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IRS RECORDS

Inconsistencies Between Statutes Affect Records Appraisal



General Government Division

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The Honorable Bill Archer
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Nancy L. Johnson
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

At any given time, the Internal Revenue Service (IRS) maintains millions of cubic feet of federal records. These records include documentation of agency policies and decisions, agency operations, and individual and corporate tax returns. IRS records containing tax returns and return information are protected from disclosure to any unauthorized person by 26 U.S.C. 6103 of the Internal Revenue Code.

The Federal Records Act (FRA)¹ requires IRS to prepare disposition schedules for its records and to submit the schedules to the National Archives and Records Administration (NARA) for approval. NARA appraises federal records for their historical value, provides assistance to agencies in carrying out their records management and disposition responsibilities, oversees agency records management programs, and promulgates and administers regulations dealing with federal records. This report responds to your request that we evaluate certain aspects of IRS' records management program. Specifically, you asked us to (1) determine how IRS applies the restrictions of section 6103 in reviewing and inventorying its records and (2) evaluate how IRS carries out its records management responsibilities. Your request was precipitated by the long-standing issues surrounding NARA's access to IRS records for appraisal purposes, the former IRS historian's allegations concerning IRS' records management program, and a 1995 NARA evaluation of IRS' records management program.² Because the NARA evaluation of IRS' overall records management program was released just before the start of our work in early 1996, we focused on the issues NARA found to be most troublesome. These issues also corresponded with your concerns.

¹44 U.S.C. Chapters 21, 29, 31, and 33.

²A NARA Evaluation: Records Management in the Internal Revenue Service, Department of the Treasury, December 14, 1995.

The following terms, as defined in a NARA glossary³ and the Internal Revenue Code, are used throughout this report:

- Appraise refers to the determination of records' value and their final disposition.
- Disposition refers to the actions taken regarding records that are no longer needed for current government business. These actions include the transfer to agency storage facilities or Federal Records Centers (FRC), transfer from one federal agency to another, transfer of permanent records to NARA, and disposal of temporary records.
- Inventory refers to a survey of agency records and nonrecord materials that is conducted primarily to develop records schedules and also to identify various records management problems.
- Schedule refers to a document that provides mandatory instructions for what to do with records and nonrecord materials no longer needed for current government business.
- Tax return refers to any tax or information return, declaration of estimated taxes, or claim for refund that is filed with IRS by, on behalf of, or with respect to any person. This term also includes any amendment or supplement to such document, including supporting schedules, attachments, or lists that are supplemental to, or part of, the filed return.
- Return information means the taxpayer's identity; the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments; whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or any other data received, recorded, prepared, and collected by or furnished to the Secretary of the Treasury with respect to a return or to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or any other imposition or offense. This term does not include data in a form that cannot be associated with, or otherwise directly or indirectly identify, a particular taxpayer.

Results in Brief

NARA's 1995 review of IRS' records management program found that IRS had managed its overall records program according to NARA requirements, except for certain issues. Specifically, NARA found that certain management and policy documents, many of which IRS maintained were subject to the disclosure restrictions of section 6103, were not inventoried or scheduled for disposition as required, and that some documents were

³A Federal Records Management Glossary, NARA, 1993, Second Edition.

stored in unsatisfactory conditions. NARA's review highlighted issues associated with its inability to appraise certain IRS records for historical value because of IRS' interpretation of restrictions contained in section 6103. Our review confirmed that these records management problems existed but also identified progress being made by IRS in resolving deficiencies in its records management program. We also confirmed that the controversy related to NARA's access for appraisal purposes to records containing tax returns or return information remains unresolved.

At the time of NARA's review, certain IRS management records that documented policymaking and high-profile programs and actions by former commissioners and other top executives were not reviewed by NARA because IRS maintained that the documents potentially contained taxpayer-protected data and, historically, the two agencies could not work out a mutually agreeable process for reviewing records given section 6103 restrictions on access to records containing tax returns or return information.

NARA and IRS subsequently worked out a test method for appraising some of these management records. For the records of former IRS commissioners and the former executive secretariat, IRS grouped records into section 6103-protected and section 6103-nonprotected records. IRS and NARA engaged in a "blind" review of the 6103-protected records, whereby an IRS official described the records' contents to the NARA records appraiser who decided on the basis of this description whether the records had historical value.⁴ The nonprotected records were made available to NARA for appraisal. After the review, IRS prepared a records control schedule for the records. We reviewed this schedule to ascertain the volume of protected and nonprotected records on that schedule. We observed that 59 percent of the records were designated as historical and containing tax returns or return information, 36 percent were designated as historical and containing no tax return information, and 5 percent were designated as nonhistorical and could be destroyed after the applicable period.

At the time of NARA's and our reviews, a substantial backlog of uninventoried records had accumulated at IRS. Also, in four of the six headquarters storage locations we observed in early 1996, records were stored in no particular order and under poor conditions. According to

⁴According to NARA officials, this blind method of reviewing records only worked for these particular records because the historical value of the records was apparent and easily determined.

NARA, some of the records stored at IRS headquarters could have been less expensively stored at an FRC.

IRS acknowledged its records management problems. Early in 1996, IRS escalated its efforts to improve its records management program with NARA's assistance. As of May 1997, IRS' last official reporting date, NARA said that IRS had completed action on 47 of NARA's 58 recommendations to improve records management and was making progress on the other recommendations. The two agencies agreed that less progress had been made on resolving NARA's access for appraisal purposes to records containing tax return information. NARA is still precluded from doing independent reviews of IRS records that possibly contain tax returns or return information. According to NARA, this lack of access did not hinder its ability to make an overall evaluation of IRS' records management program, but did preclude it from independently appraising IRS records to determine their historical value.

Background

The law protecting taxpayers' rights to privacy—codified in 26 U.S.C. 6103—is a critical underpinning of our voluntary tax system. Under this law, access to tax returns or return information is limited to certain federal employees working on tax issues and certain other authorized persons. Such information is not to be released to the public or to other unauthorized government officials. Congress considered these protections, which are enforced by civil and criminal penalties, necessary to encourage taxpayers to voluntarily file accurate information about their taxes and to prevent inappropriate use of tax returns or return information.

Government records management and retention laws have a different purpose. FRA requires agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency” The objectives of records management include the maintenance of accurate and complete documentation of the policies and transactions of the federal government, the establishment and maintenance of control mechanisms to prevent the unnecessary creation of records, and judicious preservation and disposal of records.

Statutory Inconsistencies

Both NARA and IRS agree that there are inconsistencies between the access restrictions of section 6103 and the provisions of FRA that require NARA to

appraise federal records. The legislative history of the National Archives and Records Administration Act of 1984, while acknowledging the conflict, does not resolve it. In 1984, the Department of the Treasury (Treasury) determined that certain provisions of the draft legislation⁵ to make NARA an independent agency would allow NARA to review management records that might contain tax returns or return information. Treasury expressed opposition to any overriding of the access restrictions of section 6103, stating that it would endanger taxpayer compliance if NARA were given access to tax returns that were filed with the expectation of confidentiality. Accordingly, the Senate bill was amended to provide that, notwithstanding any provision of the act, no tax returns or return information as defined in section 6103 may be disclosed, except as authorized by that title. The conference report⁶ stated that the concern for the confidentiality of tax returns and return information was a legitimate issue that deserved consideration as a separate matter. The report also noted that the conferees were sensitive to the need to protect (1) the confidentiality of tax returns and return information while also protecting the permanent historical records of our government's actions and (2) the public's right to know about those actions at some future time. Consequently, the conferees urged NARA, IRS, and other affected agencies to devise a cooperative means to address the issue.

The inconsistencies between the laws have resulted in a number of controversies. For example, the Department of Justice's Office of Legal Counsel (OLC), which provides advice to resolve inconsistencies that arise within the executive branch from differing interpretations of federal statutes, has issued at least three memorandums addressing the section 6103 issue and the transfer of records containing tax returns or return information to NARA.⁷

OLC concluded in 1986—its most recent memorandum—that the statutory provisions generally empowering NARA to obtain and open 30-year-old records that are subject to statutory restrictions in 44 U.S.C. 2107 and 2108 do not apply to tax returns and return information, which are strictly protected by section 6103. Title 44 U.S.C. 2107(2) provides that when it appears to the Archivist to be in the public interest, he may direct the

⁵S. 905, 98th Cong., section 2105 (1983).

⁶H.R. Conf. Rep. No. 98-1124, at 30 (1984).

⁷See U.S. Department of Justice Legal Counsel Memos: (1) "Transfer of Watergate Special Prosecution Force Records to the National Archives-Income Tax Information-26 U.S.C. 6103(a)" (Sept. 27, 1977); (2) "Applicability of the Non-disclosure Provisions of the Tax Reform Act" (Nov. 7, 1980); and (3) "Authority of the FBI to Transfer Restricted Records to the National Archives and Records Administration" (Feb. 27, 1986).

transfer to the National Archives federal agency records that (1) have been in existence for more than 30 years and (2) have been determined by the Archivist to have sufficient historical value to warrant their continued preservation. Title 44 U.S.C. 2108 in turn provides that the Archivist is responsible for the custody, use, and withdrawal of records transferred to him, and that such records are subject to the same statutory limitations and restrictions with respect to their examination and use as were applicable to the agency from which the records were transferred. Section 2108 provides further that statutory and other restrictions shall remain in force until the records have been in existence for 30 years, unless the Archivist, by order, having consulted with the head of the transferring agency, determines that for reasons consistent with standards established in relevant statutory laws, such restrictions shall remain in force for a longer period.

Referring to its two previous memorandums, OLC advised that section 6103 and its legislative history indicated that such tax records are not to be transferred to NARA. OLC reasoned that the legislative history of section 6103 made it clear that Congress intended no disclosure of tax returns or return information, except in the carefully limited exceptions found in section 6103.

Recent concerns raised about IRS' records management program, as well as allegations that IRS was using the access restrictions of section 6103 to avoid making public records that could be embarrassing to the agency, led Congress to reopen this access issue last year. The conference report accompanying IRS' 1997 budget directed the two agencies to submit a report to the cognizant committees by March 1, 1997. The report was to include an analysis of outstanding issues and recommendations as to how the disposition of certain IRS records should proceed. NARA and IRS submitted a report on March 17, 1997; however, because of a pending lawsuit⁸ the agencies did not provide specific recommendations in their report. The two agencies remained unable to reach agreement on the long-standing issue of access. In an attempt to end the long-standing access to IRS records issue, identical bills were introduced in both the Senate and the House of Representatives in July 1997 as part of the congressional effort to restructure IRS. Both bills provide the Archivist of

⁸Tax Analysts, et. al., v. IRS and NARA, United States District Court for the District of Columbia (Feb. 7, 1997). The four plaintiffs in the lawsuit alleged that IRS had violated the FRA and NARA regulations. Among other things, they argued that IRS had not scheduled many of its records, had not maintained an up-to-date records management program, and had denied NARA access to its records as provided by law. The plaintiffs further alleged that NARA had failed to take action to compel IRS compliance with the FRA and NARA regulations.

the United States access to “all records of the Internal Revenue Service for purposes of scheduling such records for destruction or for retention in the National Archives.”

Federal Records Management Programs

Title 44 of the U.S. Code establishes standards and procedures for the creation, management, preservation, and destruction of federal records. These records management standards and procedures are intended to ensure (1) accurate and complete documentation of the policies and transactions of the federal government, (2) control of the quantity and quality of records produced by the federal government, (3) the establishment and maintenance of control mechanisms to prevent the unnecessary creation of records, and (4) the judicious preservation and disposal of records.⁹

Under title 44, each federal agency, including IRS, is to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. Such records are to be designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency’s activities.¹⁰ To do this, each agency is to establish and maintain an active, continuous records management program that provides effective controls over the creation, maintenance, and use of agency records that are sufficient to (1) document the persons, places, things, or matters dealt with by the agency; (2) facilitate action by agency officials and their successors in office; (3) make possible a proper scrutiny by Congress or other authorized agencies of the government; (4) protect the financial, legal, and other rights of the government and other affected persons; (5) document the formulation of agency policies and decisions; and (6) document important board, committee, or staff meetings.¹¹

Title 44 also authorizes NARA to provide advice and assistance to federal agencies with respect to ensuring adequate and proper documentation of the policies and transactions of the federal government, proper records disposition, and economical and effective records management. To fulfill this responsibility, NARA is authorized to inspect the records or records management practices and programs of any federal agency for the purpose

⁹44 U.S.C. section 2902.

¹⁰44 U.S.C. section 3101.

¹¹44 U.S.C. section 3102 and 36 C.F.R. section 1222.38.

of making recommendations for the improvement of the agency's records management practices and programs. Under 44 U.S.C. 2904, NARA is to report to the appropriate oversight and appropriations committees of Congress on the results of inspections, the responses by agencies to NARA evaluation recommendations, and the estimates of the costs to the federal government resulting from the failure of agencies to implement such recommendations.

NARA views the appraisal of federal records as its most important responsibility under title 44. Under 44 U.S.C. sections 3303-3303a and 3314, agency records may only be destroyed pursuant to a records schedule that has been approved by NARA. Accordingly, the head of each agency is to submit to NARA schedules of agency records proposing the time for disposal of those records that do not have sufficient administrative, legal, research, or other value to warrant further preservation. Under section 2107, NARA may direct and effect the transfer to the National Archives of the United States those records that have been in existence for more than 30 years and that the Archivist has determined to have sufficient historical value to warrant their continued preservation. Pursuant to its regulations,¹² NARA is to appraise the records listed on agency schedules to determine which records have sufficient historical value to warrant preservation and transfer to its National Archives and is to approve the disposal of records having only temporary value.

Historical records are defined by NARA as those that, among other things, (1) document agency policies, procedures, and decisionmaking; (2) generate widespread attention from the news media; (3) provide information about an agency's mission, organization, and history; and/or (4) document persons, places, things, or matters dealt with by an agency that contain information with significant research or reference value.¹³ It is important to note that NARA's appraisal process does not equate to public disclosure of federal records. The process of "appraising records" deals with the act of determining the value of records, which is an act involving NARA appraisers and the federal agencies, rather than the separate issue of public disclosure of the records.

Organizationally, IRS maintains two records management groups. First, located within the Real Estate Planning and Management Division are the IRS Records Officer and Servicewide records management staff. They are

¹²36 C.F.R. section 1228.182.

¹³National Archives and Records Administration Records Management Handbook, Disposition of Federal Records, pp. IV-5 and C-1 through C-4.

responsible for planning, developing, and establishing standards and guidelines for the agency's records management program. They also coordinate with NARA and IRS field offices and headquarters. The second group is located within the Support Services Division and includes the headquarters records staff, which are responsible for IRS headquarters' records management program and serve as the liaison to NARA's Washington National Records Center staff. In addition, records management staff are designated in IRS' field offices to perform functions similar to those of the headquarters records management staff.

Section 6103

Before 1976, tax returns were described as "public records" and were generally open to inspection, although only with the approval of the president or under presidential order. Section 6103 was amended in 1976 to prohibit the release of tax returns or return information to unauthorized persons; the prohibition was retroactive and thus encompassed information generated before 1976. Before the 1976 amendment, questions had been raised and substantial controversy created as to whether the extent of actual and potential disclosure of tax returns or return information breached the taxpayer's expectation of privacy. This issue in turn raised the question of whether the public's reaction to this possible abuse of taxpayer privacy would seriously impair the country's system of voluntary tax compliance. Access is currently limited, on a case-by-case basis, to government staff working specifically on taxpayer issues and to certain other authorized persons. Access is specifically granted by statute and may carry with it civil and criminal penalties for unauthorized release of tax returns or return information.

Objectives, Scope, and Methodology

Our objectives were to (1) determine how IRS applies the restrictions of section 6103 in reviewing and inventorying its records and (2) evaluate how IRS carries out its records management responsibilities.

To determine how section 6103 might affect the appraisal of records containing tax return information, we reviewed laws governing the appraisal of records and taxpayer privacy under section 6103 and discussed these laws with IRS and NARA officials. Additionally, we reviewed OLC memorandums on disclosure of records containing tax returns or return information to NARA. We also reviewed Treasury, Justice, congressional, and NARA memorandums, letters, and draft legislation on the restrictions of section 6103 and NARA's appraisal responsibilities.

Our work focused on certain IRS management records, which were those records addressing agency policies, decisions, and operations. We did not review how tax returns and return information were managed at FRCS. Federal tax returns and criminal case files are currently stored in FRCS and at IRS for retrieval and use by IRS staff as needed. According to NARA officials, tax returns are inventoried and stored according to IRS and NARA regulations. We did not review IRS' field office records management operations because NARA reviewed field operations as part of its comprehensive 1995 review of IRS' records program and found that the agency had generally handled and maintained tax returns and return information correctly. As part of NARA's review, it visited 11 IRS field locations, including district offices, a regional office, a data center, a computer center, and service centers. We reviewed NARA's workpapers from its site visits and all of its IRS headquarters work.

To gain an understanding of government records management programs, we used NARA's criteria from some of its publications, including a guide on agency recordkeeping requirements, a recordkeeping self-evaluation checklist, and a records management handbook. We supplemented this work with interviews of NARA officials. We also reviewed IRS' guidance for records management, including its procedures for inventorying and scheduling records.

At IRS, we interviewed (1) the IRS Records Officer and the Servicewide records management staff located in the Real Estate Planning and Management Division; (2) headquarters records staff located in the Support Services Division; and (3) officials in the Office of Chief Counsel and the Office of Disclosure. We also interviewed the former IRS historian to obtain additional information about allegations she had made that were critical of the agency's records management program. We toured IRS' headquarters storage facilities, which contained about 2,300 cubic feet of records, to observe how these records were stored, the types of records stored, and the physical characteristics of the storage facilities. We also reviewed IRS documents, including appropriate sections of the Internal Revenue Manual and the agency's guidance and training materials on records management, to determine whether it was in compliance with internal guidance on records management at the locations NARA visited.

Additionally, we reviewed IRS' record control schedule for records of the former office of the executive secretariat and former commissioners. These records had been scheduled by IRS and appraised by NARA.

We did our work between March 1996 and August 1997 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Commissioner of Internal Revenue and the Archivist of the United States or their designees. Their written comments are addressed at the end of this report.

NARA Found Recordkeeping Problems in IRS' Records Management Program

NARA found in its review that, while IRS had many elements of an acceptable records management program, it also had serious deficiencies that needed correction. NARA noted that IRS had extensive recordkeeping requirements in its Internal Revenue Manual and was developing a vital records program, and that the agency's tax-processing records were well-managed and handled in accordance with approved disposition schedules. NARA also noted that electronic records systems were well-maintained and had been scheduled for disposition.

However, NARA noted that IRS had not conducted a comprehensive records inventory or a complete review of its records control schedules in several years. NARA found that there was no consistency in how records that documented the development of IRS policy were scheduled, that a number of important agency records were unscheduled, and that IRS records control schedules had not been updated to reflect agency reorganizations. According to NARA, these records included those that documented important IRS programs and initiatives.

NARA made 58 recommendations to address the problems it found in IRS' records management practices. According to a NARA official, as of May 1997, IRS had successfully completed 47 of these recommendations. At the time that we completed our audit work, IRS expected that the remainder of the recommendations would be completed by September 30, 1997.

In addition, NARA noted that there were a number of backlogged headquarters records stored on-site or at FRCS that could not be scheduled for disposition because IRS, on the basis of the access restrictions of section 6103, did not allow NARA to appraise the records' contents. These backlogged headquarters records included the historical office files of the former IRS commissioners, criminal investigative case files, corporate tax returns for 1909 through 1919, and records of the Special Services Staff (created during the Watergate era to review certain tax returns). In early 1996, NARA and IRS formed an interagency working group to try to find a mutually acceptable way to allow NARA to appraise IRS records.

IRS and NARA devised a test method for appraising some of the backlogged headquarters records, beginning in early 1996 with about 198 cubic feet of records from the former office of the executive secretariat and from former commissioners.¹⁴ The test method involved separating the records into two groups—section 6103-protected and 6103-nonprotected records. IRS and NARA engaged in a blind review of the 6103-protected records, whereby an IRS disclosure officer described the records' contents to the NARA records appraiser who decided on the basis of this description whether the records had historical value. The 6103-nonprotected records were made available to NARA for appraisal.

After the appraisal of the protected and nonprotected records was completed, IRS staff prepared a records control schedule for records disposition. The schedule separated the records into three categories—those that had historical value and did not contain tax returns or return information; those that had historical value and contained tax returns or return information, and those that were temporary, nonhistorical records that could be destroyed. We observed that 36 percent of the records were in the first category, 59 percent were in the second category, and 5 percent were in the third category.

NARA officials told us that although this process worked for some records, it could be problematic for others because of the potential to either inadvertently destroy records that should be kept or to unnecessarily retain records that should be destroyed. As an alternative, IRS officials said that they offered to regroup the individual 6103-protected files into restricted and nonrestricted stacks and to redact (block out restricted material), where necessary, to expedite NARA's review. According to IRS officials, NARA officials declined, preferring to keep the files in the order they were filed so that the context of each record could be understood by a records appraiser.

In a March 1997 report to the Congress, NARA officials indicated that the blind review process worked well for this group of records because their historical value was readily apparent. However, they said that for some groups of records, such as criminal investigative case files, this method will not work because the historical value may not be apparent.

¹⁴Our review of these records found that they contained a wide variety of material, including regional office reports, official executive calendars, records of former IRS commissioners, and taxpayer letters with agency responses. The records varied in size from a few inches to many feet of paper material.

We Found Several Problems in IRS' Records Management Program

Our review of IRS' records management program indicated several problems. The most significant problem was IRS' records backlog that had been allowed to accumulate over many years. IRS' records management staff had not followed their own or NARA's requirements for managing these records; thus, the backlog grew. IRS allowed records to accumulate in basement storage areas and in program offices because there was no pressing need to dispose of them and there was an apparent abundance of storage space. We observed about 2,300 cubic feet of documents in the six locations we toured in April 1996 and August 1997, as shown in table 1.

Table 1: IRS Records Storage Locations Reviewed by GAO as of April 1996 and the Status as of August 1997

Locations visited^a	Description	Approximate volume in cubic feet	Status as of August 1997
Location 1: IRS basement storage (room G560)	Former office of the executive secretariat's records and former commissioners' records (1970-1993)	235	All 235 cubic feet were (1) inventoried and scheduled by IRS and (2) appraised by NARA.
Location 2: Former historian's records (room 4547)	Various records, including Tax Systems Modernization	318	The former historian's records were consolidated and are located in room G717. All 318 cubic feet were inventoried and scheduled by IRS and were awaiting NARA's appraisal for final disposition.
Location 3: Former historian's records (room B-141, 1201 Constitution Ave.)	Various records, including Service Center reorganization board minutes		
Location 4: IRS vault and adjoining conference room (room 5120)	Special Services Staff's records	140	All 140 cubic feet were inventoried and scheduled by IRS and were awaiting NARA's appraisal for final disposition.
Location 5: Office of the Chief Counsel storage (room G511)	Chief Counsel records	1,639	807 cubic feet were (1) inventoried and scheduled by IRS and (2) appraised by NARA for final disposition. According to IRS, the remaining 832 cubic feet will be completed by September 30, 1997.
Location 6: IRS safe (room 3014)	Presidential, vice-presidential tax returns	5	All 5 cubic feet were (1) inventoried and scheduled by IRS and (2) appraised by NARA.

^aAll locations were in IRS' main headquarters building, except where noted.

During our April 1996 tour, we found at location 3, a basement storage room across the street from IRS headquarters, documents in file cabinets and other documents piled around the room. In addition, we found banners, maps, pictures, reports, furniture, and supplies. There were no inventories to assist staff in finding documents, and records were strewn throughout the room. Records in this location appeared to be undamaged.

Many of IRS' Chief Counsel documents were kept in the Chief Counsel file room in an IRS building basement storage facility. The room itself was large—about 25 by 130 feet—and contained about 1,639 cubic feet of documents. Records in this room were generally categorized by calendar year, and some records had already been scheduled for disposition. However, we observed in April 1996 that many boxes of records were piled in corners and on the tops of file cabinets. We also observed some records lying in unprotected boxes exposed to environmental conditions not recommended by NARA for paper files (i.e., no temperature or humidity control). The NARA evaluation mentioned that the room had poor air quality—staff working in this area for extended periods were given masks to wear—and there was danger from loose and hanging ceiling tiles. We found evidence of insect infestation and observed records that had been damaged by water during a basement flood. There were Christmas decorations, boxes containing ketchup packages, and boxes containing office equipment—such as lamp shades—in the room. These items were located throughout the room, intermingled with the records themselves, thus making it difficult to locate particular files.

According to NARA, if the records in the Chief Counsel file room had been managed appropriately, they could have been stored at FRCs at less cost. According to a NARA computation, which we did not examine, storing these records cost IRS about \$12,600 annually, whereas the cost of storing the records at an FRC would cost only about \$900 annually.

IRS' permanent records stored in the National Archives total about 3,000 cubic feet. Compared to other federal agencies, this amount is small. For example, as of October 1, 1994, the Department of Transportation had over 16,000 cubic feet of records in the National Archives; Justice had 43,000 cubic feet; the Department of Agriculture had 57,000 cubic feet; and the U.S. Bureau of Mines had about 5,000 cubic feet.

Not all IRS records were stored in poor conditions. IRS had, in a locked safe, presidential and some vice-presidential tax returns dating back to the first federal income tax in 1913. These tax returns were stored in alphabetical

order, and most were kept in special file folders designed to protect the paper over time. There were about 5 cubic feet of records containing the tax returns and return information.

In August 1997, we toured IRS' headquarters storage facilities again and found that progress in inventorying and scheduling these documents had been made. IRS had consolidated the records of the former historian (locations 2 and 3) into one location in the main IRS building. All of these documents had been inventoried and scheduled by IRS and were awaiting NARA appraisal. Additionally, all of the Special Services Staff's records (location 4) had been inventoried and scheduled and were awaiting NARA appraisal.

The Office of the Chief Counsel had made progress in inventorying and scheduling its 1,639 cubic feet of records. IRS records managers said that they had a commitment from the Office of the Chief Counsel to complete this task by September 30, 1997. IRS officials also said that the storage room had been cleaned and that improvements were made to ensure that environmental, health, and safety requirements were met. Additionally, exterminations to control insect infestations had been done twice. We observed that the room appeared cleaner, new air vent systems were in place, and repairs had been made to the damaged ceiling tiles.

Decisionmaking Documentation Was Not Readily Identifiable

NARA found that decisionmaking documentation was not readily identifiable in IRS. NARA was concerned that decisionmaking documentation was not maintained for the former IRS commissioners and with intervening reorganizations, such records may have become unidentifiable. Also, IRS commissioners have received various intra-agency committees' and units' input, recommendations, and alternatives that the agency has used to make policy decisions. NARA found that these types of records with the potential to influence decisionmaking are returned to the program areas, rather than being centrally filed and archived for preservation. NARA and IRS were unable to determine the extent of these records that were kept by individual staff members in personal or program area records. NARA recommended that IRS determine the most efficient way to maintain these types of records. IRS stated in its November 1996 response to the NARA recommendation that it had located and identified policy records in the program areas and that inventorying was under way.

IRS Has Made Improvements to Its Records Management Program

IRS acknowledged having some records management program problems. In addressing concerns raised in the NARA evaluation, IRS launched a records management cleanup effort. IRS plans to complete the relocation of many of its headquarters staff to new facilities in New Carrollton, MD, by 1998. This move, according to IRS officials, presented a good opportunity for staff to review existing records and improve overall recordkeeping practices. Among other efforts, IRS' records management staff has distributed memorandums, guidelines, and brochures to agency staff on working with them and on the importance of maintaining adequate records. Additionally, each program area at IRS headquarters designated an information resource coordinator who is responsible for the group's records. The information resource coordinator also acts as a focal point for records management in that group.

IRS records managers, trained by NARA staff, held training classes for IRS headquarters staff. IRS records managers developed guidance for the training session and made this available to all staff. The guidance describes the legal requirements for federal recordkeeping, defines the respective roles and responsibilities of IRS and NARA staff, defines the various types of records maintained in IRS, and provides guidelines on how staff should dispose of and save documents.

Observations

The continuing debate over how NARA should carry out its responsibilities at IRS highlights a fundamental inconsistency between two important laws. NARA's authorizing legislation requires it, among other things, to (1) appraise agency records to determine their historical value so that the appropriate retention, storage, and accessibility of those historical records will be systematically ensured and (2) establish regulations and ensure agency accountability for the proper handling of public records. Congress determined that a national interest exists in supporting the voluntary tax system through strong assurances of taxpayer privacy. To this end, section 6103 provides that tax returns and return information be safeguarded and not disclosed to unauthorized persons. Citing the section 6103 provisions, IRS prevented NARA from appraising records that IRS believed contained protected tax returns or return information.

In the draft of this report, which was sent to IRS and NARA for comment, we identified several options for consideration as potential solutions to the inconsistency between the two agencies' responsibilities. However, upon further reflection, including our consideration of IRS and NARA comments on the options discussed in our draft report, we have come to believe that

consideration of such options may be premature in light of the lawsuit (*Tax Analysts, et. al., v. IRS and NARA*) that was pending at the time of our review. The lawsuit explicitly sought the court's resolution of the inconsistency between IRS' and NARA's responsibilities. Accordingly, we have deleted the discussion of the options from this report.¹⁵

Agency Comments and Our Evaluation

We provided drafts of this report to the heads of NARA and IRS for their comments. Both agencies provided written comments, which are discussed in the following sections, and technical corrections, which we incorporated in this report where appropriate.

NARA's Comments

NARA's comments centered on two major points. First, while the Archivist has the statutory responsibility to approve the disposition of records and to select records for permanent retention, NARA believes that it is currently unable to fulfill this responsibility for all IRS records because it lacks access to the records. NARA notes, as we do in this report, that the process by which it appraises and approves the disposition of agency records is, by law, the official procedure. In line with NARA's comments on this point, we sought to emphasize in this report the statutory basis for NARA's oversight of federal records management. At the same time, we continued to highlight the conflict between NARA's statutory responsibilities and the disclosure provisions of section 6103.

Second, NARA discussed the legal interpretation of section 6103 and the policy questions it raises for both agencies. NARA stressed that although NARA employees in the FRCS are involved in the retrieval, refiling, and eventual destruction of individual tax returns on an ongoing basis, they do not have similar access to records containing tax returns or return information for appraisal and disposition purposes. IRS' comments, which we discuss in more detail below, noted that tax returns may be stored at FRCS for retrieval and use by the agency pursuant to section 6103. However, IRS does not believe that section 6103 would allow NARA access to tax returns or return information for appraisal purposes. IRS has interpreted section 6103 as allowing the disclosure of tax returns and return information for purposes of tax administration to the extent necessary in connection with the processing, storage, transmission, and

¹⁵As this report was in final preparation for printing, a U.S. district court judge granted IRS' motion to dismiss this case and noted that (1) the Internal Revenue Code and case law prevented IRS from providing NARA access to documents protected under section 6103 and (2) the remaining issues were not ripe for judicial review because the collaborative process between IRS and NARA had not been completed. Subsequently, the plaintiffs filed a motion requesting the court to alter or amend the decision to dismiss the case.

reproduction of such information; the programming, maintenance, repair, testing, and procurement of equipment; and the providing of other services. The one court that has specifically examined this issue agreed with IRS' interpretation.¹⁶

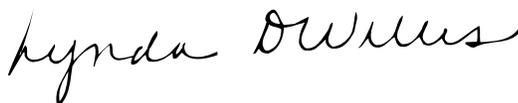
IRS' Comments

IRS explained that Congress has put very tight restrictions on access to tax returns and return information and that its interpretation of section 6103 precludes any access that has not been expressly granted by legislation. As previously mentioned, H.R. 2292 and S. 1096, introduced July 30 and 31, 1997, respectively, each include a section that would provide a statutory mechanism for NARA access to IRS records.

IRS also commented that its relationship with NARA, except for the section 6103 issue, has been satisfactory over the years. IRS described, as examples of the agencies' satisfactory working relationship, the routine management and disposition of its huge volume of individual tax returns and its efforts in addressing the 58 recommendations made by NARA in its evaluation of IRS' records management program. We mentioned in this report that IRS and NARA had worked together on several occasions and accomplished various tasks.

We are sending copies of this report to the Ranking Minority Member of the House Committee on Ways and Means, the Chairman and Ranking Minority Member of the Senate Committee on Finance, other interested congressional committees, the Secretary of the Treasury, and other interested parties. We will also make copies available to others upon request.

Major contributors to this report are listed in the appendix. If you or your staff have any questions concerning this report, please call me on (202) 512-9110.



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¹⁶American Friends Service Committee v. Webster, 720 F. 2d 29 (D.C. Cir. 1983).

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