RECOMMENDATIONS OF THE NATIONAL COMMISSION ON RESTRUCTURING THE IRS ON EXECUTIVE BRANCH GOVERNANCE AND CONGRESSIONAL OVERSIGHT OF THE IRS

HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

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RECOMMENDATIONS OF THE NATIONAL COMMISSION ON RESTRUCTURING THE IRS ON EXECUTIVE BRANCH GOVERNANCE AND CONGRESSIONAL OVERSIGHT OF THE IRS

TUESDAY, SEPTEMBER 16, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to call, at 1:17 p.m., in room 1102, Longworth House Office Building, Hon. Bill Archer (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
September 9, 1997
No. FC-9

CONTACT: (202) 225-1721

Archer Announces Hearing on the Recommendations of the National Commission on Restructuring the IRS on Executive Branch Governance and Congressional Oversight of the IRS

Congressman Bill Archer (R-TX), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing to examine the recommendations of the National Commission on Restructuring the Internal Revenue Service (IRS) with regard to Executive Branch governance and Congressional oversight of the IRS. **The hearing will take place in the main Committee hearing room, 1100 Longworth House Office Building, on Tuesday, September 16, 1997, beginning at 1:00 p.m., and will continue on Wednesday, September 17, 1997, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include, among others, U.S. Department of the Treasury officials, members of the National Commission on Restructuring the IRS, representatives from stakeholder organizations with an interest in tax administration, academics, and former senior IRS executives. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The National Commission on Restructuring the IRS was established by Public Law 104-52. Its purpose was to review the present practices of the IRS and to make recommendations for modernizing and improving its efficiency and taxpayer services. The Commission's June 25, 1997, report, which was endorsed by 12 of its 17 members, contains recommendations relating to Executive Branch governance and management of the IRS, Congressional oversight of the IRS, personnel flexibilities, customer service and compliance, technology modernization, electronic filing, tax law simplification, taxpayer rights, and financial accountability. The Commission's recommendations are embodied in H.R. 2292, the "Internal Revenue Service Restructuring and Reform Act of 1997," which was introduced on July 30 by Reps. Rob Portman (R-OH) and Ben Cardin (D-MD).

With respect to Executive Branch governance, among other things, H.R. 2292 provides for the establishment, within the Treasury Department, of an IRS Oversight Board. The Board would consist of seven members who are not full-time Federal officers or employees, appointed by the President, confirmed by the Senate, and removable at the will of the President, with professional experience and expertise in managing large service organizations. These members would be appointed to five-year staggered terms. The Board would also include the Secretary of the Treasury and a representative from the National Treasury Employees Union. The Oversight Board's role would be to guide long-term strategic planning at the IRS, appoint and remove the Commissioner, approve the development of IRS's budget and allocation of the agency's resources, and hold senior IRS management accountable for achieving the agency's strategic goals. In addition, the bill provides that the Commissioner would be appointed by the Board to a five-year term to administer, manage, and supervise the execution and administration of the internal revenue laws. The bill would also provide the IRS Commissioner with expanded authority to: (1) hire and pay certain top-level management and technical experts more competitive salaries and the Commissioner would be required to consult with the Board on major operational and management decisions; and (2) enter into performance-based employee pay and retention arrangements.

(MORE)

With regard to Congressional oversight of the IRS, among other things, H.R. 2292 provides that Congressional oversight of the IRS should be coordinated by holding at least two annual joint hearings of the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight, and the Senate Committees on Finance, Appropriations, and Government Affairs. The joint hearings would include two members of the majority and one member of the minority from each of the committees, and would focus on areas of primary importance to tax administration, including: IRS strategic and business plans, the IRS budget and how it is aligned with the agency's objectives, progress on technology modernization, and the annual filing season. The joint hearings would serve as the primary forum for interaction between Congress and the IRS Oversight Board. The legislation would also expand the Joint Committee of Taxation's (JCT) oversight responsibilities with regard to the IRS and require the JCT to report annually to the House Committee on Ways and Means and Senate Committee on Finance with recommendations to simplify the tax law and administration. Finally, the bill would require the JCT to prepare a "Tax Complexity Analysis" for any legislative proposal that amends the Internal Revenue Code.

The Administration has formulated its own plan, entitled the "Five-Point Plan for IRS Governance," which was implemented by Executive order 13051, signed by the President on June 24, 1997. H.R. 2428, the "Internal Revenue Service Improvement Act of 1997," which was introduced on September 8, 1997, by Reps. Charles Rangel (D-NY), William Coyne (D-PA), Steny Hoyer (D-MD), Henry Waxman (D-CA), and Robert Matsui (D-CA) would codify the Administration's plan. Among other things, H.R. 2428 would statutorily authorize the establishment of an IRS Management Board chaired by the Deputy Secretary of the Treasury and composed of senior officials from the Treasury Department and the IRS, including the IRS Taxpayer Advocate, a representative from the National Treasury Employees Union, and representatives of such other government agencies as may be determined from time to time by the Secretary of the Treasury. The purpose of the Management Board would be to support the Secretary's oversight of the management and operation of the IRS. The legislation would also provide for the creation of an IRS Advisory Board (composed of 14 private-sector professionals) to provide advice to the Secretary of the Treasury. In addition, H.R. 2428 provides that the Commissioner would be appointed to a five-year term to administer, manage, and supervise the execution and administration of the internal revenue laws. The bill would also provide the IRS Commissioner with expanded authority to: (1) hire and pay certain top-level management and technical experts more competitive salaries and the Commissioner would be required to consult with the Board on major operational and management decisions; and (2) enter into performance-based employee pay and retention arrangements. With regard to Congressional oversight of the IRS, H.R. 2428 would require the Department of the Treasury to submit an annual report to the Congress on the management of the IRS, and require the Secretary of the Treasury and Deputy Secretary to appear annually before the House and Senate to discuss their stewardship of the IRS. The Committee will receive testimony on the Administration's plan for IRS management and governance.

In announcing the hearing, Chairman Archer stated: "The IRS Restructuring Commission has performed a valuable service by identifying the problems facing the IRS and making recommendations to improve its operations, establish greater accountability, and lay the groundwork for a more taxpayer considerate IRS for the 21st Century. Clearly, the IRS's chief problem in administering the tax system, and the source of most of the American public's frustration with the IRS, is the tremendous complexity of our existing income tax laws. I remain firmly committed to the goal of replacing the income tax with a new tax system that is fairer, simpler, less intrusive, and more conducive to economic growth. However, I also believe that as long as we have an income tax, the IRS must be accountable for providing fair and efficient services to the nation's taxpayers. Congress and the Administration now have the best opportunity in over 40 years to truly overhaul the IRS and transform it into a modern, efficient, and taxpayer considerate agency. I look forward to working with the Administration over the coming months to achieve this important goal."

FOCUS OF THE HEARING:

The Committee will examine the Commission's recommendations with respect to Executive Branch governance and Congressional oversight of the IRS.

(MORE)

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should *submit at least six (6) single-space legal-size copies of their statement, along with an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format only, with their name, address, and hearing date noted on a label,* by the close of business, Tuesday, September 30, 1997, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Committee office, room 1102 Longworth House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments. At the same time written statements are submitted to the Committee, witnesses are now requested to submit their statements on an IBM compatible 3.5-inch diskette in ASCII DOS Text or WordPerfect 5.1 format. **Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.**

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "http://www.house.gov/ways_means/".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

*****

Chairman ARCHER. The Chair would like for staff, guests and Members to take their seats so we can begin.

Today is the first day of a 2-day hearing which will look into how we restructure and improve the Internal Revenue Service. We are pleased to have with us today Secretary Rubin, Secretary of the Treasury; several members of the Restructuring Commission and

many other distinguished experts. The Chair appreciates the attendance of all of our witnesses.

Before we begin, I would particularly thank Congressman Rob Portman and Congressman Coyne, who served on the bipartisan National Commission on Restructuring the Internal Revenue Service. Their service on this Commission has brought us to where we are today—the brink of House passage of the first comprehensive reform of the IRS since 1952.

It is important to note that the Commission on which they serve consisted of 9 Democrats and 8 Republicans yet its final recommendations were endorsed by a vote of 12 to 5.

It is my intention to address this issue in that same bipartisan spirit. The job of the IRS is complicated enough without either party injecting politics into an IRS that must be above and beyond political approach.

Similarly, as tempting as it may be, these forums should not be used as an excuse to bash the IRS, nor should they be used to shield the administration from its duty to manage the IRS properly and without political interference. Instead, until the great day comes when we have pulled the income tax out by its roots and no longer need an IRS, this Committee has a special obligation as stewards of the Tax Code to do what is necessary so the IRS can implement and enforce the laws that we pass.

That is why I am pleased that the Commission's recommendations cut across party lines, and that is why any legislation that we consider should be able to attract support from Members of both parties.

In the House, Congressman Portman and Congressman Cardin have introduced such a bill as have Senators Kerrey and Grassley in the Senate. Tomorrow these hearings will also focus on Congress' role in overseeing the IRS.

Both ends of Pennsylvania Avenue have to face their responsibilities for fixing the IRS and I intend to explore what Congress can do better.

I consider this matter a top priority before we finish our session this year, and I intend to pass a bill in the House of Representatives this year that will build a new IRS. While the nation's financial sector—particularly the service sector—has undergone sweeping change and experienced dramatic modernization in the last decade, the IRS has not been reformed in 40 years.

There is no reason the IRS cannot be run more efficiently, more effectively, and treat taxpayers more considerately than the current IRS.

[The opening statement follows:]

Statement of the Honorable Bill Archer
September 16, 1997

Good afternoon.

Today marks the first day of a two-day hearing into how to restructure and improve the Internal Revenue Service. We are pleased to have with us today Secretary of the Treasury Robert Rubin, several members of the Restructuring Commission, and many other distinguished experts. Thank you all for coming.

Before we begin, I also would like to thank Congressman Portman and Congressman Coyne who served on the bi-partisan National Commission on Restructuring the Internal Revenue Service. Your service on this Commission has brought us to where we are today - the brink of House passage of the first comprehensive reform of the IRS since 1952.

It's important to note that the Commission on which you served consisted of nine Democrats and eight Republicans. Yet its final recommendations were endorsed by a vote of 12-5.

It's my intention to address this issue in that same bi-partisan spirit. The job of the IRS is complicated enough without either party injecting politics into an IRS that must be above and beyond political reproach. Similarly, as tempting as it may be, these forums should not be used as an excuse to bash the IRS nor should they be used to shield the Administration from its duty to manage the IRS properly and without political interference. Instead, until the great day comes when we have pulled the income tax out by its roots and no longer need an IRS, this Committee has a special obligation as stewards of the tax code to do what is necessary so the IRS can implement and enforce the laws we pass.

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Tomorrow, these hearings will also focus on Congress' role in overseeing the IRS. Both ends of Pennsylvania Avenue have to face their responsibilities for fixing the IRS and I intend to explore what Congress can do better.

I consider this matter a top priority and intend to pass legislation this fall that builds a new IRS. While the nation's financial service sector has undergone sweeping change and experienced dramatic modernization in the last decade, the IRS hasn't been reformed in more than forty years.

There's no reason the IRS can't be run more efficiently, more effectively and treat taxpayers more considerately than the current IRS.

I yield now to the distinguished ranking member for his opening remarks.

Chairman ARCHER. I now yield to the distinguished Ranking Member for any opening remarks, Mr. Rangel.

Mr. RANGEL. Thank you my distinguished Chairman.

Let me join with you in making a plea to our Members that whatever we do, we should try to join in making this a bipartisan

issue. The reason I would want to do that is because so many people still have some degree of confidence in our system, and that is why it is the most successful in the world, because it is a volunteer system.

If we make a partisan battle out of this, it might cause a lot of people just to walk away from the IRS, and instead of just pulling it up by its roots, might find reasons and excuses to not abide by the law and the regulations involved.

I want to compliment Mr. Portman and Mr. Cardin, because I think that they are two Members of the Committee that are working hard to avoid what could be a very explosive political situation since the IRS is under a political attack. We all are working together for the good of the nation to improve the IRS' delivery of service.

The issue here, of course, involves how much confidence should Americans place in a board of businesspeople responsible for the conduct of the IRS, tax policy, and the hiring and firing of IRS officials—business folks that would be unaccountable to the Congress. But last week, in working with Treasury, and Congressmen Bill Coyne, Bob Matsui, Steny Hoyer and Henry Waxman, we introduced a bill, H.R. 2428, that goes a long way in improving the conditions that we all find unacceptable as it relates to the Internal Revenue Service.

Bill Coyne and Bob Matsui representing House Democrats and the National Commission on Restructuring will have a lot to do with input here.

Unlike the initial drafting of the Commission's bill, Mr. Chairman, I do want you to know that you can depend on my complete support in making this effort bipartisan. I do hope that the Chairman's mark on this will have the consultation of Democrats who feel as strongly as you for IRS reform but may not share your views about pulling it up at its roots at this point in time.

[The opening statement follows:]

**OPENING STATEMENT OF CHARLES B. RANGEL
FOR HEARINGS ON INTERNAL REVENUE SERVICE GOVERNANCE
AND CONGRESSIONAL ACCOUNTABILITY
TUESDAY, SEPTEMBER 16, 1997**

Last week, along with Congressmen Bill Coyne, Bob Matsui, Steny Hoyer, and Henry Waxman, I introduced H.R. 2428, the IRS Improvement Act of 1997.

My co-sponsors have worked long and hard on this legislation, as has our Treasury Secretary Bob Rubin. My personal thanks go to Bill Coyne and Bob Matsui for their successive roles in representing the House Democrats on the National Commission on Restructuring the IRS.

The Internal Revenue Service Improvement Act of 1997 will make many significant changes to the way the IRS operates and how the Department of the Treasury oversees the IRS.

The beneficiaries of this bill should, and will, be the American public. Taxpayers expect and deserve a tax administration system that is efficient and well-managed, fair and responsive in its dealings with the public, and staffed by employees who are well-trained and accountable for their actions.

The IRS Improvement Act of 1997 is designed to achieve these goals. The bill institutionalizes the Administration's newly-established "IRS Management Board" and planned "IRS Advisory Board" as permanent features of the tax law. The Management Board will provide for continued, high-level Government oversight of the IRS, under the direction of the Treasury Department. The Advisory Board will provide the Treasury Secretary with expert private-sector advice on the fundamental strategic and management direction of the IRS.

Under the bill, the IRS Commissioner would be given a fixed, 5-year term. This will provide continuity of direction for the IRS. Importantly, under the bill, the President of the United States will continue to appoint the Commissioner as the head of the IRS.

The bill also provides the Treasury Department and the IRS with the ability to hire one of the best management teams in the country and to make major improvements in the area of electronic tax return filing.

The IRS workforce is a dedicated and talented group of Federal employees, and they too want to see the IRS improved. They are willing to do their part, but they need the tools—the tools of modern technology, education and training—which the bill provides.

There is much about which everyone can agree in improving the IRS. We all recognize that the current IRS needs to better managed and more taxpayer-friendly. Our challenge must be to fix the IRS--and this must be done in a truly bi-partisan manner.

Today and tomorrow, we will discuss the "Governance" and "Congressional Accountability" recommendations of the National Commission on Restructuring the IRS, and the related bill, H.R. 2292, introduced by Congressmen Portman and Cardin. The bill I introduced and the Commission's bill are similar in many important respects.

However, there is one major, fundamental issue about which we disagree.

That is--Who Should Run The IRS?

Should the IRS be run by the Treasury Secretary and the IRS Commissioner, as the Administration and my bill propose?

Or, should the IRS be run by a small group of private-sector individuals, as the Commission's bill proposes?

I believe strongly that H.R. 2428 provides the correct answer. The responsibility to administer and enforce our tax laws must remain with full-time Federal Government employees, under the direction of the Secretary of the Treasury and IRS Commissioner. These responsibilities should not be handed over to private citizens. The IRS should be accountable to elected representatives of the people--the President in the Executive Branch, and the Congress in the Legislative Branch. The IRS should not be accountable to five or seven taxpayers, meeting once a month for a board meeting.

We have given the IRS one of the most difficult, important, and thankless jobs in Government. The IRS deserves our support and constructive criticism. I look forward to working with the Committee on these issues.

Mr. RANGEL. So, I want to thank you for calling the hearing and the cooperation that you have given to Members who are working together. I promise my support toward that end.

Chairman ARCHER. I thank the gentleman for his comments and I think that both of our statements should start the Committee off to a good bipartisan beginning.

Members without objection will be able to insert their written remarks in the record at this point.

[The opening statement of Mr. Ramstad follows:]

STATEMENT OF U.S. Rep. JIM RAMSTAD
BEFORE THE WAYS AND MEANS OVERSIGHT SUBCOMMITTEE
September 16, 1997

Mr. Chairman, thank you for convening these hearings on IRS restructuring issues concerning governance and Congressional oversight.

I want to compliment our colleagues, Mr. Portman and Mr. Cardin, for their work in putting the recommendations of the bipartisan National Commission on Restructuring the IRS into legislative form. Like many of my colleagues on this committee, I was proud to join them as a cosponsor of H.R. 2292 this week.

I also want to recognize the efforts of distinguished ranking member of this panel, Mr. Rangel, who has worked with the Administration on a reform bill with a different approach. I am looking forward to the healthy discussion and debate these proposals will generate.

As we struggle with the critical issues of IRS governance and oversight in these two days of hearings, I think we can all agree that the Internal Revenue Service has a long way to go to improve efficiency and customer service. I believe the IRS could learn a lot on these fronts from the private sector.

I look forward to working with my colleagues over the coming weeks and months toward making our system of collecting taxes easier and fairer for taxpayers, and making the Internal Revenue Service a truly service-oriented organization.

Again, Mr. Chairman, thank you for your leadership in holding these important hearings.

Chairman ARCHER. Now we have our first panel. The Chair will first recognize a Member of the Committee, the Cochairman of the Restructuring Commission for any comments that he would like to make to the Committee, Mr. Portman.

STATEMENT OF HON. ROB PORTMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO; AND NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE

Mr. PORTMAN. I thank you, Mr. Chairman, and my colleagues on the Committee for giving me the opportunity to testify today; and special thanks to you, Mr. Chairman. You have reiterated again today your making IRS restructuring a top priority of this Committee, and particularly making H.R. 2292, the IRS Restructuring Reform Act, your top personal priority. In fact, I would say based on Mr. Rangel's comments, notwithstanding some differences in approach that I am sure will emerge this afternoon, I think it is safe to say that I join every Member of this Committee in commending you for undertaking this challenge to transform the Internal Revenue Service and vastly improve its services to the American taxpayer.

My focus here will be on the bill Ben Cardin and I introduced and many of you have cosponsored. It implements the recommendations of the National Commission on Restructuring the IRS and includes the first comprehensive reforms of the IRS since 1952.

I will briefly discuss the Commission's process and outline our major proposals in the area of governance and oversight, the subject of this hearing.

The 17-member IRS Restructuring Commission which I cochaired with Senator Bob Kerrey was established by Congress and included Senator Grassley and our colleague, Bill Coyne, as well as a diverse group of professionals with real expertise in IRS problem areas. Eight Commissioners were appointed by the Republican congressional leadership, nine were chosen by the Democratic congressional leadership and the Clinton administration. The Commissioner of the IRS was a member ex officio.

During its yearlong existence, the Commission conducted 12 days of public hearings, three townhall meetings around the country, and hundreds and hundreds of hours with experts inside and outside the IRS. After this extensive yearlong process, 12 of the 17 Commissioners, on a bipartisan basis, supported the final recommendations.

Just last month, the one ex officio member of the Commission—then-Commissioner Peggy Richardson, now private citizen—said she too, had she had the opportunity, would have supported the recommendations.

By taking an objective, nonpartisan, but tough-minded approach, I believe the Commission came up with a realistic balance and credible plan for achieving the goal of truly transforming the IRS into a responsive, taxpayer friendly service organization.

The problems at the IRS are well documented. The attempt to computer modernization, including the $3 or $4 billion that was misspent, has been nothing short of a disaster. Only half its callers are getting through on the IRS help lines. The organization is dominated with an enforcement mentality, even though close to 90 percent of taxpayers comply voluntarily.

Most efforts to reform the IRS has focused on these and many other specific problems—usually after the fact and in response to

a crisis. The Commission took a different approach. We focused on the fundamental structural flaws, which if fixed, we believe can solve the problems and sustain quality in management and service over time.

Three fundamental flaws were identified. One, a lack of expertise; two, a lack of continuity; and three, a lack of accountability.

First, expertise. While the service revolution has swept the private sector and other governmental agencies even, the IRS has lagged behind. Why? Because the IRS and Treasury have lacked people with expertise to guide a modernization effort, to competently address the huge organizational challenges involved with over 100,000 employees handling over 200 million tax returns a year.

As you review competing oversight proposals, ask yourself if you believe that the necessary expertise is there to really ensure the tough questions get asked and the IRS turns itself around.

Second, continuity. In our view, the IRS' core problems will take 3 to 6 years to solve. They must retrain the work force, build a new computer system and put in place new measurement systems to ensure employees have more respectful interactions with taxpayers. This will require sustained leadership.

Historically, the leaders at IRS and Treasury have had very short tenures of 2 to 3 years, not long enough to get the job done.

Third, accountability. We have got to hold people's feet to the fire. Our proposals ensure that someone is there to support the Commissioner and the agency when they are doing a good job, and to hold them accountable when they are not. The bottom line is we have found an IRS that has been largely independent of consistent, expert oversight.

The Commission's recommendation and our legislation address each of these three fundamental flaws—and I want to remind the Committee that even though the Oversight Board had drawn the most attention because of Treasury's opposition, it is only part of a much broader, comprehensive package, that taken together will lead to a more accountable and responsive IRS.

Among other things, we consolidate congressional committee oversight to ensure that IRS receives much clearer guidance from the Congress. But let us go to the core of the Treasury's concern—the IRS Oversight Board.

Its members are appointed and removable at will by the President, confirmed by the Senate for a 5-year, staggered term. They are special government employees while serving, and thus subject to disclosure and conflict of interest rules, and they will be barred from any involvement whatsoever in individual tax cases, specific law enforcement activities, procurement or tax policy.

The Board's functions are very clear—to approve the long-range mission and annual, strategic and operational plans of the IRS; to support and oversee IRS top management; and to review and approve the IRS budget, and submit it to the Secretary of the Treasury, who retains final authority.

The nine-member Board includes the Secretary, a representative of IRS employees and seven individuals, who collectively would bring needed expertise and information technology, compliance, customer service, taxpayer needs and management of a large serv-

ice organization. Without such a body, the structural flaws will not be addressed and the problems will continue to fester.

I know current Secretary, Robert Rubin disagrees with the need to establish a new oversight structure with real authority, claiming that the decade's old vacuum can be filled by Treasury. But neither the record or common sense support this.

Let me be clear. This is not about the Clinton administration, and certainly not about this Secretary of the Treasury with whom I have great personal respect, and who has probably in the past year focused more attention on the IRS and our recommendations than any Secretary in history.

This is about a fundamental flaw in the system. Yes on paper, Treasury cedes some authority over the IRS, which is 64 percent of Treasury's work force, and 70 percent of its budget. But I truly believe—and much more importantly—former Treasury Secretaries, Nicholas Brady and James Baker believe that this structure should not be viewed as a threat to Treasury's turf, but—and I quote from their letter yesterday—"As an effective mechanism to assist the Secretary in IRS oversight."

Again, I thank my colleagues for their attention and look forward to working together with you to transform the IRS for the taxpayer. They deserve it.

Thank you, Mr. Chairman.

[The prepared statement and attachments follow:]

STATEMENT OF CONGRESSMAN ROB PORTMAN
COMMITTEE ON WAYS AND MEANS
September 16, 1997

I. INTRODUCTION

Thank you, Mr. Chairman, and my colleagues on the Committee for giving me the opportunity to testify today. And, special thanks to you, Mr. Chairman, for making H.R. 2292, the IRS Restructuring and Reform Act, a top priority of this committee; in fact, notwithstanding some differences in approach that will emerge this afternoon, I think it's safe to say that I join every member of this Committee in commending you for undertaking this challenge to transform the Internal Revenue Service and vastly improve its services to American taxpayers.

My focus today will be on H.R. 2292, the bill Ben Cardin and I introduced and many of you have co-sponsored. It implements the recommendations of the National Commission on Restructuring the IRS, and includes the first comprehensive reforms of that agency since 1952. I'll briefly discuss the Commission's process and outline our major proposals in the areas of governance and oversight.

II. COMMISSION'S WORK

The 17-member IRS Restructuring Commission, which I co-chaired with Senator Bob Kerrey, was established by Congress and included Senator Grassley and our colleague Bill Coyne, as well as a diverse group of professionals with real expertise in IRS problem areas. Eight Commissioners were appointed by the Republican Congressional Leadership; nine were chosen by the Democratic Congressional Leadership and the Clinton Administration; the Commissioner of the IRS was an ex-officio member.

During its year-long existence, the Commission conducted 12 days of public hearings, three town hall meetings around the country, and hundreds of hours with experts inside and outside the IRS. After this extensive year-long process, 12 of the 17 Commissioners -- on a bipartisan basis -- voted in favor of the recommendations. And, just last month, the one ex officio member, then IRS Commissioner and now private citizen, Margaret Richardson, said that had she had the opportunity, she too would

have voted for the report.

By taking an objective, nonpartisan, but tough-minded approach, I believe the Commission came up with a realistic, balanced and credible plan for achieving the goal of truly transforming the IRS into a responsive, taxpayer friendly service organization.

III. FUNDAMENTAL PROBLEMS AT THE IRS

The problems at the IRS are well documented. The attempted, computer modernization--including the $3 - $4 billion misspent -- has been nothing short of a disaster. Only half of those calling are getting through on the IRS help lines. The organization is dominated with an enforcement mentality, even though close to 90% of taxpayers comply voluntarily.

Most efforts to reform the IRS have focused on these and other specific problems, usually after the fact and in response to a crisis. The Commission took a different approach: we focused on the fundamental structural flaws, which, if fixed, we believe can solve the problems and sustain quality management and

service over time. Three fundamental flaws were identified: a lack of expertise, a lack of continuity and a lack of accountability.

First, expertise. While the "service revolution" has swept the private sector and some other government agencies, the IRS has lagged far behind. Why? Because the IRS and Treasury have lacked people with expertise to guide a modernization effort -- to competently address the huge organizational challenges involved with over 100,000 employees handling over 200 million tax returns a year.

As you review competing oversight proposals, ask yourself: do you believe the necessary expertise is there to ensure the tough questions get asked and the IRS turns itself around?

Second, continuity. In our view, the IRS's core problems will take three to six years to solve. They must retrain the workforce, build a new computer system, and put in place new measurement systems to ensure employees have more respectful interactions with taxpayers. This will require sustained

leadership. Historically, the leaders at IRS and Treasury have had very short tenures of two to three years, not long enough to get the job done.

Third, accountability. We must hold people's feet to the fire. Our proposals ensure that someone is there to support the Commissioner and the agency when they are doing a good job and to hold them accountable for results when they are not. The bottom line is that we found an IRS that has been largely independent of consistent, expert oversight.

IV. COMMISSION RECOMMENDATIONS

The Commission's recommendations and our legislation address each of these three fundamental flaws. And I want to remind the Committee that even though the Oversight Board has drawn the most attention because of Treasury's opposition, it is only part of a much broader, comprehensive package that taken together, will lead to a more accountable and responsive IRS. Among other things, our bill includes taxpayer rights, electronic filing, tax simplification and workplace flexibilities.

Oversight at this end of Pennsylvania Avenue is also streamlined and improved by consolidating Congressional committee oversight to ensure that Congress provides much clearer guidance to the IRS.

But, let's go to the core of Treasury's concern: the IRS Oversight Board -- its members are appointed and removable at will by the President and confirmed by the Senate for five year staggered terms. They are special government employees while serving and thus subject to disclosure and conflict of interest rules, and they will be barred from any involvement whatsoever in individual tax cases, specific law enforcement activities, procurement or tax policy.

The Board's functions are very clear: to approve the long-range mission and annual strategic and operational plans of the IRS; to support and oversee IRS top management; and to review and approve the IRS budget and to submit it to the Secretary of the Treasury, who has final approval. The nine-member Board includes the Secretary, a representative of IRS employees, and seven

individuals who, collectively, would bring needed expertise in information technology, compliance, customer service, taxpayer needs, and management of large service organizations.

Without such a body, the structural flaws won't be addressed and the problems will continue to fester.

I know current Secretary Rubin disagrees with the need to establish a new oversight structure with real authority claiming that the decades-old vacuum can be filled by Treasury. But neither the record nor common sense support this.

Let me be clear. This is not about the Clinton Administration and certainly not about this Secretary of the Treasury -- for whom I have great personal respect -- and who has in the past year focused considerable attention on the IRS and our recommendations. This is about a fundamental flaw in the system. Yes, on paper Treasury cedes some authority over the IRS, which is 64% of Treasury's workforce and 70% of its budget. But I truly believe and, much more importantly, former Treasury Secretaries Nicholas Brady and James Baker believe, that this

structure should not be viewed as a threat to Treasury's turf, but, and I quote from their letter, "as an effective mechanism to assist the Secretary...in IRS oversight."

V. CONCLUSION

I thank my colleagues for their attention and look forward to working together with you to transform the IRS for the taxpayer -- they deserve it. Thank you, Mr. Chairman.

The Wall Street Journal Wednesday, June 25, 1997

Tax and Repent

A new National Taxpayers Union poll finds that 90% of those surveyed said "improving the IRS" should be a top priority for their legislators.

This is amazing. What on earth could the remaining 10% be thinking of? Surely when it comes to despised federal agencies, the IRS can have few rivals. Its restructuring, happily, is the goal of the National Commission on Restructuring the IRS, which delivers its recommendations to Congress today. While no report should be rubber-stamped, the commission's common-sense suggestions deserve careful attention.

Few would dispute that the IRS is troubled. It recently spent $8 billion on new computer systems that even a top agency official admitted "do not work in the real world." A full half of the 10 million correction notices the IRS issues every year are "incorrect, unresponsive, unclear or incomplete," according to the General Accounting Office. Privacy concerns rose after it was revealed that 1,500 IRS agents were investigated in 1994 and 1995 for suspected snooping on returns.

The good news is that the commission found things are so bad that even modest reform can yield big improvements. "The IRS can be modernized, but dramatic change has to begin at the top," says GOP Representative Rob Portman, who co-chaired the commission with Democratic Senator Bob Kerrey. The commission recommends taking supervision of the IRS away from the Treasury Department and placing it in the hands of an independent governing board made up of seven members, five of whom would be from the private sector. The President would appoint the board and could remove its members at will.

The commission found that Treasury historically has shown an inability to oversee IRS management. This has resulted in an inbred IRS culture in which only six of the top 200 employees have served with the agency for less than 15 years. The commission would shake that up by giving the IRS Commissioner a five-year term and much greater flexibility in hiring, firing and salary decisions.

Naturally, Treasury wants to keep its hold on the IRS. Five of the commission's 17 members voted against the final report, and all but one dissenter was a Clinton Administration appointee. Treasury argues instead for creating an IRS management board made up of political appointees from it and other government agencies. But this would ignore the lessons of history.

In 1952, after the Truman IRS scandals, and in 1974, after President Nixon developed an IRS enemies list, necessary steps were taken to *reduce* the influence of political players on the agency. More such steps may be needed now pending the current investigation the Joint Committee on Taxation is conducting on IRS politicization.

But better governance is only one part of improving tax collections. Something must be done about what former IRS Commissioner Fred Goldberg calls the "grotesquely burdensome and monstrous" tax code. Congress has changed more than 2,000 sections of the tax code and created more than 100 new forms in just the past decade. The commission identifies 60 separate areas where the code could be simplified, as well as areas where taxpayer rights during audits need to be expanded.

On privacy issues, the commission notes the IRS gives out so little information on its reasons for ordering an audit that it "leaves room for taxpayers to speculate" that the reasons are arbitrary or political. "The Commission urges the IRS to better educate the public about its procedures," the report concludes.

Representative Portman is confident the commission's report won't gather dust on a shelf. He predicts Congress will offer financial incentives that could have 80% of all taxpayers file their returns electronically within the next decade, vastly reducing the potential for mistakes. The IRS will never become a customer-friendly entity, but the commission's report provides hope that its days as both the most feared and disdained of all federal agencies could be numbered.

TUESDAY, MARCH 18, 1997 • USA TODAY

Answer: Independent IRS

If you've spent an hour or so trying to call the Internal Revenue Service this tax season, you may have wondered, between redialings, who's in charge there? Well, soon you may have an answer.

Deputy Treasury Secretary Lawrence Summers Monday proposed a five-point reform plan for the troubled tax collector. He'd change its employment practices, budgeting and even simplify tax laws. All overdue. Most vitally, he'd end the habit of putting tax lawyers in charge and hire management professionals. But first, he'd have the Treasury Department "take responsibility for reforming" the IRS.

That's hardly reassuring.

Treasury assumed similar responsibility when the IRS began a massive modernization in 1986 to help taxpayers get questions answered, improve audits, increase compliance and save $40 billion a year. Now, $3.4 billion of misspending later, taxpayers still only get one in five calls answered, the agency loses more audit cases than it wins and compliance hasn't improved.

So, Treasury didn't get the job done.

The catch is that in getting the job done Treasury could easily get too cozy with the government's most intimidating agency.

Since Richard Nixon tried to use the IRS to attack his opponents, every administration has been wary of using the agency for political purposes. So they've let the IRS go its insular, inefficient way.

Imagine an administration putting its people in key IRS positions with access to sensitive tax information and the power to conduct audits. And could such an agency honestly evaluate problems with administration-proposed tax changes?

A national commission on restructuring the IRS is looking at a better reform idea — having an independent board oversee the agency. That would provide some taxpayer input as well as outside expertise.

Meanwhile, Treasury can make life better for the IRS and taxpayers by pursuing another Summers' reform — tax simplification. If tax laws were easier to understand, maybe the IRS wouldn't make so many mistakes and taxpayers wouldn't be holding so long for answers.

Modernizing the IRS

The Treasury Department Monday outlined a five-point plan to make the IRS more responsive to taxpayers:

- ▶ The department will become more involved in overseeing the IRS.
- ▶ IRS managers will be given increased flexibility to hire outside help, particularly people with computer skills.
- ▶ Budget procedures will be reformed so the IRS can have sufficient long-term funding to modernize computers.
- ▶ The tax code will be simplified.
- ▶ A new commissioner with proven managerial skills and tax expertise will be named to succeed Margaret Richardson.

Los Angeles Times Tuesday, July 2, 1997

Imagine a Kinder, Gentler IRS

Congressional report calls for new procedures and image-building

Imagine receiving a call from the Internal Revenue Service without getting the feeling that its agents are about to strap you to a torture rack. Imagine being treated by the IRS as a customer rather than an adversary, as taxpayers too often believe they are. Imagine having some recourse if the IRS improperly seizes your property or freezes a bank account.

Too much to ask? Not necessarily. A 17-member national commission created by Congress has just completed a yearlong study on the federal taxing agency that could revolutionize the way the IRS functions.

The report of the National Commission on Restructuring the Internal Revenue Service proposes a variety of reforms that seek, generally, to overhaul the culture of the IRS. Sen. Bob Kerrey (D-Neb.), co-chairman of the commission, said the proposed reforms are based on a simple idea: "The IRS works for the taxpayers, not the other way around."

The recommendations include the creation of a new IRS governing board, a five-year term for the IRS commissioner, imposition of modern management practices and the creation of a means of restitution—up to $100,000—for any taxpayer found to have been treated improperly or erroneously by the agency.

Many of the proposals were taken from California's taxpayer bill of rights, adopted by the state several years ago in legislation sponsored by Ernest J. Dronenburg Jr., chairman of the state Board of Equalization. Dronenburg also served as a member of the IRS reform commission.

The national commission's findings appear to have strong bipartisan support in Congress. They will be written into legislation that could go to Congress soon and possibly be adopted this year, Dronenburg said.

That's an ambitious schedule. And even if Congress passes the reforms this year, it will take time for them to have a real impact. But a start must be made. The success of the U.S. tax system lies in its voluntary nature. To the extent that the IRS angers and alienates taxpayers, that critical foundation is eroded. The IRS cannot afford much more erosion.

... version of events that students and teachers.

Dallas Morning News 7/1/97

REFORMING THE IRS

Commission recommends sensible changes

To some Americans, the Internal Revenue Service resembles the Darth Vader of federal agencies. It can appear both powerful and impenetrable.

In 1995, for instance, Internal Revenue Service agents fielded only 20 percent of consumer calls to the agency's tax hotline. The figure increased to 50 percent in 1996, but that still means only half of the hotline calls were answered.

Also, *Time* magazine reported recently how IRS agents seized one teenager's $26 bank account. The reason? To help meet her parents' tax bills.

The National Commission on Restructuring the IRS wants to improve this situation. After a year of hearings, the bipartisan commission has come up with specific changes for Congress to adopt. The reforms would make the IRS more customer friendly, improve its technological capacity and change the IRS' management structure.

For example, the commission proposes that taxpayers complete a survey after dealing with the IRS. Citizens could then comment on an agent's cooperation and professionalism.

The commission, led by Democratic Sen. Bob Kerrey and Republican Rep. Rob Portman, also emphasizes how the agency can reduce its paper load. Rep. Portman told this newspaper that increasing electronic tax filings especially would help matters. Mistakes occur on only about 1 percent of current electronic filings. By comparison, mistakes arise in about 22 percent of paper filings.

Rep. Portman notes that the report is not simply an attempt to criticize IRS agents. In fact, the changes would help them. "They are caught in a bad system," he says. Notably, the president of the IRS' employee union approved the commission's recommendations.

The Clinton administration is balking, however. Treasury Secretary Robert Rubin objects to proposed changes in IRS management.

His department now oversees the agency. But the commission suggests a new board of governors should guide the IRS. The president would appoint the board. The Senate would confirm members. And Congress would hold them accountable.

Greater direct accountability could help improve IRS operations. The agency has experienced high turnover among its top employees. A board could stabilize that situation.

Of course, a simplified tax code would greatly help matters, too. But Congress should review and support these recommendations. Improving the IRS' operations represents the first step toward tax reform.

DISTRICT ATTORNEY

Vance decision should bring strong candidates

The name on the door of the Dallas County district attorney's office doesn't change very often. Since 1950, there have only been two — Henry Wade and John Vance.

So, it's no mystery why candidates tend to look elsewhere when considering a run for public office. Mr. Vance has had only nominal opposition since he won the DA's job 11 years ago in a tough race with Royce West.

But the district attorney's announcement this week that he won't seek another term changes everything. There should be a strong lineup of people on next year's ballot who would like to be Dallas County's top prosecutor. And that is good news for voters.

Mr. Vance's public service career spans nearly four decades. As a former criminal district judge, appeals court judge and as district attorney, he served the community with integrity.

In recent years, however, his management appeared to become more remote. And the office suffered somewhat from a lack of clear direction.

With the prospects of an open election for the first time in years, candidates will be able to focus on their goals for the district attorney's office. They can discuss their priorities for hiring and retaining the top prosecuting staff in the state. And they can talk about how they would handle the more complex prosecution of white-collar crime in the 1990s.

Dallas County will lose an experienced hand when John Vance steps down. But his departure will let voters choose a qualified successor, who can make the district attorney's office even stronger heading into the next century.

Washington Post April 15, 1997

David S. Broder

Tax Time: Making It Easier

While most of us are scrambling to finish our income tax returns, two of the more independent and capable members of Congress are putting the final touches on a report that conceivably may make future dealings with the Internal Revenue Service less of an ordeal. Despite a curve that the Clinton administration has thrown at them, Sen. Bob Kerrey (D-Neb.) and Rep. Rob Portman (R-Ohio) actually have a chance to do something good for the taxpayers of this country.

They are the co-chairmen of the bipartisan National Commission on Restructuring the Internal Revenue Service, created last year by Congress and due to submit its final report at the end of June. After talking to Kerrey and Portman, I have some idea of what they want to do—and what they know is beyond their reach.

Neither of them pretends to be another Steve Forbes, who memorably promised in his campaign for the 1996 Republican presidential nomination to kill the IRS, "drive a stake through its heart, bury it and hope it never rises again." Kerrey and Portman live in the real world and recognize that both taxes and the tax-collection agency are permanent facts of life. But they do argue—persuasively—that the tax system can be simplified and the process of paying taxes made far more efficient. And that is what they hope their report spurs Congress to do.

The horror stories about the IRS have become so widely publicized that few can dispute that this is a bureaucracy in big trouble. Last month, the National Journal detailed a sad history of how the IRS's "ambitious plans for computer modernization have gone awry," a saga that reporter Graeme Browning warned "isn't for the fiscally faint of heart." After a decade of effort and at least $3.4 billion of spending, the systems are a mess; there are nine separate databases, unconnected, and it still takes about 10 days for updated information in the "master files" to show up on the computer screens of IRS agents dealing with the public.

The April 7 issue of Time spelled out other problems. Despite a $7 billion annual budget and 106,000 employees, the IRS fails to collect an estimated $200 billion of taxes a year—more than enough to eliminate the current budget deficit.

Kerrey and Portman readily concede that much of the problem lies not with IRS bureaucrats but with Congress. That is why the most fundamental of their recommendations will call for simplification of the laws that have spawned 9,451 pages of tax regulations. Radical tax reform might have been high on the congressional agenda this year if Bob Dole had been elected president, but the Clinton administration is so deeply skeptical of flat-tax or national sales-tax proposals that this kind of change is not in the cards.

But Kerrey told me that "any tax that costs us more to collect than it generates in revenue ought to be dropped." The favorite example that both he and Portman cite is the alternative minimum tax, which was supposed to nail rich folks who were exploiting multiple deductions, but which Kerrey said, "results in no additional tax liability for 80 percent of the people who go through the effort and expense of calculating it."

Expect a list of such simplification proposals from the commission soon. Also expect the commission to urge that the IRS be given a greater degree of independence from the Treasury Department, of which it is now a part, with more freedom to manage its capital spending and to hire and fire its staff members than is possible with the tight budget controls Congress now imposes and with the rigid personnel requirements of a government agency.

"We have overwhelming evidence," Portman said, "that the IRS is falling further and further behind the standards of the private sector in collecting and processing data. We need to change the whole culture of the agency and give it a sense of mission it does not now have."

I mentioned the curve that the Clinton administration has thrown at the commission, Kerrey and Portman have included the IRS's general counsel on their panel and have kept senior Treasury officials fully informed of the direction they're headed.

They were more than a bit surprised then when Deputy Treasury Secretary Lawrence Summers suddenly announced last month that Treasury had its own plan for overhauling the IRS. What was not surprising was that Treasury's plan would keep the IRS as part of Treasury.

There may be good substantive reasons for doing that, but Summers's preemptive move looked like a classic case of turf protection. Kerrey and Portman figure the taxpayers want more of a shake-up than that—and they are right.

Chairman ARCHER. Thank you, Mr. Portman.

We are very pleased to have with us, also, today the Cochairman of the Structuring Commission, Senator Robert Kerrey of Nebraska.

Senator, we are delighted to have you and we would be pleased to hear you testimony; and you may proceed.

STATEMENT OF HON. J. ROBERT KERREY, A U.S. SENATOR FROM THE STATE OF NEBRASKA; AND NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE

Senator KERREY. Mr. Chairman, I would ask, consistent with Senate practices—we talk longer—so I have a very long statement and would ask that it be made a part of the record.

Chairman ARCHER. Without objection, your entire written statement will be entered into the record, and you may synopsize. [Laughter.]

Mr. RANGEL. Reserving the right to object, Mr. Chairman, but I will not object. I would just like to join you in welcoming my dear friend and we look forward to your contribution to this very sensitive problem.

Thank you.

Senator KERREY. Thank you very much, Mr. Chairman.

Congressman Rangel, quite correctly, this is a very sensitive subject. We began this effort as a consequence of sitting on the Appropriations Committee—actually, Steny Hoyer and I did—creating this Commission in the first place as a result of GAO evaluation, after the GAO evaluation saying that the status quo just was not working.

The Tax Systems Modernization money was being wasted, customer dissatisfaction was high, added to—the approval rating of the IRS is lower than the CIA. Measured by what taxpayers are saying, change is essential and necessary.

We started off in a very bipartisan and bicameral fashion. Congressman Portman and I have worked together. We have become friends. We have acquired a capacity to trust and work with one another, and I hope that—as Congressman Rangel said—this will continue to be a bipartisan effort. I mean, there is no reason for it not to be.

This is basically Congress taking action, Congress evaluating, Congress putting pressure on the administration; and indeed the administration response has been quite encouraging. There have been many changes during the process of our deliberations that have been constructive. We just have to believe they need to go further than they are currently willing to go.

To be clear, we heard from citizens, we heard from citizens as taxpayers, we heard from citizens as professionals, we heard from the employees of the Internal Revenue Service itself; and this proposal has the full endorsement of the Treasury employees union. We heard from private companies that are in the business of providing services as well, taxpayer services that in some ways are

competitive with the IRS, we even heard from other nations who have gone through the same sort of problems that we have and have attempted to make, of course, corrections.

We found across the board, very poor customer satisfaction, a waste of money and technology, a gap—breathtaking gap—between what the IRS can do and what the private sector can do. The Speaker in providing us our guidance did something that I thought to be quite demonstrative of the problem, which was to hold up an ATM card and suggest that this is what the private sector has been doing for the last half a dozen years, trying to serve customers, trying to give customers better service, and we are still in the process of thinking about using that kind of technology; and as a result, the customers are not happy with what they are able to do.

Tremendous complexity problems—we have heard up to $200 billion of cost attributable to complexity of the Code. We heard convincing evidence that most Americans—well over 80 percent of Americans voluntarily comply so the problem is not one of insufficient resources for law enforcement. We heard an equal apportioning of blame between the executive branch and the legislative branch—both in terms of complexity in providing resources and inconsistent oversight. I mean, we heard fairly balanced reports from taxpayers and from providers who are out there trying to figure out how to make this thing work.

We have concluded that there is a need for an independent board that will be more accountable to the people. We have compromised with Treasury, leaving law enforcement and tax policy inside of Treasury. That compromise was not sufficient to get their support, but we are unwilling to go further.

We believe that you need an independent and accountable board, and believe that the criticism of it, being corporate individuals, is falsely placed.

Most people in the current administration in positions of responsibility who came from corporations or came from businesses should not be disqualified because you do—and indeed the Board that we recommend has not only the Treasury Secretary on it, but the Treasury employee union head, which I believe is important because there will be tough personnel changes that have to be made, and I hope that that recommendation is allowed.

But the President can appoint anybody he wants that is confirmed by the Senate, and the President has the authority to remove for cause. We believe that extending the life of the Commissioner was important as well. We believe we need to shift more power to the taxpayer, and we believe we needed to make some recommendations with regard to complexity which we both did in our report and with the legislation itself.

This is a change, Mr. Chairman and Members of this Committee, that I think is long overdue. It is quite sensitive. It is quite difficult. Our goal should be to increase the customer satisfaction. Increase the number of taxpayers who say, "I still hate paying taxes, but it has gotten a whole heck of a lot easier."

Currently, I do not believe that the current structure of the IRS leads me to conclude that that customer satisfaction is going to go up to a point where I believe it is necessary in order to restore citizen confidence in their government.

So, again, I have gone beyond the red light as I promised I would not do. I appreciate the opportunity to testify; but I wanted to reinforce what occurred in this process. It has been very bipartisan, right from the get-go. Congressman Portman and I; Senator Grassley and I; Congressman Cardin and I have attempted to look at this problem in an objective way and I hope that is the way it will continue to proceed.

[The prepared statement follows:]

United States Senate
WASHINGTON, DC 20510–2704

Testimony by Senator Bob Kerrey (D-NE)
Before the Ways and Means Committee
U.S. House of Representatives
"The IRS Restructuring and Reform Act of 1997"
September 16, 1997

Mr. Chairman and members of the Committee, it is a distinct honor to testify before you today. Let me begin by explaining why I think this legislation is so important.

There are twice as many people who pay taxes as vote. Citizens' faith that their government can be fair and efficient is dependent on a well functioning IRS.

The core of this legislation is based on a vision for establishing a new IRS and to eliminate the culture and climate that currently exists. A culture and climate that assumes a taxpayer is guilty of wrongdoing no matter the reason for contact.

American taxpayers do not believe the IRS works for them. We believe, in today's world, the job of the IRS is to operate as an efficient financial management organization, working for the American taxpayer. We want a citizen who calls the IRS to get a helpful voice, not a busy signal. We want it to be easy to file a tax return. And we want the IRS to be as eager to save taxpayer dollars as it is to collect them.

It is a myth that the bulk of the federal revenue is generated through heavy enforcement. While the IRS must maintain a strong enforcement presence, its core and the core of the federal revenue stream lie in a revamped, modern organization that can assist taxpayers promptly and efficiently, track account information, and send out clear notices.

There is a breathtaking gap between the service levels of the IRS and those of the private sector. The IRS has a 20 percent error rate for processing paper returns and expends an incredible amount of resources and focus to correct these errors. It captures only 40 percent of the data from returns and is still drowning in a sea of paper. It is typically 18 months before a return can be matched against 1099s. Can you imagine your bank waiting 18 months to send you your VISA statement? They probably wouldn't stay in business very long.

Today, I will focus on our proposals for Executive branch governance and consolidated congressional oversight.

Commission Recommendations

Congressman Portman has outlined the Commission's recommendations. They were developed to address systemic problems which we identified. We found that we in Congress often send conflicting signals to the agency. We found that Treasury has basically left the IRS to its own devices, leaving a vacuum in the Executive Branch oversight of the agency. And, for a number of reasons, we saw how institutionally difficult it is for the IRS and Congress to effectively work together on IRS strategy.

In short, at the top levels of the IRS and at Treasury there are murky lines of accountability, a lack of necessary expertise to operate in the new information age, and no people of authority with significant tenure to get the job done. The officials at the Treasury Department have expertise in tax law, but do not have the expertise in areas of customer service, technology, and management to oversee the IRS. Worse, they are not around long enough to ensure focus on multi-year projects like the Tax System Modernization (TSM) or changing the culture of the agency to be more responsive to taxpayers.

Aware of these glaring problems, the Restructuring Commission began developing ideas for a new governance structure. Our criteria for success were: (1) clear accountability, (2) expertise in running a modern customer-oriented organization, and (3) continuity.

To provide for accountability, expertise and continuity the legislation creates an IRS oversight board. Members of the board will include the Treasury Secretary, Union President, and private citizens with expertise to assist the Treasury Department in overseeing the IRS.

At this point I would like to address directly the recent criticism of this proposal, that part-time CEO's will take control of the IRS. This allegation is absurd. In fact, our proposal is about getting the IRS to work for the American people -- who think the IRS is out of control and working against them.

There is a long tradition in our country of citizens participating in their government from citizen review boards of police departments, to independent counsels investigating political corruption, to the Postal Service where part-time, private sector board members have responsibilities for operations, and the postal inspection service. To suggest that there is no place for citizens to help government run better is to fly in the face of our democratic (small "d") traditions. Under our proposal, the President will appoint whoever he sees as most qualified to do the job -- and they will have to be confirmed by the Senate. The Secretary of the Treasury will probably, in practice, make the appointments, and will sit on the board to make sure they are

doing their job. This model of government using the expertise of citizens will ensure that the IRS is accountable and ensure that it works for the people.
I was pleased to see a copy of the joint letter of support for our proposal sent by former White House Chief of Staff James A. Baker and former Treasury Secretary Nicholas Brady. Both are distinguished public servants who have a firsthand knowledge of the IRS and its operations and a key interest in making government work for the American people. Their letter spoke to the heart of the matter in stating that they saw the IRS oversight board as "an effective mechanism to assist the Secretary of the Treasury in IRS oversight." That is precisely our intention -- to create an entity that will assist the Treasury Secretary with the mammoth task of overseeing our tax system.

Congressional Oversight
Our legislation also ensures that congressional oversight will be coordinated among the authorizing committees, the appropriating committees, and the government oversight committees. Our legislation codifies coordinated oversight, stating that committee leaders, majority and minority, meet regularly to ensure that the IRS receives clear guidance from Congress, and that Congress is given the proper information to oversee the IRS.

With clear direction from Congress together with an oversight board, the IRS will finally truly be accountable to the people.

The Administration has come up with their own proposal which you will hear more about from Secretary Rubin today. They would like to create two advisory-type boards which attempt to strengthen Treasury's governance of the IRS. The first would consist of over a dozen political appointees from the Administration and the second would be composed of 14 advisors with no real responsibility. While we are encouraged by the Administrations agreeance that the IRS must change, we believe our proposal is much more comprehensive and will provide a more thorough guide to creating a more efficient, effective, customer service oriented IRS.

Conclusion
Mr. Chairman and Members of the Committee, Congress, the Administration and the American people know that the status quo is no longer tolerable and that the IRS needs fixing. $3.4 billion was wasted on a failed modernization project for its computer systems. Its operations are antiquated and outdated, and taxpayer (close to 90% of whom voluntarily pay their taxes) are generally, and unfairly, treated as if they are guilty of something when they contact the IRS.

The IRS's problems are rooted in the lack of strategic vision and focus, measures that do not encourage employees to treat taxpayers well, operational units that do not communicate with each other, and a systemic lack of expertise and continuity in management and governance. The Commission worked in a bipartisan, bicameral

manner to come up with a reasoned, comprehensive approach to fixing these problems. We hope you will work with us to strengthen our legislation and implement it into law so that the American people have the IRS they expect and deserve.

Indeed, this legislation -- if enacted -- will go a long way toward restoring taxpayer faith not only in our tax system but in the faith that ours is a government truly "of, by and for the people."

Chairman ARCHER. Senator, you actually ended quite precisely at the moment that the red light came on. That is a great compliment to you.

Another member of the Commission is also a respected Member of the Committee, the gentleman from Maryland, Mr. Cardin. We will be pleased to have your testimony.

STATEMENT OF HON. BENJAMIN L. CARDIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. CARDIN. Thank you, Mr. Chairman. Although my statement is not as long as Senator Kerrey's, I would ask that it be made a part of the record.

Chairman ARCHER. Without objection, it is ordered.

Mr. CARDIN. Mr. Chairman, I wanted to concur in your comments and observations concerning the public service that Congressman Portman, Senator Kerrey, Senator Grassley and Congressman Coyne displayed in their service on the National Commission. All four served with distinction and we all should be very proud of their record.

I would also like to compliment Congressman Hoyer for his longstanding interest in the Internal Revenue Service and his steadfast support of the appropriation process for a more accountable Internal Revenue Service.

Secretary Rubin has been perhaps the most active Secretary of the Treasury in the interest of the IRS. For too many years the IRS has been an orphan agency. Secretary Rubin has elevated the interest of the agency and I applaud him for those efforts. He has made significant change.

Secretary Rubin also understands the need for legislation and has filed legislation before the Congress. We may differ as to the form of that legislation, but it is important that Congress pass legislation reforming the IRS.

We all share the common goal of a more efficient, better managed, more taxpayer friendly IRS. Mr. Chairman, I agree with you that that must be done in a bipartisan way. I am pleased to join Congressman Portman as a cosponsor of the legislation. I think we will demonstrate that we will work and need to work in a bipartisan manner.

There are many important points or sections in the legislation before you. There are sections that deal with simplification, there are sections that deal with Taxpayer Bill of Rights, with electronic filing, with congressional oversight; but I would like to spend a few minutes dealing with the Board, since that has had by far the most discussion and is the most controversial section in the bill.

It is clear that the legal authority of the agency rests with the public official. The Board will provide oversight, expertise, guidance and advice to the Commissioner. The legislation is clear that it does not give to the Board authority that should rest with public officials. The bill specifically denies the Board any authority with respect to development and formulation of Federal tax policy and specific law enforcement activities of the IRS, including compliance activities. That remains with our public officials.

The Board has no authority with respect to the day-to-day operational plans of the IRS, which remains properly within the au-

thority of the Commissioner. The Board has no authority with respect to the appointment of the Chief Counsel of the IRS.

The Board has a vitally important role to play in helping the Commissioner, in helping the agency develop its long-range plans, and developing a game plan in order to be able to accomplish those objectives.

Under H.R. 2292, the Secretary of the Treasury would serve on the Board. The Board is appointed and removable by the President of the United States. The Board will act as an advocate for the IRS. There are many important roles it will play. Perhaps one of the most important is to have an advocate here in Congress for the needs of the IRS, to help us identify in a more objective way the tools that the IRS needs in order to be able to achieve its objectives; and yes, the IRS needs evaluation and accountability, and that is also built into the Board.

I think the Board can be strengthened if the appointment of the Commissioner remains with the President. The need for this legislation is clear. How the IRS interacts with our constituents or our taxpayers is well documented—that it needs to be improved. Its communication with our taxpayers needs to be clear, courteous, and the information it supplies must be correct.

In too many cases, that is not the case today. The IRS must also be able to resolve problems of our taxpayers quickly. That in too many cases, again, is not the case today; and it must be more efficient in its collection of government revenues.

The legislation that you have before you today will move us to achieving those goals and I hope that we will be able to move a bill in a bipartisan manner quickly through the Committee.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Congressman

Ben Cardin

Third District — Maryland

TESTIMONY OF THE HONORABLE BENJAMIN L. CARDIN

ON IRS GOVERNANCE

BEFORE THE WAYS AND MEANS COMMITTEE

SEPTEMBER 16, 1997

I am pleased to have this opportunity to appear before the Committee today to testify on the crucial issue of reform of the Internal Revenue Service. I am especially pleased to join Rep. Portman, and Senators Kerrey and Grassley, who deserve our thanks for the work they have done over the past year on the National Commission on Restructuring the Internal Revenue Service.

I also want to commend my colleagues on the committee, Rep. Rangel and Rep. Coyne, for their work on this issue. While we have differences over the specifics of the legislation we have each sponsored, I am confident that we share the same objectives and will be able to work fashion legislation we can all support.

Mr. Chairman, I am pleased that the Committee will have the opportunity today to hear from Secretary Rubin. The Secretary has provided strong leadership in beginning the needed reforms of the IRS. He has recognized the need for legislation in this area to continue the overhaul of the agency. The Administration's proposal differs in important ways from the Portman-Cardin bill, but we share the goal of a more efficient, better-managed, more taxpayer-friendly IRS. I look forward to working with the Secretary as the legislative process moves forward.

Reform of the Internal Revenue Service is important on two levels. First, it is vitally important to put in place systems that will change the way the IRS interacts with its customers, the American taxpayers. Paying taxes as required by law is a fundamental responsibility of citizens. Treating taxpayers with professional courtesy, respect, and competence is a fundamental responsibility of government. It is too clearly understood by too many taxpayers, through personal, often painful experience, that the government is not meeting this responsibility nearly often enough.

Second, reform must be carried out in a way that will begin to restore the confidence of the American people in their

government. More Americans have contact with their government through the Internal Revenue Service than through any other agency. With more than one hundred million individual tax returns filed each year, the IRS plays an indispensable role in collecting the revenues needed to fund the government. This essential government function must be carried out in a way that gives people confidence that the government is in fact working for them.

This bill is not about abolishing the IRS. It is about making the IRS more responsive and efficient in assisting taxpayers and collecting revenue.

Today we are discussing the most significant aspect of IRS reform, governance. No institution in America is more in need of a sign that says "Under New Management" than the IRS. H.R. 2292, the bill I have introduced with Rep. Portman, treats the management problems at the IRS seriously by proposing serious reforms.

First, we would establish a new Oversight Board to bring private sector expertise to bear on the Service's customer service failures. The bill creates, within the Treasury Department, a nine-member board, appointed by the President, and subject to removal at will by the President.

The Secretary or the Deputy Secretary of the Treasury will serve on the board, as will a representative of the employees of the IRS. The remaining board members will be appointed based on their demonstrated expertise in areas the IRS most needs it -- management of large customer service organizations, information technology, and organization development.

The Board's members will serve staggered five year terms. This will help establish and preserve continuity, which is sorely lacking both in the current structure and in the proposals advanced by the Treasury.

The major thrust of the bill is to empower the Commissioner to run the IRS. The Board will provide oversight, expertise, guidance and advice to the Commissioner. By giving the Commissioner the opportunity to bring in his or her own senior management team, the bill will give future Commissioners a fighting chance to change course at the IRS.

The bill provides that the Commissioner, working with the Board, will prepare a budget for the IRS, and that the Commissioner's budget request will be sent to Congress. This informational budget, which tracks the process used by the Social Security Administration, will be sent to Congress by the President along with his official budget proposal. The added information will provide Congressional budget-writers a fuller picture of the needs of the Service.

By involving the Board in the budget process, this system will create a powerful advocate for the IRS in the Congress. The members of this Committee know the difficulty of securing adequate funds for the administration of the IRS. The Committee has routinely urged the Budget Committee to give the IRS the money it needs to do its job, only to have those requests ignored in the final funding. The Board members will bring needed credibility and stature that will, with the reform of IRS, help win approval of adequate funding.

Mr. Chairman, H.R. 2292 as introduced includes one change in the management of the IRS which I believe will not work to strengthen the role of the Commissioner. I am speaking of the proposal to transfer from the President to the Oversight Board the power to appoint the Commissioner.

I believe it is vitally important that the appointment of the Commissioner remain with the President. I am troubled by the constitutional issues raised by a provision to rest appointment by the Board. Perhaps more seriously, I am convinced that the success of IRS reform depends on strengthening the office of Commissioner. Removing the appointment from the President, in my judgment, will distance the Commissioner from the source of executive branch authority, and thereby weaken the office. When the time comes to mark up this bill, I would hope the Committee will change that provision.

The Oversight Board created by H.R. 2292 has been criticized for allowing a dangerous level of private control of the IRS. While I applaud the work of the Commission, it is important to point out that H.R. 2292 differs significantly from the recommendations of the Commission. Those differences are concentrated on the role of the Oversight Board in running the IRS.

Let me briefly outline changes in the bill regarding the Board's authority.

The bill specifically denies the board any authority with respect to the development and formulation of Federal tax policy, and specific law enforcement activities of the IRS, including compliance activities.

The board has no authority with respect to the day-to-day operational plans of the IRS, which remains properly within the authority of the Commissioner. The board has no authority with respect to the appointment of the Chief Counsel of the IRS.

Management of the more than 100,000 person workforce of the IRS, and the collection of the revenue needed to run the federal government, is a vital job. By strengthening the role of the Commissioner in running the IRS, we will improve the accountability and continuity of the management of the agency.

On a bipartisan basis, the Commission on IRS Restructuring has made recommendations that will make it possible to improve the service the IRS provides to the American people. H.R. 2292 continues that bipartisan process. I look forward to working with my colleagues in the House and the Senate to enact legislation to reform the IRS and regain the confidence of the American people for this vital function of government.

Chairman ARCHER. Thank you, Mr. Cardin.

We also have a respected Member of the Senate, a member of the Restructuring Commission with us today, Senator Grassley, Senator from Ohio. We are pleased to have you and—Iowa.

Senator GRASSLEY. We will take it.

Chairman ARCHER. What did you say? You will take it? [Laughter.]

Senator from Iowa.

Mr. RANGEL. Reserving the right to object, I will not object.

Chairman ARCHER. The Chair has not asked for unanimous consent. [Laughter.]

Mr. RANGEL. I just ask the Chairman to yield.

Chairman ARCHER. I will be happy to yield.

Mr. RANGEL. I just want you to know that if you have any special concerns about corn or anything like that, I want you to feel free——

[Laughter.]

Senator GRASSLEY. We would—Charlie, I know that people do not know the background of your statement, but I will be seeing you in the next 2 weeks on the subject of ethanol. [Laughter.]

Chairman ARCHER. Well, the Chair was hopeful that in as much as we already have a sensitive and delicate issue before us that there not be any other potentially controversial issues that are injected——

[Laughter.]

Chairman ARCHER [continuing]. Into these discussions today.

But we are pleased to have you with us, Senator Grassley, and we will be pleased to have your testimony.

If you have got a long written statement, without objection, it can be inserted into the record and you can verbally synopsize.

Senator GRASSLEY. OK.

STATEMENT OF HON. CHARLES GRASSLEY, U.S. SENATOR FROM THE STATE OF IOWA; AND NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE

Senator GRASSLEY. Mr. Chairman, Members of the Committee, I thank you very much for the invitation to be here today and particularly to be here with my House and Senate cosponsors of this very important legislation.

When it comes to the subject of our work over the last year that is before this Committee for today on IRS governance and management, people divide their remarks into two areas.

The first area is the matter of the new Management Board. The second area is a kind of group into all other issues. We need to be careful to not miss some very important points among these other issues because we are focusing on the ever-important Board.

The matter of the Board is actually a simple issue. Is it going to be a real board with independence, responsibility and having teeth and power? Or is it going to be just another reshuffling of the deck chairs down at the U.S. Treasury?

I succinctly summarized the arguments 2 months ago before the Subcommittee on IRS Oversight by saying—and I would like to quote myself. "Treasury officials who 2 years ago could not find the IRS if they were standing at the corner of Eleventh and Constitution are suddenly in fits about losing some control over a part of their budget and bureaucracy."

The American people deserve better from the executive branch than just a reshuffling of the chairs on the deck of the Titanic. We are presenting real options for real change in our report in our legislation.

This brings me to an important issue that has been lost among all the other issues. That is that the silence of the President of the United States and his constitutional responsibility over administra-

tion—and particularly on this subject of the IRS—the Constitution says that the Congress makes the laws and the President enforces the laws.

The IRS, of course, is a law enforcement, executive branch agency. So where is the Chief Executive regarding his own agency; and does he intend to enter into the reform debate? So far, we have not heard from the President.

This should not, of course, be taken as partisan criticism, because most of the problems with the IRS predate and are still present during the Clinton presidency. He can be so outspoken on some other pieces of legislation; and so why has not he personally said something about the IRS?

On another subject, the personal flexibility section of the bill, I want to say that this is very important, because when this restructuring goes through and we have new administration—new people and a new chain of command within the IRS—we must give the new IRS Commissioner the statutory ability to hire his or her own team of senior managers.

The IRS has a pyramidal structure. Every few years, we replace the Commissioner at the top, but the next higher block of persons seem to persist and persist and persist. When private-sector executives poorly manage a private-sector company, they are taken over by a new chief executive officer. That chief executive officer usually culls out the remaining failed management team. We can not do that at the IRS because of the executive service laws.

If a new, business-type IRS Commissioner is to succeed, that person will need to retool, therefore, he or she will need to bring in his or her own people. So do not overlook that very important provision of our legislation.

On the matter of the next Commissioner, first it is encouraging to hear that the Commissioner nominee, Mr. Rosati, is not a lawyer. He is supposed to know something about leading a large and diverse organization. That is encouraging. Second, if he had to commit to defending the status quo at the IRS in exchange for his nomination, then he may have a tough row to hoe in the Senate. However, his nomination could go smoother if the President would get on record about his personal plans to lead at the IRS.

End of my remarks.

Thank you.

[The prepared statement follows:]

Statement of Senator Charles Grassley
Remarks before the House of Representatives Committee on Ways and Means
Executive Branch and Congressional Governance of the Internal Revenue Service
September 16, 1997

Mr. Chairman, members of the Committee, thank you for the invitation to speak here today with my House and Senate Cosponsors. When it comes to IRS governance and management, my colleagues mostly divide their comments into two areas. The first is the new management board. The second is all other issues. We need to be careful to not miss some important points among those other issues, despite the importance of the board.

The matter of the board is actually a simple concept. Will it to be a real board with real independence, authority, and teeth? Or, will it to be another reshuffling of the deck chairs down at the Treasury and IRS? I summarized the Treasury Department's position two months ago before this Committee's Subcommittee on IRS Oversight. I said then, "Treasury officials who two years ago couldn't find the IRS if they were standing at 11th and Constitution are suddenly in fits about losing some control over part of their budget and bureaucracy." In short, they have been out of touch with the troubles and concerns of our citizens. The American people deserve better from the Executive Branch. I am glad that my cosponsors and I are presenting real options for real change at the IRS.

This brings me to another important issue that has been lost among the others. That is, the role the President should play in our efforts to reform the IRS. And that begs the question: **Where is the President, as the true, constitutional leader of the IRS?** The Constitution provides that Congress makes the laws and the President enforces the laws. The IRS is a law enforcement, Executive Branch agency. So where is the Chief Executive regarding reform of his own agency? Does he intend to personally enter the reform debate? Or is he satisfied to sit this one out? He certainly and traditionally gets involved with legislation. This is the same President, after all, who recently demanded that Congress enter into a pre-certified agreement on federal budget and tax legislation. He later insisted that Congress provide "his" full legislative commitment on tax subsidies for education.

Where is the President on an expression of support for major and real legislative reform of the IRS? If he remains silent on IRS reform, can we interpret that as President Clinton being in favor of the status quo at the IRS? The people have a right to know.

The President should not take my remarks as a partisan criticism. Some of the problems at the IRS predate him. Simply, if the President can be so outspoken about budget legislation, which is not his Constitutional responsibility, then he should also find something to say about the IRS, which is his Constitutional responsibility. IRS reform is much too important for the President to use surrogates, like Secretary Rubin and Deputy Secretary Summers. The President himself must demonstrate leadership. He needs to stand up and be heard himself. If not, he risks being perceived as running from the problems at the IRS. That's not the kind of leadership that inspires confidence among the people.

However, if the President intends to continue to hide behind Secretary Rubin and Deputy Secretary Summers, then there is something that we can do as legislators. We can simply send the President this completed reform legislation for his signature. Then, he can perform his only true legislative role. He can make real IRS reform the law.

On a related matter, I want to say a few words about the "Personnel Flexibilities" section of our bill. This section is so important that we need to discuss its now, even if it is not the direct jurisdiction of this Committee.

To me, the most important provision, among the personnel provisions, is the statutory ability for a new IRS Commissioner to hire his or her own team of senior managers. The IRS has a pyramidal structure. Every few years we replace the Commissioner at the top, but the next highest block of managers remain unchanged. What is happening in this legislation is similar to what happens to private sector companies when they are taken over by new management. First, a new CEO comes in. That new CEO usually culls out the remaining failed management team. We can't do that at IRS because of the executive service laws. If a new business-type IRS Commissioner is to succeed, that person will need the tools to succeed. Therefore, he or she will need to bring in his or her own people. There is no point in recruiting a new quarterback for the IRS if we are going to keep the same problem wide receivers. A new IRS Commissioner will need someone to throw to. I caution my colleagues to not overlook the importance of the personnel flexibility legislation.

On the matter of the next IRS Commissioner, I have much to say, but I will say only two things. First, it's encouraging to hear that the Commissioner nominee, Mr. Rosotti, is not a tax lawyer, with all due respect to members of that noble profession. I have not interviewed him, but Mr. Rosotti's strength is supposed to be his experience in leading a large and diverse organization, much like the IRS. Second, if he had to commit to defending the status quo at the IRS, in exchange for his nomination, then he might have "a tough row to hoe" in the Senate.

The American people are ready for real changes and real leadership at the IRS. Congress is stepping into the leadership void. But, ultimately, it is the place of the Chief Executive to lead the IRS. It's his agency. The American people look to their President to deliver.

Chairman ARCHER. Senator Grassley, thank you. The Chair compliments each of you for some very cogent input to the Committee.

Mr. Portman, there seems to be a lot of common ground between the bill that you and Congressman Cardin had cosponsored and the Treasury's recommendations. Could you highlight for the Committee any significant differences?

Mr. PORTMAN. I think that one of the major differences is that the legislation we introduced is not quite as comprehensive. Senator Kerrey earlier said that the Treasury Department's bill does not go as far, and that is true. But also, some of the taxpayer rights provisions, and personnel flexibilities we might have to talk about. I do not know if there is any opposition to those; but there are just things that need to be added to the mix in order to compare the two.

The major difference, though, in terms of the subjects that each address would be this notion of the Oversight Board. The Treasury proposal is to have a Board composed of really midlevel bureaucrats and political appointees that would oversee the IRS, and that does not meet any of the criteria that I think the Treasury Department and we agree on, which is, you have got to have vastly increased expertise, you have got to have this continuity we talked about and the accountability.

In terms of expertise, those individuals—the political appointees—do not bring the kind of information technology, customer service expertise we are looking for. They just do not have it.

In terms of continuity, the average length of service of the people identified on that Board, Mr. Chairman is less than 2 years. So we know you are not going to have the continuity.

Finally, in terms of accountability, I am not sure it is the kind of accountability we want. In 1952, the last time we addressed this issue, we specifically did so to take politics out of the IRS, and to put political appointees—including members of the executive office

of the President—into the IRS to help run the IRS, would be a grave error. I think it not only does not solve the problems, but it injects a whole other problem into the IRS we want to stay away from.

So, that is the major difference I see between the two approaches. Otherwise there are a lot of similarities; and I think, again, we share the same goal.

Other Members may want to comment on that.

Chairman ARCHER. Does any other Member want to comment?

Senator KERREY. Mr. Chairman and Members of the Committee, to elaborate. First of all, we began—I began with the belief that the IRS should be completely independent.

In an effort to gain the administration's support, moved in their direction, leaving significant responsibilities in Treasury—tax policy, tax enforcement—inside of Treasury; and moving the operational side, with the Secretary of Treasury, on this particular Board.

So, we have moved in their direction, but not enough to get their support. Their recommendation is significantly different. As Congressman Portman said, they are proposing to create two advisory boards. The first one has got over a dozen political appointees to the administration. The second, 14 advisors with no real responsibility.

Now, in an effort to accommodate in a good-faith fashion, I did consider these proposals; but as I said, I do not believe it gets us to a point—either in terms of independence or in terms of expertise that is needed in order to give me a level of confidence that I can go home and say, "If this bill is passed, if these changes are made, 10 years from now, your satisfaction with the IRS is going to be higher, the gap between the private sector and what the IRS can do is going to close." I just do not think that is going to happen with their recommendation.

As you compare the two proposals, to have a Board over the IRS and new management, you have got to remember that the key reason for doing so is to have people with the proper expertise involved in solving their problems.

If you look at Treasury's proposal, they have got the same group of lawyers and economists trying to oversee this big agency in need of operational and technological restructuring. I just think the question you have got to ask is, "Are these the right people to do the job?"

Congressman Portman has talked about turnover. There is significant turnover at the IRS. It has been a problem at the top. If you look at—again, if you look at both the political problems that could be involved, the politicizing of the IRS as well as the turnover problem, I just do not believe—and again, a good-faith effort to evaluate the Treasury proposal, that they get to a point where you can actually go home and say, "You have got a Board there with both the power and the expertise to bring the kind of decision-making necessary to improve the customer satisfaction"—those customers out there that are trying to comply with the IRS policies.

Chairman ARCHER. Is it fair to say that the Treasury's proposal would maintain management within the Treasury with an outside advisory board that really would have no power other than to rec-

ommend? Whereas, your proposal, your Commission's restructuring proposal would give more quasi-independent management to an independent board?

Senator KERREY. Yes. That is an accurate way of saying, Congress still has all the oversight that we currently have. The executive branch still has the power to remove.

It is not as if it is the Postal Service, for example, which is one of the models that we looked at. The Postal Service is very difficult for the Congress to get at, very difficult for the President to get at. We keep significant accountability and responsibility vested both with the Congress and with the President in our proposed structure.

But there is, I think, a significant difference between our proposal and what the Treasury is proposing to do, in terms both of accountability and of competency to be able to make the kinds of decisions that are necessary, as I said, to close the gap between where we are today and where we would like to be in terms of measured consumer satisfaction.

Mr. Chairman, I want to underscore as well, Treasury has done a lot of good things. They brought in a Chief Information Officer about half a year after we started our effort, they made some changes by creating a management board. As Senator Grassley said, they have now for the first time in several years looked at nominating or recommending for the IRS Commissioner somebody with real management expertise. These are all good things.

So I think we need, in trying to get a piece of legislation enacted with the President's signature, to acknowledge what they have done. I just think that the recommendation that they made does not get us as far as is necessary if we are going to, again, be able to say to citizens that, "Ten years from now you are going to like the IRS an awful lot better than you do today."

Chairman ARCHER. There are many, many questions to be asked, and I am only going to ask one last short one and then turn to my colleague, the gentleman from New York for any questions.

The Treasury has said a number of times that your plan would simply turn the IRS over to part-time chief executive officers. Is that true?

Senator KERREY. No, it is absolutely not true. It is no more true that it—the Board itself is composed of—we tried to structure the Board so that it is composed of people who have the expertise to make decisions.

As I said, we for the reason of acknowledging that there are going to be very difficult personnel decisions to be made—and we did not do it for political reasons, putting the head of Treasury employees union on there. It was done. As I say, most of the Republicans and Democrats on this Committee feel this is one that could become politicized.

We did it because this is one of the recommendations that the Australian ministers that went through a very similar kind of restructuring suggested. Because a lot of difficult personnel decisions are going to have to be made. Better to have the Treasury employee union inside making those kind of decisions than outside objecting to them.

As I said, the Secretary of the Treasury is on there. We tried to structure this thing so we would have the expertise on there. If the objection is full versus part time, I am perfectly willing to acknowledge that maybe they all ought to be full time.

We did not believe that was necessary, but we should not disqualify, it seems to me, from serving your country people from corporate life or private-sector life who are only needed for part-time service by implying that somehow they are not going to be able to operate without a conflict of interest.

We have lots of good and able people who come into public service, who serve on all kinds of commissions and serve part time; and I do not think it serves the interest of advancing the cause of this nation to suggest that somehow they are going to be conflicted in the decisions they are going to be making.

Chairman ARCHER. Thank you.

Mr. Rangel.

Mr. RANGEL. Senator, I think the last question that the Chairman asked is where the debate is going to be. Every one is in accord that in order for the IRS to have any credibility, it has to improve its accountability and to insure that taxpayers have confidence in the system.

The question is whether or not executive types from the private sector, with all good intentions, can come in once a month—and even though you say that they will not be able to set policy, they will be able to hire and fire the Commissioner.

It just seems to me that what this Congress is all about is that we have the diversity of representing all kinds of people. Your Board seems to represent the executive type. I am not saying it is a conflict of interest, but you think based on your experiences. If we are talking about millions of taxpayers having a handful of people who have no accountability to the Congress, except being able to confirm them, I just do not know what assurances I will have.

Conflict of interest does not mean that someone intends to break the law. It means they can not help themselves in thinking the way they do. In this bill, you allow the President to select the Chief Counsel to the Commissioner that is appointed by the Board. It seems like that is a conflict of interest between the President and your governing board.

The whole idea that private-sector people could be involved in law enforcement by having a Commissioner that has to be involved in all of these things frightens a lot of us. How we handle this, I would think, is for those people who are trying to work toward getting a bipartisan bill, if they would concentrate on the agreement that has already been made by Treasury, even to the point of trying to strengthen it.

I think when we get to this one point, as to whom are these people accountable, and what confidence will the American taxpayer have in having this person in charge rather than the Secretary of the Treasury. I know that the Commission studied this and they probably came out with a whole lot of business decision.

But what we have to do, as I said earlier, is to make certain whatever we do, that the American people have confidence in what we have done, and there are very, very strong feelings—and I do not think it is partisan, it is just different feelings as to who directs

the tax collection for the people of the United States of America and who sets the rules, as to what the policy is, as to who gets indicted, who does not get indicted, what group of people should we concentrate on, where the emphasis should be, and what is more effective.

You tell me who is calling the shots and what a guy like Charlie Rangel has to do in talking about it. But if you take this just because they are good and decent people and we should trust them because they are experts in management, you are implying that in all of the U.S. Government, we just do not have the people who have these type of skills to make our IRS more effective.

Mr. Portman and Mr. Cardin still do not have any accord here on that issue. So I could agree with all of you and we could walk away. But until that issue is resolved—and that is the button that causes the problems that may appear to be political; but, I am certain the U.S. Chamber of Commerce would approve of what you are doing, but I am not sure that the taxpayer-rights people would approve of what you are doing as it relates to this private-sector board.

Senator KERREY. Congressman, I am sure you have made proposals in the past, and then you have heard it described by somebody else and you say, "My gosh, are they describing the same thing that I wrote and put out?

Mr. RANGEL. Where was I wrong?

Senator KERREY. Let me go down. Nowhere in this bill is the word chief executive officer mentioned.

Mr. RANGEL. Oh, I know that.

Senator KERREY. Congressman, I mean, let me finish.

Mr. RANGEL. You described who the people would be and the head honcho will not be coming——

Senator KERREY. No, sir. No, sir, it is not. The critics of the bill have used the word chief executive officer. They have implied that——

Mr. RANGEL. Why not describe the pool of people who will be eligible to be appointed?

Senator KERREY. We put the head of the Treasury employees union on. You could certainly assert there that that is not an American corporate leader. Yes?

Mr. RANGEL. Well, I would——

Senator KERREY. That is one out of nine. We certainly assert that the Treasury Secretary is not.

Mr. RANGEL. Senator, if you have already written him in, I would like to believe that he would support it. I mean, he is not selected. You have written him in. If you write me in, I will be with the bill, too. [Laughter.]

Senator KERREY. Congressman, what I am trying to do, with great respect to your legislative ability and great respect for you personally is just to suggest that we have to debate the facts of the bill.

Nowhere in this bill does it say, "chief executive officer." If you want to talk—I am willing——

Mr. RANGEL. Strike out the union person and just describe for me, Senator, what would be the attributes——

Senator KERREY. Look at the bill language. The bill says that we want some one with management of large service organizations, somebody with experience. I mean, that could be a nonprofit, somebody with experience in customer service, somebody with experience of compliance, somebody with experience in information technology, somebody with experience in organizational development, somebody with experience in dealing with needs and concerns of taxpayers.

In other words, we are dealing—what we were trying to do was write in general requirements so as not to tie the hands of the President in making appointments, but still coming up with a board that has expertise.

I am just saying that what critics have done is falsely describe this proposal as being one that suggests they all have to be chief executive officers. Nowhere in the bill does it say, "chief executive officer."

So, I am willing to argue, I am willing to debate, I am willing to negotiate with anybody that wants to make specific changes in recommendations for changes in this bill. But when they start off by saying, "I want to have chief executive officers take over the IRS," or some have gone on to say that "chief executive officers will be setting tax policy," the language specifically says that this Board cannot do tax policy, it cannot do law enforcement, it cannot have access to tax return information—those things are specifically prohibited in the bill.

So, I am willing to negotiate in good faith with anybody who has got an objection to the specific language; but, if they misrepresent what is in the bill, it is difficult to reach——

Mr. RANGEL. Let me withdraw the term, "chief executive officer" Senator, and just describe it as a private-sector person. Then, maybe at another time we can discuss the debate. But the title chief executive officer does not bother me nearly as much as it does you. It is someone that I do not believe that we have accountability from, meeting once a month, to do the things that are stated in the bill.

Mr. PORTMAN. Charlie, you are going to have to go a little bit broader than that because it just says, "From private life." If you look at the criteria, it would not preclude somebody, let us say, from a state taxing authority, somebody who happened to be working for a university, somebody who was with a taxpayer rights group, somebody from a think tank, somebody who was retired and maybe at one time was in the business community.

I actually have a list of two seven-person slates. I have not talked to the people about it, they are just people who have the criteria we are talking about. Not one is a chief executive officer. I am going to present that to Mr. Rubin later today for his consideration.

But it is not even as narrow as you have now described it. It has to be from the private sector. You do need these skills sets, though. If you do not bring these skill sets into the IRS, we are not going to solve the problem.

Mr. CRANE [presiding]. I would simply remind our colleagues here that the light applies to us as well as to our witnesses. [Laughter.]

I am trying to keep your interrogations within the timeframe of 5 minutes.

Now in a written statement submitted for the record, the National Association of Enrolled Agents and the National Association for the Self-Employed strongly endorsed the Oversight Board concept, but suggested that the Board should include representatives from both the small business sector and tax practitioner communities.

I would like to throw it open to the panel to get your insights on those proposals.

Mr. CARDIN. The Board is not configured so that every interest is going to be represented on the Board. It is configured to bring to the IRS the expertise it needs in developing its long-range strategy and to evaluate its performance. It is also a small board. We would like to keep it that way so it can do its work efficiently.

So I appreciate the concerns that different groups would like to see, make sure that there is adequate representation on board, but we would encourage keeping the Board at its current size, and that the talents that are needed on this Board are more functional talents than representing one of the interests that might be dealing with the IRS.

Mr. CRANE. Any others want to comment on that?

One of the ones in that proposal that struck me as significant was the tax practitioner communities. You do not think that is a constituency that could serve a very good purpose?

Mr. CARDIN. Well, I think the IRS needs to be responsive to all of the entities that it interacts with, the most important being the taxpayer himself or herself. But to start to say that we are going to give a seat on this Board to one interest that happens to deal with the IRS, I think would be a mistake

Mr. PORTMAN.

Phil, could I follow up on that?

I agree with what Ben Cardin has said. I think it would be a real mistake for us to reserve certain seats on the Board for certain interests, whether they are tax practitioners, small business or other.

We avoided that temptation here by setting out these skill sets, and then giving the President the ability—and incidentally, this President would choose all seven of these members. Because then the staggered terms would begin. But give the President the ability to find the people who meet these criteria.

With regard to your specific question on tax practitioners, we have got to remember what the challenge here is. It really is not so much something that a tax lawyer or even an enrolled agent would have expertise in, although that is helpful; and you do want to hear from those people. We do set up means by which those people can communicate their concerns through advisory committees.

But it really is, making the train run on time; the phones work, the computers work, providing people with the status of their account. Again, this information technology and service revolution that has swept the private sector that the IRS has been left behind on. That is where we really need the expertise, and that is why we spelled out these particular skill sets.

It does say as one of these skill sets, "The needs and concerns of the taxpayer," and there you might want to have a representa-

tive either from the practitioner community or the taxpayer rights community.

Mr. CRANE. Well, the light has not gone on, but I know Charlie ate into my time significantly; so I now will yield to Mr. Thomas. [Laughter.]

Mr. THOMAS. I thank the Chairman for yielding.

First of all I want to thank all of you. Senator, I do not—Senator Kerrey, specifically, but Senator Grassley, you have been involved as well. I do not know how you folks get yourselves into this. You have been on other commissions. This one, I have a hunch, is going to be more successful than some of the others.

In fact, if you look at the administration's proposed legislation, you have already won, in terms of their willingness now to make a fairly fundamental change.

I want to underscore what everyone else will say, or if they do not say it explicitly, they certainly mean it. This is certainly not an attack on this administration. The fundamental problems of the IRS are there regardless of who the President is and what the President's party affiliation is. It has gone on for a long time. The problem is truly bipartisan and what we are looking for is a bipartisan solution.

I guess the crux for me, since in so many ways, the administration's proposal now duplicates the proposals of the Commission, is my understanding that there was a clear two-way line of communication and what you folks developed as good policy they picked up in their bill—and there is nothing wrong with that.

But my question is, is there enough change in the administration proposal, and will those changes, once instituted, last? That is where I think the Commission proposal that you are advocating has a better chance.

Just as an aside—the Secretary is not here yet, but when he arrives and delivers his testimony, on page 3 of his testimony he indicates that they have a nominee for a Commissioner. In his testimony he chooses to describe the nominee this way, and I quote: "Our nominee for Commissioner—a chief executive officer, or CEO of a large private-sector organization, with extensive experience in systems modernization and other technology issues—is a symbol of our commitment to continuing the process of change."

So I guess they are looking for a Commissioner that fits the criticisms of the Board that has been indicated, but quite honestly, all of us agree we are looking for professional people, not necessarily a chief executive officer.

One of the quotes of the Secretary that concerns me quite a bit appeared in the New York Times in which the Secretary said, "I do not think that in this debate about governance in the IRS there are"—"I do think that in this debate about governance in the IRS there are others who have other agendas," Mr. Rubin said, without naming anyone. "I think clearly there is a desire on the part of some to undermine our progressive taxation system and replace it with a different system of taxation, and that one approach to trying to do that is to attack the Internal Revenue Service," he said.

I think attacking the Internal Revenue Service is too easy. That is not hard to do. The question is, what do you offer to fix it? It seems to me that if someone wanted to undermine the current sys-

tem, you would be pushing for the status quo, not a fundamental reform such as this.

So I want to, once again, visit what I think will be the key debating point. That is, if we are going to try to fix the IRS through the Commission's proposal or through the administration's proposal, which one fixes it more fundamentally and more permanently?

The key to me is looking at the package as a whole, not just the debate about the Board and its independence in appointing the Commissioner—not just the kind of Commissioner for a fixed, 5-year term; but also the ability to utilize the new structure for employees—both in payment and reward that you have initiated.

So when we look at the criticism, the first thing I would ask my colleagues to do is to read the legislation and not listen to the representations of the legislation, from a permanent and a fundamental point of view.

Could you check off the one, two or three points—once again, because I think repetition on this has to be critical. What is it about the Commission's proposal that more fundamentally and more permanently fixes the IRS?

Senator KERREY. Well, first of all, I need to beg the Committee's indulgence and apologies. I have to go to another presentation. So, after I answer briefly, I have got to take my leave. Again, I appreciate the chance to testify and look forward to working with all Members as we try to enact a piece of legislation.

I do think, Congressman, when you get right to it—I mean—the question is, which one more closely permanently fixes the problem? I have got to say I would even go further than we have gone with independence.

When I started off—and actually ended—believing that the IRS should be significantly independent. Congress still needs oversight. I do not want it as independent as the Postal Service. I still want it to have significant accountability. Indeed, one of the problems we have right now with the IRS is that it is not terribly accountable to us.

I mean, all of us know, if you have a citizen problem—a citizen has a problem with the IRS, it is difficult to intervene, and it is difficult to approach and try to get satisfaction without being accused yourself of doing something that is going to personally benefit a friend or a constituent.

The independence actually provides the taxpayer with significantly more accountability and freedom. Secretary Rubin is talking about people with another agenda—it is true, by the way, that having an independent Commissioner is going to result in times in the Commissioner saying, "You know, Mr. President, that is a terrific proposal you made on taxes, but here is what it is going to cost the taxpayers to comply."

If it costs $200 billion or $100 billion for taxpayers to comply—we are all talking about the need for simplification—very often our proposal is the very proposal that makes it more complicated. This Commissioner will have the same kind of independence that we now have with the Social Security Administration. That administrator now should come to Congress and say, "Here is the problem. Here is what is going to happen if we do not take action," regard-

less of whether or not it is going to embarrass the President or embarrass Members of Congress.

It is that kind of independence that provides much more accountability. We tried to provide a balance, in short. I think the administration's proposal does not come close to the kind of independence necessary to achieve the necessary accountability with the customer—with the taxpayer.

That really is the goal. That is the thing that all of us need to keep in mind here. How do we get that taxpayer to say, "This is better. It has gotten easier to comply." Eighty-five percent of the people out there voluntarily comply. They do not need cops. They do not need enforcement. They just need to know the information. It is the largest bill that most taxpayers have, the largest bill they pay. It is vital that they know what that number is so they can do financial planning.

If half of their calls do not get answered and 25 percent of those that are answered are wrong, they cannot rely on the agency in its current form.

So what we have tried to do is create independence with our Board, that achieves accountability without surrendering Congress' ability to approve budgets, without surrendering the President's ability to be able to appoint and to make sure it gets people on that Board with expertise.

But imagine—this is one of the last things I am going to say—if any of us were Secretary of the Treasury. Just imagine if you were Treasury Secretary Thomas, or Treasury Secretary Kerrey, all of the things you have got to do, including in the current arrangement, managing an organization with 100,000 people, and the Secret Service, and the Bureau of Alcohol, Tobacco and Firearms, and Customs and half a dozen other independent agencies.

Mr. THOMAS. Senator, the administration proposes to help the Secretary of the Treasury by moving people from the Vice President's office and the Office of Management and the Budget to assist in this independent evaluation.

Senator KERREY. That, on its face I would say, Congressman, is a mistake. It would politicize the IRS. It may sound good, but I would just very respectfully suggest that—independent of whether or not a more loose board with less responsibility is going to work, putting anybody on there from the Vice President's Office or OMB would politicize the IRS and take us in precisely the wrong direction.

Mr. THOMAS. Thank you.

Senator KERREY. I thank the Committee's indulgence and this opportunity to testify.

Mr. CRANE. Well, we thank you for your appearance here today, Senator Kerrey, and understand.

Our next interrogator is Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

I would just like to ask all the panelists, in as much as H.R. 2292 contains the requirement that the Oversight Board hire the Commissioner, I presume that you do not agree with the proposition by Congressman Cardin that the bill would be improved by not having the Oversight Board hire the Commissioner.

Mr. PORTMAN. This is a point where I think there can be an honest discussion of various alternatives. My own view is that it is better to have the Board hire and fire the Commissioner simply because that then creates the kind of accountability that we are looking for with the Board.

If the President were to be in the position of appointing the Commissioner, perhaps the Board could have a role in that, as we do in many other agencies where an entity like this Board might recommend a slate of candidates, maybe two or three candidates.

Maybe on the other end—which is the removal power—to also be in a position to recommend to the President removal, when that is appropriate.

What you have in this Board—as you know, Mr. Coyne, is the Board's function of evaluating the performance of the Commissioner. Again, accountability of holding the Commissioner's feet to the fire.

If you take away too much of that, including taking away the entire ability to affect that person's hiring or firing, then I think you really have lost something. You have lost a good deal of authority with the Board. I think there may be some room for discussion there.

I personally believe that the stronger approach that will really bring the kind of change we are looking for at the IRS would be to maintain that authority at the Board level.

Senator GRASSLEY. I agree with Congressman Portman only I would back it up with testimony we had before our Committee over a period of 1 year from employees and former employees, people who have had good experiences, and people who have had bad experiences in dealing with the IRS. The common theme of criticism that we heard is that a major problem at IRS is inbreeding and being an insular-type organization.

It seems to me that to overcome that, it is very important that we have the Board appoint the manager, and more importantly than even just doing that, is his ability to bring in a whole team of managers to make sure that whatever changes at the highest level that need to be made are actually carried out and not do what we have been doing, by always having somebody who had to be a tax attorney as a qualification—written or unwritten—to be Commissioner of IRS.

A person who was there because they were noted more for their understanding of tax law than they were for administration—particularly with their subordinates being people in middle management who have been around for a long time, just build upon the insularity that is the basic problem we are trying to deal with here.

Then in addition to management of that, there is another very important principle that we put into this. That is to make sure that freedom of information requests are responded to immediately; and also, to make sure that the abuse of the privacy laws that had been used to protect this insularity are modified, particularly in the case of the freedom of information, so that the things that police government, generally, police the IRS to be a responsible agency, including people in the media that are involved in freedom of information.

The mere fact that the historian resigns because documents are being destroyed and there is no effort to archive still seems to us to be evidence of—not necessarily covering up, because there might not be a specific thing that is going to be covered up, but when you make access to this information either impossible or very difficult, it protects the inbreeding and insular attitude that we have; and it is that attitude that we need to modify.

Mr. CARDIN. Bill, the key here is the balance on the Board so that the Board has enough impact and influence on the decision-making at the IRS that you can attract the right people to serve on the Board, to invest their time in helping the IRS develop its game plan, and holding its management accountable to achieve those results.

I think it is enhanced by the Commissioner being a Presidential appointment. I think you actually enhance the ability of the Board to do its work.

As Rob pointed out, there is some honest difference of view here. I do not think you attract better people to the Board because they can nominate the Commissioner. To the contrary, I think the people who serve on this Board will be willing to serve on this Board because they are interested in helping work with the IRS in developing a mission and accomplishing that mission in a more effective way.

So I think you actually improve the Board by keeping the Commissioner as a Presidential appointment; and I think it is somewhat awkward to have some of these people appointed by the President, but yet the Commissioner will be the chief person responsible for carrying out the policies and will not be appointed by the President. I think it strengthens the bill to have the Commissioner appointed by the President.

Mr. COYNE. Thank you.

Mr. CRANE. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman. I am going to try to set a trend here and be brief. [Laughter.]

The document before us provides that "The overall governance of the IRS will be provided by a Board which will oversee the Internal Revenue Service in the administration, management, conduction, direction, supervision execution, and application of the Internal Revenue laws, but would have no responsibility or authority with respect to the development and formulation of Federal tax policy relating to existing or proposed Internal Revenue laws or specific law enforcement activities of the Internal Revenue Service, including compliance activities such as criminal investigations, examinations and collection activities."

How do you propose to separate them with regard to criminal prosecution and development of regulations? I throw that out to whoever might care to take that on.

Mr. Portman.

Mr. PORTMAN. First, I want to thank you, Mr. Shaw, for reading the legislation. [Laughter.]

That is very helpful. Honestly, it has been misrepresented, as we said earlier, on a number of points. This is one that is very important and needs to be clarified.

Fred Goldberg, former Commissioner of the IRS, former Assistant Secretary for Tax Policy and former Chief Counsel was on this Commission. We also conferred with former Commissioners. We also conferred with people on the Treasury side at the Secretarial level, also Deputy Secretary and Assistant Secretary level on this very issue: Can the two be separated?

The answer is, yes. In fact, they are separated now.

With regard to the regulatory side and the enforcement side that you just mentioned at the end, and tax policy, those continue to be Treasury functions. Those are not functions right now that are handled by the IRS, nor should they be.

One of the concerns about total independence is that there is a certain amount of synergy between tax policy, in particular, and tax administration; and you probably want to retain that. That is one reason the Commission in the end did not recommend the model of the Post Office, as Bob Kerrey said, of total independence.

There are some reasons to keep these two areas involved with one another in a close way as they are now, but you can accomplish what that legislation states, for the most part, because it is already done that way.

The IRS does not get involved. The General Counsel at the Treasury Department is responsible, as you know, for drafting those regulations. The Assistant Secretary for Tax Policy, Treasury, is responsible for tax policy. We believe it should stay that way.

The one benefit, I think, you get from this in terms of your very question is, you do have a more independent view from the IRS from the point of view of tax administration on tax policy. That has been one of my frustrations on this Committee and I know one of yours and others, is that we do not often hear directly from the IRS, as an example, on how a tax credit for education might work, or how the EITC might work.

In this case, I think because of not only separating it the way we did, but also because we provided on the congressional side for the IRS to be at the table, giving us their input, we will get better information, unvarnished, from the IRS about how you actually would administer some of these great sounding tax policy ideas.

Mr. CARDIN. On the compliance issues and on the specific law enforcement, there are very strict laws today about who has authority in those areas. This bill specifies that the Board has no authority in these areas.

So, without a specific grant of authority, the Board could not have access to individual returns, and will not be able to be involved in any of the specific law enforcement issues involving an individual taxpayer.

Mr. SHAW. I appreciate your clearing that point up and yield back the balance of my time.

Mr. CRANE. Mrs. Johnson.

Mrs. JOHNSON of Connecticut. Thank you, one of the useful and thoughtful parts of this report—and gentlemen, I commend you all, those who have served on the Commission, and Mr. Cardin, who has given a lot of time and thought to reviewing the work of the members of the Commission, and working with Mr. Portman.

One of the thoughtful parts of this report is its analysis of congressional oversight of the IRS. There have been times when the congressional process has really worked against IRS action and leadership, and has been of concern to me.

However, there are some significant differences between the Treasury's proposal on this score and the Commission's proposal; and I would ask that you comment on those differences.

Mr. PORTMAN. Well, thank you. I responded earlier to Mr. Rangel's question, I think—perhaps it was Chairman Archer's—regarding the differences between the Treasury proposal and our proposal by not mentioning congressional oversight; and I should have.

The Treasury proposal, to my knowledge, does not address the issue of congressional oversight. So the difference is, they have no proposal there. Our proposal is actually pretty interesting. I think the fact that you support it and other Members of leadership support it, is extremely significant and perhaps unusual. Because it requires consolidation of Committees in a way that one might think would threaten jurisdictional prerogatives.

What we say quite simply is that the IRS is not getting a clear message from Congress. There are seven different Committees of Congress that have some responsibility for IRS oversight, I include in there the Appropriations Committees, of course.

Because, particularly in recent years, they have had a good deal to do with not just IRS spending, but IRS oversight by legislating in Appropriations bills. What we say is that all of the leadership of all seven of these Committees would confer twice a year in hearings with the IRS present. One on the strategic plan of the IRS; and one on the budget of the IRS; and then they would issue a report, together as a consolidated Committee under the auspices of the Joint Tax Committee.

The Joint Tax Committee is bicameral, bipartisan and seems to have the expertise that is needed to be able to staff this kind of a—almost superconsolidation of Committees.

That is what is in our proposal. I feel very strongly that if we do not streamline and consolidate the oversight at this end of Pennsylvania Avenue, we will have not responsibly addressed the existing problems. We cannot just look downtown at Treasury. We have to also look here in our own back yard.

Mr. CARDIN. Mrs. Johnson, I remember as a new Member of this Committee looking at the IRS functions, budgets and making certain recommendations to the Budget Committee and absolutely having it totally ignored, that there was really no coordination at all among the different Committees that had jurisdiction of the IRS.

As Mr. Thomas pointed out, the problems of the IRS developed over a long period of time. Part of the responsibility has been the inability of Congress to adequately oversight the operation of the IRS.

So I think it is right and I am pleased to see our legislation confronts the issue of a more effective way that Congress can use its energy to coordinate oversight of the IRS. I can understand the administration not wishing to put that in its bill, the congressional oversight; but I do hope that we will include that provision in the final bill that is brought forward.

Mrs. JOHNSON of Connecticut. I do want to point out that if we fail to include the IRS at the time we are writing tax policy, we will never straighten out our problems. If we fail to require of ourselves the amount of change that we are asking of the executive branch, we also will fail to make government more responsive to the taxpayer, more efficient and effective.

We talk a lot about it, but this portion of your report is extremely important. I am proud to say that the Chairmen of the three Committees, this year, have been meeting to talk about some demonstration projects and pilot projects that we asked the IRS to do in order to avoid the three Committees interpreting the work differently, so on and so forth.

But, it is extremely important that we begin to work as a body on oversight of the IRS at the same level of discipline and coordination—on the part of the Congress—as we are asking the executive branch, in terms of both the bureaucracy and the private sector. This is a new era we are moving into and we have to drag ourselves forward as well as them forward.

Thank you.

Mr. CRANE. Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman.

Clearly there has to be some changes. I think everybody agrees with that. The Commission has helped to spotlight some of the needed changes. There are urgent needs for improvement in management.

Let me, though, try to zero in on what are the differences, because I think where we are agreeing, we will legislate. It is where we disagree that may be more difficult. It relates to the powers of the Board. I think Chairman Archer described it somewhat well, it is the question of whether there would be an advisory capacity, or also a quasi-management authority in any board or commission.

Senator Grassley, you said in your testimony, "Will it be a real Board with real independence authority and teeth?" Senator Kerrey talked about a Board that could make difficult personnel decisions. I think that is really the most fundamental disagreement.

So, if you would, tell me the kinds of decisions that you think this Board will be able to make? There is a disagreement as to whether the Board would appoint the Treasury—the IRS Commissioner, which is a pretty important issue. But in addition to that—Senator Grassley, let me start with you.

What kinds of—when you say "real independence, authority and teeth." I tend to agree that it has to be a Board with more expertise than perhaps envisioned in one of the bills, but that can be readily fixed. So tell me what you mean by "independence, authority and teeth?" Give me examples of what the Board would do.

Senator GRASSLEY. Well, this may not be specific enough for you, but it seems to me that it is tone and direction and mission. What we are trying to do here with the Board is something that I guess in over 1 year—that not just in 1 day of testimony, but in testimony over a long period of time, it tended to be a theme that somehow the Internal Revenue Service was just kind of a mission onto itself, without proper oversight from the President and the Secretary of Treasury.

We understand that the Secretary of Treasury has so many important duties—and you could list eight or nine that are very, very important—and whether or not the IRS being within that organization has the mission and the goals laid out adequately by an overseer to make sure that problems within are seen and overcome very shortly.

Now that is a very general answer to your question, but——

Mr. LEVIN. How about a few specifics in terms—Senator Kerrey, who had to leave, talked about "difficult personnel decisions."

Senator GRASSLEY. OK. Well, one that I mentioned already is the fact that under the existing administrative set up, even though a new President, elected with an overwhelming mandate—maybe nothing to do with the IRS, but still having an overwhelming mandate to come in and govern, appoints a new Commissioner of Internal Revenue; and that new Commissioner tends to always be a tax attorney, with probably very good expertise in tax law, goes in to manage an organization, but inherits because of tradition and because of law a middle management that may be inbred with the organization to keep the real changes that the Commissioner of Internal Revenue wants to get carried out. From that standpoint, it seems to me that we do not get the changes that need to be done as fast as we should.

Mr. LEVIN. Mr. Portman and Mr. Cardin.

That could be fixed, Senator Grassley, by—you do not need to set up a Board to give the Commissioner more authority, vis-a-vis personnel, I do not think. I am not an expert on that system.

Senator GRASSLEY. And I cannot disagree with what you say, but we set it up as an independent—a more independent agency with a Board that is going to have special authority to look at that. Since it is outside the normal stream of Cabinet Presidential relations.

Mr. CARDIN. Mr. Levin, let me just try, if I might—just quickly, if I might.

That is, it is not so critical—the decisions that are made by the Board. It is the Board working with the Commissioner and developing a management strategy that will correct the problems that we all have identified with the IRS. So, if you look at the bill, you will find that the legal authority rests primarily with the public officials, not with the Board. The Board has access to the Commissioner in the development of the strategic plan and the development of a budget necessary to carry out that strategic plan. You have a working relationship between experts in the area—the Board—and the Commissioner working to develop a strategy that will correct the problems at the IRS.

Establishing evaluation techniques, so that we all can see—including those of us who serve in Congress—as to whether the IRS is carrying out its mission will be a tremendous assistance to Congress, as well as the American people.

But the legal authority rests with the public officials. All of us can draw from our own personal experience of serving on boards. We know good boards, we know boards that have not functioned so well. A good board works in tandem with the institution; and that is how we see this happening. We think that we have given enough access to the decisionmaking by the Board so you can attract the

kind of talent that is necessary in order for the Board to carry out its mission. If you are looking for legal authority to make decisions, most of that rests with public officials.

Mr. LEVIN. I think you have described an effective advisory board.

Mr. CARDIN. We could spend a lot of time on what the Board should be called. We think it is an Oversight Board.

Mr. LEVIN. An Oversight Board.

Mr. CARDIN. Yes.

Mr. PORTMAN. Mr. Levin, I appreciate your question. Let me try to give you some—even more specific corrections on that, that comes right out of the legislation. It is actually pretty well spelled out on pages 12 through 15 in the legislation, probably as well as in many of the summaries I have seen.

I think it is very important to look at this Board, not so much as a management board—which happens to be the name of the Treasury Board—but as an oversight board. There is a difference between the two. It is not an advisory board. It is not a management board. It is an oversight board, meaning that it has certain powers that are approval-type powers, and certain boards that are consulting-type powers.

We have spent a lot of time on this and the way we ended up working out that balance between approval, which as you said earlier is real authority, it gives it real teeth; and on the other hand consulting with the Commissioner was as follows: The Board actually approves the strategy.

I mentioned in my statement, not just the long-range mission of the IRS, but the annual strategy for implementing, really, that mission. So there is a strategic plan that has to be prepared now by the Commissioner, has to be presented to the Board, and that Commissioner needs to work with the Board to come up with a plan that is approved by the Board. That, in my view, is where a lot of the authority vests.

Second is performance measures. One of the things that we tried to do, as I said earlier, is to push change all the way through the system. Part of that is change in the performance measures. Not making it as an example, but subject to the kind of incentive where if you end up raising more money from the taxpayer, you end up getting a better performance review. Rather, the performance measures should be tied to taxpayer service.

The notion there being that ultimately we are trying to improve the service to the taxpayers. That will in the end lead to better compliance. But we need to reestablish the performance measures. The Board will have that authority, too, to approve something the Commissioner presents to them.

The appointment of the Commissioner, you mentioned, which is very significant, I think. Although, I think there are other ways to do that to give the Board some power—there is, as I mentioned earlier, a slate of candidates—maybe some removal powers.

Finally, the budget. The budget is very interesting. Because Treasury has argued before this Committee and the Subcommittee and has said publicly many times that the Board is going to establish the budget for the IRS, and that that would somehow lead to unavoidable conflicts of interest. That is not the way it works.

It works much like Social Security, where you and I, Social Security Subcommittee Members and the Full Committee Members get an informational copy of what the Social Security Board thinks is the right budget, but the budget itself—actually, once it is approved by the Board—and again, the Commissioner has every incentive to work with the Board. The Secretary of the Treasury is on the Board. Then that budget goes to the Secretary. The Secretary has the same veto power that the Secretary currently has. Then it goes as part of the President's unified budget, through OMB, through the White House, and up to the Hill.

So the President's request comes really from Treasury and OMB. But at the same time, you and I will get an informational copy of a budget that was actually approved by the Board working with the Commissioner.

So those really are the fundamental authorities of this Board. Where the Board does not have approval power, but has review power, includes the management plans—kind of the day-to-day management plans—the technology plans. We talked about that a little today and in the last year. Many have explained the IRS has made a lot of progress with the blueprint for a new technology plan. But we need to have that continuity we talked about earlier because there has been a new technology—Tax Systems Modernization Plan—every couple of years; and it has not been followed through on.

The reorganization plan, which would include some of the downsizing you talked about, potentially; personnel systems and training plans. Those would be reviewed by this Board in a formal way; but the Board would not have to approve it. The Secretary would be required to submit that to the Board.

So it is a balance. Your question is a very good one. In the end, this is a board that is neither advisory nor management, but it is in my view—I think the best way to describe it is oversight.

Mr. CRANE. Colleagues, I would like to interrupt for a moment here because I have learned that our colleague, Mr. Hoyer, has to be out of here by 3, and Secretary Rubin has to be out of here by 4. So I would ask our remaining questioners if you would be kind enough, if it is not a major, overriding question that you have to ask of any one of our current panelists, to hold and we will save them either for Steny and our good friend, Mr. Coyne, or we will save them for Secretary Rubin.

Next, though, in line of succession is Mr. McCrery.

Mr. MCCRERY. Thank you, Mr. Chairman. I just have one quick question that can get a quick answer.

Congressman Portman, did the Commission study the approaches taken in the Treasury Department's proposal? If so, what was the discussion around those proposals?

Mr. PORTMAN. It is a good question. Yes, the Commission did take into account the Treasury's proposal. The General Counsel of the Department of Treasury was a member of the Commission. We got a lot of input from Treasury along the way. The report actually reflects a lot of Treasury's input and IRS' input, even though in the end, Treasury opposed the final recommendations. As I said, earlier, it was a 12 to 5 vote on a bipartisan basis with Treasury not supporting it.

What we have determined is that Treasury's idea—which actually came relative to relating to the Commission's, but was part of our deliberations of having a, again, midlevel bureaucrat, political appointee, management board, in that case, made up of 20 individuals—which has actually been implemented by Executive order—simply did not meet any of the criteria which we all seemed to agree on, which is a needed—more expertise at the IRS to solve their very tough problems with information technology, customer service and so on.

There was no continuity. The average length of the people who actually were named on that Board is less than 2 years. That is not continuity to get the job done; and third, accountability. They did not provide that kind of accountability. You really can never get accountability, in our view, unless you have the first two: expertise and continuity. Otherwise, there really is not good accountability.

Finally, as I mentioned earlier, there is a real concern that the kind of accountability you have might not be what you wanted. Because to have political appointees actually managing the IRS—because it is called a management board and I do not know exactly how the duties are enumerated. It may not be that different from ours. But they had political appointees and that position seemed to us to really risk politicizing the IRS in a way that I think none of us want to go back to.

Mr. MCCRERY. Thank you.

Mr. CRANE. Our next questioner would be Mr. Neal. Do you have any questions, Mr. Neal?

Mr. NEAL. Mr. Chairman, maybe one quick question of the panel and I can get that done in a rapid manner.

By definition, it is my understanding that the Board would not have any influence over tax policy?

Mr. CARDIN. That is correct. Tax policy would continue to reside at the Department of Treasury.

Mr. NEAL. And how do you maintain that very clever distinction.

Mr. CARDIN. There is a specific provision in the bill that specifically states that.

Mr. NEAL. You would not ever see an opportunity for a conflict?

Mr. CARDIN. No, as Congressman Portman pointed out, traditionally tax policy has been handled by the Secretary, Department of Treasury. It has not been in the IRS itself. IRS administers the laws. It has not been involved directly in tax policy.

Mr. NEAL. But would not they make——

Mr. CARDIN. It would specifically prohibit this Board from being involved.

Mr. NEAL. Would not they make recommendations then over tax collection policy, or who to focus on, something like that?

Mr. CARDIN. No. We do not see that happening. We do not see that as part of the mission of this Board. We think—what we are talking about is giving direction to the agency, not dealing with either a specific policy; or a specific enforcement issue.

Mr. CRANE. Next is Mr. Ramstad.

Mr. RAMSTAD. Mr. Chairman, I have no Earth shattering questions and will gladly defer.

Mr. CRANE. Very good. Thank you kindly.

Mr. English.

Mr. ENGLISH. No questions, Mr. Chairman.

Mr. CRANE. Very good.

Mr. Becerra.

[No verbal response.]

Mr. CRANE. Mr. Tanner, do you have any questions?

Mr. TANNER. No.

Mr. CRANE. Well, that concludes this panel and we thank you both for your participation and that of our departed colleagues. With that, we will ask our colleagues, Mr. Coyne and Mr.——

Chairman ARCHER [presiding]. Mr. Crane, I am going to ask, with the permission of Mr. Coyne and Mr. Hoyer whether they might be willing to defer to the Secretary, who has got time problems.

Unless we can have some kind of an agreement that we would be very succinct in questioning Mr. Hoyer and Mr. Coyne, if we could have that agreement and that is acceptable to the Members, then we will recognize Mr. Coyne and Mr. Hoyer. Particularly, I am concerned about my friend Steny Hoyer having to sit around in the Ways and Means Committee. Some of it might rub off on you. [Laughter.]

We are pleased to have both of you and the Chair would first recognize a Member of the Committee and also a member of the Restructuring Commission, Mr. Coyne for his testimony. Without objection, your written statement can be put in the record in its entirety.

STATEMENT OF HON. WILLIAM J. COYNE, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

Mr. COYNE. Well, thank you, Mr. Chairman. I thank you and the Members of the Committee for the opportunity to testify here today on H.R. 2428.

I believe the Restructuring Commission has made an important contribution to the debate on the role of the IRS by carefully studying the problems facing the IRS and producing some very thoughtful recommendations in the report. I want to especially commend the Cochairs of the Commission, Senator Kerrey and Congressman Portman, for their skillful leadership and for all of their hard work.

As you know, all of the Commission members agreed that there is a clear need for dramatic reforms at the IRS. In fact, we agreed on a number of reforms that should be adopted in order to improve IRS operations and make this agency more customer friendly.

There are some issues, however, that still need to be debated before Congress enacts an IRS reform bill. H.R. 2292 and H.R. 2428 reflect two different perspectives with regard to those issues. Both H.R. 2428 and H.R. 2292 would make IRS personnel policies on issues like hiring and pay more flexible; and they both attempt to provide a fix for the troubled IRS computer modernization program. Both bills would also promote increased electronic tax return filing.

Finally, and perhaps most important, both bills attempt to increase oversight of the IRS and to provide the agency with the expertise and leadership it needs to carry out its mission fairly, efficiently and courteously.

There is, however, one major difference between H.R. 2292 and H.R. 2428. H.R. 2292 would turn control of the IRS over to a board of directors composed primarily of private citizens, which would select and appoint the Commissioner. Under H.R. 2428 the Commissioner would be appointed by the President and confirmed by the U.S. Senate.

Under H.R. 2292, the Board would review and approve the IRS budget and it would review and approve the strategic plan of the IRS. Consequently, in my opinion, H.R. 2292 would make the IRS less accountable to the American public than it currently is.

The Federal Government has and will continue to have a number of substantial obligations: national defense, law enforcement, scientific research, investment in infrastructure and maintaining safety net programs like Medicare and Medicaid.

As long as it continues to have such obligations, it will need to collect the revenues necessary to meet them; and it will need an agency that collects taxes fairly and efficiently.

The question before us today in considering these two proposals is whether that agency, the IRS, will be accountable to the American people. Both of these bills will make the IRS more efficient and more taxpayer friendly, but I believe that H.R. 2428 would make the agency more responsive to the American people than H.R. 2292. H.R. 2292 creates a layer of unelected appointees between the IRS and the taxpayer public.

While those appointees might provide the IRS with much needed technical knowledge and managerial experience, they could also serve to insulate and alienate the IRS from the taxpayers and our elected representatives. I see no compelling need to sacrifice accountability to the American people in order to provide the IRS with the benefits of outside technical expertise and private-sector management experience.

Gerald Seib of the Wall Street Journal, addressing the idea of an outside board to oversee management at the IRS, states that, "The idea would erode accountability, which is key to integrity in government." He concludes by saying that, "Attacking the IRS' ineptitude should not require undermining government integrity."

Would the taxpayers feel better knowing that executives from around the country, rather than the officials they elected, are in charge of the IRS? I think not. Would there be concerns about conflicts of interest with a board of directors who serve the public part time while keeping their lucrative private-sector jobs? I suspect that there would be, and legitimately so. Would part-time board members be able to dedicate the time and energy necessary to exercise effective oversight of the IRS? I do not think they would.

Mr. Chairman, there is a better way to address this problem. H.R. 2428 would codify actions already taken by Treasury and the IRS to set up an IRS Management Board composed of high ranking Federal officials and an IRS Advisory Board composed of experts from the private sector.

This approach would allow the IRS to benefit from private-sector knowledge and experience without sacrificing accountability. In most of the other provisions, H.R. 2428 is very similar to H.R. 2292. Consequently, I urge my Ways and Means colleagues to support H.R. 2428.

I know that it is fashionable in some quarters to bash the IRS. In fact, the Wall Street Journal reports that a Member of the other body actually sent out a letter soliciting funds in which he stated that, "With your immediate help today we can virtually abolish the IRS as you know it."

Of course, I know that is not the intent of anyone here today on this Committee, or anyone who will testify here today. I only raise this issue to say that we on this Committee know what we are up against on this issue. I hope that Congress and the administration will work together with the taxpayers' interest foremost in our minds to reform the IRS in a manner that promotes efficiency, equity and accountability.

I thank you once again for the opportunity to testify before the Committee.

[The prepared statement follows:]

Statement of
The Honorable William J. Coyne
Ways and Means Committee
Hearing on IRS Restructuring Legislation
September 16, 1997

Mr. Chairman, I want to thank you for allowing me to testify in support of H.R. 2428.

I believe that the Restructuring Commission has made an important contribution to the debate on the role of the IRS by carefully studying the problems facing the IRS and producing some very thoughtful recommendations. I want to especially commend the co-chairs of the commission, Senator Bob Kerrey and Congressman Rob Portman, for their skillful leadership, and for all of their hard work. As you know, all of the commission members agreed that there is a clear need for dramatic reform of the IRS. And, in fact, we agreed on a number of reforms that should be adopted in order to improve IRS operations and make this agency more "customer-friendly." There are some issues, however, that still need to be debated before Congress enacts an IRS reform bill -- and H.R. 2292 and H.R. 2428 reflect two different perspectives with regard to those issues.

Both H.R. 2428 and H.R. 2292 would make IRS personnel policies on issues like hiring and pay more flexible, and they both attempt to provide a fix for the troubled IRS computer modernization program. Both bills would also promote increased electronic tax return filing. Finally, and perhaps most importantly, both bills attempt to increase oversight of the IRS, and to provide the agency with the expertise and leadership it needs to carry out its mission fairly, efficiently, and courteously.

There is, however, one major difference between H.R. 2292 and H.R. 2428. H.R. 2292 would turn control of the IRS over to a board of directors composed primarily of private citizens, which would select and appoint the commissioner. Under H.R. 2428, the commissioner would be appointed by the President and confirmed by the Senate. Under H.R. 2292, the board would review and approve the IRS budget, and it would review and approve the strategic plan of the IRS. Consequently, in my opinion, H.R. 2292 would make the IRS less accountable to the American public than it currently is.

The federal government has, and will continue to have, a number of substantial obligations -- national defense, law enforcement, scientific research, investment in infrastructure, and maintaining safety net programs like Medicare, and Medicaid. As long as it continues to have such obligations, it will need to collect the revenues necessary to meet them -- and it will need an agency that collects taxes fairly and efficiently. The question before us today in considering these two proposals is whether that agency, the IRS, will also be accountable to the people. Both of these bills would make the IRS more efficient and more taxpayer-friendly, but I believe that H.R. 2428 would make the agency more responsive to the voters than H.R. 2292.

H.R. 2292 creates a layer of unelected appointees between the IRS and the voters. While those appointees might provide the IRS with much-needed technical knowledge and managerial

experience, they could also serve to insulate and alienate the IRS from the taxpayers and their elected representatives. I see no compelling need to sacrifice accountability to the voters in order to provide the IRS with the benefits of outside technical expertise and private sector management experience.

Gerald Seib of the Wall Street Journal, addressing the idea of an outside board to oversee management of the IRS, states that "the idea would erode accountability which is the key to integrity in government." He concludes by saying that "attacking the IRS's ineptitude shouldn't require undermining government integrity."

Would the taxpayers feel better knowing that corporate executives, rather than the officials they elected, are in charge of the IRS? I think not. Would there be concerns about conflicts of interest with a board of directors who serve the public part-time while keeping their lucrative private sector jobs? I suspect that there would, and legitimately so. Would part-time board members be able to dedicate the time and energy necessary to exercise effective oversight over the IRS? I do not think that they would.

There is a better way to address this problem.

H.R. 2428 would codify actions already taken by Treasury and the IRS to set up an IRS management board, composed of high-ranking federal officials, and an IRS advisory board composed of experts from the private sector. This approach would allow the IRS to benefit from private sector knowledge and experience without sacrificing accountability. In most of its other provisions, H.R. 2428 is very similar to H.R. 2292. Consequently, I urge my Ways and Means Committee colleagues to support H.R. 2428.

I hope that Congress and the Administration will work together -- with the taxpayers' interests foremost in our minds -- to reform the IRS in a manner that promotes efficiency, equity, and accountability.

Thank you once again, Mr. Chairman, for allowing me to testify before the Committee today on this very important issue.

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Chairman ARCHER. Thank you, Congressman Coyne.

Our next witness is an individual well known to the Members of the House, our friend Steny Hoyer.

Mr. Hoyer, we will be pleased to receive your testimony.

STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOYER. Thank you very much, Mr. Chairman, Mr. Rangel and Members of the Committee. I want to also commend Mr. Portman, a Member of this Committee, and Senator Kerrey, for their work on the Commission.

The Commission has made a number of very good proposals. They are included in H.R. 2292 and they ought to be adopted. I, however, have joined with Mr. Rangel, Mr. Coyne, Mr. Waxman and Mr. Matsui in introducing H.R. 2428, which includes many of the Commission's proposals.

The IRS has been rightly criticized in recent years for its failure to manage its operations well, our Treasury-Postal Appropriations Committee has been among that number. Particular focus has been

directed to the attempt to modernize its information systems. Until very recently, that effort had been severely criticized by the GAO.

Furthermore, Mr. Chairman, for the first time in the 15 years I have been reviewing IRS budgets, a Secretary of the Treasury and his Deputy are giving personal attention to IRS management issues. It is making a difference.

However, as the Commission points out, Congress' failure to have consistent policies regarding funding, its frequent changes of the Tax Code, and its attempt to micromanage, in some instances, the IRS have all undermined the ability of IRS to manage efficiently in the long or short term.

In fiscal 1995, we started a major compliance initiative to collect overdue revenues. Despite the fact that it collected far more than anticipated, Congress abruptly canceled the effort in fiscal 1996.

Congress is also the perpetrator of budget problems at the agency. In June 1996, Chairman Archer and Chairman Johnson signed a 10-page letter detailing problems with IRS funding in the Fiscal 1997 Treasury Postal General Government Bill.

I want to congratulate both of you for your leadership and important intervention at that time.

The attacks on the agency's budget, while partially restored in Congress, hurt morale and distracted management from the task at hand. The Commission wisely recommended that, "Congress provide the IRS certainty in its operational budget in the near future," and further called for "greater stability in funding levels." Our bill addresses those concerns by calling for stable budgets and, when appropriate, multiyear budgets.

As I noted, there are similarities in the two proposals for improvement. Both bills before the Committee strengthen employee performance management systems. Both bills provide flexibility for recruiting and managing employees. Both sets of proposals promote electronic filing, which shows great promise for lowering cost and speeding refunds to taxpayers. Both bills set a fixed, 5-year term for Commissioner to enhance the stability of IRS leadership.

The central, critical and compelling difference between the two bills is the issue of governance. This difference, Mr. Chairman, may be a profoundly philosophical one on how best to protect and promote the public interest. I believe very strongly that the IRS, more perhaps than any other government office, must be governed and managed by those unconflicted by private interest and responsibilities.

Donald Kettl, director of the Brookings Center for Public Management, referred to the Commission's proposal for governance as fundamentally flawed. He stated that it was "An unwise, unaccountable, and probably unconstitutional transfer of public authority."

Mike McNamee of Business Week called the proposal, "One truly bad idea." Gerald Seib of the Wall Street Journal, who has already been quoted, said that in this instance, the Commission's good intentions had produced a bad idea.

I am very strongly opposed to H.R. 2292's unprecedented proposal to turn day-to-day management of the IRS over to an independent group. While there is no doubt a role for private-sector advice and expertise, what the IRS needs is more accountability, not

less. H.R. 2292 would place management in the hands of people who, however well meaning, are loyal and accountable to the firms and businesses that employ them—as they should be.

While everyone has a joke, Mr. Chairman, about a tax collector, the vast majority of Americans believe that the IRS will protect the confidentiality of their private information and enforce laws evenly and fairly. Directors tied to private interests could easily undermine public confidence in the agency and dramatically decrease what Senator Kerrey and others have referred to as a very high, voluntary compliance.

I know that Secretary Rubin will review in far greater detail the serious problems that he sees with H.R. 2292. I hope, Mr. Chairman, that Members of this Committee will recognize that H.R. 2428 meets the spirit of the Restructuring Commission without the fatal flaws of delegating a central and sensitive responsibility to a private-sector board.

I want to close by noting that far too often critics of the Tax Code go after the employees of the Internal Revenue Service. Federal employees are easy targets for those who dislike the laws we pass here in Congress. Nowhere is it more apparent than the IRS, and it should stop.

The reality is quite different. The Commission's final report said that interviews with IRS employees gave "an overall impression of competent, hardworking people who want to deliver a high quality product to the American taxpayer."

Therefore, instead of denigrating these civil servants, we should provide adequate training and reward those employees who are giving a 110 percent effort. I want to congratulate Mr. Portman for the Commission's attention to that issue.

There are a lot of dedicated men and women in the agency who are working hard to ensure that our voluntary tax compliance remains the highest in the world. By adopting H.R. 2428, Congress can ensure that we enter the 21st century with an IRS that is customer-friendly, technologically advanced, and governed "by the people, for the people."

Mr. Chairman, I want to again reiterate how much I have enjoyed working with you and your staff, and Mrs. Johnson and her staff from the Treasury Postal Committee Appropriation's standpoint, to have an IRS that is more taxpayer friendly, is more efficient and spends collection dollars as efficiently as possible.

I thank you, Mr. Chairman, for your time.

[The prepared statement follows:]

TESTIMONY OF THE HONORABLE STENY H. HOYER

ON PROPOSALS TO IMPROVE OPERATIONS OF

THE INTERNAL REVENUE SERVICE

BEFORE THE COMMITTEE ON WAYS AND MEANS

SEPTEMBER 16, 1997

Mr. Chairman, Mr. Rangel, thank you for the opportunity to testify on proposals to restructure the Internal Revenue Service and improve its operations.

I want to begin by commending Senator Kerrey, Congressman Portman, and other Members of the National Commission on Restructuring the Internal Revenue Service. Their June report summarized many of the issues and problems that have hampered IRS operations in recent years. Their recommendations, which form the basis of H.R. 2292, include many good ideas that the Congress should adopt.

I have joined Mr. Rangel, Mr. Coyne, Mr. Waxman, and Mr. Matsui in introducing legislation, H.R. 2428, which includes many of the Commission's proposals.

The Internal Revenue Service has been rightly criticized in recent years for its failure to manage its operations well. Particular focus has been directed at the attempt to modernize its information systems. Until very recently, that effort had been severely criticized by the General Accounting Office. Furthermore, for the first time in the fifteen years I have been reviewing IRS budgets, a Secretary of the Treasury and his Deputy are giving personal attention to IRS management issues. It is making a difference.

However, as the Commission points out, Congress' failure to have consistent policies regarding funding, its frequent changes of the tax code, and its attempt to micromanage the IRS have all undermined the ability of the IRS to manage efficiently in the long or short term.

In Fiscal 1995, we started a major Compliance Initiative to collect overdue revenues. Despite the fact that it collected far more than anticipated, Congress abruptly cancelled the effort in Fiscal 1996.

Congress is also the perpetrator of budget problems at the agency. In June of 1996, Chairman Archer and Chairman Johnson signed a ten page letter detailing problems with IRS funding in the Fiscal 1997 Treasury-Postal Service-General Government Appropriations measure. The attacks on the agency's budget, while partially restored in Conference, hurt morale and distracted managers from the task at hand.

The Commission wisely recommended that "Congress provide the IRS certainty in its operational budget in the near future" and called for "greater stability" with funding levels. Our bill addresses those concerns by calling for stable budgets and, when appropriate, multi-year budgets.

As I noted, there are similarities in the two proposals for improvements. Both bills before the Committee strengthen employee performance management systems. Both bills provide flexibility for recruiting and managing employees at all levels of this critical organization.

Both sets of proposals promote electronic filing which shows great promise for lowering costs and speeding refunds to taxpayers. And both bills set a fixed five-year term for Commissioner to enhance the stability of IRS leadership.

The central, critical, and compelling difference between the two bills is the issue of governance. This difference may be a profoundly philosophical one on how best to protect and promote the public interest. I believe very strongly that the IRS, more perhaps than any other government office, must be governed and managed by those unconflicted by private interests and responsibilities.

Donald Kettl, Director of the Brookings Center for Public Management, referred to the Commission's proposal for governance as "fundamentally flawed." He stated, as well, that it was "an unwise, unaccountable and probably unconstitutional transfer of public authority."

Mike McNamee of Business Week called the proposal "one truly bad idea." And Gerald Seib of the Wall Street Journal said that in this instance the Commission's good intentions had produced a bad idea.

I am very strongly opposed to H.R. 2292's unprecedented proposal to turn day-to-day management of the IRS over to an independent group. While there is no doubt a role for private sector advice and expertise, what the IRS needs is more accountability, not less. H.R. 2292 would place management in the hands of people who, however well-meaning, are loyal and accountable to the firms and businesses that employ them.

While everyone has a joke about a tax collector, the vast majority of Americans believe that the IRS will protect the confidentiality of their very private information and enforce laws evenly and fairly. Directors tied to private interests could easily undermine public confidence in the agency -- and dramatically decrease voluntary tax compliance.

I know that Secretary Rubin will review in far greater detail the serious problems with the H.R. 2292. I hope that Members of this Committee will recognize that H.R. 2428 meets the spirit of the Restructuring Commission without the fatal flaws of delegating a central and sensitive responsibility to a private sector board.

I want to close by noting that, far too often, critics of the Tax Code go after employees of the Internal Revenue Service. Federal employees are easy targets for those who dislike the laws we pass here in the Congress. Nowhere is this more apparent than at the IRS and it should stop.

The reality is quite different. The Commission's final report said interviews with IRS employees gave "an overall impression of competent, hardworking people who want to deliver a high quality product to the American taxpayer."

Instead of denigrating these civil servants, we should provide adequate training and reward those employees who are giving a 110 percent effort. There are a lot of dedicated men and women at the agency who are working hard to ensure that our voluntary tax compliance rate remains the highest in the world.

Our efforts to reform the IRS can and should be done in a positive way which will encourage IRS personnel to implement them for the benefit of our citizens, our employees, and our country.

Mr. Chairman, our bill is real reform that builds upon the progress started by Secretary Rubin. By adopting H.R. 2428, the Congress can ensure that we enter the 21st Century with an IRS that is customer-friendly, technologically-advanced, and governed "by the people, for the people."

I urge support for the Rangel-Coyne-Hoyer-Waxman-Matsui proposal and I look forward to working with the Committee to craft a proposal that the Congress and the President can support.

Chairman ARCHER. The Chair thanks both of you for your input. It was very constructive and very helpful to the Committee.

If Members have questions for these two witnesses, the Chair would appreciate their deferral until after the testimony of the Secretary of the Treasury.

Congressman Hoyer, certainly you are excused, but if there are questions that might be directed at Congressman Coyne, the Chair would appreciate Members deferring until after the Secretary of the Treasury has testified.

Mr. RANGEL. Mr. Chairman.

Chairman ARCHER. Mr. Rangel.

Mr. RANGEL. I want to thank them and especially let Mr. Hoyer know that we have got to try desperately hard to reach a bipartisan solution to this problem. We think it is important for the Congress and for IRS administration.

I feel very comfortable in having you included in all those discussions.

Mr. HOYER. Mr. Chairman, if I might, we have all talked about bipartisanship, and I talked about you, Mrs. Johnson and I and others on the Treasury Postal Committee working together in a bipartisan fashion.

I believe there is a basis on which we can reach bipartisan agreement, not only in the Congress, but between the Congress and the administration, which I think will be important; and I thank you for the time.

Chairman ARCHER. Thank you.

Now, Mr. Secretary, we welcome you back to the Ways and Means Committee. You are no stranger to our Committee. I apologize that you have been kept waiting in the wings here for the period of time that has occurred in questioning the previous witnesses. But we are happy to have you with us now and you know the subject of the hearing and we will be pleased to receive your testimony.

STATEMENT OF HON. ROBERT E. RUBIN, SECRETARY, U.S. DEPARTMENT OF THE TREASURY

Secretary RUBIN. Mr. Chairman, thank you. I put my extra time to good use working on fast track.

Chairman ARCHER. That is a very worthwhile activity, Mr. Secretary.

Secretary RUBIN. Mr. Chairman, Mr. Rangel, let me thank you very much for providing this opportunity to talk about what the administration is doing to improve the Internal Revenue Service, and about the proposals that have been put forward by Senator Kerrey and Congressman Portman.

Under the leadership—under their leadership, the National Commission on the Restructuring of the IRS has given serious thought to the issues confronting the Internal Revenue Service. Its report, which I read in its entirety, has made an important contribution in dealing with these issues.

Mr. Chairman, we know there are real problems at the IRS, problems which have developed over many years, and we have devoted a great deal of time and resource to fixing those problems. We have made real progress, but we know the full job will take time. We are committed to change and to building a fair, efficient and accountable IRS the American deserve.

We agree with the Commission on goals—fair treatment for all taxpayers, strong customer service and effective use of technology, all while collecting the taxes due. We agree that achieving these goals requires better oversight, greater continuity of leadership and improved access to expert advice from the private sector.

Mr. Chairman, there is a right way and a wrong way to achieve change. I believe the Commission's proposal to give governing control over the IRS to a private-sector board is greatly flawed and would create grave and unacceptable problems.

The administration's reforms already instituted have had real effect and our proposed legislation, which provides for appropriate use of private-sector input, would get the IRS where it needs to be without unacceptable risks.

More than a year ago, we established a Treasury Oversight Board which proved to be the most significant structural change in IRS governance in 45 years. In large measure, as a consequence of this improved oversight, we have made significant changes in improved use of technology and better customer service.

Let me list just a few examples. Today Americans have a Taxpayer Bill of Rights and a taxpayer advocate to give them a voice in the IRS. Around 14 million people filed their taxes electronically this year, an increase of 19 percent. Filing by telephone was up more than 65 percent to more than 4 million returns.

Twenty-six systems contracts were canceled or collapsed into nine; and a comprehensive technology proposal for a public/private partnership, prepared under the direction of a new Chief Information Officer, has received a favorable response from both Congress and the private sector.

Much has been done. Much remains to be done. But we must proceed in a sensible way. The IRS Improvement Act introduced in the House last week with the support of the administration, would institutionalize our commitment to change, and continue our very real progress without creating unacceptable risks.

The bill would make permanent the IRS Management Board. This Board, which under the legislation would be comprised of senior officials from Treasury, OMB and the IRS, and a representative of the employees union, provides ongoing oversight for the operation of the IRS, of the modernization of its systems, customer service, IRS strategy and other relevant matters. Its members are available, as needed, to deal with IRS issues.

The legislation would also require the Secretary and Deputy Secretary to report on the IRS, in person, to Congress each year. I believe perhaps that should be changed to at least twice a year. This is key. In my view, this kind of public exposure will, in the words of Benjamin Franklin, "concentrate the mind" of any future Secretary and Deputy Secretary and cause them to take their responsibilities for the IRS seriously, and to make those responsibilities a top, personal priority.

Second, the legislation recognizes the critical value of private-sector input by creating an IRS Advisory Board made up of individuals to represent a wide range of relevant expertise. This Board would report to the Secretary of the Treasury, and make an annual report to the Congress and the American people.

Third, to provide for increased continuity at the IRS. Our legislation calls for the appointment of an IRS Commissioner to a fixed, 5-year term. Our nominee for Commissioner, a chief executive officer of a large, private-sector organization, with extensive experience in systems modernization and other technology issues is a symbol of our continuing commitment to the process of change.

Mr. Chairman, I would now like to turn to the proposal to put a board of private-sector individuals in charge of the IRS with great power with respect to the budget, evaluation and compensation of senior personnel and strategy, both explicitly and because

the board would both appoint and have the power to fire the Commissioner.

Mr. Chairman, as you know, I spent 26 years in the private sector, much at a very senior level, before entering public service at the beginning of this administration. I would be the last person to question the value of private-sector input.

However, having now spent nearly 5 years at relatively senior levels of government, I would also caution that there are very substantial differences between the public and private sectors in objectives, obligations, the complexities of public process and other respects. My understanding of these differences have informed both the structuring of the IRS Improvement Act and my great concerns about private-sector board governance for the IRS.

My views on this proposal are in line with a wide range of serious commentators such as the New York State Bar Associations; the Brookings Institution report said that the proposal was deeply flawed. Business Week has called it, "A truly bad idea."

In prepared testimony for presentation later in the hearing, the Tax Section of the American Bar Association says that management should not be moved to a private-sector board.

We see five major problems with this proposal. First, our Constitution envisions substantial government functions be conducted by departments and agencies that are accountable to the President on an ongoing and regular basis. Putting the IRS in the hands of a board that is appointed by the President and can be dismissed by him would reduce accountability to a bare minimum. On a day-to-day basis, that board would report to no one, and for all practical purposes, would not be accountable to anybody, except in extreme cases requiring outright dismissal.

Second, a private-sector board would give private citizens control over a major law enforcement agency. More than half of the IRS' $7.2 billion budget goes to civil and criminal enforcement, both to collect taxes and to work alongside with other government agencies in their efforts to combat drugs, money laundering, health care fraud and the like.

While the proposed board would not have access to specific law enforcement cases, the decisions it would take about the IRS' budget priorities, personnel and overall strategic direction, would have as substantial impact on law enforcement. Private governance of substantial law enforcement would be totally unprecedented in our history.

In a recent letter to Deputy Secretary Summers, the Department of Justice expressed its grave concerns that the proposed board system would, "Present a significant and unjustifiable risk to important law enforcement missions."

Third, putting private citizens in charge of the IRS would pose serious real and apparent conflicts of interest, which are inherent in the proposal and not curable through recusal.

As private-sector individuals, members of the proposed board would have a wide range of interests, which could be deeply affected by the judgments the IRS makes. The board would be prohibited from involvement with case specific matters. But the temptation and the potential for abuse would have been created.

Even leaving aside matters dealing with board members' specific interests, more general IRS decisions will be affecting their interest all the time. To state just one example. Under the proposed board, executives whose companies are automatically subject to yearly audits could end up affecting the audit budget for the IRS and its audit and enforcement strategies.

Looking at conflict from the other direction, I do not believe that there is any question that the people who work in a large organization are affected by the outlook of the people at the top—such as those who have the powers of this board—and by the desire to satisfy those people.

Lawyers call this a "chilling effect," one which would almost certainly have an impact on IRS audit policy, enforcement policy and the like. Under the proposed board system, the public will also very likely feel that the IRS was responding to the views of a private-sector board. That creates a serious risk of undermining public confidence in the fair and professional application and enforcement of the nation's tax laws. That in turn could work to undermine our voluntary system of compliance—a very grave issue indeed.

If I were still in the private sector, Mr. Chairman, I could not in good conscience serve on such a board.

Fourth, this proposal would separate tax policy from tax administration—two functions which are inexplicitly intertwined. If our tax policies are determined by an elected President working with Congress and then the IRS does not put enough emphasis on enforcing those policies, those democratically decided tax policies can wither on the vine.

Finally and very importantly, I believe that this board is unlikely to work in providing the intense oversight that is necessary. The IRS requires ongoing, energetic oversight of full-time government employees who are available, as needed—the kind of oversight that has been provided by the Modernization Management Board in the past year and which will be made permanent by our legislation, not the sporadic attention of people whose dominant involvement is in the private sector and who meet once a month.

To conclude, Mr. Chairman, we must continue reforming the IRS and we are committed to change, but we must proceed in the right way. We must also, in my view, respect and support the committed men and women of the IRS, who year in and year out perform the difficult and often unpopular job of collecting the taxes that fund our Federal Government.

In recent years, we have seen threats and incidents of violence against these public servants and bomb threats against IRS facilities.

There is no doubt, Mr. Chairman, that in any large organization with significant powers there will be a number of instances each year where individuals behave improperly. Let me be clear, the Treasury and IRS do not condone such actions. We find any instance of abusive behavior deeply troubling and the Treasury Department and the IRS are working to curb them in every way possible.

We can and we must deal with these instances, but always in the context of continued support for the people and mission of the organization as a whole.

Mr. Chairman, we have made real progress. We are committed to change. We have put forth a sound plan to accomplish change, but there is much to be done. I very much look forward to working with the Members of this Committee, members of the Commission, with the National Treasury Employees' Union, the men and women of the IRS and with other interested parties as we work to continue to process of change.

I will now be delighted to respond to any questions.

[The prepared statement follows:]

EMBARGOED UNTIL 1 P.M. EDT
Text as Prepared for Delivery
September 16, 1997

TREASURY SECRETARY ROBERT E. RUBIN
HOUSE WAYS AND MEANS COMMITTEE

I'm pleased to have this opportunity to talk to you today about what the Administration is doing to improve the IRS and the proposals on this subject put forward by Senator Kerrey and Congressman Portman. Under their leadership, the National Commission on Restructuring the IRS has given serious thought to the issues confronting the IRS. Its report, which I have read, has made an important contribution to dealing with these issues.

Mr. Chairman, we know there are real problems at the IRS which have developed over many years -- and we have devoted a great amount of time and resources to fixing those problems. We have made real progress, but we also know that there is much to do and that the full job will take time. We're committed to change and to building the fair, efficient and accountable IRS the American people deserve.

We agree with the Commission on the goals: fair treatment for all taxpayers, strong customer service, and effective use of technology, all while collecting the taxes due. And we agree that achieving these goals requires better oversight, greater continuity of leadership, and improved access to expert advice from the private sector.

But, Mr. Chairman, there is a right way and a wrong way to achieve change. I believe the Commission's proposal is greatly flawed, and would create grave and unacceptable problems. The Administration's reforms already instituted have had real effect and our proposed legislation, which provides for appropriate use of private sector input, would get the IRS where it needs to be without unacceptable risks.

RR-1929

A Core Government Service

No one likes to pay taxes and through the ages tax collectors have not been popular. But taxes are inevitable: they pay for the core public services upon which our society relies. The IRS collects 95 percent of the Federal government's revenues that provide benefit checks for the elderly, Pell grants for colleges students, and the manpower and equipment for our national defense.

The question, then, is how best to reform this pivotal government agency. Building the IRS that the American people deserve has been the sole test for all of our activity and views in this area.

Change and Progress

More than a year ago we established a Treasury oversight board which proved to be the most significant change in IRS governance in 45 years. The Modernization Management Board has greatly enhanced Treasury's capacity to provide effective oversight of the IRS. As a consequence of this improved oversight, we have made significant strides in improved use of technology and better customer service.

To list just a few examples, Americans now have a taxpayer bill of rights and a Taxpayer Advocate to give them a voice in the IRS. Around 14 million people filed their taxes electronically this year, an increase of 19 percent. Filing by telephone was up more than 65 percent, to more than 4 million returns. There were more than 140 million hits on the IRS web site in 1997, and response to telephone calls increased very substantially. Twenty-six systems contracts were canceled, or collapsed, into nine. And a comprehensive technology proposal for a public-private partnership, prepared under the direction of a new and well received Chief Information Officer, has received favorable response from both Congress and the private sector; Representative Kolbe, for example, has called it a "step in the right direction".

Much has been done, much remains to be done, but we must proceed in a sensible way.

Improved Governance

The IRS Improvement Act introduced in the House last week with the support of the Administration would institutionalize our commitment to change and continue our very real progress without creating unacceptable risks. This bill strengthens oversight, increases accountability and continuity, and provides for increased and continuing advice from the private sector. And I believe it will assure that future Treasury Secretaries and their deputies take their responsibilities with respect to the IRS with the utmost seriousness.

The bill would make permanent the IRS Management Board. This Board, which under the legislation would be comprised of senior officials from Treasury, OMB and the IRS, and a

representative of the employees union, provides ongoing oversight of the operations of the IRS, the modernization of its systems, customer service, IRS strategy, and relevant matters. It meets monthly, but its members are available as needed on an on-going basis to deal with IRS issues. That close, ongoing involvement also produces important synergies: as we have seen, for example, in the recent close and continuing cooperation between the IRS and Treasury on the Year 2000 computer conversion.

This legislation will also require the Secretary and Deputy Secretary to report on the IRS in person to Congress each year, although I believe it should perhaps be twice a year. Speaking personally, I can tell you there is no question that this kind of public exposure will, in the words of Benjamin Franklin, "concentrate the mind" of any future Secretary and Deputy Secretary and cause them to take their responsibilities for the IRS seriously and make that a top personal priority. I believe this to be the key to institutionalizing an effective approach to reaching the goals we all have for the IRS.

Second, the legislation recognizes the critical value of private sector input by creating an IRS Advisory Board made up of individuals selected to represent a wide range of relevant expertise, including information technology and customer service. This board would report to the Secretary of the Treasury, and make an annual report to Congress and the American people.

Third, to provide for increased continuity at the IRS, our legislation calls for the appointment of the IRS Commissioner to a fixed, five-year term. As now the Commissioner will be appointed by the President with the advice and consent of the Senate, and removable at will. Our nominee for Commissioner -- a Chief Executive Officer of a large private sector organization with extensive experience in systems modernization and other technology issues -- is a symbol of our commitment to continuing the process of change.

This governance structure, working in partnership with the committed and well-informed oversight of Congress, can provide the kind of oversight needed to build the IRS the American people deserve. And, as I said before, improved governance, in conjunction with strong involvement of Congressional oversight and appropriations and the commitment and dedication of the men and women of the IRS, is already making a real impact.

A Private Sector Board

Mr. Chairman, I would now like to turn to the proposal to put a board of private sectors individuals in charge of the IRS, with great power with respect to the budget, evaluation and compensation of senior personnel, and strategy.

Mr. Chairman, I spent 26 years in the private sector, much at a very senior level, before entering public service at the beginning of this administration, and I would be the last person to question the value of private sector input. However, having now spent nearly five years at relatively senior levels of government, I would also caution that there are very substantial

differences between the public and private sectors in objeetives, obligations, the complexities of public process and other respects. My high regard for private sector input and my understanding of these differences have informed both the structuring of the IRS Improvement Act, supported by the Administration, and my great concerns about private sector board governance for the IRS.

My views on this proposal are in line with a wide range of other serious commentators. The New York State Bar Association, for example, said that the proposed board was a poor idea, with many problems. A recent Brookings Institution report said the proposal was "fundamentally flawed... [that] it confuses the undeniable need to strengthen the IRS's leadership with a plan to turn the agency over to a board dominated by private officials." A recent Business Week editorial called it a "truly bad idea". Citizens for Tax Justice said the board proposal was rife with conflicts. And in prepared testimony for presentation later today the tax section of the American Bar Association specifically rejects the transfer of important IRS management decisions to an outside board.

We see five major problems with this proposal: that it would weaken accountability, give private sector individuals control over a major public law enforcement agency, raise the virtual certainty of serious, real and apparent conflicts of interests, separate tax administration from tax policy, and very likely not work to provide the effective oversight necessary to accomplish what needs to be done at the IRS.

Limited Accountability

First, our constitution envisions substantial governmental functions being conducted by departments and agencies that are accountable to the President on an ongoing and regular basis. Putting the IRS in the hands of a board that is appointed by the President and can be dismissed by him would reduce the accountability to a bare minimum. On a day to day basis that board would report to no one -- and, for all practical purposes, would not be accountable to anybody, except in extreme cases requiring outright dismissal.

Private Control

Second, a private sector board would give private citizens control over a major law enforcement agency. More than half of the IRS's $7.2 billion budget goes to civil and criminal enforcement -- both to collect taxes and to work alongside other government agencies in their efforts to combat drugs, money laundering, health care fraud, financial fraud, organized crime and other illegal activities.

While the proposed board would not have access to specific law enforcement cases, the decisions it would take about the IRS's budget priorities, personnel and overall strategic direction would have a substantial impact on law enforcement. Private governance of substantial law enforcement would be totally unprecedented in our history. In a recent letter to Deputy Secretary Summers, the Department of Justice expressed its grave concerns that the proposed

board system would "present a significant and unjustifiable risk to important law enforcement missions".

Outsider Control, Outsider Interests

Third, putting private citizens in charge of the IRS would pose serious real and apparent conflicts of interest, which are inherent in the proposal and not curable through recusal.

As private sector individuals, members of the proposed board would have a wide range of interests which could be deeply affected by the judgments the IRS makes. The Board would be prohibited from involvement with case specific matters, but the temptation and the potential for abuse would have been created. Even leaving aside matters dealing with Board members' specific interests, more general IRS decisions will be affecting their interests all the time. To state just one example: under the proposed board executives whose companies are automatically subject to yearly audits could end up affecting the audit budget for the IRS and its audit and enforcement strategies.

Looking at conflict from the other direction, based on an adult lifetime involved with large organizations, I don't think there is any question that the people who work in a large organization are affected by the outlook of people on the top -- such as those who have the powers of this Board -- and by the desire to satisfy those people. That is just human nature -- and it is right at the core of the conflict of interest problems raised by this proposal. The board, for example, would have authority to review hiring and compensation decisions affecting senior managers. I know of nothing more ripe with conflict than the power to review compensation and dismissal decisions. The fact that the agency was being run by private sector individuals would almost surely have what lawyers call a "chilling effect" on IRS employees, and influence audit policy, enforcement policy, and the like.

Under the proposed board system, the public would also almost inevitably feel the IRS was responding to the views of a private sector board, and that creates a serious risk of undermining public confidence in the fair and professional application and enforcement of the nation's tax laws. That, in turn, could work to undermine our voluntary system of compliance -- a very grave issue. If I were still in the private sector, Mr. Chairman, I could not in all conscience serve on such a board.

Separating Tax Policy From Tax Administration

Fourth, this proposal would separate tax policy from tax administration -- two functions which are inextricably intertwined. For good reason, in our government the making of policy and its implementation are almost invariably conducted by the same government organization. Policy considerations help inform decisions about administration, and factors related to administration naturally inform policy development.

If our tax policies are determined by an elected President working with Congress, and then the IRS does not put enough emphasis on enforcing those policies, those democratically decided tax policies can wither on the vine.

Unlikely to Work

Finally and very importantly, Mr. Chairman, I believe that this board is unlikely to work in providing the pro-active oversight that is needed. I've been around boards of directors a great deal. Private sector boards vary, but in almost all cases the oversight function of private sector boards is more removed from the issues of the organization than the intense oversight the IRS requires. What the IRS needs is the ongoing, energetic oversight of full time government employees who are available as needed -- the kind of oversight that has been provided by the Modernization Management Board in the past year, and will be made permanent by our legislation -- not the sporadic attention of people whose dominant involvement is in the private sector and who meet once a month on the IRS.

Summary

To conclude, Mr. Chairman, we must continue reforming the IRS, but we must proceed in the right way. We must also, in my view, respect and support the committed men and women of the IRS who year in, year out perform the difficult and often unpopular job of collecting the taxes that fund or government's services. In recent years we have seen threats and incidents of violence against these public servants and bomb threats against IRS facilities.

There is no doubt, Mr. Chairman, that in any large organization with significant powers there will be a number of instances each year where individuals behave improperly. Let me be clear: we do not condone such actions. We find any instance of abusive behavior deeply troubling, and the Treasury Department and the IRS are working to curb them in every way possible.

We can and must deal with these instances -- and do everything possible to prevent them -- but always in the context of continued support for the people and mission of the organization as a whole. We believe in a fair tax system -- and compliance and enforcement are both important sides of that fairness.

Mr. Chairman, in all we have done Deputy Secretary Summers and I have had but one guiding objective: to build the IRS the American people deserve. We have made real progress, but there is much to be done. The IRS Improvement Act, supported by the Administration, would take the steps necessary to continue to reform the IRS without posing the many serious risks that control by a private sector board would bring. I look forward to working with the members of this Committee, members of the Commission, with the National Treasury Employee's Union, the men and women of the IRS and with other interested parties as we work to continue the process of change. I would now welcome any questions.

Chairman ARCHER. Mr. Secretary, thank you. Unfortunately the bells have rung for record votes on the floor of the House. It is the intention of the Chair to conduct inquiry as long as we can in this first 15-minute vote segment. Then we will recess, with your permission, make our 5-minute votes and then return as rapidly as we can.

Mr. Secretary, as has been said earlier, whatever we do needs to be bipartisan; and whatever we do should not be considered to be a reflection on anyone that is in your position, but rather an effort

to find a better policy than we have had in the past as far as how we govern the IRS.

You have come a good way, I think, in your recommendation. However, I have some concern in that our system has been called voluntary. I question whether it is really voluntary because there is always a big stick back there that causes people to want to volunteer.

But certainly trust in the system is exceedingly important. Perception is exceedingly important. The perception today that disturbs me and disturbs many other people with whom I converse is that there is a great potential for the IRS to be used for political reasons.

I worry about how your recommendation will get around that perception. Because all your management board—as I read your recommendation—are basically political appointees; and you still leave the complete accountability and running of the IRS, for the reasons that you outlined, which are not without merit. The Secretary and the Deputy Secretary are arms of the President of the United States.

How do we overcome what is currently in the minds of many Americans that the use of this extremely powerful arm of our government can be used for political purposes?

Secretary RUBIN. Mr. Chairman, you and I have discussed this issue before and I think it is an important issue that you raise. Let me give you my views on it.

As you know, it is the established practice of the Treasury, not to get involved in case specific matters. If there is ever a question about—at least in the time I have been there, there is no doubt we never have. If there is ever a question about whether that has occurred, then it would seem to me that people who have that question should go either to the IG of the Treasury or possibly to other appropriate persons.

I also think that whenever there is a concern of any sort with respect to the issues that you have just raised, there are now a number of modalities available for people to get satisfaction. You have the IG at the Treasury, you have the Inspector at the IRS. We now have a taxpayer advocate. That was a very good thing. We believe in a robust taxpayer advocate function.

So I think basically, Mr. Chairman, that is the best way to do this. I think that vigorous congressional oversight can also contribute very substantially. I agree with you that confidence in the fairness of the IRS is absolutely critical. But I think by taking the IRS and putting it under the governorship of a private-sector board, rather than ameliorating this issue will create an enormous new and I think vastly greater range of issues, which is the question of the public attitude toward governance of the IRS by private-sector individuals, with all of their manifold interests.

Even if these people behave in a totally appropriate fashion, I think it would create an enormous sense of uncertainty about what kind of effect these private-sector citizens are having upon the administration of the tax law. One of the things that most troubles me about the private-sector board is exactly this factor. That it does, I think, create a very real possibility for undermining con-

fidence in the fairness and impartiality of our tax system and all the adverse effects that you say they would have.

Chairman ARCHER. Well, I understand your concern on that side, although Senator Kerrey has just testified in a very strong way that he disagrees with you in what you just said, but that still does not overcome what I think is a major problem, perceptionwise, that exists in the minds of the American people today, perhaps more so now in the last week than in quite some period of time.

Even though you and every other former Secretary of the Treasury that would testify before this Committee, if they would be here would tell us, they have never ever gotten involved in a political way with the IRS. But the perception is still out there with the American people.

I think we have a responsibility to do what we can about that perception and whether or not there is an ombudsman for the taxpayers and whatever else is not alleviating that perception in the minds of the American people. That is simply all that I wanted to say within the constraints of time.

Secretary RUBIN. Could I add just one thing, Mr. Chairman? Just one quick comment?

Chairman ARCHER. Yes.

Secretary RUBIN. If one had the conclusion that really had become a serious problem, it is not—my impression is that that problem is not really to the level of seriousness that you quite suggested, but nevertheless, I absolutely agree with you. It is an issue.

I think a very sensible way to go about trying to deal with that, without creating what I think would be enormous additional problems to a private-sector board, would be through some additional congressional oversight that is directed at that issue. Then Congress could play a very constructive role.

Chairman ARCHER. I do not think we should belittle it, because as recently as 1½ hours ago, a Member of Congress said that he was convinced that he had been audited 3 years in a row as a result of political input on the part of a previous Secretary of the Treasury.

So, it is a situation that is out there, Mr. Secretary, and I am concerned about it.

Secretary RUBIN. I did not mean to belittle it. I am sorry. What I meant to say was that if it has risen to the level where it seems like it needs additional attention, my suggestion would be that that is a totally appropriate, and I think, very constructive role for Congress to play, which does not create the other kinds of problems that the private-sector board does. That was what I meant to say.

Chairman ARCHER. Mr. Rangel, just a couple of minutes.

Mr. RANGEL. We have to vote, but Mr. Secretary, before you arrived, I think all the Members were concerned that we find out what the bottom line is and whether or not we can support it. Because since we agree it is the credibility of the IRS and the perception of the IRS that is at stake, we may be doing more damage than good with our discussion, if it reaches the point that our dispute is based along political lines.

So, I know that you are working with the Members trying to improve the situation there, and I hope that they will continue to do so in the tone that you have set. It would help us to assure the

American people that we conclude that something better has to be done. It is just a question of how to do it without injuring the tax administration system further.

Thank you.

Chairman ARCHER. Mr. Secretary, I hate to ask you, but if you can, could you stick around a little longer until we vote, then we will come back and in the meantime we are happy to make an office available to you or whatever. It should hopefully be 15 minutes——

Secretary RUBIN. I would be delighted, Mr. Chairman. You know there is a——

Chairman ARCHER [continuing]. If not before.

Secretary RUBIN. That is fine. You know I have a slight problem at 4 o'clock. Are you familiar with that?

Chairman ARCHER. Yes. We will understand that you have to leave at 4 o'clock. Is that correct?

Secretary RUBIN. I am delighted to stay.

[Recess.]

Mr. MCCRERY [presiding]. If everyone would take a seat, we will get started as soon as the Secretary gets back in the room.

Mr. Secretary, Chairman Archer has been called away to a leadership meeting and apologizes for his being absent. We do have some Members who are close by and are being summoned now. As soon as we get——

Secretary RUBIN. Rob, I think you have a singular enthusiasm. [Laughter.]

Mr. MCCRERY. Why don't we go ahead.

The meeting will come to order. Mr. Secretary, as you heard, there is another vote. However, since one of the primary authors of the legislation is here, why don't we proceed for as long as we can, then perhaps some of the other Members will return and they can allow us to go vote.

Mr. Portman, would you like to inquire of the witness?

Mr. PORTMAN. Thank you, Mr. Chairman. First, I would like to inquire of you if I may enter into the record certain publications that deal with the IRS reform issue. We previously heard from Mr. Coyne and also Mr. Rubin that the Wall Street Journal and Business Week had supported Treasury's approach; and just to set the record straight, individual columnists contributing to those publications have—the Wall Street Journal has actually editorialized in favor of the approach by the Commission and by H.R. 2292 and I thought it would be helpful to include in the record, again, these articles and editorials which have appeared in magazines and newspapers.

Mr. MCCRERY. Without objection.

Mr. PORTMAN. Thank you, Mr. Chairman.

Mr. Secretary, thank you for once again coming before the Committee to talk about this issue that is near and dear to our hearts. You mentioned earlier my singular interest in this. I know other Members would want to be here—including Ben Cardin, with whom I just spoke, but are at other testimonies in his case and other meetings—and are now on the floor voting again.

Your arguments, of course, I have heard before—both publicly and privately. As you know, the Commission in private session

with you heard you out. In my view, we addressed some of the concerns, specifically, in the legislation. You and I may disagree on that. Perhaps we will have an opportunity to walk through some of those specific issues, such as tax policy that you mentioned.

With regard to other points that you made, the Commission simply agreed to disagree. This is why in the end—although we heard, I think it is fair to say, every one of these concerns raised both by you and your able representative on the Commission, General Counsel Ed Knight, we determined in the end by a 12-to-5 bipartisan vote to take a slightly different approach.

I think it is very true what we have heard from Mr. Rangel and others today that for the most part we are in agreement. I know your proposal does not address congressional oversight, nor should it probably coming from the Treasury Department. But obviously we need to do more in terms of consolidating the oversight here in Congress on taxpayer rights.

I know that you all chose not to address that as well, although I do not know that there is a great deal of disagreement and maybe we can work those concerns out. I do not know whether it is fair to say it is 80 percent or 90 percent of the proposals we pretty much agree on, but it is certainly a substantial part and the majority of the legislation and the Commission report on which it is based.

The issue, again, that we come back to time and time again is this issue of the oversight bodies that might, again, meet those criteria we talked about earlier. I guess my first question to you would be, do you agree with us? I think you do that indeed when you look at the problems at the IRS, it really comes down to some structural flaws in the way the IRS has been both managed by Treasury and the U.S. Congress and the lack of oversight. In particular, there is a lack of expertise, as we talked about and you mentioned in your statement.

Continuity, the follow through, and finally this issue of accountability, that there has not been a group to keep Treasury's and the IRS' feet to the fire on the strategic plans and other proposals, which have been either recommended by the IRS or promoted by Treasury or the Congress.

Do you agree with those criteria, that we need to meet the expertise, continuity and accountability criteria to be able to properly judge your proposal?

Secretary RUBIN. I think it is a useful framework with which to approach the problem, Mr. Portman. Having spent pretty much my whole adult life running large organizations; and as I looked at the IRS when I first got there, it seemed to me the key was to establish an institutionalized, some kind of very intense oversight as you would—I was actually involved in one in the private sector—as you would for a troubled company.

It was really out of that concept that the Modernization Management Board came. It was really out of that concept that the notion came of having the Secretary and Deputy Secretary be so accountable to Congress, and publicly—within the full realm of public exposure, that they would in effect be forced to take the responsibilities that were needed to be taken.

Mr. PORTMAN. That is interesting. I would agree with you on the need to institutionalize the oversight function. So I guess we are one step closer there. Then the question is, what are we institutionalizing?

One of the interesting conversations I have had in the last few months with stakeholder groups, with some of the experts inside and outside the IRS, has been the degree to which the Commission has influenced, and indeed Treasury, over the last year. Folks have volunteered to me that they thought the Commission made some impact, in a positive way.

What I have said in response is, "What we are trying to do really is to institutionalize that kind of oversight." You are probably going to be off doing other things. I will be off doing other things. Senator Kerrey will be off running for President or whatever he is going to do and the Commission is now disbanded.

There is a need, I think, to indeed institutionalize the kind of expertise, customer service, information technology, management of large service organizations. In many respect I think this longer term oversight board fills precisely that role.

I guess what I would ask you is whether you think your plan, and this is the management board, meets the criteria that we set out earlier, expertise, continuity, accountability, and whether indeed it does institutionalize the kind of pressure that is needed to move the IRS?

Secretary RUBIN. Yes, let me respond in two pieces, if I may, Mr. Portman.

I think that once you get a Secretary and a Deputy Secretary—particularly a Secretary—to make something one of his or her highest priorities, I think you then have created enormous energy that can be applied to dealing with whatever the issue may be.

So I think if you put into place the legislation that we proposed, I do believe you will have institutionalized long-term, ongoing, intense focus. Then the question is, what is the mechanism through which this focus should operate? The view we had was that something analogous to the Modernization Management Board, which is our IRS Management Board, would be the appropriate vehicle for doing that. So I think the answer to your question is, yes.

The other part of my answer would be that I think that a private-sector board, for reasons I discussed in my testimony, is not likely to work. I actually think the probability of it working is very slight, because I have lived it. I lived this thing. I know what it is like.

Between my Deputy and myself, people come to us all the time with IRS kinds of issues. We are full-time people. We are there and we can deal with them.

I think a group that has predominant interests elsewhere, it seems to me, is seemingly unlikely to give the IRS what it needs in its current state, which is a state in which there are very many challenges to be met.

Mr. PORTMAN. If we went to bimonthly meetings, would you support the proposal?

Secretary RUBIN. If you were constantly in session and had full-time people——

Mr. PORTMAN. Let me follow up on that?

In your testimony in the unlikely to work chapter, you do indeed talk about the need—and I quote your testimony—"For ongoing, energetic oversight of full-time government employees, who are available, as needed."

Secretary RUBIN. Right.

Mr. PORTMAN. And you say that is what the IRS needs. I guess I would have two questions about that.

One, going back to the criteria, do those full-time government employees provide the expertise needed? Do they provide the accountability, given that the average tenure is less than 2 years, of the very people who are selected on your board, and is there the accountability that we are looking for if we do not have either the expertise—something we do not—the information technology, customer service and so on, or the continuity.

Secretary RUBIN. I think you have gotten—if you are taking those two criteria—I think in terms of expertise that really depends on what you do. I think that as we have structured it, we have gotten exactly what we need. We have the CIO—well, let us just focus on systems for a moment, although you could look at other areas.

We have the CIO from the IRS, and we have the CIO from Treasury. So you have two people who are steeped in this sort of thing. The Advisory Board can consist of who you desire to have on it, but it would certainly be our expectation that it would be some number of people who have systems expertise.

It so happens—although this is not necessarily true going forward—we chose as our nominee for a Commissioner a person who in his private-sector capacity has run, in effect, a firm deeply involved in systems. So, yes, I think you can provide the expertise that you need. You can also pull in extra people from the outside for consulting, one thing and another.

As far as accountability, I think one of the strengths of the system is it provides accountability within an existing constitutional structure of government so that people are accountable. There is no question where the buck stops. The buck stops with me; and I find that quite an awesome responsibility.

Mr. PORTMAN. I guess I would ask whether there is accountability running the other way? In other words, is that group going to be able to hold the IRS' feet to the fire if it does not have, in my view, the kind of continuity that you would need.

As we said earlier—I think my testimony said it is probably a 3 to 6 year process of retraining the work force, computerizing the IRS, bringing the IRS up to speed, if you do not have that continuity. In my view, the expertise you are looking for really is outside expertise. It is taking advantage of the service revolution that is occurring in the private sector, and trying through these special government employees, subject to all of the restrictions that special government employees are, which includes disclosure—financial disclosure, conflict of interest, confirmation by the Senate and so on can bring to bear.

I guess what I would ask is that over the next couple of months as we work through this, that we can see whether—if you indeed agree with the criteria—whether indeed there is an oversight body that meets those criteria that perhaps provides that continuity we

are talking about, provides that expertise, and in the end, provides that accountability. Because I think, again, if we do not do that, we will have failed in our mission to make long-term change. I do, again, as I said in my testimony, commend you for the amount of time and effort you have put into this over the last year. If you can make a commitment that you will be with us for another 5 years—3 to 6 years, I think we said—I might feel differently about it. But that is not going to be the case, and this is a structural law that I think needs to be addressed and not simply something that might apply to this current administration and your renewed interest and Mr. Summers' interest in the oversight of the IRS.

Secretary RUBIN. I appreciate the comment, Mr. Portman. My answer to you would be this—you know, I have seen the private sector too.

I think if you could institutionalize the structure that we have, particularly given that you have—well, I do not necessarily depend on this—but given that you do have career IRS personnel. I think the history of the last couple years suggests that this can and will work.

My problem with the—as you know, because we discussed this many times—my problem with the outside board is, I do not think it is a question of continuity, I just do not think it is very likely to work altogether. So I do not think you are going to get continuity in something that does not work.

No, I think if you institutionalize this the way I said, even though people will turn over just as they did at the firm I used to be at, once you have a structure institutionalized and you have a top management who take that responsibility with the enormous seriousness that I think it has to be taken, I think you will have the continuity and you will have the intensity and effectiveness that you need, I do.

Mr. PORTMAN. Again, I would suggest that the average tenure for a Treasury Secretary is also somewhere between 2 and 3 years, even continuity at that higher level might be lacking.

I thank you, Mr. Secretary. Apparently we have to now make a sprint for the floor.

Secretary RUBIN. You are going back?

Mr. PORTMAN. Thank you, Mr. Chairman. I yield back my time.

Mr. COLLINS [presiding]. We thank the gentleman for his inquiry. Mr. Secretary, I know you have to leave very shortly, sir. Two things.

One, we have some questions that Congresswoman Dunn would like to submit to you in writing for some reply.

[The questions follow:]

Suggested Questions for Secretary Rubin

1. I recently received a letter from a growing company in my district. The company described to me a recent interaction it had with the IRS. Evidently, the IRS had sent the company a letter citing a discrepancy with its 1993 return. This discrepancy was for sixty five cents.

   As the taxpayer explained, **"It cost them half that just to mail the letter to me! On top of that, in order to "correctly document" the discrepancy, I had to go to a payroll service that I haven't used since 1993 in order to get an answer. They, in turn, had to go into their archives and research....I spent time, the payroll company spent time and the IRS spent time. And for what? In this case, we owe no money at all, so it was pretty much done for nothing."**

   Mr. Secretary, do you agree that this was a waste of time and resources for the company and the IRS itself? And would the Administration support an effort to address this problem by providing some sort of de minimis exemption when a tax discrepancy is such a small percentage of the larger tax liability?

2. Under current law the IRS summons authority permits the IRS to inquire into a taxpayer's thought processes and the tax advice they have received. In my view, this violates the taxpayer's reasonable expectation of privacy and confidentiality and goes beyond IRS needs for factual information to determine proper tax liability. Also under current law, taxpayers can protect non-factual information such as analyses, advice and opinions if they have the financial resources necessary to obtain legal counsel. This practice results in unequal treatment of taxpayers based on their financial status or choice of tax professional. Mr. Secretary, I have a bipartisan proposal that I will soon introduce and hope we can agree should be included in this measure to provide all taxpayers fair and equal treatment. Do you agree that we should not base a taxpayer's protections under the law on their ability to pay for legal counsel?

[At the time of printing, no answers had been received.]

Mr. COLLINS. Also, Congressman Neal would like to ask a brief question.

Secretary RUBIN. Sure.

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Secretary, there has been some confusion about the legal authority that is proposed in the Portman-Cardin bill. Some supporters have suggested that under 2292 that there are no legal authorities. Is that your assessment?

Secretary RUBIN. Are you asking me whether I think that there is legal authority in this governing board?

Mr. NEAL. Yes.

Secretary RUBIN. Oh, I think, Mr. Neal, there is enormous governing authority. Let me get to—well, I think I remember it well enough to deal with the statute.

The statute says that the Board has the power to review and approve—review and approve a budget and then submit it to the Treasury, that has to pass it on unchanged to the President and to the Congress. That power over the budget is a very substantial power.

The Board also has the power to review and approve strategic plans, a very substantial power. The Board also has the power to—and sole power—to approve and dismiss the Commissioner. So, as long as the Board can dismiss the Commissioner, it seems to me it basically has full power over everything the Commissioner does.

Because if it is dissatisfied with any aspect of what the Commissioner does, it can dismiss the Commissioner. There is also specific statutory language which in effect takes a wide range of powers that have previously existed in the Secretary of the Treasury, and puts them in the Commissioner. So the Commissioner then has those powers and the Commissioner reports to the Board, which can dismiss him or her.

So I would say that the Board is—I do not have any question that the Board is vested with enormous power over the IRS. It is a governing group.

Mr. NEAL. I appreciate your insight, Mr. Secretary, thank you. Thank you, Mr. Chairman.

Mr. COLLINS. We thank you, gentlemen.

Mr. Secretary, before you leave, you know one of the most intimidating or fearsome things to me is to go to the mailbox and find a letter that has a return address on it that says, "Internal Revenue Service." I mope and drag all the way back to the house and ask my wife to open it and read the bad news to me, because I just cannot stand to read it myself.

Therefore, I think the Commission's proposal for restructure is a very formal proposal. I understand that you have some difference of opinion. But even in your comments, you made the statement that even with restructuring, in 10 years, you as a taxpayer would still not like the IRS because, "I will still be fearful of receiving that letter in the mail from the Internal Revenue Service."

So, therefore, it appears to me that the only way we can overcome that fearfulness as a taxpayer, and for other taxpayers, is to restructure and reform the—not only IRS, but the whole Tax Code to something that is flatter, simpler and more fair, whether it is a consumption tax, or it is just a flat income tax. Because of the statement you made, in 10 years I will still hate the IRS. I will still fear them.

Is that not true, sir.

Secretary RUBIN. Well, I do not think actually that statement about 10 years was in my testimony. It may have been in somebody else's, but, tax collection agencies have never been popular. I suspect they never will be popular.

You are raising another issue, which is the question of should we reform our tax structure—have structural tax reform and go to a flat tax of some sort. I think that is what you said.

Mr. COLLINS. My point is that it is just fearsome to me to pick up a letter out of the mailbox that has a return address for the Internal Revenue because I know that any news from the Internal Revenue is not good news. The only good news from the Internal Revenue is no news.

Secretary RUBIN. Let me say this, Mr. Collins——

Mr. COLLINS. The only way that I see I can overcome that intimidation is that somewhere in the future there would be a complete elimination of the IRS, or either a downsizing to the point we would not have that intimidation, no matter how we restructure the top end of it.

Secretary RUBIN. Let me break it into two parts, if I may. I do think, as I said in my testimony, that there is a need for a great deal of change at the IRS. I think we have accomplished a good bit, but there is a lot to do. We are committed to change and we need to make it taxpayer friendly and all the rest.

Having said that, the tax collection process by itself will always I think be unpopular. I suspect—I really have not thought it out in terms of a flat tax. But no matter what kind of a tax you have, there are always going to be people who have problems with those who collect the taxes and that is going to create issues.

If you are asking me the other question, do I think that we should have tax reform, in effect thereby eliminating the IRS, then that is a whole other megaquestion. I do happen to have views on that subject, but I think it is a different and very complicated question that I suspect will probably get debated in the context of this debate about—may get debated in the context of this debate about reforming the IRS.

Mr. COLLINS. Yes, we are just starting that.

Thank you. Mrs. Johnson, you have a quick question?

Mrs. JOHNSON of Connecticut. Thank you. I have already voted on this—what is before the House—so I am just waiting for the next vote.

But, Mr. Secretary, I did hear your testimony. I am sorry I have not heard the questioning of my colleagues, so, I apologize if I am repetitive.

I do hope that we will, in the end, be able to bring forward a bipartisan bill as well, but I am very concerned about the governance structure that you have proposed. The Management Board made up of executive branch people seems to me not to respond at the level that we need to respond to the expertise issue.

We really have to bring people into helping us modernize government. Civil service people in Treasury and in OMB and other parts of the administration—many of them have been there a long time. If you are going to take the top people, then you have all political appointees.

Now, there are agencies that work together. You have been getting their input. But you know, I have been around for a long time. I have watched the Defense Department try to reform procurement. I went through the whole FAA effort in trying to allow the FAA to modernize its technology governing landings and take-offs at our airports, and failing to do so, because we really could not within the bureaucracy, meet the demand for expertise in an ongoing, advisory way.

It seems to me that we really need to bring a board to the service of the IRS, with a breadth of experience that is envisioned in this board; and that substituting people from the OMB and the Vice President's office—which incidentally I think is extremely dangerous—plain, flat-out dangerous——

Secretary RUBIN. That is not in our goal, Mrs. Johnson.

Mrs. JOHNSON of Connecticut. Well, it was in your original proposal.

Secretary RUBIN. Yes, but we agreed with your view and we took it out of the bill.

Mrs. JOHNSON of Connecticut. OK, but even so, OMB also is naturally in the service of the President, so is the Secretary's office. We need to have outside expertise with an independent view and broad experience in how the private sector manages technology such as new pay structures, personnel issues and management issues. We have never had that. That has impeded our ability to modernize service in department after department in the years that I have been a Member of Congress—though we have tried.

Secretary RUBIN. Well, let me partly agree, if I may Mrs. Johnson, and partly—well, I do not so much want to disagree as to try to draw a distinction.

I have enormous respect for the private sector. I came out of it. I spent 26 years in it. I might add, incidentally, a lot of the problems I have seen at IRS with respect to systems, were the same kinds of problems that the firm I was part of had. It took us probably—well, toward 10 years to get the systems operation right, and we——

Mrs. JOHNSON of Connecticut. In the private sector?

Secretary RUBIN. Yes.

Mrs. JOHNSON of Connecticut. It is just that there is an urgency in the private sector that makes them noncomparable. If you do not modernize in the private sector, you are out of business in the end. In the public sector, you are still in business for ever and ever, regardless of what you do.

Secretary RUBIN. No, I am not—I am just saying that these problems are not totally public sector problems.

I think there is a very great value to having private-sector expertise. I do not disagree with that. Our notion was that in part you would have it through the advisory board. In part you could have it through—and you very well might choose to have it—through special groups of people that you called in to advise you on particular problems.

For example, on the blueprint that we put out. That is being put out as part of the public/private partnership. A lot of the work will be outsourced.

Mrs. JOHNSON of Connecticut. OK, can I just have a dialog with you because I think——

Secretary RUBIN. Sure.

Mrs. JOHNSON [continuing]. Because I think——

Secretary RUBIN. Could I just add one more word, though?

But I think the distinguishing character—but I think the distinction, though, that I would like to make is that if you are calling upon outside expertise—which I agree with—and the governing

power over the IRS is placed in these outsiders is what I disagree with.

Mrs. JOHNSON of Connecticut. But our failure has not been in not seeking advice. We have had an advisory board. Our failure has been in implementation. Our failure has been in continuity. Our failure has been the inability to oversee change.

The mechanisms you point to, even the plan you have, that is short term. We do not do such a bad job in the short term. In fact, your involvement and your interest in the IRS during the time that you have been the Secretary of the Treasury, has made a difference. It is just that nobody has before and probably nobody will after and we cannot count on that mechanism.

So, what impresses me about the proposal before us is that it provides expertise and continuity. Your advisory board is to me a statutory rendition of what is already there.

The advisory boards, we all know, get listened to or not, depending on whatever the weather is. So, I am not impressed with advisory boards. I want more concrete input than that. I want a closer coupling of action and advice than your advisory board gives. Your coupling of action and advice is really with the OMB, Treasury, executive branch team. Those are administrators, who in their own bureaucracies, need to modernize and have not.

So I do not see how we couple them for action. We have to couple advice and the agency for action. Coupling OMB, Treasury and the executive branch—with all due respect—does not give one a lot of belief that action will result.

Secretary RUBIN. Well, let me respond, if I may, Mrs. Johnson.

On the question of, will future Secretaries and Deputy Secretaries take this with the seriousness that I do believe Larry Summers and I have? We—as you know, we have addressed that and what I think—in a mode that I think will work.

Having now been there almost 5 years, one of the things I have noticed is that, if there is a lot of public exposure for something that I am doing, it gets a lot of attention. That is the reason we put in the provision about reporting to Congress. I think we should report more frequently. I think we should report often enough so that a Secretary would have to take it as a number one priority—well, wait a minute—as a prime priority.

I do not think I agree with the other, Mrs. Johnson. I think that if you have people in the form that we have in our IRS Management Board, and you put the appropriate people inside the government and you support them with advice and consultation outside the government, I think you can make that work. And I think you can get what you need to get done.

My fear is the one that I expressed before. I just do not see a board that meets once a month and gives basically a sporadic kind of attention from people whose minds are predominantly elsewhere, being effective. But that is—you know, that is——

Mrs. JOHNSON of Connecticut. Thank you for your thoughts, and I look forward to talking with you about this in the future.

Secretary RUBIN. Sure.

Mrs. JOHNSON of Connecticut. I did not realize you had a deadline. I had lost track of that when I was out of the room.

Sorry for having taken so much of your time.

Mr. COLLINS. I understand Mr. Coyne has a brief question and that you have been instructed to give a brief answer, so we will move to Mr. Coyne.

Secretary RUBIN. I will match the brevity of your question, Mr. Coyne. I doubt the President is here.

Mr. COYNE. Thank you. Thank you, Mr. Chair.

Mr. Secretary, we are going to hear testimony later on today from witnesses—at least from one witness—who will say, It is also somewhat troubling and surprising that the administration's tax proposal—the IRS proposal—does not preclude either the management board or the advisory board from involving themselves in tax policy, law enforcement, procurement decisions and day-to-day management of the IRS.

It also appears that members of the management board, some or all of whom may be political appointees, would have access to tax return information. While this may not have been intended, it is a frightful thought.

Could you address yourself to that?

Secretary RUBIN. On the last piece there, Mr. Coyne, under section 6103—I do know counsel is here, I am not sure, he might have seen this—they would not have access—well, he was here. Oh, he is still here. OK.

That is simply not correct. They would not have access to taxpayer information. If there is any ambiguity with respect to that in the legislation, we will change it. Under 6103, they would absolutely not.

What was the first part of the question?

Mr. COYNE. Well, involving themselves in the daily operation of the IRS.

Secretary RUBIN. Well, they would not be involved with case specific matters, as a matter of practice. They would not get taxpayer information. They would be involved in such matters as systems, customer service——

Mr. COYNE. Law enforcement?

Secretary RUBIN. Yes, with law enforcement. Not with cases—not with individual cases. Zero, with respect to particular cases. But, the budget is related to law enforcement, or the strategy is related to law enforcement, and matters of that sort.

They would be involved in exactly the kinds of things you want them to be involved with, to provide the energized oversight that will help the IRS reform and become the IRS we want it to be.

Mr. COYNE. Thank you.

Secretary RUBIN. But nothing case specific.

Mr. COYNE. Thank you.

Secretary RUBIN. Thank you, Mr. Coyne.

Thank you, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Secretary. We know we have kept you a few minutes overtime.

Secretary RUBIN. No, no.

Mr. COLLINS. We appreciate it.

Secretary RUBIN. I am pleased to be with you all. Thank you.

Mr. COLLINS. OK, our next panel—are you all ready? Does someone have their nameplates?

Mr. Goldberg, we have you listed first on the panel. Let me see, you are a Commissioner, National Commission on Restructuring the Internal Revenue Service.

Will you go ahead and give us your testimony?

STATEMENT OF HON. FRED T. GOLDBERG, JR., COMMISSIONER, NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE

Mr. GOLDBERG. Thank you, Mr. Collins. I request my written statement be included in the record, and I will try to keep this very brief.

Mr. COLLINS. All of the statements in their entirety will be entered into the record.

Mr. GOLDBERG. Thank you.

Having listened to today's hearings, I would like to just take this opportunity to just jump right in and talk about this question of private-sector involvement in the board structure that the Commission recommended. That clearly—that has been identified as the issue that concerns most folks, and I would like to talk about it.

The starting point is that the Commission members shared those concerns. Anytime you talk about putting folks, who are private-sector individuals, into a position of some kind of responsibility in the government, you need to be very careful about that. I think the Commission bent over backward to be sensitive to those concerns.

I believe that when you look at the facts, when you look at the legislation as introduced, the Commission was wholly responsive to those concerns. In particular, I believe any suggestion that the Commission recommended turning IRS management over to the private sector is simply wrong.

I would like to take a few minutes—this is not flowery stuff, but I think it is important to look at the facts. The President remains ultimately responsible. The President appoints the board members, and the President can remove the board members at any time for any reason.

Second, the proposal leaves in place Code section 7801(a). Section 7801(a) of the Internal Revenue Code provides that the administration and enforcement of the tax laws is to be performed by or under the supervision of the Secretary of the Treasury.

Third, by statute, the board would have no involvement in or authority over tax policy matters, tax law enforcement, procurement decisions, day-to-day administration of the tax laws. By statute, the board would have no access to tax return information.

Fourth, the expressed function of the board is to provide oversight, not management. As introduced, the legislation makes this clear. It is an oversight board, and it is a board that resides within the Department of the Treasury.

Fifth, by their very nature, the board's products—what this board does, ends up in the public domain. At the end of the day, everything this board does, what it produces is subject to the scrutiny of the Congress and is subject to the scrutiny of the American people.

Sixth, as introduced, the board has nine members. That means that each member's conduct is subject to the review and assessment of his or her eight colleagues.

Finally, while the Commission members are absolutely confident that this administration—in particular this administration and this Secretary—will be able to recruit representatives of the business community who are of the highest integrity and competence. That is not required. We assume that some members of the Board would come from other walks of life, academia, the nonprofit sector, state and local government, retirees from both the public and private sector.

If some administration were so uncomfortable with the involvement of the business community, they could create a board of directors consisting of no one from the business community.

Finally, let me talk about the budget. There is apparently some confusion on this score. The Board will indeed form its position on funding for the IRS and will communicate that position, publicly. That is exceedingly important. This Congress has already vested similar authority in the Social Security Administration.

But that is not the budget of the IRS. The Congress decides the funding for the IRS, through the normal appropriations process. So while the Board performs a critically important function in expressing its independent views on funding, those decisions regarding funding stay exactly where they are.

So, again, I think it is confusing and misleading this entire discussion to talk about turning the IRS over to the private sector. It is not the recommendation. It is not going to happen. It should not happen. It is a red herring argument in its entirety.

Real quickly, on the point of continuity. Changing computer systems, introducing quality concepts into one organization, revising training, changing culture of an organization—these are very, very hard things to do. They take more than 2 or 3 years.

The Secretary said it took 10 years to do systems work in the private sector. There is nothing about the administration's proposal that offers the slightest hope for the continuity that is required.

Thank you very much, Mr. Chairman.

[The prepared statement follows:]

Statement of Fred T. Goldberg, Jr.
National Commission on Restructuring the IRS

Before
House Committee on Ways and Means

September 16, 1997

Mr. Chairman and Members of the Committee: My name is Fred Goldberg. I served as IRS Chief Counsel from 1984-1986, as IRS Commissioner from 1989-1991, and as Assistant Secretary of the Treasury for Tax Policy during 1992. I was appointed to the IRS Restructuring Commission by Senate Minority Leader Tom Daschle. I am appearing today as a Member of the Commission and not on behalf of any client interest.

For the most part, I believe the Commission's Report speaks for itself, and I will limit my comments to several observations that I urge you to keep in mind as you review our recommendations.

The Context

The IRS is the one institution of government that directly affects everyone. It is essential that it meet the demands and expectations of the American public. It does a very difficult and important job; that job is made close-to-impossible by a complicated and unworkable Internal Revenue Code. Most IRS employees are hard-

working and well-meaning, and the IRS still collects most of the revenue that is due and owing at a lower cost than its counterparts around the world.

At the same time, however, there is widespread frustration that something is terribly wrong -- from phones that aren't answered and audits that go on forever to correspondence that is often incomprehensible; from employees who lack the training and tools to do the job to employees who view all citizen-taxpayers as crooks and cheats; from a large and growing tax gap to legendary computer troubles. Above all, there is one, incontrovertible fact: the IRS fails to meet the minimum acceptable standards that citizens have come to expect and demand from service companies in the private sector. This failure does not mean that the IRS is doing "worse" -- it means that the IRS has not kept pace with changes that are transforming the private sector.

The Causes and Criteria for Change

By and large, the problems result from two causes. First is the complexity of the tax law. This issue was beyond the scope of the Commission's charge, but it is important to emphasize our finding that simplification of the tax law is essential.

Second is the need for fundamental change in the management, governance and oversight of the IRS. Regardless of the "problem" under review, the same themes kept recurring. What's missing is agreement on what the Administration and Congress want from the IRS -- and the expertise, accountability, and continuity to deliver on those expectations.

This is the most important point to bear in mind. All of our recommendations were focused on these criteria: what do we want from the IRS, and how can we provide for the expertise, accountability and continuity to get the job done? I urge you to test our recommendations -- and consider alternatives -- against these standards.

The Commission's Recommendations

When viewed in this light, I believe that the case for the Commission's recommendations in the areas of management, governance and oversight is overwhelming:

Appoint the Commissioner for a five-year term.

Give the Commissioner authority and tools to build his or her own senior management team, and hold those individuals accountable for performance.

A Board of Governors -- fully accountable to the President of the United States -- with the expertise and continuity to focus on strategic, long-term objectives, and hold the Commissioner accountable for performance.

Coordinated Congressional oversight among those responsible for all aspects of the IRS, with a specific focus on strategic and long-term issues.

Stable financing over a three year period and explicit Congressional authority to provide additional IRS funding outside the budget caps, subject to the express understanding that the IRS will use that three year period to get its house in order, develop appropriate performance measures and obtain "clean" financial audits.

Workforce flexibility that will enable the IRS to recruit and retain those who measure up -- and get rid of those who don't.

These recommendations comprise an integrated package. Each of these elements is essential to provide the requisite expertise, accountability and continuity; no single recommendation standing alone would be sufficient.

With respect to the question of vision -- what's expected of the IRS -- the Commission believes that this is ultimately a matter for the Administration and Congress to decide, on behalf of the American people. A primary purpose of the reforms we are recommending is to create a structure that will force agreement on this all-important issue.

Nonetheless, I believe that the Commission's Report reflects a view that is shared by most Americans. There are many ways to describe this consensus -- for example, customer service comparable to the best that is available from the private sector. What needs

emphasizing is that this choice has consequences. For example, we recommend that the IRS adopt two fundamental principles in its dealings with the American public: (1) The IRS should not contact a taxpayer unless the IRS is prepared to devote the resources necessary to provide that taxpayer with a prompt, high quality resolution of the matter in question. (2) The IRS should not force the taxpayer to deal with an IRS employee unless that employee is adequately trained and has the tools to do the job properly.

These standards are a business necessity and a moral imperative in our system of government. They may sound obvious, but make no mistake about it: at present, and for all too many years, the IRS has failed to live up to these standards. I can tell you from personal experience, if the IRS did adhere to these standards, it would transform tax administration.

The reasons for this failure go to the essence of our recommendations: First, there has been no explicit acceptance -- by either Congress or the Executive Branch -- that these standards embody first principles of tax administration. Second, the current management, governance and oversight of the IRS does not

provide the expertise, accountability and continuity that would be necessary to meet these standards.

To prove the point, ask yourselves the following questions: What if adhering to these standards meant lower audit coverage and a short-term reduction in revenue? What if adhering to these standards meant increased funding for the IRS? What measures are in place to assess whether the IRS is meeting these standards? How do the Administration's budget request and Congressional appropriations align themselves with these standards? How many Congressional oversight hearings have focused on these standards? Who's accountable for meeting these standards?

IRS Oversight Board

Most of the controversy surrounding the Commission's Report has focused on its recommendation for an IRS Oversight Board. As a preliminary matter, it is important to reemphasize that this is only one in a series of integrated recommendations to provide expertise, accountability and continuity. While I understand that some question whether the Board will have any real impact, I want to emphasize that most Commission members, myself included, believe that some type of Board -- with most or all of the formal duties and

responsibilities we identified, and with private sector representatives who serve for fixed terms -- is essential to provide the continuity, expertise, and accountability that the IRS requires. If this basic concept is rejected, then efforts to reform the IRS will fail.

Having served as IRS Commissioner and as Treasury Assistant Secretary, I can understand why this particular proposal makes the Treasury Department uneasy. But I am absolutely certain that any discomfort or skepticism is well worth enduring for the sake of the other reforms being recommended by the Commission. In my view, it's not even a close question.

Since the Commission's Report was issued, the primary criticism of the Commission's Board recommendation relates to the role of the private sector, and the prospect for, or appearance of, conflicts of interest. Mr. Chairman, this is an issue that the Commission took seriously, and addressed with care. In light of the following, these criticisms are, at best, erroneous and misleading. In particular, any suggestion

that the Commission recommended turning IRS management over to the private sector is absurd.[1]

First, the President would remain ultimately and unambiguously accountable for tax administration. Private sector members of the Board would be appointed by the President for five year terms; however, the President could remove any Board member at any time, and for any reason -- including inadequate performance or conflicts of interest.

Second, the proposal would ***not*** alter Code 7801(a), which provides that the administration and enforcement of the tax laws is to be performed by or under the supervision of the Secretary of the Treasury. Nothing would change in this regard.

Third, by statute, the Board would have no involvement in (much less authority over) tax policy matters, tax law enforcement, procurement decisions, and day-to-day administration of the tax laws. Moreover, by

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[1] I should note, however, that several Commissioners favored removing the IRS entirely from Treasury, and placing control of the Agency in the hands of an independent board with private sector representatives. This suggestion is not as dramatic as it may sound. Indeed, Canada, Japan, and Mexico are moving in precisely that direction.

statute, the Board would have no access to tax return information.

Fourth, the express function of the Board is to provide oversight. As introduced, the legislation makes this clear: It establishes an "Internal Revenue *Oversight* Board" and that Board resides "*within the Department of Treasury.*" The Board's duties are delineated in a manner consistent with that responsibility.[2] A primary area of expertise that Board Members from private life should bring to the job is their ability to distinguish between legitimate oversight activities, and the epidemic of micromanagement that makes government so inefficient and ineffective.

Fifth, by their very nature, the Board's "products" -- review and approve strategic plans, review annual business plans, appoint and remove the Commissioner, review and approve the IRS budget for transmittal to the Administration and Congress, periodic reports to the Congress and the American public -- end up in the public domain.

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[2] By way of comparison, the Administration's proposal establishes a *Management Board* whose duties and authority are not circumscribed.

Sixth, as introduced, the Board will have nine members. This means that each member's conduct will be subject to review by his or her colleagues -- including representatives of the Administration and IRS employees.

Seventh, while those of us supporting the Commission's recommendation are confident that the Administration will be able to attract business leaders of the highest competence and integrity, we also assumed that at least some Board members from outside the Federal government would come from other walks of life. If this (or any other) Administration has so little trust in the integrity or competence of the business community, it could, of course, draw on Board members from other pursuits (including academia; state or local government; the consulting community; individual taxpayers; retirees from the public and private sectors; etc.)

Finally, there is apparently some confusion regarding the Board's role in setting the IRS budget. The Board will make its own independent determination regarding proper funding for the Agency, and will communicate that determination to the Administration and the Congress. However, the Administration will also present its proposed IRS budget to the Congress. The IRS budget will then go through the normal appropriations

process. In other words, the IRS budget will *not* be determined by the Board -- it will be determined by the Congress and the Administration.

The Commission decided that the foregoing was fully responsive to legitimate concerns regarding the role of the private sector. By the same token, however, the Commission was well aware that there are no perfect answers to any of the difficult issues we considered. They require a balance among competing concerns and objectives. What's important to keep in mind is what we were trying to accomplish: provide IRS with expertise, accountability and continuity -- while avoiding the pitfalls that accompany any change. There are any number of modifications to the Board proposal that would maintain the basic concept (a group with independent and formal oversight responsibilities that includes private sector members who serve fixed terms) and therefore meet the overall objectives of expertise, accountability and continuity. Thus, for example, it would be possible to alter the role of the Board in selecting the

Commissioner, or change the composition of the Board, and still achieve the Commission's objectives.[3]

The Administration's Proposal

I would also like to comment briefly on the Administration's Proposal as recently introduced in Congress. As a preliminary matter, it is encouraging that there is so much agreement on so many areas. On the other hand, while the omission of any provisions regarding Congressional oversight may show commendable deference, it ignores an area where change is required.

The biggest area of disagreement relates to Executive Branch governance. The Administration proposes creating an IRS "Management Board" consisting of an unspecified number of career government employees and political appointees from throughout the Federal government. The Management Board will assume some significant (but ill-defined) responsibility for management of the IRS. It will also have its own independent staff, outside the IRS. The Administration's

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[3] Whatever Congress may decide, I think it is important to limit the number of Board members (if anything, nine may be too many). I also think it would be a terrible mistake to put individuals from "Main Treasury" (other than the Secretary or Deputy Secretary), or from elsewhere in the Executive Branch, on any type of management, governance or oversight board.

Proposal also creates an Advisory Board, reporting to the Secretary, that is much like the current Commissioner's Advisory Group. While this approach may address some issues, it fails to address others.

In particular, it will not satisfy the three criteria that should be used to evaluate any reform proposal. First, these groups will not bring to bear the kinds of expertise that the IRS requires -- at least in a way that has any hope of making a real difference. Second, they will diffuse, not focus accountability. Finally, the likely turnover in membership will undermine any hope for continuity.

On balance, the Administration's proposal, in its current form, will do little more than visit the mother of all micromanagement plagues on the IRS, and undermine any IRS effort to meet the expectations of the American public.

It is also somewhat surprising and troublesome that the Administration's Proposal does not preclude either the Management Board or the Advisory Board from involving themselves in tax policy, law enforcement, procurement decisions, and day-to-day management of the IRS. It also appears that members of the Management Board (some or all of whom may be political appointees)

would have access to tax return information. While this may not have been intended, it is a frightening thought, at least for those who recall why Section 6103 was enacted in the first place. As compared to the Executive Order, the legislation as introduced compounds these problems because there is no limit on who or how many Executive Branch employees can be involved in such matters.

Conclusion

I have spent most of my professional life dealing with taxes and tax administration; I consider myself extremely fortunate to have served in a number of senior government positions in the world of taxes. Based on my experience, I am certain of the following:

> Fundamental change in IRS management, governance and oversight is essential.
>
> That change must result in a shared vision of what we want from the IRS, and the expertise, accountability and continuity to deliver that vision.

You and your colleagues, and the Administration, have a unique opportunity -- one that doesn't come along very often. A well-functioning IRS is not a partisan issue, or a turf issue, or a question of hidden agendas. The IRS occupies a unique role in our system of government. It is essential that it meet the legitimate demands and expectations of the American people.

Mr. COLLINS. Thank you, Mr. Goldberg.
Mr. Weston, you are next, please.

STATEMENT OF JOSH S. WESTON, COMMISSIONER, NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE; AND CHAIRMAN, AUTOMATIC DATA PROCESSING

Mr. WESTON. Thank you, Mr. Chairman. I am also chairman of Automatic Data Processing. I have been a senior ADP executive for over 25 years. President Clinton appointed me to the IRS Commission. I was the only large company chief executive officer on the Commission.

ADP itself is a $4 billion-plus computer service. We have 60 computer centers, 33,000 employees and the longest growth record in America, 36 years in a row of double-digit growth.

We pay 22 million Americans on payday. We are electronically interfaced with 2,000 U.S. taxing authorities, from IRS to local school districts. Our IRS relationship is paperless. We transmit $200 billion a year to IRS. That is one-seventh of the Federal Government's revenues.

We also give IRS 35 million, paperless, W–2 forms and millions of electronic tax returns. ADP handles over 50 million phone calls per year, and while 40 to 60 percent of the IRS phone calls reach their destinations, well over 90 percent of the calls to us reach us at the proper point.

We support 100,000 computer terminals for Wall Street, where response time is measured in milliseconds. Our computers process 20 percent of Wall Street trades, where timing and accuracy are absolutely critical, as with payrolls.

So I think I know a lot about service, efficiency, computerization and management. In addition, I serve on the boards of four large service companies. In each case, I think I am a well-informed, focused and influential part-timer.

Although those boards generally pay me around $30,000 annually, they get my dedicated attention. My fellow board members have more board longevity than do relevant Treasury executives and the present advisory boards concerned with IRS.

Our private-sector boards neither micromanage nor do they implement policy. They do not manage. Boards do not run companies. They are not in charge. chief executive officers are in charge. Effective boards do maintain clear focus, clear oversight and continuity. They demand measurable plans, competent organizations and good outcomes from the chief executive officer.

The President recently named a very qualified, private-sector executive to be IRS Commissioner. Because of my connections in private-sector activities, I was the private-sector part-timer who identified this next IRS chief executive officer to Larry Summers.

I give you a lot of this background because it illustrates the kind of public-minded talent that is available for the IRS Board that our Commission recommends. There are many qualified, private-sector individuals like me. They are not all chief executive officers, and my description illustrates why I disagree with the Treasury's view that an external IRS Board of part-time executives would not be appropriate, qualified or dedicated for the IRS operations and service.

As a further indicator of the relevance of private-sector executives to IRS, I can tell you that in just 4 months on the IRS Com-

mission, I made indepth visits to five tax centers. I doubt that any of the salaried Treasury advisors have learned from as many IRS field personnel and tax processes as I did as an unpaid part-timer. There are others like me who could bring relevant experience and competence and consistent guidance to the IRS.

By contrast, as to relevant experience, consistency and accountability, the past 20 years clearly indicate that existing IRS and Treasury oversight have suffered from a glaring lack of relevant experience, focus and consistency regarding large scale, service and operation activities.

IRS oversight by Treasury is flawed because the relevant officials, as you have well heard, generally have low longevity and limited experience to guide IRS. The Treasury proposal does not amend or improve this situation.

I would like next to talk about accountability. Accountability is very important. It is absolutely the missing ingredient in the Treasury proposal. Accountability only applies to persons, not to departments, not to positions. An incumbent feels accountability only if he or she both launched and finished a plan or a business cycle.

Successor appointees cannot effectively be held accountable for a prior incumbent's deeds or plans. Short longevity in Treasury absolutely negates effective accountability.

Our proposed board and IRS Chief Executive Officer would both have the longevity to permit effective accountability.

The bulk of IRS employees are not in heavy-duty enforcement. Most of them are in service, phone call activities and computer operations, because well over 75 percent of revenues come in almost automatically from withholding taxes and employer payroll taxes.

Therefore, it is particularly important to get help with accountability that can improve service, clerical activities and computer operations.

I thank you for your time and would be happy to answer any questions.

[The prepared statement follows:]

Testimony to the House Committee on Ways and Means
by Josh S. Weston, September 16, 1997

Mr. Chairman and Committee members:

I am Josh Weston, chairman of Automatic Data Processing. I have been a senior ADP executive for 25 years. President Clinton appointed me to the IRS Commission. I was the only large-company CEO on the Commission.

ADP is a $4+ billion computer service, with 60 computer centers, 33,000 employees, and the longest growth record in America...36 years in a row of double-digit growth.

We pay 22 million Americans on payday. We electronically interface with 2000 U.S. tax authorities, from IRS to local school districts.

Our IRS relationship is paperless. We transmit $200 billion per year to IRS. We also give them 35 million paperless W-2 forms and millions of electronic tax returns.

ADP handles over 50 million phone calls per year. While 40-60% of IRS phone calls reach their destinations, well over 90% of calls to us do so.

We support 100,000 terminals for Wall Street, where response time is measured in milliseconds. Our computers process 20% of Wall Street trades, where timing and accuracy are critical, as with payrolls. So, I think I know a lot about service, efficiency, computerization, and management.

In addition, I serve on boards of four large service companies. In each case, I think I am a well informed, focused, and influential part-timer. Although those boards generally pay me $30 thousand annually, they get my dedicated attention. My fellow board members have more longevity than do relevant Treasury executives and advisory boards. Our private sector boards neither micromanage nor implement policy. They do not manage. Boards don't run companies. They are not "in charge." CEO's are in charge. Effective boards do maintain clear focus, oversight, and continuity. They demand measurable plans, competent organizations, and good outcomes from the CEO.

The President recently named a very qualified private sector executive to be IRS Commissioner. Because of my Commission and private sector activities, I was the private sector part-timer who identified this next IRS CEO to Larry Summers.

I give you this background because it illustrates the kind of public-minded talent that is available for the IRS board that our Commission recommends. There are many private sector execs like me. My description illustrates why I disagree with Treasury's view that an external IRS board of part-time executives would not be appropriate, qualified, or dedicated for IRS operations and service.

As a further indicator of the relevance of private sector executives to IRS operations, I tell you that in just four months, I made in-depth visits to five tax centers. I doubt that any of the salaried Treasury advisors have learned from as many IRS field personnel and tax processes as have I as an unpaid, part-timer. There are others like me who could bring relevant competence and consistent guidance to the IRS.

By contrast, as to relevant experience, consistency, and accountability, the past twenty years clearly indicate that existing IRS and Treasury oversight have suffered from a glaring lack of relevant experience, focus, and consistency in large scale service and operations. IRS oversight by Treasury is flawed because relevant officials generally have low longevity and limited experience in roles that can guide the IRS towards better service, efficiency and computerization.

Treasury's proposal for a 14-person quarterly advisory board of part-timers hardly approaches the value of our recommended board. Their large advisory board would include only four private sector executives. It would not have intensity, clout, or accountability.

Treasury's 20-person, part-time management board consists mostly of mid-level department heads who lack the senior level experience to guide a $1.5 trillion, 100,000 employee, computerized service that handles a billion transactions and 150 million phone calls per year. Nor would such a large, heterogeneous board likely have a shared, sustained strategic vision with clear authority and accountability.

Accountability is a very important, missing ingredient in Treasury's proposal. Accountability applies only to persons, not to departments or positions. An incumbent feels accountability only if he or she both begins and finishes a plan or business cycle. Successor appointees cannot effectively be held accountable for prior incumbents' deeds and plans. Short longevity in Treasury

negates effective accountability. Our proposed Board and CEO would have the longevity to permit effective accountability for both the Board and the IRS CEO.

Some have characterized our Board as a free-standing, privatized, non-accountable tax enforcement agency. Those allegations are not accurate. Board members would be selected by the President, who could also terminate them. The President could also terminate the IRS CEO. The Senate would have a say on each appointee. The Secretary of the Treasury would be on the board. The board's budget requests would flow through both Treasury and Congress. The board would have no say on tax policy and tax enforcement, which would continue to flow through Treasury, as it does today.

The bulk of IRS' employees are not in heavy-duty enforcement. Most IRS employees are in service and operations, because well over 75% of revenues come in almost automatically from withholding taxes and employer payroll taxes, where enforcement and tax policy are not primary issues.

Regrettably, even reliable publications have recently been misled and/or have misled their audiences on several of the important principles that I've addressed...to the detriment of intelligent debate and sensible outcomes. It is naive or malicious to suggest that our Commission wishes to privatize tax collection or put corporate America in control of their own tax audits.

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I would like to emphasize some non-governance observations that are important:

1. Our tax system is based on voluntary, self-assessment. It produces $1.5 trillion per year. Initial voluntary compliance is over 85% accurate, which is very high by international comparisons.
2. Voluntary self-assessment is very sensitive to taxpayer attitudes and treatment. A mere 1% compliance shift in either direction affects federal proceeds by $15 billion per year.
3. Current IRS service standards, behavior, and audit methodology are much below private sector standards, and cost the government huge shortfalls in revenue and goodwill. More qualified board governance and continuity (not daily management by the board) could make a big difference.
4. Congress also needs better coordinate its oversight of seven different Congressional committees interrogate and guide IRS. They typically hold 20-30 hearings per year. In each of these past ten years,you have authorized over 40 different GAO investigations and reports on the IRS, most of which have been more burdensome than useful. That adds up to 400 such GAO reports about the IRS.

   This abundance of checking, auditing, and criticizing generates a defensive value system in IRS. IRS executives spend more time avoiding exposure to criticism and replying to criticism than to improving responsiveness and efficiency.
5. Our Commission recommends that the House and Senate have one joint, senior body to better coordinate the direction, focus, and consistency of Congressional and GAO guidance.
6. Finally, I have a few comments on technology:

   a. It is imperative that you fully fund and monitor IRS progress on fixing the Year 2000 challenge well before December 1999, or chaos will ensue.
   b. It is equally imperative that IRS be allowed and encouraged to build and retain an experienced, capable senior technology leadership team that is not solely home grown talent. To do so in the very competitive, dynamic information technology industry, IRS needs more flexibility in hiring and firing than prevails elsewhere in government.
   c. Electronic filing and other simplifications are critical to enhanced accuracy, efficiency, and auditing. Automated data collection projects need funding, clear targets, and legislative revisions to make electronic filing and scanning more attractive and simpler.

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I thank you for your attention and would be pleased to further help you.

Mr. COLLINS. Thank you, Mr. Weston.

Mr. Wetzler.

STATEMENT OF JAMES W. WETZLER, COMMISSIONER, NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE; AND DELOITTE & TOUCHE LLP

Mr. WETZLER. Mr. Collins, thank you. I am James Wetzler. I am speaking here as a member of the Restructuring Commission who dissented from the final report. My experience with tax policy and administration is primarily 11½ years spent here on the staff of the Joint Tax Committee, and then 6½ years as New York State

Tax Commissioner in the latter part of the eighties and early nineties.

Let me first emphasize that there was a substantial consensus within the Restructuring Commission on quite a number of points. I tried to outline that in the first couple of pages of my statement. We agreed on quite a number of things, and if you put together an IRS reform bill that consisted of all the items on which there was a substantial consensus, you would have a very, very successful reform of tax administration in this country.

I am not going to belabor that here, because I think it is more useful to go into some of the differences.

You should start your deliberations on this issue with a balanced assessment of the strengths and weaknesses of the Internal Revenue Service. We have heard a lot about the weaknesses in the last year. We have heard a lot about the weaknesses so far today in this hearing.

But the IRS also has very substantial strengths, and they are not always given proper attention in the public discussion. The IRS, remember, is basically an organization that is accomplishing its mission. Taxpayers do get their refunds every year. The tax forms are printed and distributed to taxpayers; their accounts are maintained.

The country has a tolerably high level of voluntary compliance with our tax laws. The IRS runs a very low-cost operation. Measured in terms of its budget as a percent of revenue collected, the IRS is much cheaper than tax administrations in states here in the United States, or in other countries.

Confidentiality of taxpayer information is maintained. The IRS issues a massive amount of guidance every year about our very, very complex tax law. And the IRS is almost entirely—and has been for many, many years—almost entirely free from political interference, if not entirely free. These are very substantial assets. Things could be a lot worse.

Other countries like Italy and Russia envy our relatively successful tax administration. You are dealing in an area where the downside of making our tax administration worse is very, very serious. Because a serious deterioration of our tax administration below what it is today threatens the fiscal stability of the country.

So I urge you to approach your task with a balanced assessment of the Service's strengths and weaknesses. Things could be a lot worse.

I dissented from the Commission's report for two reasons. One is, I am opposed to the idea of turning management of the Internal Revenue Service over to a private-sector board; and second, there were certain areas that I thought should have received more attention in the Commission's report than they actually did—and I will allude to those in a minute or two.

Let me start with the governance suggestion. My objection to the Board is not an ideological objection. The reason I object to it is, having thought about the idea for the better part of a year, I still cannot identify sensible solutions to what I think of as serious problems with the way this would actually work on a day-to-day basis in practice. Indeed, I continue to think about it, and I con-

tinue to identify problems at a somewhat faster rate than I am identifying solutions.

The proposal envisions a matrix management structure for the Service. The Board would hire and fire the Commissioner, approve the Service's budget and strategic plan, and review operational plans, as well as the pay and hiring of senior officials.

However, the Board would be specifically precluded from involving itself in law enforcement matters, procurement decisions and tax policy—and I assume by this we mean tax policy as both the IRS input into your decisions on how to write the tax laws, as well as the content of guidance issued by the Internal Revenue Service, rulings, regulations and so forth.

I do not really understand how this would work. Would the Secretary continue to supervise the Commissioner with respect to all the matters from which the Board is precluded? How would the Secretary exercise his authority over the Commissioner and the senior staff over any aspect of their performance, when he or she has no involvement except as a board member in payroll and personnel decisions?

What would prevent the Board from intervening into matters from which it is supposed to be precluded? How would the Board, in its hiring and firing decisions, take proper account of how the Commissioner is performing, or the Commissioner's capabilities, in the precluded areas? Who would supervise the Commissioner with respect to areas that are not specifically reserved for the Board, but from which the Board is not specifically precluded? Is it the Secretary or is it the Board?

When Congress gets two different IRS budget requests, one directly from the Board through the Treasury, the second from OMB, how is Congress going to respond? Are they just going to take each line item and pick the lower of the two amounts and that will be the IRS' budget? It is hard for me to see how this is going to work successfully on a day-to-day basis in practice.

The conflict of interest issue, I think, is important. To my mind, this is largely an issue of perception. Personally, I am confident you could select board members who have the proper qualifications, who are willing and able to put aside their parochial interests and make decisions that are in the best interest of tax administration. I think if you select the board members properly, they will be able to handle themselves ethically.

But I think in approaching the conflict of interest issue, you have to consider realities in modern-day Washington. This is a town where you create a national scandal if you buy somebody lunch. I really think that as a practical matter, the people who have the qualifications that you are going to want on a board like this are going to have perceived conflicts of interest, and this issue will totally dominant the appointments process, the confirmation process, and the public perception and the press coverage of the Board's behavior, once it is appointed.

Finally, boards have a very mixed record of directing organizations. Some are very successful and contribute to their organization's success. Others are inattentive and do little or nothing. Some boards micromanage and make their organizations worse.

The key to a board-directed structure is that there is no one person who is responsible. The board's responsibility is defused among the board members. No one of them actually is responsible for the success of the organization, and that causes some boards to perform well, and some boards to perform poorly.

Given the risks of poor performance, and the risk to the country of an organization that would cause the IRS to deteriorate, as some organizations do, I am not sure I would want to take the risk inherent in a board structure.

An alternative governance structure can create virtually all the advantages of the Commission's recommendations without the disadvantages.

You can get outside input through an advisory board, an advisory board that makes public reports to Congress. As a practical matter, that is going to give that board a lot of power. The Secretary of the Treasury is going to be very reluctant to ignore public reports given by his advisory board about how things like systems modernization or other features of our tax administration are proceeding.

However, because the board would only be advisory—would not have decisionmaking power—Congress and the President could feel free to ignore those suggestions, and the conflict of interest issue would be greatly reduced.

I think the way you would get the Secretary to pay attention to tax administration, as Secretary Rubin suggested, is to haul him up here a couple of times a year to tell Congress what he is doing to improve tax administration, and that as a practical matter, will focus the Secretary and the Deputy Secretary's attention on making sure they have something constructive to say during these hearings.

I do not see a need to legislate the creation of an internal IRS Management Board consisting of government officials within the executive branch. As a practical matter, many executive branch agencies exercise some control over various aspects of the IRS: the Office of Personnel Management, the Office of Management and Budget, the General Services Administration, various bureaus within the Treasury Department. It seems reasonable to suggest that they should meet periodically to make sure they all are operating under the same strategy. I do not see why that has to be legislated. People can have meetings any time they want to without Congress writing legislation.

My testimony goes into some areas I believe were not given proper emphasis in the Commission's report, and those include the IRS budget, budget scorekeeping and the tax compliance gap. I will leave those for my written statement and will be happy to respond to any of your questions.

[The prepared statement and attachment follow:]

Statement of James W. Wetzler
Deloitte & Touche LLP
on
Management and Governance Provisions of IRS Restructuring Legislation
House Committee on Ways and Means
September 16, 1997

Thank you for the opportunity to testify on the management and governance provisions of proposed IRS restructuring legislation. Let me note for the record that I am speaking strictly for myself, as a member of the National Commission on Restructuring the IRS who dissented from the majority report, and that my testimony does not necessarily represent the views of Deloitte & Touche LLP or its clients.

Areas of agreement

It is important to emphasize that there was substantial agreement within the Restructuring Commission on many important points.

• We agreed that the United States needs a world-class tax administration agency, one that formulates and executes strategic plans to accomplish its mission, achieves a high degree of compliance with the tax law, operates in such a way as to minimize the burdens that tax compliance imposes on taxpayers, treats taxpayers courteously and fairly, and successfully deploys modern data processing technology to these ends.

• We agreed that there has been a governance problem at the IRS. Part of that problem is that political leaders have not been willing to support a consistent set of priorities for the Service. One day the emphasis is on raising revenue, the next it is on reducing burdens imposed on taxpayers, the next it is on increasing productivity within the Service. Specific shortcomings in the Service's performance take center stage for brief periods of time, and corrective action is demanded, without consideration necessarily being given to the significance of these shortcomings to the overall tax administration program. A second aspect of the governance problem is that the Commissioner of Internal Revenue has not always been properly supervised by his or her boss, the Secretary or Deputy Secretary of the Treasury, which has created an environment where certain serious shortcomings have not been attacked with a proper sense of urgency.

• We agreed that a new governance structure for the Service should include substantial input from people outside the government who have expertise in information technology, marketing, organizational change and high-volume customer service, as well as the tax expertise that has traditionally dominated informed public discussion of tax administration. However, because tax administration is such a sensitive government function, we also agreed--after considerable discussion--that ultimate decision-making authority over tax administration should rest with people who are appointed by, and serve at the pleasure of, the President. The IRS is not the Federal Reserve Board, where a conscious decision has been made to insulate monetary policy from political

accountability. If our tax administration is functioning poorly, the voters should be able to hold elected officials responsible.

• We agreed that taxpayers have a right to be served by IRS employees who are properly equipped to provide good service; that is, who are properly trained and given access to the research tools, office equipment and facilities they need to serve the public. The Service needs to be sufficiently adequately staffed that it does not initiate contacts with taxpayers unless it is prepared to deal promptly and effectively with the taxpayers' responses to those contacts.

• We agreed that the Service needs to proceed ahead with modernization of its systems, without which there will not be quantum improvements in the level of service to taxpayers no matter what changes in governance are adopted.

• We agreed that steps need to be taken to increase the tenure of office of the Commissioner of Internal Revenue to achieve more continuity of management.

These areas of agreement create the basis for a successful effort to restructure the Internal Revenue Service if a good faith effort is made to resolve the remaining areas of disagreement, to which I now turn.

Areas of disagreement

I dissented from the Restructuring Commission report for two reasons. First, I disagreed with the recommendation that the Commissioner of Internal Revenue report to a part-time IRS Oversight Board dominated by private-sector members. Second, I believed the Restructuring Commission report failed to address several important issues that need to be considered in a comprehensive program of IRS reform.

Those involved in the IRS reform effort should start with a balanced view of the Service's strengths and weaknesses. We should not take for granted the fact that, despite its very real problems, the Service is an organization that accomplishes its mission. The U.S. has a tolerably high, although by no means optimal, level of voluntary compliance with the tax laws. Taxpayers get their tax forms and tax refunds every year, and their accounts are maintained with reasonable accuracy. The Service produces a massive amount of guidance on how to interpret and comply with our extremely complex tax law. Measured by the ratio of its budget to the revenue it collects, the Service is much more efficient than tax administration agencies in other countries or in states. The Service protects the confidentiality of taxpayer information. Since the 1950's, tax administration in the U.S. has been insulated from political interference. Under these circumstances, it is possible to make the Service a lot worse, and the downside from poorer tax administration, which potentially threatens the fiscal stability of the country, is substantial. Countries like Russia and Italy envy our successful tax administration.

Unbalanced or shrill criticism of any tax administration agency runs the risk of causing taxpayers to lose respect for the tax system, a sentiment that can affect their voluntary compliance with the tax law. Our comparatively high rate of voluntary compliance is a precious national asset that should not be jeopardized.

Objections to the Commission's Board proposal

My objection to the Restructuring Commission's recommendation that the Commissioner report to an IRS Oversight Board rather than to the Secretary or Deputy Secretary of the Treasury is that, having thought about this idea for the better part of a year, I still cannot identify sensible solutions to what I deem to be major problems with the Board proposal.

• The proposal envisions a matrix management structure for the Service. The Board would hire and fire the Commissioner and approve the Service's budget and strategic plans. It would review operational plans as well as the pay and hiring of senior officials. However, the Board would be specifically precluded from involving itself in law enforcement matters, procurement decisions, and tax policy (which presumably includes both the content of guidance issued by the IRS and its input into tax policy decisions by both the Administration and Congress). I have trouble imagining how this would work in practice. Would the Secretary continue to supervise the Commissioner with respect to matters from which the Board is precluded? How would the Secretary exercise his authority over the Commissioner and senior staff over any aspect of their performance when he or she has no involvement (except as a Board member) in pay or personnel decisions? What would prevent the Board from intervening in the matters from which it is supposed to be precluded? In its hiring and firing decisions, how would the Board take proper account of the Commissioner's capability and performance in the areas from which it is precluded? Who would supervise the Commissioner with respect to the areas that are not specifically reserved for the Board but from which the Board is not specifically precluded? If Congress gets two different IRS budget requests, one from the Board and a separate one from OMB, will it simply pick and choose between the two proposals and adopt the lower level of funding for each line item? Absent answers to these kinds of questions, I am skeptical that matrix management is appropriate for the Internal Revenue Service.

• Most private-sector candidates for appointment to the Board who have the expertise to oversee an organization as complex as the Internal Revenue Service will have conflicts of interest, actual or perceived. Personally, I am confident that well-selected board members could put aside their parochial interests and make decisions that are in the best interest of successful tax administration; however, the realities of present-day Washington are such that the conflict-of-interest issue will affect, and perhaps dominate, presidential appointments to the Board, the confirmation process, and public perceptions of the Board's impartiality.

• Boards in general have a mixed record of directing organizations. Many Boards are actively engaged in their work and make sizable contributions to their organization's success. Others are inattentive and contribute little or nothing. Still others micromanage ineffectively and actually hurt their organizations. Under a Board-directed governance structure, accountability for the Service's success is diffused among several people, instead of being centered in the office of the Treasury Secretary. It is not clear to me why this should necessarily produce more effective supervision of the Commissioner.

An alternative governance structure

Virtually all of the advantages of the Restructuring Commission's Board proposal can be achieved, with few of the disadvantages, under an alternative governance proposal. The Commissioner would continue to report to the Secretary and Deputy Secretary of the Treasury. The Secretary would receive significant private sector input from an advisory board consisting of individuals who have the relevant skills, including both tax expertise and expertise in non-tax areas deemed essential to the IRS's success. The advisory board would review the IRS budget, strategic plans and major operational initiatives, just like the proposed IRS Oversight Board, and would make both private recommendations to the Secretary and public recommendations to Congress. As a practical matter, it will be very difficult for the Secretary to ignore public recommendations given by such an advisory board if they are reasonably well supported, but because the board is only advisory, the conflict-of-interest problem would be greatly reduced. If the advisory board is inattentive or gives little thoughtful advice, the Secretary and Congress remain free to ignore it. To increase the likelihood that the Secretary will make management of the IRS an important priority, the law should require that the Secretary appear at congressional hearings on IRS management twice a year.

I see no need to legislate the creation of an internal IRS management board consisting of government officials within the Executive Branch. As a practical matter, many Executive Branch agencies exercise some control over various aspects of the IRS--the Office of Personnel Management, the Office of Management and Budget, various bureaus within Treasury, the General Services Administration, and so forth. It seems reasonable to suggest that they should meet periodically with the IRS to make sure that they are all helping execute the same strategy, but I do not see any reason why these meetings need to be enshrined in legislation or an Executive Order.

Issues omitted from the Restructuring Commission report

Several significant issues of tax administration were omitted or addressed sketchily in the Restructuring Commission report, preventing it from being a comprehensive program of IRS reform. These may not all be suitable for inclusion in IRS reform legislation at the present time, but should be kept in mind for the future.

IRS budget.--The report outlined a vision of world-class tax administration, but it did not ask, much less answer, the question of how much this vision would cost. Today, the Service spends about 50 cents for every $100 of revenue it collects. Tax administration agencies at the state level and in other countries typically spend a lot more. For example, Australia, which was often cited as a model for the IRS during the Commission's hearings, spends $1 on tax administration for every $100 collected. The Restructuring Commission recommended a flat IRS budget for three years without analyzing whether that would be adequate to achieve the Commission's vision. It also recommended several additional spending initiatives for the Service, including additional phone service, more funds for the Exempt Organizations function, subsidies for electronic filing, more training, and greater availability of payments of attorneys fees incurred by taxpayers,

without identifying the source of funds to pay for these ideas in the context of a flat budget.

Budget scorekeeping.--The Restructuring Commission recommended some helpful changes in how budget scorekeeping rules apply to the IRS's budget by institutionalizing a procedure under which the IRS budget can be increased under certain conditions to improve taxpayer service or tax compliance. Under existing law, the Service is treated like any other agency for budget scorekeeping purposes; that is, less spending on tax administration frees up money for spending on other programs even if it can be demonstrated that the reduced spending on tax administration will lead to a revenue loss or increase burdens on taxpayers. More generally, the revenue impact of tax administration is simply not accounted for in the present budget process. Congress should revisit the budget scorekeeping rules for the IRS to ensure that they reflect the Service's unique role as administrator of the tax system that funds the rest of the government and interacts with virtually all of the American people. More realistic scorekeeping rules should apply not just to proposed IRS budget increases but to budget reductions as well.

Tax compliance gap.--The commission report describes the IRS as a high-volume, data-intensive financial services organization, which it is to some extent. However, it is also, and some would say primarily, a law enforcement organization. Consistent with its vision, the Restructuring Commission paid little attention to the tax compliance gap. A successful restructuring of U.S. tax administration should ask and answer the following questions: using cost-effective initiatives that are consistent with a reasonable definition of civil liberties, by how much is it possible to reduce the present tax compliance gap, and how would one go about doing so? I do not know the answer to this question, and I suspect that the analysis needed to derive a reliable answer does not presently exist. (Indeed, in some respects our knowledge of the tax compliance gap is shrinking as old TCMP data lose relevance and the Service fails to replace the TCMP with a less burdensome and more accurate way of measuring noncompliance.) Nevertheless, we should put in place a process that produces reliable and widely accepted answers that can become the basis for a serious policy discussion about improving tax compliance.

Congressional oversight

The Restructuring Commission report correctly points out that diffuse and inconsistent congressional oversight makes it difficult for the IRS to set and maintain priorities without appearing unresponsive to Congress. Without presuming to trespass on the sensitive question of congressional committee jurisdiction, let me just say that some self-restraint and centralization of congressional oversight would be helpful, and the report presents a sensible way to do this.

The Restructuring Commission also reviewed GAO's oversight of the Service, both regarding its operational audits and its financial statement audits. In both cases, many Commission members concluded that GAO could improve its performance, although these sentiments were somewhat toned down in the final draft of the Commission's report. I especially commend to your attention the discussion in the report on IRS

financial accountability. Each year, the GAO issues a report announcing that it cannot certify the IRS financial statements, and this attracts headlines owing to the inference that the IRS is applying standards of financial accountability to taxpayers that it cannot itself meet. However, the Restructuring Commission report documents that the financial management deficiencies that prevent the Service from obtaining a clean opinion from GAO are largely out of the Service's immediate control, and that GAO appears to have been less than totally cooperative in assisting the Service is getting a clean opinion. The IRS should have a clean opinion on its financial statements, but this should be a joint responsibility of the IRS, GAO, and the other Executive Branch agencies, like GSA, who will need to change their behavior in order for the Service to get a clean opinion under the present GAO standards. The practical significance of the Service's failure to obtain a clean opinion appears to be greatly overstated in much public discussion of the IRS.

Conclusion

The Internal Revenue Service is the one federal agency that interacts with virtually all Americans. It should be a model of public sector management. Congress has a opportunity to build on the Restructuring Commission report to move us closer to this goal; however, it must also be mindful of the fact that the financial stability of our country depends upon a successful tax administration effort and that reform of the Internal Revenue Service should not be a pilot project for untested ideas.

09/19/97

Hon. Nancy L. Johnson
Chair
Subcommittee on Oversight
House Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Ms. Johnson:

I am writing in response to your request at the Ways and Means Committee hearing last Tuesday for my reaction to a proposal under which the IRS governance structure in H.R. 2292 would be modified such that the Commissioner of Internal Revenue would continue to be appointed by, and serve at the pleasure of, the President.

As I understand it, this modification of the bill would mean that the proposed IRS Oversight Board under H.R. 2922 would have two specific powers. First, it would approve the budget request of the IRS, which would be transmitted to Congress along with the "official" administration budget request submitted by the President. Second, the Board would approve the IRS's strategic plan. All other activity of the Board would be purely advisory.

On the issue of the budget request, I question the usefulness of having the IRS submit its own budget request to Congress, with or without Board approval. As a practical matter, the official administration budget request will always be lower than the IRS request, and Congress is very unlikely to enact an appropriation for the IRS larger than what the administration recommends. Thus, a separate IRS budget request will have no practical impact in most years.

Eliminating the separate budget request would leave approval of the Service's strategic plan as the remaining power of the IRS Oversight Board. In contrast, under the administration's governance proposal, the IRS Advisory Board would merely review and issue public comments on the strategic plan, but not formally approve it. There would seem to be little practical difference between how the Service would operate under these two alternative ways of handling the strategic plan. Under the administration's approach, it is hard to imagine the Secretary approving an IRS strategic plan to which his Advisory Board plans to publicly object. My recommendation would be that you keep the Board clean of any decision-making

authority, so as to eliminate constitutional concerns, minimize the public relations fallout over the conflict-of-interest issue and obviate the need for Senate confirmation of Board members. As I indicated in the hearing, a prestigious advisory board with public reporting responsibilities on such questions as the budget and the strategic plan can have a significant positive impact on IRS governance. In any event, the various governance proposals seem to be converging rapidly, and I hope you can reach agreement on what should be a very useful IRS reform effort.

I hope you find these comments helpful.

Sincerely,

James W. Wetzler

cc. Donna Steele, Subcommittee on Oversight
Ken Kies, Joint Committee on Taxation

Mr. COLLINS. Thank you, gentlemen.

Mr. Goldberg and Mr. Weston, I have an interest in your comments about the particular proposal by the Commission—and yours, too, Mr. Wetzler. You had very interesting comments also.

You stated very firmly that this does not put the IRS under the private sector. Mr. Goldberg, go back through those steps, maybe the first four, once again, as briefly as you can.

Mr. GOLDBERG. The President has full authority to appoint and remove the board members. By statute, Code section 7801(a) will continue to vest responsibility for tax administration and enforcement in the Secretary of the Treasury.

Third, by statute, the Board will be precluded from any involvement in tax policy, tax administration or procurement and would have no access to tax return information.

Fourth, the statute specifically identifies its responsibilities as oversight and the duties it is asked to perform are those of oversight, not management.

This inability to distinguish between management and oversight is what plagues the Federal Government, Mr. Collins. The Treasury proposal was more micromanagement. The whole point of the Board's structure is not to have these people messing around in the day-to-day concerns. The point is to have somebody who will say, "What is it going to look like in 3 years, in 5 years, in 10 years?"

How can we deliver on that promise 3, 5, 10 years from now? What do we need to do to deliver on the future; and that does not exist today; and that is what this Board is all about.

Mr. COLLINS. Mr. Weston, you said you had been to several different regions visiting with employees and also supervisors. Did you find that the directors at those different regions were inconsistent in how they interpret and enforce? Did you find a lot of the de-

cisionmaking on what went on within a region that varies from region to region mainly made by the director himself or herself?

Mr. WESTON. No, I would not say I found that kind of inconsistency. I found loyal, conscientious people who had received directives or were subject to budgets that did not strike me to be in balance with the best of service and operations, and as a result, I think unfortunately we are compelled to generate a burden on taxpayers and unfavorable environments that in a private sector you would say are unacceptable, whether it is telephone calls being answered only 40 percent of the time, or backlogs in certain kinds of correspondence going back for months; or not withstanding the presence of a so-called taxpayer advocate.

I have seen cases where the same issue has reverberated 15 times without resolution in a local district because they did not have the authority to say, "This is what is right. Do it."

So, my answer to you is, there are darn good people, but the overall management practices, the budget as it was constructed, senses of urgency did not strike me as being up to the standard that I know many people in the service industries could help out on.

Mr. COLLINS. Do you want to comment, Mr. Wetzler?

Mr. WETZLER. Mr. Collins, could I comment on Mr. Goldberg's statement about what this proposal means. Because, I think it all boils down to who has the power to hire and fire the Commissioner.

You are dealing here with a matrix structure where the intention, as I understand it, is that the Commissioner reports to the Board with respect to certain matters and to the Treasury with respect to other matters.

But, the fact is right now the President appoints the Commissioner and can fire the Commissioner. The President is in frequent contact with the Secretary of the Treasury, so the Secretary is in a position to supervise the Commissioner because the Commissioner knows that the Secretary is likely to be very influential with the President in terms of the President's decision on whether to hire or fire. So the Commissioner responds to the Secretary.

Under a board structure where the board has the power to hire and fire, I cannot see any result other than the Commissioner being very, very responsive to the board and very unresponsive to the Secretary. Because the fact is, while the board is appointed by the President, the only way the President can, under this proposal, get rid of the Commissioner is to fire the board, wait until the Senate confirms a new board, and then the new board can fire the Commissioner.

As a practical matter, that is going to lead to a much more attenuated political accountability than exists when the Commissioner is reporting directly to the Secretary with authority delegated by the President.

So I think as a practical matter, this proposal does involve putting a group of part-time, private-sector individuals in control of the Internal Revenue Service.

Now, I am not saying you cannot find very dedicated people to perform this function, not that they would not do a good job. I am just saying, that is what the proposal involves, and I think it is a concern to many people.

Mr. GOLDBERG. Mr. Collins, could I clarify a couple of points.

Mr. COLLINS. Very briefly, because I know the other Members want to ask some questions.

Mr. GOLDBERG. First, both Mr. Wetzler and the Secretary referred to the Commission's recommendation that the Board have authority over pay and compensation and hiring of other IRS executives. That piece was deleted from the legislation that was introduced because Mr. Cardin expressed the kinds of concerns that have been voiced. I think it is important to clarify that this is an evolving process.

Second, if Mr. Wetzler thinks that the Commissioner would be so responsive to the Board because the Board hires and fires the Commissioner, one would assume the Board would be very responsive to the President, because the President hires and fires the Board.

Mr. COLLINS. Mr. Weston.

Mr. WESTON. Mr. Chairman, may I comment on one part of Mr. Wetzler's comments.

The way he put it one could think that hiring and firing is the crux of oversight governance and guidance. It is not. On every board I am involved in, intelligent, conscientious people, occasionally with diverse points of views, one of whom might be the chief executive officer, work back and forth on issues—and there is not a pervasive sense of, "Well, if I as a chief executive officer can be fired by that board member, I will kowtow to every suggestion the board member makes."

It does not represent the reality I live in in the four boards I am on.

Mr. COLLINS. Thank you.

Mrs. Johnson.

Mrs. JOHNSON of Connecticut. Thank you.

Mr. Wetzler, I was interested in your last comment. You said, "It all boils down to who has the power to appoint the Commissioner." If this report was changed so that the President did retain the authority to appoint the Commissioner as under current law, would you support it?

Mr. WETZLER. As I understand the legislation, if the Board no longer had the power to hire and fire the Commissioner, the Board would have two remaining powers. One would be the power to approve the IRS budget and send it to Congress. Under the legislation that has been proposed, the Board would have one budget and OMB would send up another budget, and Congress would then write its own budget—which is what it is going to do anyway.

Mrs. JOHNSON of Connecticut. My understanding is that the Board would approve the budget and then the Secretary would have to approve the budget before it went up to OMB.

Mr. WETZLER. I may be mistaken, but as I understand the legislation, the Board would approve an IRS budget request that would be transmitted directly to Congress, and OMB would approve its own recommendation for the IRS budget. So really there would be two proposed IRS budgets, if I understand the statute.

Mrs. JOHNSON of Connecticut. OK.

Mr. WETZLER. In any event, Congress is going to write the budget one way or the other. So Congress ends up with ultimate author-

ity over the IRS budget at the end of the day under any of these structures—which is what the Constitution provides.

So the remaining power of the Board would be approving the strategic plan of the IRS. That would be the one remaining piece of authority left in a private-sector board.

Mrs. JOHNSON of Connecticut. Does that disturb you?

My question was, if the President appointed the Commissioner, would you then support the report?

Mr. WETZLER. Oh, with the one remaining power?

Mrs. JOHNSON of Connecticut. With the Board approving the budget, but also approving the strategic plan.

Mr. WETZLER. I do not know. I would have to think about it.

Mrs. JOHNSON of Connecticut. I wish you would think about it. Because first of all, it is very important to me that the Board does make whatever statement it wants to make about the budget. Frankly, nobody controls what OMB is going to send forward, the Commissioner or the Secretary will send OMB what he wants, OMB will do whatever they want and they send that to the Congress. We all know that.

Furthermore, what OMB says to the Congress about the budget may or may not be taken seriously. It is a terribly haphazard, chaotic practice. It would be far better for the IRS, if under a formal process that Board is able to say, "This is what we think the agency needs," to both the executive branch and the Congress. It is one way of creating, greater budget continuity and consistency and support. So I do not object to that.

But you know, that is not a big power there. To approve the strategic plan, I think is good to have some outside eyes. But also, this issue of continuity, I think, is extremely important. Appointees in the executive branch at the top level are short-term folks. Bureaucracies are long-term folks.

The Congress is made up of short-term folks. If you are going to make change in any big organization, 5 years is rather a limited amount of time to make any change. You may have heard in preceding hearings our concern about the fact that they set the objective in 1993 to get 80 percent of filers electronic, but no plan was ever laid out. We never knew what their plan was. Nobody could ever hold them accountable.

We only really got the technology modernization problem visible because there was a change in the majority; and so the Oversight Chairman changed—and this is not to put down my predecessor, it is just that lots of things come on you. But you had GAO out there saying it was not working. You had lots of voices out there saying it was not working.

We really have to take some risk here in doing something more aggressive about government's ability to do what it knows needs to be done. Treasury cannot get the budget from OMB it wants. Why would it be able to assure we could manage a modernization process in the future, frankly, much better than we did in the past?

So, I think when you look at the history of advisory boards, it is not impressive. And then you look at the history of interagency cooperation, it can be terrific in the short term—advisory boards can also be terrific in the short term—but government's problem is constancy, the staying with things.

This is worth a shot, I think, and that is why I would like to have you think about it and get back to me. It is worth a shot to put in place people who come to the table with a different level of experience than anyone we have ever had come to the table; and over 5 years can just talk with the Commissioner.

The Commissioner has no one to talk to and I think it is interesting that Peggy Richardson, with whom I have worked very closely now for 3 years, and for whom I have great respect, has come out in favor of this plan. What does that tell you? She could only get the ear when there was press attention out there. That is when she got the ear.

Secretary Baker, Secretary—who is the other one? I have forgotten, anyway—Brady. So I think—I would like to know. I can see the concern about appointment.

So, if you would think about that and get back to me, I would be very appreciative.

Mr. WETZLER. On the continuity question, I have to confess that that one stumps me. Setting a 5-year term for the Commissioner does not guarantee the Commissioner is going to stay for 5 years. The way you are going to get Commissioners to stay for 5 years is to make the job more attractive. That, I think, is going to be a difficult task.

Mr. COLLINS. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman, and I thank all three of my colleagues. It is like a family reunion here of Commissioners. We all enjoyed working together and for the most part we agreed.

I would love to hear a little more interaction between the three of you. Fred Goldberg, you were not only a Commissioner, but Chief Counsel and the Assistant Secretary for Tax Policy. It is a rather unique perspective you bring to this.

Josh Weston is chairman and chief executive officer of a major and successful service company and on the board now, I understand, of four service companies. You bring a perspective from the board side that I think is probably unparalleled in terms of service businesses.

Perhaps the two of you can answer more directly some of Mr. Wetzler's concerns. Because he laid them out in his testimony with regard to how this would actually work. Let me just try to rephrase, if I might Mr. Wetzler, some of your concerns and have both Mr. Goldberg and Mr. Weston comment on them.

You say that the Board would be precluded from involvement in law enforcement, which—we have made that point over and over again, sometimes to deaf ears. I notice now the Treasury is making that with regard to their Management Board. So maybe we will get more receptivity.

Procurement decisions and tax policy. You have trouble imagining how that would possibly work. Mr. Goldberg, you have been there on both sides, how could that possibly work; and Mr. Weston, from a board perspective, how could that possibly work?

Mr. GOLDBERG. Mr. Portman, the most difficult issues the Commissioner faces are things having to do with systems modernization, with recruiting and retention policies as they relate to employees. How you change this law enforcement mentality, which is

important in certain respects, to a customer service orientation and other facets.

Those are hard things to do. Those do not involve law enforcement, they do not involve day-to-day case selection. They do not even get close to the universe of what is happening every day in the IRS. They are a different level of concern. That is where the IRS is falling down. That is where the system has breached faith with the people. That is not management.

Well, how does that happen? It means you talk to a board. I do not think you have to talk to the board once a month. I think once a quarter is fine, because these are long-term problems; and the discussions you can have with the types of folks we are talking about do not even get in the same universe as law enforcement and tax policy. They are management questions and strategic-direction questions. That is how it works.

It is nothing more than the ability to have a dialog with people who have been there and lived with it and probably know a hell of a lot more than you do. There is no more magic to it than that. That is how it works.

Mr. PORTMAN. Mr. Weston.

Mr. WESTON. I would like to mention something for the first time that has not come up in this proceeding that is very common in private-sector boards which I think addresses some of what we are talking about.

Every board I am on has created committees of the board that deal with certain areas of expertise. Each of those committees typically has about four board members, so you do not have to convene a committee of the whole where you cannot find a convenient time, and so forth.

Those committees are chosen for competence. Those committees quite apart from quarterly or monthly board meetings go deep on their subject, based on their expertise; and because they also have continuity, you have the same people there as counselors to the chief executive officer that are not forever flaunting power and threat of being fired.

I have heard the word "power" far too much here and I have heard practically nothing about the real world that goes on between the board and chief executive officers, which is counsel, advice, occasionally difference of opinion, and on rare occasions, the exertion of what one might call "raw power" let alone the threat of termination.

I can only tell you that from my experiences, chief executive officers value the help from diverse, other experienced people, who also have the continuity to be around at the beginning and the end of a project.

This whole business of accountability that I have heard many, many times is a play on words from many of the well-intentioned presenters. Accountability does not mean a darn thing, unless it is a person who is there at the beginning and the end, otherwise, you are not accountable. You get that in most private boards because the folks there are there far longer than appears to be the case in the public sector?

Mr. PORTMAN. Are you convinced?

Mr. WETZLER. I think that many boards function very well and are very helpful to their organizations. There are other boards that do not function very well. We are dealing with a public sector organization, not a private-sector organization, where there is in the private sector one bottom line of profitability that everybody understands and everybody agrees with.

In the public sector—I will just cite an example. Let us take the New York City school system, which is run by a board where the appointees come from six different places. It used to be run by a board that was controlled by the mayor. That was changed in the late sixties, and the school system has been heading downhill pretty much ever since, and nobody feels responsibility for the success of the school system. Everybody can always point to somebody else who has the ultimate authority.

So some boards do not function well.

Mr. PORTMAN [presiding]. If I could just make one point there. I think you heard the testimony earlier regarding whether there should be spaces reserved on the Board for certain interests. I think that is the situation in New York City, as I understand it.

I think you and other members of the Commission thinking through this—particularly on the governance task force—made a conscious decision not to have that kind of Balkanization of the Board. But rather, to set out these skills sets you need represented on the Board, and then have the Board work together to avoid those same kinds of problems.

I would just make one final comment; and that is that it seems to me that we are actually very close among this panel and this expertise is unbelievable and exactly the kind of expertise that one would hope to find on an oversight board—not that any of the three of you would be interested in serving or even asked, after this year-long process.

But, honestly, this is exactly what I think the Congress needs and the American people need. As I said to Secretary Rubin, it is really the institutionalization of the kind of expertise that the three of you bring to this and I hope you will stick with it and we can work out a proposal that would actually move the ball forward and achieve the goal we all share.

Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman. I too want to welcome the three Commissioners and thank you all for the benefit of your testimony and your service on the Commission.

Mr. Goldberg, earlier you pointed out your hope that the Oversight Board would be created because you say, ultimately, the President is going to be responsible for the makeup of that Board, anyhow.

Many of us who voted against the Commission's report and are supporting other legislation are supporting other legislation exactly for that reason. We see their effort to create another Board for the President to deal with as superfluous. The President ultimately now, along with the Treasury Secretary, is responsible for the operation of the IRS. To create another Board is just another layer between the American people and their government.

I just wish you could respond to that.

Mr. GOLDBERG. Mr. Coyne, I understand that concern. I will point out that the administration proposal creates two, not one. I think that is important. One is better than two; and I think small is better than bigger.

But, Josh put it now better than I have ever heard it; and it was—I think I did some good things as Commissioner. I know I did a lot of bad things as Commissioner; and the absence—the complete absence of what Josh was describing was to me, as I looked back on my experience, the biggest hole in what I did.

I thought Congress did good things in oversight in certain areas; Treasury did good things, but there was not what Josh was describing; and I believe that that Board, however configured, gives the Commissioner more ability to do his or her job; and I think maybe in cooler time, a little bit more distance, I believe probably that Board structure is the single best thing you can do to enable the Secretary to do his or her job better than it is being done now.

I think that those trade sessions that are going on right now are extremely important. That is where he belongs. I think that it gives the Secretary some institutional continuity that he can draw on or that she can draw on when they are appointed to the job.

When they get in their job, who do they talk to about the IRS? Right now there is no one. There is no one. What the Board says is that this Secretary can go to the Board and learn about the history, learn where the thing is headed, learn what ugly stuff is under the locks out there.

I think if we get a little bit less emotional about this, I think it does make it easier for everyone involved to do their job and leaves it ultimately where it ought to be, with the President and the Secretary. Absolutely, that is where it ought to end.

Mr. COYNE. I wanted to ask this question of the three of you on the panel.

Earlier we heard testimony from Congressman Cardin that he thought that the legislation as proposed by the Commission could be enhanced, that the legislation would be even better if the Board did not have the responsibility of appointing the IRS Commissioner.

I was wondering what your views are on that.

Mr. WESTON. I will give you a comment as an individual. We are no longer a Commission.

There has got to be a lot of give and take within the Congress, which is an area I have very little experience in. If someone were to say that as part of the give and take, we can retain all the positives—or most of the positives of the Commission's proposal, but it would be necessary to change to where the Board would float up two or three recommended names to the President and the President could pick one or the Board could float up one and the President decided yes or no on that name for the IRS Commissioner.

If that was the necessary compromise to get the other things here, I as a citizen would say it is a worthwhile compromise rather than saluting either the status quo or these two large Boards that Treasury is recommending—one with 20 people, one with 14 people and none of them would have the longevity, competence and accountability.

Mr. WETZLER. Mr. Coyne, I think the sides are relatively close together here. Everybody agrees that the governance of the IRS needs advice from outside experts who have strengths outside the traditional tax field.

The question is, do you want to give those people decisionmaking authority, or do you want to give them the ability to give advice; and to give both private advice and public advice, so there is more of a chance the advice is taken seriously.

I do not agree with the statements that have been made that advisory boards are always irrelevant. I think you have some very, very important advisory boards in the government right now that do have a major impact on the public discussion and on policy decisions because of the individuals who are on those boards and because of the tradition that their recommendations have been respected over the years.

So I do not have the same negative view of advisory boards if the right people are appointed to the board and if the board is giving its advice publicly as well as privately.

Mr. COYNE. Mr. Goldberg.

Mr. GOLDBERG. I have a "back to school" night tonight, Mr. Coyne. Can I be excused, please? [Laughter.]

My personal view is that there is an awful lot to be said for having the Commissioner appointed by the President. I think you need to look at it in terms of what retained role the Board had; and I think you need to look at it in terms of what other changes were made in the legislation.

But of all the concerns that have been voiced, I believe that is an honorable and appropriate concern to be expressed. I think a lot of this other stuff I do not really get, but I understand that issue; and if that were the only issue, and that led to a bipartisan piece of legislation, I would recommend that you do it in a minute.

Mr. COYNE. Thank you.

Mr. PORTMAN. Thank you, Mr. Coyne.

I would just mention one thing before going on to Mr. Houghton. You mentioned, Mr. Goldberg, that the Secretary has many other things to address; and that it is good that he is in meetings on international trade and so on.

As he arrived this afternoon, Chairman Archer jokingly said, "Sorry to have detained you. I hope you got some work done." He said, it was "Fine, Mr. Chairman. I worked on 'fast track.'" I think you and I would agree. That is appropriate. The Secretary should be working on fast track, if that is what he chose to do with the time he had waiting for me and other verbose Members of Congress to finish our comments.

He, as the Secretary of the Treasury is responsible for the domestic and international economy, and that is a big job.

Mr. Houghton.

Mr. HOUGHTON. Thank you. I will try not to take too long. Thanks, Mr. Chairman. Gentlemen, good to see you and listen to your testimony.

You know the thing that confuses me is that I think this board issue is way out of context here. I cannot understand the position of the Secretary. First of all he says, "You know a board has got

to meet more than once a month." Well, boards meet once a month. That is what they do.

They do not meet more because you cannot get good people. If they did meet more, they would be doing the job that management should be doing. Also, the concept of having diversity—you know, a long time ago, board used to be all internal. Then, not only did stockholders complain, but also management realized it was far better having outside opinions.

But you know this is really not a board as such. The two functions of a board is to choose a chief executive and to approve the money. This board does neither. It is really an advisory board.

But you know, it seems to me that all the issues have been focused on that and the question really is, how do we make the IRS more efficient, in effect. You do that by two things, in my mind.

One, you give them the tools to do the job. I am not sure we have addressed that. I mean, I was down here on the Grace Commission in 1982, and we did not give them the tools. We did not give Social Security the tools. We did not give the Department of Commerce the tools. We did not give other people the tools. We thought we did, but we did not.

The other thing really is to make sure that Congress stays out of the mix. I mean, Congress in this case is the board and the stockholders combined. I do not know whether combining under the Joint Tax is going to make that much difference. I hope it does, but if I was still in business and I was asked to come to work for the IRS, and Congress has done to the IRS what I have seen it do—because I used to be on the Oversight Committee of the Ways and Means Committee—I would not join the IRS. I would not do it.

So the question really—forgetting about the board—is, are we doing those things in the boiler room of the IRS to make it more effective. I would like to ask all of you gentlemen, but I would like to start with Mr. Goldberg, if I could.

If you were still the Commissioner, would this make you a more effective Commissioner adopting this report?

Mr. GOLDBERG. I think the combination of recommendations, Mr. Houghton, would make any individual a far better Commissioner.

You are absolutely right. It is a package. You need to do all of these pieces. At the end of the day it is giving the agency the tools to do the job. I believe that the package of recommendations here are the prerequisite to getting it done.

Mr. HOUGHTON. Mr. Weston.

Mr. WESTON. I would say that the proposal creates a structure and a process which might and hopefully would produce the tools; but the tools are not all designed by any stretch in our proposal. Let me take just one little example.

One of the things I learned from Peggy Richardson when she was IRS Commissioner and I was asking her, "How come you sometimes only answer 40 percent of the phone calls? Is not that horrendous?" She told me, "Well, all we got was a budget that allowed us to answer 50 percent, and therefore, that is what we had."

If we had a structure and a process that this board—whatever you want to call it, advisory, governance or something else—gave the IRS Commissioner the insight and the support that as a tax

service, damn it, you have got to have a budget and an expectation to answer 80 percent, 90 percent of the phone calls.

That same message was transmitted by this independent, knowledgeable board to the Secretary of Treasury and even Congress, my guess is that that structure and that process would have avoided a situation where allegedly there was a budget that only permitted answering 50 percent of the phone calls.

So I see us at the beginning creating a structure and a process. Hopefully the structure and the process and the people would then recognize and create the tools. Certainly folks who come from large service organizations, if they were on this board, they would understand that on day one.

Mr. HOUGHTON. The problem I see, of course, is that you can choose a good Commissioner, you can choose good people, you can have a different attitude and you can be able to hire and fire—get rid of the dead wood—but if you cannot invest the money in the equipment, it does not make any difference. I do not see that process attended to here.

Mr. WESTON. Is that a question addressed to me?

Mr. HOUGHTON. Yes.

Mr. WESTON. My observation and learning curve on this Commission included the following: First, for whatever set of reasons, there does not appear to be a correlation between proposed investments and the return that we get—equipment or otherwise—or the opportunity cost of failing to invest, which produces a different kind of hidden expense. There are no footprints of any kind of process or outcome that addresses that.

Second, in our voluntary, self-assessment tax system, we initially get about 85 percent voluntary, first round compliance—which compared to Italy and France is terrific.

On the other hand, a mere shifting of 1 percent in that compliance equates to $15 billion a year of Federal revenue. I have seen no process structure or support in the current environment to look at that and say what investments are necessary and/or would support creating a higher compliance when a mere 1 percent improvement would create $15 billion.

Everything about it is missing. Not that a new board would be magic, but the kinds of colleagues I see on my boards would be raising those questions on day one; and if it was necessary to give support or political cover to the IRS Commissioner who said, "I really need more money in computers or answering the phone," at least such an independent board would help OMB, Secretary of Treasury, Congress, whomever, feel more comfortable in authorizing an investment that made good return sense.

Mr. HOUGHTON. Mr. Chairman, would it be all right if I asked Mr. Wetzler what his comments might be. I know my time is up.

Mr. Wetzler.

Mr. WETZLER. The Commission outlined the vision of what tax administration ought to look like. You could agree or disagree with that vision. It did not then go ahead and ask the question, "How much does that vision cost?"

We thought about answering the question, but the political dynamic within the Commission was such that the judgment was made that since Congress was unlikely to enact anything that dra-

matically increased the IRS' budget, under the present circumstances, it would not really be a good investment of our time to try to ask how much the vision would cost; because if a recommendation was for a big increase in the budget, no one would pay any attention to it, anyway.

So, I think you made a very, very good point that outlining a vision is not the end of the story. You have got to ask, how much is it going to cost to achieve that vision; and see how well that aligns with the present level of resources that they have.

Mr. GOLDBERG. Mr. Houghton, I think it is important to turn it on its head, turn your question a little bit on its head.

Absolutely the kind of changes that the Commission is recommending—many of which the administration agrees with—I would not trust the IRS with the money. I think you have to do both.

I think you need to do this step before you spend more money. I think that once you do this step, I think it is imperative to give the agency the tools you are talking about.

Mr. HOUGHTON. Thank you.

Mr. PORTMAN. Thank you, Mr. Houghton and I thank the witnesses again for their time and effort, not just this afternoon, but through the last year in preparation for today; and we look forward to continued dialog.

We now have one final panel. Gentlemen, I thank you for your patience; and apologize for the congressional schedule on behalf of all of us.

We have Gene Steuerle, senior fellow, Urban Institute; Don Kettl, director, Center for Public Management, Brookings Institution and director of the Robert La Follette Institute of Public Affairs, University of Wisconsin-Madison; and we have Robert Stobaugh, Charles Edward Wilson Professor of Business Administration, Graduate School of Business Administration, Harvard University.

Gentlemen, I would ask that you try to keep your opening remarks to 5 minutes, certainly submitting your full statement for the record; and that we begin with Mr. Steuerle.

We probably are going to be called for a vote at some point during your presentation. Again, apologizing in advance for that, but we will see what we can get through.

Mr. Steuerle.

STATEMENT OF C. EUGENE STEUERLE, SENIOR FELLOW, URBAN INSTITUTE

Mr. STEUERLE. Thank you, Mr. Chairman, and Members of the Committee, and thank you for staying around at this late hour to listen to us.

Using the recommendations of the National Commission on Restructuring the IRS as a starting point, I believe this Committee has a real opportunity to improve tax administration. Although I will also talk to the issue of a board of directors, I have to express my regret that so much focus has been paid to it, because I think many of the other recommendations of the Commission, as well as some other ideas that are out there, are really worthy of considerable attention as ways to improve tax administration.

A very brief summary of my recommendations is as follows: The IRS administration can certainly be improved, as suggested in different draft bills if congressional oversight is streamlined. The simple fact is that IRS Commissioners are called to testify so quickly and so often, in addition to the time that they spend reporting to the Treasury and the Office of Management and Budget, among others, that they are put in a defensive position almost from day one, even before they have learned the job.

My second recommendation is that IRS be given greater authority to hire the necessary expertise and to move away from a salary structure that emphasizes management to the exclusion of other skills. Again, I think a recommendation like this is contained in the Restructuring Commission's report.

I think the personnel problems are especially severe in the areas such as computer science and statistics—that is the quantitative areas. Good computer scientists and statisticians are worth their weight in gold, but both personnel policies and IRS culture tend to require that higher salaries correlate mainly with the number of persons managed, not with knowledge and ability.

Third, the Restructuring Commission acknowledged that many of IRS administrative problems were due to the inordinate requirements placed on it by tax legislation.

The demand for changes in tax laws is not going to dissipate, but there are ways to give simplification a greater hearing and on a timely basis. The Commission suggested that the Joint Committee on Taxation report annually with recommendations to simplify tax law administration.

I suggest that a role also be give to IRS and Treasury as well. They have much of the expertise and knowledge that is necessary, and the Joint Committee staff is quite small. Perhaps a biannual reporting requirement should be placed on the executive branch, with a followup report by the Joint Committee, which could also assess strengths and weaknesses of those reports.

Fourth, I think we need to figure out ways to give simplification more attention during the legislative process. One recommendation I have made for years is that mockup tax forms be made available during certain stages of the legislative process.

Now I recognize that there has to be a rule or reason here, as time constraints are severe, but more can be done than currently. I give in my testimony some anecdotal pieces of evidence with respect to the Catastrophic Health Bill of 1987, where the introduction of mockup tax forms did indeed change that legislation, albeit, inadequately.

Finally, let me turn to the board issue that is so preoccupying our attention. In its report, "A Vision on the New IRS," the National Commission on Restructuring the IRS suggested that the executive branch governance of the IRS should be place with a new board of governors.

The Treasury Department suggests we set up a sort of super management board, with representatives from various other agencies, to try to monitor the IRS. After following the debate for some time now, I am convinced that both sides are partly right and both sides are partly wrong.

The new management board pushed by Treasury would probably create more problems than it would solve. But a new board of directors fits neither within the structure set up by the Constitution for the executive branch, nor can it provide clear lines of authority associated with private-sector boards.

Perhaps there is a better organizational structure—a compromise to these structures—that we could offer. The primary goal, it seems to me—the one emphasized most by the Restructuring Commission—is to raise the level of accountability, as well as oversight of the IRS.

This goal might be achieved better through some intermediate structure that still included private persons, with a greater stature and power than advisors or Commission members, but with less control than directors. Such individuals might serve more or less as trustees for the public, and share oversight and responsibility with Treasury and other parts of the executive branch to report on the success and failures, the capability and limitations of the IRS.

They would have no power, however, to make actual decisions for the executive branch. The purpose of the board would not be to turn accountability over to yet another group, but instead to hold more accountable those in the executive branch responsible for the IRS, for its successes and failures.

I give some evidence in my testimony as to the success of the Board of Trustees for the Social Security Trust Funds and their ability, both directly and indirectly to influence that process.

In conclusion, constructed well, I believe that a package of reforms can be assembled by this Committee to improve tax administration. Among the items I support most are: One, a streamlining of congressional oversight; two, greater authority within the IRS to hire necessary expertise, particularly in the quantitative areas; three, regular reports by IRS, Treasury and the Joint Committee on Taxation on taxpayer complexity and IRS enforcement difficulties.

I should add, by the way, that you have never really gotten those reports—at least in my long history in this town.

Fourth, the release of mockup tax forms during the legislative process; and finally, the selection of a small—not a large and unwieldy—number of private-sector individuals who, in the manner of the public trustees of Social Security, participate in a type of board whose sole responsibility is to monitor and report on IRS progress.

Thank you.

[The prepared statement follows:]

PROPOSALS FOR RESTRUCTURING THE IRS

Statement before the Committee on Ways and Means
United States House of Representatives

September 16, 1997

C. EUGENE STEUERLE
Senior Fellow

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PROPOSALS FOR RESTRUCTURING THE IRS[1]

Mr. Chairman and Members of the Committee:

Using the Recommendations of the National Commission on Restructuring the IRS as a starting point, this Committee has a real opportunity to improve tax administration. Although a large portion of my written testimony will focus on the particular question of whether a board of directors, or some alternative type of board, might be part of an effort to restructure the IRS, I will speak briefly, to a few other issues: streamlining Congressional oversight, setting salaries for IRS personnel, reporting on the complexity of existing and proposed law, and releasing preliminary tax forms, when feasible, as part of the legislative process.

A summary of my recommendations is as follows:

(1) IRS administration can certainly be improved, as suggested in different draft bills, if Congressional oversight is streamlined, and (b) IRS is given greater authority to hire necessary expertise and move away from a salary structure that emphasizes management to the exclusion of other skills.

(2) Some attention should be paid to one of the primary causes of the IRS' problems: inadequate attention in the legislative process to issues of simplification and enforcement. Thus, I support efforts to require (a) that the IRS, Treasury, and the Joint Committee on Taxation report regularly on taxpayer complexity and enforcement difficulties of both current and proposed laws, and (b) that mock-up tax forms, within bounds of feasibility, become a regular part of the legislative process.

(3) Both an IRS Board of Directors and the IRS Management Board favored by the Treasury Department could easily confuse lines of responsibility and involve individuals who would weaken, rather than strengthen, the decision-making process.

(4) The primary merit in the Restructuring Commission's arguments for a board, it seems to me, is for greater accountability. The focus on shifting responsibility outside of IRS and Treasury has tended to detract from this primary concern. As a reasonable compromise, I suggest that private sector individuals be brought into the process, but not in a way that would confuse lines of authority and responsibility nor confuse the role of advisor from that of monitor, auditor, or critic. In effect, I suggest that a small number of private sector individuals be asked to monitor IRS progress and partake in reporting publicly on its successes and failures. However, they should not be given decision-making power, and their role should be separate from that of advisors.

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[1]Portions of this testimony are taken from Economics Perspective, a column produced for Tax Notes Magazine.

In the remainder of my testimony, I provide some background on these recommendations.

Congressional Oversight

While I do not have strong opinions on the exact mechanism that should be adopted to streamline Congressional oversight, my experience in Treasury was that the constant reporting by top IRS officials to many parts of the Congress often so pre-occupied them that it detracted from their ability to focus on internal management. The simple fact is that Commissioners are called to testify so quickly and often -- in addition to the time they spend reporting to Treasury and the Office of Management and Budget, among others -- that they are put in a defensive position almost from day one, even before they have learned the job. Fewer testimonies and the ability to work through expert staffs, such as the Ways and Means Oversight Subcommittee, might not only give the Congress better information, but allow top IRS managers more time to do their job better.

Personnel Policy

The Restructuring Commission recognized that the personnel policies of the IRS, many of which are imposed from the outside, tend to prevent it from hiring the expertise it needs. This is especially true in quantitative areas, such as computer science and statistics. Good computer scientists and statisticians are worth their weight in gold, but both personnel policies and IRS culture tend to require that higher salaries correlate mainly with number of persons managed, not knowledge and ability. For instance, anyone who thinks that the IRS or the government's problems with computers is going to go away as long as agencies cannot hire top notch computer experts is crazy. Note, however, that these types of problems are not unique to the IRS.

Reporting on IRS Ability to Enforce Tax Policy

The Restructuring Commission acknowledged that many of IRS' problems were due to the inordinate requirements placed on it by tax legislation. The demand for changes in federal tax laws is not going to dissipate, but there are ways to give simplification a greater hearing and on a timely basis. The Commission suggested that the Joint Committee on Taxation report annually with recommendations to simplify the tax law and administration. I suggest that a role also be determined for IRS and Treasury, as well. They have much of the expertise and knowledge, while the Joint Committee staff is quite small. Perhaps a biennial reporting requirement should be placed on the Executive Branch, but with a follow-up report by the Joint Committee which could also assess weaknesses and strengths these earlier reports. Some effort must be made to insure that these efforts are not token and that, over a course of several years, they are comprehensive in nature.

The Release of Tax Forms During the Legislative Process

One needs also to figure out ways to give simplification more attention during the legislative process. One method would be to designate someone from the Joint Committee or the Treasury to sit at the witness table during markup and report only on simplification aspects. Another suggestion

I have made for years is that mock-up tax forms be made available at certain stages in the legislative process. I recognize that there has to be a rule of reason here, as time constraints are severe, but more can be done than currently. My one anecdotal piece of evidence goes back to the debate over Catastrophic Health in 1987, when as a Deputy Assistant Secretary of the Treasury I was able to get some forms up to Congress to show just how complicated were going to be the new premiums/taxes it was starting to enact. The effort did lead Congress to alter the legislation in conference, but insufficiently. This example demonstrates that releasing forms can improve the process, but certainly does not suggest that it would or should be the sole determinant of final outcomes.

A New Board Structure: The Two Sides

In its report on "A Vision for a New IRS," the National Commission on Restructuring the IRS suggested that executive branch governance of the IRS should be placed with a new Board of Governors. Tired of the inability of the Executive Branch and the Treasury Department to solve many of IRS' problems, the Commission sought to set up a new governance structure that would hold someone more firmly responsible for its successes and failures. The Treasury Department vehemently opposed this suggestion, arguing among other matters that this type of board would usurp the powers of the Executive Branch. It suggests instead that a sort-of super management board, with representatives from various other agencies, to try to monitor the IRS.

After following the debate for some time now, I am convinced that both sides are partly right and both sides are partly wrong. The new management board pushed by Treasury will probably create more problems that it will solve, but a new Board of Directors fits neither within the structure set up by the Constitution for the Executive Branch nor can it provide the clear lines of authority associated with a private sector board. Perhaps there is a better organizational structure than offered by either of these options. The primary goal, as set by the National Commission, should be to raise the level of accountability, as well as oversight, of the IRS. This structure must be able better to reward success and to penalize failure.

Both the National Commission and the Treasury make a strong case for their respective positions. The National Commission seeks an efficient, service-oriented, IRS with the authority and management oversight to get its job done well. The members of the Commission struggled with the failures of both Congress and the Executive Branch and argued that the current governance structure is often reactive rather than strategic. Within the Treasury Department, they noted that much attention is paid to matters of international economic affairs, economic and tax policy, and other fiscal matters. Attention to strategic issues within IRS received secondary attention both because of other priorities and because the IRS grew to gain a fair amount of independence in recent decades out of concern over attempted interference from politicians such as Richard Nixon. The Commission does note that some new focus was given to the IRS over the past year, but it does not see how this is guaranteed for the future, and it does not believe that groups such as the Modernization Management Board (MMB) "provide the necessary focus, expertise, and continuity."

The Board of Directors, as proposed, would not have any control over tax policy, but it would have overall responsibility for IRS governance, including appointing and removing senior leadership. It would review and approve of many of the Commissioner's recommendations on business and organizational plans and budget. Its seven members would include 5 individuals from the private sector, along with the Treasury Secretary and a representative from the National Treasury Employees Union. Very importantly, it would be required to provide annual stewardship reports to the public.

Representatives from the Executive Branch, along with a former head of tax administration for the State of New York, defended recent Administration efforts. They pointed to an expanded IRS Management Board that would include representatives from relevant Executive Branch agencies and to the establishment of an IRS Advisory Board that would provide other expertise. Very importantly, it, too, would issue an annual report on the IRS.

Treasury's problem with a board of directors, however, are several-fold. It questions whether an independent board is consistent with accountability to an elected President and cited related "constitutional" concerns raised by the Justice Department's Office of Legal Counsel. It also cites a GAO report that concluded that boards did not run well large government organizations and that "the board form of organization has not proven effective in providing stable leadership [or] in insulating decisions from political pressure..."

Each side has merit. Treasury's attention to tax administration has always been weak. There is nothing in most traditional executive branch committees or advisory committees that insures that greater attention would be paid, absent such bad press and political pressure as exists today. Despite the extra attention given to the IRS by this particular Administration, it has still ended up with a more complex tax Code than when it started, has been unable to solve many of IRS' problems, and, like all Administrations before it, puts its tax policy and administration staffs into public positions of having to defend the President's legislative efforts, no matter how good or bad for tax administration. Even if a new structure is not perfect - - and none is -- realignment of responsibilities often can serve as a catalyst toward doing new things and operating more efficiently.

By the same token, management by committee is almost never efficient, and the Constitutional creation of an executive branch was designed partly to avoid that problem. Donald F. Kettl, director of the Brookings Center for Public Management, reinforces this view when he asserts that private management "fails to take account the problems of conflicts of interest, accountability, and even weaker governance that such a system of part-time private board members would inevitably entail."

An Alternative Structure

Perhaps there is a better organizational structure than either of the options on the table right now. The primary goal should be to raise the level of accountability, as well as oversight, of the IRS. The goal might be achieved through some intermediate structure that still included private persons with greater stature and power than advisors or commission members, but less control than directors.

Such individuals might serve more or less as "trustees" for the public and share oversight responsibility with Treasury and other parts of the Executive Branch to report on the successes and failures, the capabilities and limitations, of the IRS. They would have no power, however, to make actual decisions for the Executive Branch. The purpose of the board would not be to turn accountability over to yet another group, but, instead, to hold more accountable those in the Executive Branch responsible for IRS, both its successes and failures.

My own experience on various advisory and interagency committees leaves me skeptical so far that either side has come up with an optimal solution. As an organizer of one effort at tax reform -- including many simplification efforts that did not survive the legislative process -- I was greatly dependent upon IRS efforts and contributions. That experience taught me that tax policy and administration are necessarily intertwined at almost every single level and in almost every single provision of the tax Code. I simply don't see how those functions can be easily separated. A significant portion of IRS problems today, moreover, involve tax policy, not administration. As much as I object to the inattention given to tax administration, I would probably object even more to giving it inordinate attention relative to other tax policy goals such as equal justice and efficiency. Since a balance must be reached, it must be made by someone who has responsibility for both policy and administration -- and that person, sometimes for better and sometimes for worse, is the Secretary of the Treasury.

By the same token, I have also served on innumerable interagency committees and almost none were effective. Large ones, such as the management board suggested by Treasury, are especially unwieldy. Inevitably these groups are composed of many individuals with only scant knowledge of the subject matter. Does anyone, for instance, really think that the relatively tiny office of the Vice-President typically will contain anyone with more than superficial knowledge of the IRS. The consequence of these interagency groups is often that real policy or administrative reform becomes harder because it isn't going through the best or most knowledgeable reviewers available. Indeed, these types of committees can severely deter IRS commissioners or Secretaries of the Treasury from making necessary decisions in a prompt and efficient manner. They also will take up the very scarce time of those top tax administrative officials who need to be running the agency, and who already spend an inordinate amount of time worrying about the next public testimony or statement to several committees of Congress, the Secretary of the Treasury, the Office of Management and Budget, and others to whom they already report.

One of the best examples I know of useful outside input into government comes from the "public" trustees of Social Security. These private- sector trustees represent the public and their job is primarily to report, as peers with several cabinet officials, on the status of the trust funds of Social Security. These public trustees have been successful over the years in making sure that the assumptions, data, and information in those reports are accurate and in no small way have brought Social Security to the front of the public debate. A few years ago, the public trustees went so far as to publish their own summary because they felt that the traditional reports left too much hidden from the public.

It is not at all clear that IRS problems are due to inadequate designation of responsibility. The Commissioner is the principal officer and she reports to the Secretary of the Treasury, who reports to the President. The lines of authority are clear. The principal tensions in lines of authority are twofold. First, the Congress really serves as a board of directors who constantly change the rules for tax administration, then blames the IRS because it cannot enforce all of these laws. The second tension is with personnel rules coming out of places like the Office of Personnel Management (as well as Congress). These tensions aren't going to be solved by new boards, but they might be alleviated if outsiders can report openly on them as problems.

Despite these tensions, it's not so much responsibility that causes problems, it's accountability. When things aren't working well, when the Congress is about to put on new unenforceable provisions, when Office of Personnel Management is a major obstacle to progress, when IRS itself fails, the responsibility is not all that hard to determine. But someone has to hold the officials accountable.

In a democracy, it primarily the citizen who holds officials accountable. But to do the job well, reliable sources of information are required. It is here that the current system breaks down. The Commissioner often feels like a pawn in reporting to various authorities and, constantly on the defensive, seldom will seek out and admit internal failure. The Secretary of Treasury won't report on a Congress making impossible tasks for tax administration if the President is about to sign a bill. The President won't point to his personnel management practices as a failure unless he can blame then on the last administration. Finally, the Congress will be the last to accept accountability for IRS failure.

Is compromise possible? It seems to me that the principal goal sought by the Restructuring Commission in suggesting a board of directors was to put some accountability back into the system. Greater accountability probably does require some private sector officials who can report to the public, without being held back by the political constraints and self-interest of existing officials. But a board of directors would have substantial self-interest and would itself be defensive of its own efforts.

If we can figure out a way to give that fuller reporting responsibility to private sector reviewers -- call them trustees, advisors, or a board of something or another -- then public officials would be held more accountable. Strictly speaking, then, a board of outside directors would not be required, and new confusion of lines of authority and responsibility avoided.

Conclusion

Constructed well, I believe that a package of reforms can be assembled by this Committee to improve tax administration. Among the items that I support most are (1) a streamlining of Congressional oversight, (2) greater authority within IRS to hire necessary expertise, especially in quantitative areas, (3) regular reports by IRS, Treasury and the Joint Committee on Taxation on taxpayer complexity and enforcement difficulties, (4) the release of mock-up tax forms during the legislative process, and (5) the selection of a small (not large and unwieldy) number of private sector individuals who, in the manner of the public trustees of Social Security, participate in a type of "board" whose sole responsibility is to monitor and report on IRS progress.

Mr. PORTMAN. Thank you, Mr. Steuerle.
Mr. Kettl.

STATEMENT OF DONALD F. KETTL, DIRECTOR, CENTER FOR PUBLIC MANAGEMENT, BROOKINGS INSTITUTION; AND ROBERT M. LA FOLLETTE INSTITUTE OF PUBLIC AFFAIRS, UNIVERSITY OF WISCONSIN-MADISON

Mr. KETTL. Mr. Chairman, thank you very much. It is a great pleasure to appear before you this afternoon and to note the tre-

mendous service that this Commission has done to the nation in outlining the critical problems that the IRS simply must begin now to attack.

It is in many ways precisely right on the problems that need to be solved. So you need to try to improve the level of expertise that the IRS has, and probably even more importantly, you need to try to restore public trust in the Internal Revenue Service and in the process of collecting the nation's tax revenue.

My concern with the report focuses principally on the proposal for the governance board. There is an assumption that the problem is in some way structural. My view, on the other hand, is that it is not primarily a problem that needs to be solved with a change in structure, it is a problem in management. Put differently, what can we do at the top to ensure that the quality of services that we want at the bottom happens? That in my mind is not primarily a structural problem. It is one that requires fundamental changes in management that I hope to outline shortly.

There are, though, a couple of concerns that I want to outline with this governance board that has been proposed, having to do with the conflict of interest issue that we have heard constantly today. I simply want to underline many of the concerns that have been raised.

The concern in a nutshell is this: If there is a discussion about the level of budget that ought to be supplied for, say, the audit function of the Internal Revenue Service, there is no way to consider the level of auditing in the budget without somehow raising questions about who will be audited and at what level.

The degree to which there may, for example, be private-sector people representing simultaneously some companies and, say, the IRS, in the process of sorting through these decisions, there will inevitably be questions about the way in which those priorities are set. This is, I think, a serious concern that is just simply unresolvable.

The second concern I have is what I view as a continuing false distinction we have been making between management, policy, and oversight. I have been in the public management business for 20 years—there are those who have been doing it a whole lot longer than I have for the last century—the one point that comes through unarguably is the fact that the distinctions among oversight and management policies are simply false.

For example, consider the IRS' oversight policy—it is budget policy. Its overall policy toward audits will be determined by how much money is supplied and how that money is spent. We can talk about broad policy goals, but it is only in the implementation of those goals—by the money actually spent—that determines what the policy actually turns out to be.

So, seeking to try to have an arbitrary line separating policy and administration in many ways flies in the face of the realities of the implementation of tax policy.

The second thing—and this is a piece of evidence that was supplied to me by experts in tax policy in New Zealand—is how important the integration of the management and policy functions are, especially in providing feedback into the system. For all of the reasons my colleague just suggested, we need to have early warnings

about changes. We need to have quick feedback on proposals to the tax forms.

What we need in the process of doing that is some way to make sure that policy and administration are more integrated, and not more separated.

I guess my conclusion is that in many ways we know precisely what it is that we need to do to fix the IRS. The problem is in figuring out how to get it done. My concern is that I see nothing in the fundamental structural change that will ensure that actually happens.

We have been talking about accountability, which is really the nub of the problem. The nub of the problem really has to do with trying to find a way to make sure that what it is we want to have happen at the top occurs at the bottom of the tax system.

My concern, ultimately, with the proposed board—for that matter, the administration's boards—is that there is no guarantee that the current system will get the changes that we need. There is no guarantee that having new boards will produce the changes that we want either.

What it is that we know from the nation that has experimented more with this than any other nation in the world—New Zealand—is that they have focused more on governmentalizing the policy side, and producing incentives for improved management at the managerial side, as well. Building that linkage is critical.

How to go about doing this? I think that it is clear there has to be top-level leadership and support from both the Congress and the Treasury, from the Secretary on down—from this Committee on down—to ensure that what we want to have happen in tax policy happens.

The second is that it is terribly important to get outside advice for all the reasons that we have heard from other witnesses earlier today. But more importantly, I think we need to find some way—as we have heard—to ensure accountability and continuity in the process.

One way of doing it is to restructure. There is another way through people. But I think the more important lesson—and this comes through quite clearly in the experiences in Australia and New Zealand—is to focus on performance-based measures.

That is, set out measures very clearly, goals that are unarguably clear for everyone about what it is that ought to happen and how. How many call ought to be answered? How long should it take? What kind of feedback should there be?

The fact that I have here before me some of the performance measures that the Australian and New Zealand tax services have established for doing that.

So my conclusion, I think, is that there are ways of doing this—but these ways are fundamentally procedural, though not structural. They have to do with leadership and management. They are not primarily organizational. Restructuring will not solve them.

In my view, the only way to guarantee that we pay attention to what we must pay attention to is to ensure we have solutions tailored to the problems, and the problems in the end require focus on performance and performance based management.

[The prepared statement and attachments follow:]

TAXING REFORMS: Assessing the Plans to Transform the IRS

by Donald F. Kettl

The Internal Revenue Service is unquestionably a troubled government agency. Tax collectors have been wildly unpopular since biblical times, but today's unhappiness with the IRS goes far beyond even great American traditions like dumping tea into a harbor rather than paying a tax. Incorrect answers to citizens' tax questions, long telephone waits to get any answer at all, tax employee snooping into confidential files, and billions poured into a tax system modernization that the General Accounting Office has called "chaotic"—these nagging problems have made the IRS perhaps the federal government's least-favorite agency.

Though most of its detractors acknowledge that the IRS has made real strides in recent years, its continuing difficulties prompted Congress in November 1995 to create the National Commission on Restructuring the Internal Revenue Service. The commission's June 1997 report boldly proclaimed *A Vision for a New IRS*. The report is bold, especially in self-consciously admitting Congress's complicity in the complexity of the tax code and the unpredictable funding that makes long-term IRS planning impossible.

However, the report is also fundamentally flawed in its most significant recommendation: a transformation of IRS's governance. It confuses the undeniable need to strengthen the IRS's leadership with a plan to turn the agency over to a board dominated by private officials.

The Commission's Recommendations

The commission's central recommendation is to create a seven member board of directors to govern the IRS. It would be charged with setting basic management strategy and overseeing IRS operations. Its members would be appointed by the president, confirmed by the Senate, and removable by the president. Five of the commission's seven board members would come from the private sector; they presumably would be drawn from the ranks of corporate leaders.

The commission proposed the new board for two reasons. First, the commissioners were concerned that, despite mounting problems, top Treasury officials had not stepped in strongly enough to correct them. The commission concluded that senior Treasury leaders naturally concentrated on the broad questions of financial policy and invested too little time in the IRS's management. Second, the commissioners believed that private-sector-style management techniques—most notably, the boards of directors that set broad strategic policy for most private companies—would provide a firmer hand and clearer guidance for correcting IRS's difficulties. "The current IRS governance structure is often reactive rather than strategic," the commission argued. Putting the Treasury Department clearly in charge of developing tax policy, but removing it from administering it, the commission concluded, would solve that problem.

The proposal represents an understandable reaction to critical problems, but it is an unwise, unaccountable, and probably unconstitutional transfer of public authority. Quite simply, throughout American history there is no precedent for vesting such substantial governmental power in the hands of private citizens. The closest analogue in all of the federal government, in fact, lies in the boards at each of the twelve regional Federal Reserve Banks. Like the proposed IRS board, their boards are composed of leading private sector officials and oversee the

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management of the reserve banks. But unlike the proposed IRS board, they do not exercise governmental functions. At each regional reserve bank, a president (acting in the private-sector model) manages operations; 5 votes on the Fed's key policymaking body, the Federal Open Market Committee, rotate among the 12 reserve bank presidents. In the end, however, government officials—the members of the Federal Reserve Board—dominate Fed policymaking. Government policy making remains principally in governmental hands.

The Fed's system of governance has been roundly criticized over the years for vesting too much power in private bankers. The proposed IRS would place vastly more governmental power into private hands—and pose enormously greater problems of accountability. The commission countered that the "duties of the Board . . . are those of governance rather than management, a distinction that is practiced effectively by most large corporations." This, however, is a foundation of sand on which to build such sweeping reform, for several reasons.

Inevitable Conflicts of Interest

The report notes that the board members would be subject to the government's conflict of interest safeguards to prevent the reality, or the appearance, of conflicts of interest. With the proposed board, however, such conflicts of interest are not just possible—they are inevitable. Sooner or later (probably sooner) every private sector member would face a vote that would unavoidably affect the operations of the business or organization from which they came. The only option in such cases would be for board members to recuse themselves from the decision.

Such frequent recusals would surely deepen public distrust in the IRS and undermine its new board. If disclosed conflicts are rampant, taxpayers are likely to wonder how much deeper implicit conflicts might run. Like Caesar's wife, the IRS cannot afford even a hint of scandal, yet routine recusals would fuel recurring worries.

Moreover, it would be impossible for board members to recuse themselves from all conflicts, whether real or potential. Suppose board members recused themselves from decisions with direct implications for their company. What should they do about the next round of decisions on the budget, management strategy, or information technology that affect the part of the IRS that caused the company tax troubles to begin with? If board members recused themselves when second-order conflicts arose, within a short time all board members would find themselves disqualified from most key votes, and the board would be rendered impotent. If board members did not recuse themselves, they would undermine public confidence in the reinvented IRS. Either way, the conflict-of-interest trap would destroy the new board.

Weak Leverage by Part-Time Board Members

The board members would be part-time officials, assisted by a small permanent staff. Board members could not possibly exercise the responsibilities that won their appointment to the board and devote full energy to the IRS's problems. The Federal Reserve Board has a powerful staff, but it has an even more powerful, full-time board of government officials to supervise it and keep it in check. No part-time board could possibly exercise the same control. If the board exercised substantial power, the real power would rest in the board's staff. If the staff were not so powerful, the board would find it difficult to exercise effective oversight over the IRS. Either way, governance would suffer.

Accountability

The 16th Amendment to the U.S. Constitution gives Congress the power to impose income taxes. But long-standing constitutional practice dictates that Congress cannot delegate the exercise of governmental power to a private entity. That, of course, is just what the board is—a private and independent entity vested with governmental power. Its very existence would be open to serious constitutional question.

Moreover, the commission attempted to deal with the difficult and critical questions of where responsibility rests by drawing two sharp boundaries. One boundary was to rest between

policymaking (the responsibility of Congress and top Treasury Department officials) and governance (vested in the new board). The other boundary was to rest between governance and policy execution (vested in the commissioner of the IRS and the service's staff).

There are two fundamental problems with such division of responsibility. One is the question of how responsibility would truly work. The model envisioned by the commission is the corporate board answering to its stockholders. But, as the late political scientist Wallace Sayre would have pointed out, the two approaches are similar in all unimportant respects. Congress is not a group of stockholders, but (with the president) it is the ultimate source of the IRS's policy and the ultimate power to ensure accountability. The commission sought to solve the central problem of accountability for tax policy in a democracy by prescribing precisely the wrong model.

The other is the question of how to separate broad strategic guidance from tactical management decisions. Both theorists and public officials, in the United States and around the world, have fought for more than a century on how to divide policymaking from its execution. This is the single most difficult problem in public management. To solve this problem, the commission wrongly assumes that this quintessentially public problem can be solved by private management approaches—and it fashions an approach more distant from real democratic accountability than any entity in American government.

If the commission had sought to maximize the conflicts in the board's role, it could scarcely have done a better job. It has proposed a private board to perform a public function. It has created a board likely to constantly trip over itself in conflicts of interest. And in putting the board at the critical crossroads between policymaking and policy implementation, it has put the board in a constitutional never-never land in which the only options are confusion over its role and constitutional challenges over its function. It would be hard to create a messier solution for a more important puzzle.

Toward Real Reform

The IRS unquestionably needs deep reform—but it requires reform that will solve its most important problems, not make them worse while creating new ones, which is just what the commission's governance recommendations would do. The IRS needs stronger leadership connected directly to the Treasury Department's top leadership. It is truly reasonable, as the commission suggests, for the IRS to provide more responsive, efficient, and accurate service to taxpayers. However, contrary to the commission's conclusions, the IRS can never be a customer-centered financial service organization like a mutual fund or a neighborhood bank.

What could improve the IRS's governance and strengthen its leadership? Although IRS is just one agency among many in the Treasury, its employees dominate the department's work force. In implementing tax laws, they have tended to labor in relative obscurity, apart from the high financial policy debates that preoccupy top Treasury officials—until problems or controversies within the IRS demand their attention. A policy of laissez-faire except for damage control can never provide the effective political leadership that the IRS needs. The critical problem, as the commission identified, is bridging the gap between policy and execution. The commission's plan of bridging the gap with a private board is distinctly ill-considered. So too is its basic plan to vest key management decisions in a board. Boards are excellent in providing a forum for consensus building and gathering ideas, but they are poor for framing management strategy.

A far more effective effort would build on a three-pronged strategy. First, the IRS needs strong political leadership from the Treasury Department's top ranks. The leadership that the IRS needs can come only from the department's secretary. The needed strategic thinking and departmental support ought to be coordinated by the department's deputy secretary, operating vigorously as the chief operating officer envisioned by recent reforms proposed for the top levels of cabinet departments. Together they can ensure that the IRS is steered in the right direction.

Second, the Treasury Department ought to rely on its new IRS Management Board for strategic thinking. It would be a mistake for the IRS to report to this board, but its diverse Treasury Department members can provide the high-level guidance that the IRS badly needs.

Finally, the IRS commissioner and the agency's top staff ought to be hired on five-year management contracts, held strictly accountable for the agency's performance, and rewarded for superior achievement. The commissioner ought to bring substantial management experience to the position; the job in its essence is far more managerial than policy making. The management contract approach has worked well for such positions in the management reforms implemented in the United Kingdom and New Zealand. It would provide both the professionalism and accountability that the IRS needs.

No matter what reforms the IRS pursues, of course, they will never stick unless Congress fully supports the effort. The complexity of the tax code is the product of legislation, not the whim of IRS lawyers. The difficulty of answering taxpayers' questions is much more the product of preferences Congress has woven into the tax code, not incompetence of IRS employees. The difficulty of planning long-term investments in new technology lies in part with the IRS's own capacity but far more in Congress's unwillingness to make a plan and stick to it. No reform can transform the nation's tax collections until Congress first makes clear its own commitment to a clear, fair, and effective revenue system.

But with congressional support and sharply focused reforms, the IRS can be significantly improved. Taxpayers will never like its functions, love its employees, or find the same level of satisfaction they seek in their banking services. But having the IRS report to a board dominated by private interests is likely to push the IRS even deeper into the problems it is struggling to escape.

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September 24, 1997

The Honorable Bill Archer
The Honorable Charles Rangel
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515-6348

Dear Congressmen Archer and Rangel:

It was my great privilege to appear before your Committee on September 16 to testify on proposals to reform the governance of the Internal Revenue Service. The IRS is in serious need of reform, and your hearings are performing a great public service in focusing attention on the critical issues.

Several issues came up in the course of the hearing that, I believe, deserve further attention. In particular, there was an extended debate on the role that a private advisory committee might properly play. In response to those questions, I have drafted supplementary comments to my testimony, and I ask that they be inserted in the record following my testimony.

These truly are critical issues. If I can be of any further service to the Committee, I hope you will call upon me.

Sincerely,

Donald F. Kettl
Director

Supplementary Comments for the Record

Recommendations of the National Commission on Restructuring the IRS

Donald F. Kettl

Director, Center for Public Management
The Brookings Institution

Director, Robert M. La Follette Institute of Public Affairs
University of Wisconsin-Madison

In the course of the Committee's September 16 hearing, many questions arose about the proper role and function of the board proposed to improve IRS governance. Let me explain which functions are, in my opinion, appropriate and which are not for such a board.

Role

The hearing featured extensive debate on whether the proposed board was a management, oversight, advisory, or some other kind of board. H.R. 2292 christens it "the Internal Revenue Service Oversight Board" [Sec. 101(a)]. The title, of course, does not really matter at all. The critical issue is the board's function; "by their works ye shall know them" is the applicable adage. The debate before the Committee therefore has meaning only in terms of what the board would do.

Function

The hearing revealed widespread agreement on the need for at least one external board. Indeed, the proposal by Rep. Charles Rangel would create two boards. However, the hearing also revealed broad disagreement on which functions such a board could properly exercise.

H.R. 2292 stipulates that "The Board shall have no responsibilities or authority" to deal with "the development and formulation of tax policy" or "specific law enforcement activities of the Internal Revenue Service" [Sec. 7802(c)(2), as contained in Sec. 101 of the bill]. Nevertheless, H.R. 2292 gives the board authority to:

- Review and approve the IRS's strategic plans.
- Review the operational functioning of the IRS.
- Select, appoint, and remove the IRS commissioner.
- Review and approve the IRS's budget.

Such functions might be labeled in many different ways, but one point is unarguable: Any entity exercising these functions would have clear authority over the IRS and its operations. Moreover, although many supporters of H.R. 2292 have contended that the bill separates tax policy from its administration, in reality tax policy *is* its administration. Who gets audited for which provisions of the tax code, how IRS runs its computer-based tax return review system, and how many telephone service operators are made available inevitably defines the very fiber of tax policy.

Thus, the board as defined in H.R. 2292 would unquestionably exercise authority over the IRS, and this authority would shape the IRS's implementation of tax policy. No matter how this role is labeled, the function is clear. The Secretary of the Treasury might be responsible for submitting the IRS budget to OMB and to the Congress. But in all cases the board would like directly in the IRS chain of command, between the president and the Secretary of the Treasury. Its authority is clear and unmistakable.

Putting such public authority into the hands of a board dominated by private citizens, as I noted in my testimony, is unprecedented, unwise, and fundamentally flawed. Quite simply, no private board should be allowed to exercise such public authority, for the reasons I outlined in my testimony: inevitably conflicts of interest, weak leverage by part-time board members, and a fatal lack of accountability.

What Functions Might Properly Be Given to a Private Board?

There is near-universal agreement on the need for a non-governmental board to improve the management of the IRS. What functions could such a board properly exercise?

A private board could provide invaluable guidance to the IRS on its operations and political support for making needed changes. Experienced private officials could supply, from their experience, ideas about focusing IRS's strategic planning. They could sharpen the IRS's functioning and provide guidance about transforming the agency's organization culture. They could identify leading candidates for high IRS positions. They could review and make recommendations about the agency's budget. All of these functions would be invaluable. The IRS's troubles, moreover, have demonstrated just how badly additional guidance is needed.

However, no private board should ever be allowed to enter into the IRS chain of command. A board could review the IRS strategic plan, but it should not be allowed to approve it. A board could review the operational functioning of the IRS and make recommendations for improvement, but it should not be allowed to set managerial policy. A board could recommend candidates for IRS commissioner, but it certainly ought not select, appoint, or remove the commissioner. A board could review and make recommendations on the IRS budget, but it should not be allowed to approve it.

There is a clear and bright line between the proper and non-proper functions such a board can play. *It can—and should—advise the IRS on its operations. It cannot—and should not—exercise authority over those operations.* By both constitutional practice and good management practice, there must be a clear line of authority from the Secretary of the Treasury through the IRS Commissioner to the IRS's front-line workers. The creation of such a private board with some, but not all, management authority over the IRS is bad law because it confuses and diffuses accountability. It is bad management because it muddies the question of just who is in charge of what.

H.R. 2292 ought to be amended to change the board's function from "review and approve" the IRS's strategic plans and budget to "review." It ought to be amended to change the board's function from "the selection and appointment, evaluation, and removal of the Commissioner of Internal Revenue" to "recommend candidates for" and "evaluate the performance of" the Commissioner.

The Case for the Board

A new advisory board ought to be created to bring the IRS strong ideas from private sector experience. The functions of such a board, however, ought to be crystal-clear: The board ought to play an advisory role and ought not to exercise any authority over IRS operations.

The arguments against the board proposed in H.R. 2292 does not rest on an inability to find experienced public-service-minded members. The composition of the National Commission on Restructuring the IRS provides ample evidence of the rich supply of potential board members. Rather, the arguments against such a board depend solely on its functions—on the need to retain public authority in public hands, and on the need to provide clear and unambiguous management direction to a troubled agency.

Creating a new private-sector advisory board would prove an invaluable first step in helping the IRS turn around. I enthusiastically support the creation of such a board—with clear advisory functions, not with authority over the IRS.

Mr. PORTMAN. Thank you, Mr. Kettl.
Mr. Stobaugh.

STATEMENT OF ROBERT B. STOBAUGH, CHARLES EDWARD WILSON PROFESSOR OF BUSINESS ADMINISTRATION, EMERITUS, GRADUATE SCHOOL OF BUSINESS ADMINISTRATION, HARVARD UNIVERSITY

Mr. STOBAUGH. Thank you, Mr. Chairman. Thank you for the invitation to appear here today. I understand my written statement will be put into the record.

Mr. PORTMAN. Without objection.

Mr. STOBAUGH. Because my area of expertise, which happens to be corporate governance, I will focus on the IRS Oversight Board proposed by the Commission.

First, I strongly support the Commission's plan for governance of the IRS. Second, I think that the membership makeup on the Oversight Board is appropriate. That is, seven members from private

life, plus the two from the government. That will provide a well-rounded board.

Next, the proposed responsibilities, I believe, are appropriate. The Board focuses on strategic issues—and there are differences between oversight and management. They focus on the strategic issues appropriate for oversight. This Board would have less power than corporate boards, but I still thing that is OK under the circumstances.

The Secretary of Treasury would still have major control over the IRS. The Secretary would still be responsible for tax policy; and the Board would not be involved in tax policy. The Secretary would be the most powerful board member. It is like having an 800-pound gorilla there on the Board.

The Secretary would recommend the selection and dismissal of other board members to the President—the President can do that; and then like an earlier witness, the way I read the bill, the President—the bill says the President can dismiss a director. I do not think it says he has to dismiss all the directors at one time.

Also, the Treasury Secretary can veto the budget, in effect, by not incorporating it in the budget pushed forward by OMB. I found the proposal acceptable, but I would not move to weaken the Board's proposed powers from these shown in the bill.

I reviewed the competing proposal of the Treasury Department and I think it has three major defects. I think it muddles the accountability by having additional boards. Secretary Rubin criticizes the part-time board proposed by the Commission, but in effect, the key Board in the Treasury proposal would be a part-time board—in terms being able to be devoted to the IRS, because they would have other duties in their government jobs.

My guess is that if a Mexican currency crisis comes up, there is going to be a lot of attention paid to that at the expense of the IRS by people on that Board.

The second major problem is the historical lack of interest on the part of the Treasury Department officials in the IRS. I do not consider that a criticism of the Treasury Department officials, but they naturally spend time on what they are experts at; and they are experts at tax policy, international affairs, capital markets. They are world class experts on those subjects and they are not experts on governance.

Now, even if we make the assumption that their interest has all of a sudden changed—and I think part of it changed, once this Commission was announced—but if their interest would change in the future and they would want to devote more time to the IRS, I think there is still a major defect left—and it probably is the most important one.

That is that the members of this IRS Management Board as proposed by the Treasury will not have the qualifications to do an outstanding job of overseeing the IRS. They are primarily trained in their work experience as economists and lawyers.

They are very smart people, with outstanding careers, but they have no experience in providing oversight of a large organization, with a goal of becoming world class in service and efficiency. Now, there is a big contrast between that experience and what is available in the private sector.

In the private sector, we have talked about chief executive officers being available; but there are a lot of people who are not chief executive officers who would be available. You have former chief executive officers with experience. You have people who have had a lot of board experience and have worked for companies, but have never been a chief executive officer. We honored one at the National Association of Corporate Directors because she was an outstanding director.

You have people in the university world. A colleague of mine has written books and serves as director and teaches directors how to be better directors. So I am confident there are many, many people in the private sector who are qualified to do this oversight function.

I think that my—according to the red light, my time is up. If I may make one other quick statement. That is, I think a lot of dissenters confuse tax policy and oversight; and I think there is a difference. They confuse the oversight function with the day-to-day management, which is for full-time managers; and I think that is a clear distinction.

Thanks again for the privilege of being here; and I will be happy to answer any questions.

[The prepared statement follows:]

Statement of

Robert B. Stobaugh

Charles Edward Wilson Professor of Business Administration, Emeritus

Harvard University

Graduate School of Business Administration

Thank you for the invitation to appear here today to comment on H.R. 2292, the Internal Revenue Service Restructuring and Reform Act of 1997.

Because of my area of expertise, I will focus on the sections of the Commission's Report and the Bill that propose an Internal Revenue Service Oversight Board. The key points of these sections are:

1. The Secretary of the Treasury will continue to maintain full control over tax policy.
2. A newly created Oversight Board will have overall responsibility for overseeing the IRS.
3. The Board will guide the direction of long-term strategy, appoint and remove the IRS Commissioner, and hold IRS management accountable.
4. The Board will have the following powers:
   a. Review and approve:
      - Mission and objectives, and standards of performance relative to either
      - Annual and long-range strategic plans
      - Selection, evaluation, and removal of the Commissioner of Internal Revenue
      - Budget (The budget will be sent to the Treasury and to OMB to be re-worked into the President's budget. In essence, the Board budget is an advisory budget, but copies go through Congress for information.)
   b. Review items on which the Commissioner must consult with the Board (Board approval not necessary):
      - Operational plans, including modernization of the operations of the tax system, outsourcing and managed competition, and training and education
      - Commissioner's selection, evaluation, and compensation of senior managers
      - Plans for reorganization of IRS
5. The Board will have no involvement in specific matters in the areas of interpretation or enforcement of the tax laws and have no access to taxpayer returns.
6. The Board will consist of seven members from private life and two members from the U.S. Government—the Secretary of the Treasury (or a designee) and a representative from the National Treasury Employees Union.
7. The President, with the advice and consent of the Senate, will appoint the Board members and can remove Board members at will.
8. The Board members from private life will be high stature, nonpartisan professionals, with experience particularly relevant to a 100,000 employee organization.
9. The Board will make an annual stewardship report to the President, the Congress, and the American public.

The activities of the Oversight Board are consistent with the activities of boards of directors of large firms, including those with strategies to provide services efficiently. True, the actual authority of the Oversight Board is somewhat less than the authority of a board of directors of a large firm. In fact, the Secretary of the Treasury will have considerable authority in the functioning of the IRS Oversight Board—through being a Board member, making recommendations to the President to appoint or remove Board members, and having a veto over the budget. Still, I believe these proposed powers of the IRS Oversight Board are appropriate. I would not, however, lessen the proposed powers

because such an action would have a negative effect on the ability to attract the most qualified persons as Board members and on the ability of the Board to function effectively.

Thus, I strongly support the Commission's plan for the governance of the IRS.

The Administration has an alternative plan. Under its plan, the Secretary of the Treasury will maintain full control over all aspects of the IRS, and be responsible for "oversight of the management and operation of the IRS." The Secretary of the Treasury will be assisted by an IRS Management Board, chaired by the Deputy Secretary of the Treasury and composed of other senior government officials. There also will be an IRS Advisory Board composed of 14 private-sector professionals with no real authority.

I find three major defects with the Administration Plan. As a result, it is far less desirable than the Commission's proposal.

First, history indicates that the Secretary of the Treasury will be extremely busy on other important matters. And since the IRS Advisory Board of private-sector professionals will have no real authority, the IRS Management Board (composed solely of government officials) will provide most if not all of the oversight the IRS will receive. This will muddle the accountability picture.

Second, even though the IRS has historically been part of the Treasury Department, Treasury officials have not shown great interest in providing oversight of the management and operations of the IRS. Indeed, it is my understanding that the Administration's plan for increased oversight did not surface until after the Commission began its work. This is not intended as a criticism of the Treasury Department but a reflection of the reality of the situation. It is only natural for Treasury officials to be interested in matters for which their expertise is renowned: capital markets, international affairs, economic and tax policy, and other important fiscal matters. Has there been a true change in the interests of the Treasury Department's top officials? Are they now really interested and willing to make the commitment of time and energy needed to oversee properly the IRS? Even if the answer to these questions is "yes," there remains another major defect in the Administration's plan.

Third, and perhaps the most important defect of all, **members of the IRS management Board proposed by the Administration will not have the qualifications to do an outstanding job in overseeing the IRS.** To support this conclusion, I will discuss the qualification of the types of people who likely will be nominees for this board: For illustration, I have considered and will discuss the experiences of Lawrence H. Summers, Donald Lubick, and Edward S. Knight.

It is clear that these are very smart men who have had outstanding professional careers with truly outstanding accomplishments. Unfortunately, none of them have had the experience that indicates they could do an outstanding job in providing oversight of the management and operation of the IRS.

First, consider the experience derived from their formal training. One is an economist (and I might say that we at Harvard think that he is one of the best economists of his

generation). The other two are lawyers. An economist's formal training tends to emphasize the prediction of economic behavior by using mathematical models based on summaries of quantities and prices. A lawyer's formal training tends to emphasize knowledge of the laws, drawing conclusions therefrom, and making logical arguments. This formal training is valuable but is not what is most needed for overseeing the management and operations of the IRS.

What about their work experience? Collectively, they have experience in university teaching, economic policy making, practicing law, tax policy making, serving as an assistant and advisor to a top elected official, and serving as General Counsel of the Department of the Treasury. Again, these experiences are not the types needed to qualify them to provide oversight of the management and operations of the IRS.

Thus neither the formal training nor the work experience of likely candidates for the IRS Management Board proposed by the Administration would qualify them to provide oversight of the management and operations of the IRS. Furthermore, a board made up of such people would not be well rounded—collectively it would not have the types of experiences necessary to provide proper oversight of the IRS. (To be sure ex-government officials often are elected to boards of directors of large companies, but they are not elected because of their experience in the managing or providing effective management of a large organization.)

To show the contrast between the type of expertise that would be represented on the Administration's proposed IRS Management Board and the type of expertise that would be available for the Commission's proposed Oversight Board, I will discuss briefly the experience of some of the persons in private life. There are people in private life with different types of experience who are qualified to serve on the IRS Oversight Board. An obvious category of people mentioned prominently in the press are active CEOs of large companies. Although such persons may be qualified, there are a sufficient number of people with other types of experience that a well qualified Board could be put together without including a single CEO.

Another logical type is an ex-CEO with extensive experience as an outside director—John G. Smale, the former CEO and Director of Proctor & Gamble, who as an outside director at General Motors, led the board in exercising its control over management. But there are many types of people who have not had any experience as a CEO but still would be highly qualified to be a member of the IRS Oversight Board. Barbara Scott Preiskel, for example, recently was honored by the National Association of Corporate Directors (a non-profit on whose Board I sit) for her outstanding work as a director of large companies as well as non-profit organizations. Professor Jay Lorsch, a colleague of mine at Harvard Business School is another example. He not only has served as a corporate director, but he has written a well known book on the subject, and he teaches practicing directors how to be more effective. I am not indicating that these three persons would be available, but I am only using them to illustrate the types of experience that are available in private life that would be relevant for the IRS Board of Directors. There are many outstanding people with similar experiences who would be pleased to serve their country by being a member of the IRS Oversight Board.

Indeed, I am confident that it will be possible to find many individuals who will meet the Commission's desirable goal of collectively bringing "to bear expertise in the following areas: (1) management of large service organizations, (2) customer service, (3) compliance, (4) information technology, (5) organization development, and (6) the needs and concerns of taxpayers..." Such expertise is much more relevant in providing oversight of the IRS than the expertise of the three government officials listed above. And, of course, the seven directors from private life will be joined on the Board by the two government employees.

In conclusion, I believe that having the seven persons from private life with relevant professional experience serve alongside the two government employees would provide a well-rounded Board—certainly a far better Board than one composed solely of government officials, even the outstanding ones illustrated above.

Three members of the Commission joined to voice a dissenting opinion to the recommendations in the Commission's report. This opinion also is reflected in a Brookings *Policy Brief* written by Professor Donald F. Kettl. They express concern about a conflict of interest between the directors' private interests and their responsibility on the IRS Oversight Board. Another dissenter is the New York State Bar Association. Its members are concerned about a board made up of "part-time managers with limited experience in the tax law..."

I believe that these concerns are misguided. The dissenters fail to recognize (1) the difference between tax policy (Treasury Department) and oversight of strategy and management (the Board) and (2) the difference between those who exercise the oversight function (the Board) versus those who manage day-to-day operations (full-time managers). The Board's functions, listed above, clearly focus on oversight that is intended to produce efficiency and service, and are not involved with day-to-day operations. I do not believe that directors will be involved with decisions that will have a competitive effect on private-sector companies or the non-profits for which they are directors. Of course, I join others in hoping that all U.S. taxpayers receive better service at a lower cost. But this result would not be a conflict of interest.

In conclusion, I recommend adoption of the Commission's recommendation to create the IRS Oversight Board, with seven chosen from private life and two from the U.S. Government. It is very important, of course, that members from private life be chosen on the basis of merit and not on political affiliation.

Thank you again for the privilege of appearing before you. I would be pleased to answer any questions you may have.

Mr. PORTMAN. Mr. Stobaugh, thank you for the time and effort you put into this—all three of the panelists.

We have a decision to make here. We have a vote in about 4 minutes I am told. I think we need to go. We can come back in a half hour to continue the questioning, and I am perfectly willing to do that, and I think other Members would be as well.

Would you prefer to adjourn this hearing now and not wait around a half hour? You could work on fast track. [Laughter.]

Or, would you like to wait for a half hour and we will be back for questions?

UNIDENTIFIED SPEAKER. It is up to you, Mr. Chairman.

Mr. PORTMAN. Can you stay?

[No verbal response.]

Mr. PORTMAN. All right. We will see you in a half hour.

Thank you very much. Mr. Coyne, do you have a quick question before we leave? We have about 3½ minutes.

[No verbal response.]

Mr. PORTMAN. OK, we have to go. We will recess now, but we will be back in session about 30 minutes.

[Recess.]

Mr. PORTMAN. Gentlemen, thank you for your patience again, I really appreciate the testimony.

I would like to, if he is ready, to move straight to Mr. Coyne and then I will have some further questions.

Mr. Coyne.

Mr. COYNE. I would like to address a question to Mr. Kettl. First of all, I want to thank you for being a witness. We appreciate all three of your testimonies here today. It is very helpful to us.

Mr. Kettl, some people have argued that the President's authority to remove board members gives the President indirect but sufficient authority over the IRS Commissioner. It may be indirect, but it is good enough to have the authority over the IRS Commissioner.

Would you agree or disagree with that?

Mr. KETTL. I guess my reaction would be that it would give the President indirect, but insufficient authority over that. In fact, he would have some leverage, but there is, I think, insufficient control to ensure any kind of real policy responsiveness.

The board members would have fixed terms and they would know that absent any kind of truly egregious problem, they would likely serve. It would create serious problems for the President to try to muddle or to be appearing to muddle with issues of that sort.

So my concern is that it would be unlikely to give the President any great operational control, or any real influence over the behavior of the board in that kind of way. So, across some line on a far extreme on some extraordinary piece of policy, I cannot imagine the President invoking it, but I cannot imagine it proving a very effective source of Presidential influence, especially in the day-to-day or month-to-month or year-to-year basis.

Mr. COYNE. Does anyone else care to——

Mr. STOBAUGH. Yes, I would like to say that I doubt that the President is going to do much on the day to day, even if there is not a board there.

I mean, the President is not going to oversee the IRS Commissioner. He has a lot of other things to do. At least he will have a board there overseeing the Commissioner. I mean, the thought of the President doing day to day, month to month or even year to year, reviewing the plans and strategy of the IRS and so on like an oversight board, I do not think——

Mr. COYNE. Well, what about his removal powers?

Mr. STOBAUGH. Yes, sure. He can remove the Commissioner, but I guess under what conditions is he likely to remove the Commissioner?

Mr. COYNE. Thank you.

Mr. PORTMAN. Thank you, Mr. Coyne. I have a number of questions, starting with Mr. Steuerle.

First of all, we really appreciate the time and effort you put into looking at the report and the legislation. As you walked through your testimony, it was clear that you have invested a lot of your time and your experience at Treasury is very helpful as you analyzed it.

As you know, Congressman Coyne, myself and others tried hard to put together a simplification incentive; and what we came up with was this analysis for simplification. You talk about the potential addition of a biannual report from Treasury to Congress. That was in the report, I think, as a suggestion, not a recommendation as I recall.

The National Taxpayers Union, David Keating, was on the Commission and was quite supportive of that idea as well. I like that idea; and I do not know how my other supporters of this legislation would feel about it, but having an additional report from the Treasury Department and administration to Congress on perhaps a biannual basis, I think, would force them to deal with the simplification issue—which is after all a two-way street. If we just do it up here and do not have Treasury's input and expertise, it is unlikely to happen.

So my first question to you would be, given what you saw in the Commission report and what is in the legislation, do you think that would be a natural or logical addition to what we are talking about with simplification? What other ideas do you have on simplification?

Mr. STEUERLE. Mr. Portman, I studied this issue long and hard when I was at Treasury. I was coordinator of the 1986 tax reform package out of Treasury. The attempt then was to try to create a system that would tax income more equally. There were some efficiency issues, raised also simplification. But we really did not get much simplification out of that act.

My quick reading of the history of the Tax Code is we have never really had a major focus on simplification, per se. Now I am not saying that if you went to a flat tax for everybody or a value-added tax for everybody, that there are not major complete overhauls of the system that might simplify; but I am talking about the type of simplification effort that I think we need to have a more regular basis, which is kind of bottom-up simplification. You know, can we combine any retirement accounts in this way? Can we simplify penalties? There are just hundreds and thousands of these provisions.

That is one reason I recommended that you had to have IRS and Treasury involved. Because just trying to go through that enormous range of provisions is very difficult. I do not want to suggest that there doesn't have to be some goodwill involved here.

If the Secretary or the President or Congress or the Joint Committee decides they are not going to put a lot of effort into it, I do not know how you can control that type of thing by legislation. But I do think legislation can demand that there be a report; and you can make several demands—not just on Treasury and IRS, but maybe on the Joint Committee—to monitor whether Treasury and IRS are really doing it.

I would like IRS to report item-by-item, on which areas of enforcement they have the greatest difficulty. They actually do this calculation indirectly, if you look at some of their statistics. They are reluctant to release them, because they are a little bit uncertain as to how well they do the statistics, but they do report on compliance rates across all sorts of items.

One reason they are reluctant to do this type of study because, if they do it they are going to offend people. If they report on noncompliance on the EITC ITC, they are going to offend the President when he advocates an EITC increase. On the other side, if they report on noncompliance in areas, say, like capital gains, then they are going to offend people who want capital gains relief.

So, they get caught in a box. They must be required to report on complexity on a regular basis, or they will not do it because there is a danger of offending somebody in the process. I think the process itself would be enhanced if these EITC reports were automatic—if they were required to report on enforcement problems. The Treasury in turn could come up with a list of simplification options.

Think of the impact, for instance, of the deficit reduction options that CBO puts out every year. Now I do not even agree with a lot of those options, but CBO does not put them forward as necessarily saying that these are the best options, or that there are no options. But it gives Congress a list, almost an enactable list—something that is not far from draftable if Congress wanted to use it.

Well, what happens if Treasury would do this and the Joint Committee year after year? You would start having laundry lists of areas where, if you wanted to take action, you could do it. You do not have that ability now. Today if you want to do simplification it is because somebody is objecting to something somewhere, you know, or there is a press report or something. It is very indirect, and so there is no formal process to really make a simplification effort on a much grander scale. I just really think that better information needs to be part of the system and this mandate to report seems to be one way to try to force it.

Mr. PORTMAN. At this stage, I think it would be very helpful if you would go on and sit down with me and the staff and try to work through what we already have on simplification and see whether some of these might be added.

I think it is one of the most important aspects of the Commission report, making that nexus between tax complexity and tax administration. I am proud the Commission went that far. It was further than probably our mandate envisioned; and yet I think Mr. Coyne, myself and others would be very interested in any concrete things we could put in this legislation to encourage a simplification, in a thoughtful way, which would include in my view, getting Treasury and IRS involved in giving us proposals so that we could then begin to vent these and have hearings on them.

The other one you mentioned, which is marking up tax forms. As you know, in the legislative proposal, as well as in the Commission report, we urged that the IRS be at the table in developing tax legislation. That is not always practical when you are in a conference committee at 3 o'clock in the morning, literally, the eleventh hour before taking a bill to the floor. But most of our proposals we do

develop through the Subcommittee and Committee process, and I think to have the IRS there in a formal way and require that, will help.

I think marking up tax forms should be a part of that in the sense of the IRS telling us what forms will be required for this tax law change. That is certainly the intent of this legislation; and maybe we can specifically add that very helpful suggestion.

Your suggestion on the public trustees I think is generally positive. I think it helps move the debate forward. It is the only, frankly, helpful suggestion I have heard in the last couple months to try to maybe bridge some of the gaps.

My concern with it, of course, is accountability. If they do not have absolute decisionmaking authority, and they look at the citizens advisory group—or the Commissioner Advisory Group, the CAG, and other advisory groups and if they do not have the ability to—as in the case of our board—approve the budget, which then goes to the Congress, but not through the process, as we talked about, approve the strategic plan, hire and fire the Commissioner, who is going to listen to them.

I think, to be taken seriously by the Service, what kind of accountability will there be to that group; and is it just another exercise in futility. I think, the final question I would have is, who is going to serve on such a Committee.

If they do not have some authority, one of my great concerns—and Ben Cardin raised it earlier today—are you really going to be able to attract the kind of high-caliber people we are talking about?

Mr. STEUERLE. Mr. Portman, I struggled with this a great deal. I did not come to the issue of the board of directors on one side or the other. I have struggled with it for months. I suppose where I am coming out is a compromise.

But to have these people as more than advisors—I think there is a difference between an advisory role and a monitoring role. Usually, if you are in an advisory role you are on the inside. You know, you are sort of like the Joint Committee on Taxation, which provides great people as advisors to you, but they are not going to go out and say, "Boy, did Mr. Portman publicly make a mistake when he enacted this legislation." A monitor, on the other hand, does say, "OK, IRS is not doing this. The budget is inadequate for that," so I want to raise this board—whatever we call it—to this kind of monitoring position.

Yes, they can advise as well, but I think their principal function should be monitoring. The best example that I have—and I admit that it is not a perfect metaphor—is with the Board of Trustees of Social Security. That is partly because I have watched the way they operate. I know the people who have done this job over time, people like Stan Ross, Marilyn Moon and others.

They actually participate in the process of reporting—in this case, reporting on the status of the trust funds. With them as representatives of the public and knowing they have to put out these reports, they take very seriously this monitoring role. They actually do it with the government. That is, the government really still has all the data.

So, the people inside the government are gathering the information, but the outsiders are saying, "Look, that information is inad-

equate, you have got to do this." A lot of times, the success of the trustees is never really seen, except indirectly. Because they have held the administration's feet to the fire to force them to report on things accurately.

That is sort of the role that I see for them. My biggest fear with actually giving them authority in the actual appointment of the Commissioner or with the budget is that I fear that we would add one more layer on what, in my experience, is already a confused process. I tend to believe the decisionmaking has to be an executive decisionmaking process. Essentially, you know at every stage who is above whom, and I am not sure whether that would help if you actually give aboard partial authority over appointing the Commissioner or setting the budget.

But as I say, I do not want this board just to be advisory. I do want them to play this accountability role, which seemed to me to be the main focus of your concerns as a Commission.

Mr. PORTMAN. I want to hear from Mr. Kettl and Mr. Stobaugh, if they are interested in this particular issue, but I would just make the suggestion that, if you look at the Social Security model, the reporting particularly. That is a very specific and very interesting report every year, not just for Members of Congress—I guess it is on a quarterly basis, actually—of the Medicare Trust Fund and the degree to which we might be going into a deficit. It has political ramifications and so on.

This Board we have set up also has this reporting requirement in the sense of reporting to Congress, really, on the budget, on the strategic plan, working with the government, as you say.

It is really not that far from our model when you think about the actual workings of the Board and how it would interact with the Congress and with the public—the American people.

Fred Goldberg kept making the point that, after all, this is all public. That is very important. With the IRS there may not be as much interest in the budget or the strategic plan as there is in the report of the trustee with the Medicare Trust Fund. But I do think it is not—in terms of this actual impact on the process—that different from the role you laid out.

Mr. Kettl.

Mr. KETTL. Yes, let me draw one distinction and then make a slightly different point on the idea of the Social Security Trust Fund and this Committee as a possible metaphor.

As for Social Security: the Commission that reviews that on a regular basis examines the overall financial health of the system, which is one kind of thing. Here we are talking about trying to find some way to crawl inside the administration of the IRS and make a report on that, which is a very different kind of animal.

The Social Security Committee does not really look inside Social Security to see what percentage of checks are going out on time, which kinds of computer problems they are having in dealing with that. It is just on the financial health of the system.

So, the point of similarity that is important is just how seriously they take it; and how brave in some cases they have been to declare that "The emperor has no clothes." But on the other hand, they do not really get into the question about what you have to do at the top of the Social Security Administration to ensure solution

to the problems of information technology, or if the delivery of the checks happened. That is the real level at which, it seems to me, the IRS needs to try to devote its efforts.

I do think that the possibility for some kind of reporting and oversight role is a very important possibility here. There is another mechanism, of course, that exists not only through strategic planning, but also through the Government Performance and Results Act. It seems to me that is the lever that is available to this Committee, for starters; but also, if there is an oversight board of some kind created to that board, because that is the handle by which to grab the IRS' activities.

There is an interest in trying to ensure there is a long range of attention to these issues. The way to do it is to send out clear signals through the oversight hearings and through the strategic plans and the reports on GPRA to ensure that is taken care of. There is an interest in making sure the people at the bottom get the lesson. That is the way to send the lesson across.

Mr. PORTMAN. I misspoke earlier when I said Medicare. The Medicare Trustees also issue a report, but the Social Security Trustees was your analogy, and I would make that same analogy to the Medicare system as to the Social Security system.

I will say also that at Social Security the phones are getting answered. The customer service satisfaction level that Bob Kerrey talked about earlier is higher; and it probably needs different kinds of attention as you indicate and would need a different kind of board at the IRS to get the same kind of results.

Mr. Stobaugh, do you want to comment on this?

Mr. STOBAUGH. I was going to comment on this reporting to the public, the President and Congress. I think that is very, very important. I think this IRS Oversight Board could make the decision to report an account of the things that actually affect citizens.

At the service level, I would anticipate they will do some reports on service levels of the IRS, as opposed to just, "The IRS budget was $7.4 billion this year and $7.5 billion next year," and numbers of that sort.

I think the citizens would be very interested in how service is improving.

Mr. PORTMAN. That is an excellent point. I think what you will see in the budget, of course, is more than just the aggregate number, but a reallocation of resources based on whatever the board's informed insight is on that. I would suspect that customer service will become more important over time and that will be something the public will see.

Mr. Kettl, you have given an interesting statement today. I read your initial article in the Brookings publication and then looking at your testimony. I heard your testimony today and I see some disparity between what I heard today and the Brookings article.

I think you are much more flexible about these various approaches than it would appear, based on your article. I think your view of the Treasury proposal is fascinating and certainly has not been touted by the Treasury Department, which has taken great pains to tout your views on our Oversight Board. [Laughter.]

I do not want this to be putting you on the spot. We are having a good give and take, and I want to learn more from you about your distinction between management, oversight and so on.

But, I take it from your earlier comments that you would be, if anything, less enthusiastic about the Treasury Management Board proposal than you would about the Oversight Board proposal in the Commission report?

Mr. KETTL. I am not sure about that—and I certainly do not want to be speaking out of different sides of my mouth. This is an incredibly complex issue and the difficulties are in trying to find some way to get one's arms around it simultaneously.

Let me make two points on the question of the boards. I find the idea of the basic board as proposed by the Commission very troubling because of its role, regardless of what it is called. Whether it is called oversight, whether it is called management, the fact is it is making governmental decisions; and I find that extremely troublesome.

I have great difficulties in that, especially having to do with the appointment of the IRS Commissioner and its approval and review of the IRS budget. That is a question of, who is it that would make final decisions about each of those. I find that very troubling.

I think the Treasury's proposal for these boards is interesting. I think that, for example, it is a very useful idea to make sure that all of those who have a role within the Treasury affecting the IRS' operation sit together on a regular basis to make sure that their operations are coordinated. I think it is extremely important that information and ideas and insight come in from the outside.

I have a concern about the Treasury's Boards in that there is a risk in making these things too big, too huge, too ungainly. My concerns ultimately about both of these Boards is that I am not sure they really solve the problem. That I think is what we have—I worry that we are in the process now, as we have been engaging in these discussions of tinkering, possibly, in the margins with things that in the end will not fundamentally attack the basic problem, which has to do with improving the competence of the Internal Revenue Service, first; and second securing public trust in the Internal Revenue Service's operations.

There is a risk that the more tinkering that goes on with these, the further we will get away from attacking those basic problems. That is where we basically have to go in the end.

Mr. PORTMAN. I do not think we are going to change your mind on that, but I guess all I would suggest is it is precisely what we have done over the years is to tinker. This is a major structural change, which is not tinkering at all.

Mr. KETTL. No, I do not mean to suggest—I do not mean in any way to suggest——

Mr. PORTMAN. No, whether this was tinkering or not, I do not mean to be defensive about that. All I am suggesting is that if you want to get real change through the system, which you emphasized in your oral statement today—which I could not agree with more. That is ultimately where we have to be.

The only way to do it, as you say, is from the top down. The only way to do that is to undertake these very significant structural reforms. If Treasury could have done it, they would have done it. It

has been about four decades now since we got into these problems. It is not about the Clinton administration, as many of us have taken great pains to say today, it is about a structural flaw, which is that the Treasury Department does focus on fast track—as they should.

The Treasury Department does not have the expertise to bring to bear these major problems at the IRS, and the Treasury does not have the continuity. As you know, that Management Board has less than a 2-year tenure; and you also know it is going to take several years to straighten this out.

Finally, if you do not have those two things, what kind of accountability do you have. Because the IRS people in the field just kind of wait it out until the next great proposal from Treasury, even if those proposals are forthcoming because of the increased tension.

So, I think, you know, you are a nationally renowned, I am sure, expert on public management and I am just a Member of Congress; but I think structural reform does make sense here. Because if you do not have the structural reform, you really have not solved the problem.

Now, it may not work in the end. Even the structural reform may not work, but certainly without them it is not going to work. I think the record is very clear on that. We all have to do our best here in Congress to increase and consolidate oversight, as you said. We suffer from some of those same problems, though. We do not have the continuity.

My constituents may throw me out in—what is it, about 1 year, 14 months? In any case, you know, I may be off the Oversight Subcommittee. Bill Coyne probably has more longevity than I do, politically, but it is honestly very unlikely you are going to see that kind of stability here on the Hill. Plus there are political issues here on the Hill that make it difficult for us to focus and to give the IRS the kind of support it needs.

So, I would ask you to go back through the recommendations. Take a look again at the legislation. Also, in your statement, there were a number of things that changed in the legislation. I just want to bring those to your attention. You have a seven-member board. It is now nine, as you know.

Looking at the Commission report you say it confuses the—I am now on page 1 of your floor statement—"To turn the agency over to a board dominated by private officials." We are not talking about running the IRS day to day. It really is an oversight function. You know now, I think as of today, what the functions of that board is.

They are limited. In my view there is a difference between oversight and management or even governance. You say, "Putting the Treasury Department in charge of developing tax policy, but removing it from administering it." Well, we do not remove Treasury from doing that. They have never been that. That has been the IRS.

So, I just think there are some things—"No precedent for vesting substantial governmental power in the hands of private citizens," this is unusual, I admit. I do not know if it is unprecedented. We have the Post Office. We have citizens review boards in various communities around the country for police forces. We have the

Independent Council, also special government employees. So there are some precedence for this. I agree this is not the usual approach to problems at an organization like the IRS.

And finally, some of page 4. Some of your power decisions of the budget management strategy, information technology. That is a review power, not an approval power on information technology—which is the way we think it should be. You say that the Board would have a small permanent staff. That is not the way it is in the legislation. It may have been in the report. We went back and forth on that and for many reasons decided not to give the Commission—I am sorry, the Oversight Board—an actual staff.

Finally, you say it is a private and independent entity vested with governmental power. It is not. It is a governmental entity. These are special government employees. We can talk about the constitutional issues if you like. We have constitutional scholars on our side who very clearly say that this is—if the President wants all these people, it is a governmental entity and it can then appoint an inferior officer.

So I think the constitutional issue is, at best, murky. I happen to believe that once we took away the proposal in the Commission report. We said the President could not remove board members. Once the President has that removal power—appointment and removal—I think the constitutional issue with regards to the appointments clause was handled. We can talk about. But these are special government employees and it is a governmental body. The question is whether the Commissioner should be an inferior officer of government.

I have talked too long without giving you a chance to respond. Let me, just quickly, to Mr. Stobaugh, and then Mr. Kettl, if you have additional comments, I will be delighted to hear them.

Mr. Stobaugh, when Amo Houghton—who could not be here—left he said, "I agree with that guy from Harvard." So, I want you to know that even though he could not come back, he was impressed with what you said.

I guess the question I would have for you, given your experience and background in the private and public sector in the governance area is, you know, we have heard a lot today from the Secretary of the Treasury and others regarding sort of the inherent flaw in having private-sector people involved in this kind of organization really for two reasons.

One, they would be part time; and second, they would have unavoidable conflicts of interest if they were not full-time government employees. Can you respond to those? Is that appropriate for you to respond to?

Mr. STOBAUGH. First, on the issue of part time. American industry is directed by directors who work part time. Many board of directors only meet six times a year, seven times a year, four times a year. This board here is meeting once a month.

I think in my own studies, corporate governance—American corporate governance—is really the leader in the world. So I think this so-called part-time board can provide oversight very, very effectively.

On this issue of management versus oversight, I would recommend to the Committee to read carefully again the statements

of Mr. Goldberg and Mr. Weston. I thought they hit the nail right on the head in terms of the real world, as to how boards operate and how the Commissioner needs people to talk with and get advice from. So I think the board will function very well.

In terms of—any questions before I move on?

Mr. PORTMAN. I do have one before you get into the last point. Do you think we can attract high caliber people to this board?

Mr. STOBAUGH. Pardon?

Mr. PORTMAN. Given your experience, do you think we can attract high caliber people to get the job done?

Mr. STOBAUGH. I am sure you can. There are many, many people with the qualifications to do the kind of oversight that needs to be done who would certainly be willing to help the country by serving on this particular board.

The payment here is not as high as a corporate board may be, given the same amount of time involved; but I think the payment is adequate and I think a lot of people would probably serve. I do not think the payment tied to the thing would be a major issue. I can name many people off hand.

One of my coprofessors at Harvard, Jim Cash, who is an expert on information technology and a director of several boards, including General Electric, he would be a great board member. Ben Bailar, former Postmaster General, who was the dean of the Rice Business School, has been a director of a number of companies. He would be a great director, and I name other people in my statement. So I do not think there would be any problem on that.

On the conflict of interest, I think there certainly is testimony there—particularly Mr. Goldberg's—about the level of questions that would come to the board. I cannot see at all how the issue of how much money is going to be spent auditing General Electric is going to make it to this board—this oversight board. The oversight board is going to have certain measures given to them, certain classifications of the thing, how much it may cost and where they may want to put their resources. But they will be looking at cost benefit and effectiveness analysis.

Also, overlooking a lot of this discussion on this board, the Secretary of Treasury or his designee will be right there on the board, and there will be another government official right there on the board. I just cannot imagine the kind of conflict of interest that people have been talking about.

Mr. PORTMAN. I think that is a very important point we should have made earlier, which is there is an additional safeguard of having the Secretary of Treasury in all the board meetings.

Mr. STOBAUGH. The other thing is, people have been talking about chief executive officers and thinking of this person having loyalty to one big company. You can get directors who are not chief executive officers—people with director experience who have been members of four or five boards. This would be another one. But they are not going to put—I cannot imagine the quality people you would get here would ever dream of putting the interest of any of these boards over their duty as a director here—and they are used to dealing with these kind of issues.

Mr. PORTMAN. Thank you. I just want to tell you that we have gotten a lot of input from Professor Lorsch—Jay Lorsch on these proposals. We want to, through you, thank him for his help.

We are now going to adjourn, but before we do, if there are any other comments, Mr. Kettl you would like to get on the record or Mr. Steuerle—and I want to thank you all again for your patience. This is the kind of private-sector input we need and you are doing it out of the goodness of your hearts, I know, without compensation today just as we would hope we would get private sector on the IRS Board.

Everything you say here is made part of the record. So even though it is kind of a lonely dais, know that this information is going to be available—not just to the other Committee Members and staff, but also to the public.

Mr. Kettl.

Mr. KETTL. Just a couple brief points, if I might, Mr. Portman.

The first is just by way of clarification. The policy brief that I wrote for Brookings was actually written quite a while ago, based on the Commission's report; and the legislation was drafted subsequently. So that explains some of the distinctions, because some of the changes was made since the time it was drafted.

Mr. PORTMAN. I was referring to your testimony today—the written testimony.

Mr. KETTL. That was in fact based on the policy brief.

Mr. PORTMAN. That is fine. Thank you.

Mr. KETTL. That explains that. The one thing I want to conclude by saying is that I do not think anybody could possibly have listened to the discussion today and the interchange between the Members of the Committee and witnesses without coming away with just a deep appreciation for how seriously everyone involved is taking this; and how hard everybody is wresting with what is essentially a very difficult set of problems.

My concern with the proposal that has been made by the Commission on governance, leaving aside everything else which as I said before is absolutely first rate, is not so much the fact that we cannot find good people, that they will not try hard to do a good job; and that they will not in fact do a job well, but that there very well may be—for those of us sitting way out beyond the beltway near the Mississippi—the kind of perception that, if for example, an issue comes up about how much money should we spend on auditing corporate taxes as opposed to individual taxes—auditing versus taxpayer assistance?

There will be, I fear, a deep concern on the part of many taxpayers out there that those who are involved are somehow steering the process in a way that will further undercut the trust in the system. I do not in any way believe that those good people who would be responsible for making those decisions and those recommendations and those reviews would in any way attempt to steer the process to advantage themselves.

But there is a very serious problem of perception out there in the country, and I worry greatly about anything that might aggregate the perception. That is something, I think, the recommendations would have to address very clearly.

Ultimately, my real concern is—what I am struck by after having listened now to 5½ hours of testimony is—how unanimous the sense is of what the problems are. I sense a gap between some of the recommendations and those things that are likely, in my opinion, to actually produce the results that we want. It is my concern ultimately about the governance proposals in particular that I am not sure they are likely to produce the results that we need.

As I suggested, I think, based on my study of what has happened in New Zealand and Australia and other places that have established, or have attempted to establish, world class tax collection systems, that it is the performance-based system that is much more likely to provide the kind of guidance that is needed to change the system.

Mr. PORTMAN. I thank you, Mr. Kettl. I know you understand how the budget works, but in terms of the perception as to where audit resources might be allocated, it would be the opportunity for the Secretary to not only be on the Board and be part of the discussion as to that budget; but then ultimately, the Secretary would have veto authority and if the Secretary were to determine that the Board's decision on the budget were inappropriate, the Secretary through the process would then be able—as part of the President's request—to lay that out.

So it is, one, in a sense advisory opinion that would be coming up here; and I do not think the perception of the taxpayer would be affected by that much. What Congress does, of course, is another matter—which is a whole 'nother process and ultimately decides the IRS budget.

But I do appreciate your testimony and your analysis of this. I think you are right. I think there is an amazing consensus now on the problem, at least. The question is how we actually make a difference on the performance-based management issue.

As you know, there is a whole section of this legislation that we are not going over in Ways and Means, because it is not in our jurisdiction. That has to do with title V, and has to do with some of the reinventing government ideas that Vice President Gore and others have talked about—performance-based organization. I am very excited about that. That is a very important part of this legislation.

It is not the Tax Code. It is actually a civil service issue. If we can do it, it will make the IRS, in my view, a model agency, believe it or not. If my colleagues were here to hear that, they would think that I had spent too much time looking at the IRS Code.

But I think what you are talking about actually is in the legislation. I will get you that material so you can see it in terms of pushing that through the system and rewarding people based on performance.

Mr. Stobaugh.

Mr. STOBAUGH. I just want to make one last point and that is, on this issue of what directors do and what they do in the private sector, there have been major changes in the last 10 years. There is something called "Director Professionalism." I happened to sit on a blue-ribbon commission of the National Association of Corporate Directors that issued a report on director professionalism, outlin-

ing: "Here are the kind of people you need for directors and here is what they ought to do."

I wanted to volunteer to make this available to the Committee here.

Mr. PORTMAN. I appreciate it. We will take a look at it and I appreciate your wanting to share it with us.

Mr. Steuerle.

Mr. STEUERLE. Just a last statement. I would like to add my compliments to you, Senator Kerrey and the other members of the Commission.

I have to confess that when I saw how the Commission was originally put together, I was somewhat skeptical it was going to be able to come to any type of agreement at all. The fact that it put forward so many good proposals, I think, is a real testimony to your own abilities, as well as the staff and Senator Kerrey's.

Again, to repeat one comment that I made earlier, I regret that so much attention gets focused on the Board as a measure of success or lack of success. Because I think it takes attention away from other details, but very important details, of the Commission's report to which I think we all need to devote some attention.

Mr. PORTMAN. I thank you, Mr. Steuerle and the Committee will now stand in recess until 10 a.m., tomorrow.

[Whereupon, at 6:45 p.m., the Committee recessed to reconvene the next day at 10 a.m.]

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON RESTRUCTURING THE IRS ON EXECUTIVE BRANCH GOVERNANCE AND CONGRESSIONAL OVERSIGHT OF THE IRS

WEDNESDAY, SEPTEMBER 17, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to call, at 10 a.m., in room 1100, Rayburn House Office Building, Hon. Bill Archer (Chairman of the Committee) presiding.

Chairman ARCHER. The Committee will come to order. We are going to get started, in spite of the vote on the floor of the House, and we will move along for 10 or 12 minutes and then go vote and then come back.

Today marks the second day of a 2-day hearing to examine the recommendations of the National Commission on Restructuring the IRS. Mark Twain once said that everyone complains about the weather, but no one does anything about it. Sometimes it seems to me that this statement could apply to the way that we have let the IRS languish since 1952, but that is about to change.

As I indicated yesterday, I consider reforming the IRS into an efficient, consumer-oriented, taxpayer-considerate agency this Committee's highest priority for the remainder of this session, and my sincere goal is to work with my colleagues on the Ways and Means Committee on a bipartisan basis to meet that challenge.

For many taxpayers the IRS is a source of fear and for far too many it is a source of frustration. It has likely more direct contact between anyone representing the Federal Government and the average citizen in this country than any other operation at the Federal level. We may not be able to prevent people from getting a knot in their stomachs when they open an envelope from the IRS, even if it is a refund check until they see the check, but we are certainly going to try to address the needless frustration.

Today, we are going to talk in part about Congress' role in overseeing the IRS and the need to sweep our own doorstep, because Congress bears a big part of the problems in the IRS. Not only do we have the responsibility of oversight, but the Congress passes laws that are often virtually impossible to administer.

As I said yesterday, both ends of Pennsylvania Avenue must face their responsibilities for fixing the IRS and I intend to explore what Congress can do better. In the hearing today, we will hear from Ken Kies regarding the role of the Joint Committee on Tax-

ation under H.R. 2292. Additionally, we will receive testimony from experts in the tax arena: the American Bar Association Section of Taxation, the Tax Executive Institute, the AICPA and the New York State Bar Tax Section. We will also receive the views of former IRS Commissioners and other former senior IRS executives.

[The opening statement follows:]

Statement of the Honorable Bill Archer
September 17, 1997

Good morning.

Today marks the second day of a two-day hearing to examine the recommendations of the National Commission on Restructuring the IRS.

Mark Twain once said that everyone complains about the weather, but no one does anything about it. Sometimes it seems that the same is true of the IRS. However, that is about to change. As I indicated yesterday, I consider reforming the IRS into an efficient, consumer-oriented, taxpayer considerate agency to be this Committee's highest priority for the remainder of this session. My sincere goal is to work with my colleagues on the Ways and Means Committee on a bipartisan basis to meet this challenge.

For many taxpayers, the IRS is a source of fear, and for far too many it is a source of frustration. We may not be able to prevent people from getting a knot in their stomach when they open an envelope from the IRS, but we are certainly going to try to address the needless frustration.

Today we are going to talk, in part, about Congress's role in overseeing the role and the need to sweep our own doorstep. As I said yesterday, both ends of Pennsylvania Avenue must face their responsibilities for fixing the IRS and I intend to explore what Congress can do better.

In addition to hearing from Ken Kies regarding the role of the Joint Committee on Taxation under H.R. 2292, we will receive testimony today from experts in the tax arena — the American Bar Association Section of Taxation, the Tax Executives Institute, AICPA and the New York State Bar Tax Section. We will also receive the views of former IRS Commissioners and other former senior IRS executives.

I yield now to the distinguished ranking member for his opening remarks.

Chairman ARCHER. And I now yield to Bill Coyne, a member of the Commission on Restructuring for any comments that he might like to make in an opening statement.

Mr. COYNE. Thank you, Mr. Chairman. I just want to welcome Ken Kies and the rest of the witnesses and say that the Ranking Member, Mr. Rangel, was held up and will not be here for a while, and I look forward to the testimony.

Chairman ARCHER. We do have with us today the Chief of Staff of the Joint Committee on Taxation, Ken Kies, and we are pleased to have your input on this very important topic. You may proceed.

STATEMENT OF KENNETH J. KIES, CHIEF OF STAFF, JOINT COMMITTEE ON TAXATION, U.S. CONGRESS

Mr. KIES. Thank you, Mr. Chairman. I want to thank the Committee for inviting me to testify today. It is my pleasure to present the testimony of the staff of the Joint Committee concerning the proposals to restructure the IRS and improve congressional oversight of IRS operations.

There are two principal proposals under consideration at this time. H.R. 2292, introduced by Congressmen Portman and Cardin, embodies the recommendations of the IRS Restructuring Commission. H.R. 2428, introduced by Congressmen Rangel, Coyne, Matsui, Hoyer, and Waxman, would codify an administration proposal. As H.R. 2428 contains no specific proposals impacting the operations of the Joint Committee, my testimony will be limited to the provisions of H.R. 2292 that affect the Joint Committee.

You may recall that the Joint Committee was originally created in 1926 to have a significant and ongoing role in the oversight of the entire Federal tax system. In fact, the history of the creation of the Joint Committee provides some interesting background on why Congress was concerned with this oversight.

The Joint Committee was originally created because of concerns in the Congress that the IRS was not properly administering the Internal Revenue laws and that the IRS was being improperly influenced by political appointees in the Treasury Department. In 1924, Senator James Couzens introduced a resolution in the Senate for the creation of a select Committee to investigate the Bureau of Internal Revenue.

At the time there were reports of inefficiency, waste and fraud in the Bureau. One of the issues investigated by the select Committee was the valuation of oil properties. The Committee found that there appeared to be a total absence of competent supervision in the determination of oil property values.

In 1925, after making public charges that millions of tax dollars were being lost through the favorable treatment of large corporations by the Bureau, Senator Couzens was notified by the Bureau that he owed more than $10 million in back taxes. Then Treasury Secretary Andrew Mellon was believed to be personally responsible for the retaliation against Senator Couzens. At the time, Secretary Mellon was the principal owner of Gulf Oil, which had benefited from rulings specifically criticized by Senator Couzens.

The investigations by the Senate Select Committee led, in the Revenue Act of 1926, to the creation of Joint Committee. The Revenue Act of 1926 defined the duties of the Joint Committee, which have remained essentially unchanged since that time.

Under present law, the Joint Committee has broad responsibilities and powers relating to the operation and effects of the Federal tax system, including oversight of IRS operations. The powers of the Joint Committee include, among other things, the power to inspect tax returns, to hold hearings and to subpoena witnesses.

I have the following comments with respect to the provisions of H.R. 2292 relating to the work of the Joint Committee. H.R. 2292 would require all requests for investigations of the IRS by the GAO, other than requests from Committees and Subcommittees, to be approved by the Joint Committee. We generally agree that in

order to ensure appropriate allocations of resources both of the IRS and the GAO, it is important to coordinate requests for investigations. The proposal aids in this regard by indicating congressional intent that there should be further scrutiny of investigations relating to the IRS.

The provisions of H.R. 2292 require the Joint Committee staff to provide support with respect to two annual joint hearings of certain Members of the congressional Committees with jurisdiction over the IRS. This does not expand the powers of the Joint Committee so much as it would formalize the role the staff would have with respect to these joint hearings. I would note that the bill's approach adopts recommendations made by the staff of the Joint Committee and I appreciate the willingness of Congressmen Portman and Cardin to adopt this approach.

H.R. 2292 clarifies the duties of the Joint Committee with respect to reports to be provided to the Congress. In addition to the duties of the Joint Committee under present law, the bill requires that the Joint Committee report annually to the taxwriting committees on the overall state of the Federal tax system; and annually to the six congressional Committees with jurisdiction over the IRS with respect to matters relating to IRS operations.

I believe that this reporting approach is appropriate and that it will assure that all of the Committees responsible for oversight of the IRS will receive consistent information on a regular basis. This approach should improve the decisionmaking capabilities of the Congress with respect to IRS oversight.

H.R. 2292 provides that it is the sense of the Congress that the IRS should provide the Congress with an independent view of tax administration and that, during the legislative process, the taxwriting committees should hear from frontline technical experts at the IRS with respect to the administrability of pending tax legislation. I believe that it is vital to the legislative process for the Congress to have the ability to consult with IRS officials with respect to pending legislative proposals and, therefore, I wholeheartedly support the goals of this provision.

The bill would require that the Joint Committee provide a tax complexity analysis for each tax provision in a bill, resolution, amendment, or conference report considered by the Congress.

The Commission's recommendations are based on the Commission's finding that the complexity of the laws is a major source of taxpayer frustration. I share these concerns, and we generally support the bill's approach. However, we have several recommendations, outlined in my written testimony as to how the complexity analysis could be modified to make it more workable.

I thank the Committee for the opportunity to offer the testimony of the staff of the Joint Committee with respect to certain provisions in H.R. 2292, and look forward to working with the Committee in the consideration of this legislation.

Thank you, Mr. Chairman.

[The prepared statement follows:]

WRITTEN TESTIMONY
OF THE STAFF
OF THE
JOINT COMMITTEE ON TAXATION
WITH RESPECT TO
CERTAIN PROVISIONS OF H.R. 2292
(the "Internal Revenue Service Restructuring and Reform Act of 1997")

Presented by

Kenneth J. Kies
Chief of Staff
of the
Joint Committee on Taxation

Before a Hearing of the
Committee on Ways and Means

JCX-45-97
September 17, 1997

Mr. Chairman, I want to thank the Committee for inviting me to testify today in my capacity as Chief of Staff of the Joint Committee on Taxation. It is my pleasure to present the testimony of the staff of the Joint Committee on Taxation at this hearing concerning the proposals to restructure the Internal Revenue Service ("IRS") and improve Congressional oversight over the operations of the IRS. I have been asked to limit the scope of my remarks to those proposals that would alter or clarify the role of the Joint Committee on Taxation.

There are two principal proposals under consideration at this time. H.R. 2292, introduced by Reps. Rob Portman (R-OH) and Ben Cardin (D-MD), embody the recommendations of the National Commission on Restructuring the IRS. H.R. 2428, introduced by Reps. Charles Rangel (D-NY), William Coyne (D-PA), Steny Hoyer (D-MD), Henry Waxman (D-CA), and Robert Matsui (D-CA), would codify an Administration proposal implemented by the President through Executive order 13051. As H.R. 2428 contains no specific proposals impacting the operations of the Joint Committee on Taxation, my testimony will be limited to discussing the provisions of H.R. 2292 that affect the Joint Committee.

I. History of the Joint Committee on Taxation

The Joint Committee on Taxation was originally created in 1926 to have a significant and ongoing role in the oversight of the entire Federal tax system, in general, and the administration of the Federal tax system by the IRS specifically. In fact, the history of the creation of the Joint Committee on Taxation provides some interesting background on why the Congress was concerned with this oversight. The Joint Committee on Taxation was originally created because of concerns in the Congress that the IRS was not properly administering the internal revenue laws and that the IRS was being improperly influenced by political appointees in the Treasury Department. In 1924, Senator James Couzens introduced a resolution in the Senate for the creation of a Select Committee to investigate the Bureau of Internal Revenue. At the time, there were reports of inefficiency and waste in the Bureau and allegations that the method of making refunds created the opportunity for fraud. One of the issues investigated by the Select Committee was the valuation of oil properties. The Committee found that there appeared to be no system, no adherence to principle, and a total absence of competent supervision in the determination of oil property values.

In 1925, after making public charges that millions of tax dollars were being lost through the favorable treatment of large corporations by the Bureau, Senator Couzens was notified by the Bureau that he owed more than $10 million in back taxes.[1] Then-Treasury Secretary Andrew Mellon was believed to be personally responsible for the retaliation against Senator Couzens. At the time, Treasury Secretary Mellon was the principal owner of Gulf Oil, which had benefited from rulings specifically criticized by Senator Couzens.

The investigations by the Senate Select Committee led, in the Revenue Act of 1926, to the creation of the Joint Committee on Internal Revenue Taxation.[2] The first Chief of Staff of the Joint Committee on Internal Revenue Taxation was L.H. Parker, who had been the chief investigator on Senator Couzens' Select Senate Committee. The Revenue Act of 1926 defined the duties of the Joint Committee on Taxation, which have remained essentially unchanged since that time.

II. Duties and Powers of the Joint Committee on Taxation

Under the Internal Revenue Code, the Joint Committee on Taxation is required to (1) investigate the operation and effects of the Federal system of internal revenue taxes; (2) investigate the administration of such taxes by the IRS or any executive department,

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[1] According to Esquire magazine, the internal revenue commissioner personally handed to Senator Couzens a bill for $10 million. Berendt, John, *The Tax Audit*, Esquire, February 1994, p. 18.

[2] The name of the Joint Committee on Internal Revenue Taxation was changed to the Joint Committee on Taxation in the 1970's.

establishment, or agency charged with their administration; (3) make such other investigations in respect of the Federal system of taxes as the Joint Committee may deem necessary; (4) investigate measures and methods for the simplification of the Federal tax system, particularly the income tax, and to publish from time to time various simplification proposals; and (5) report, from time to time, to the Committee on Finance and the Committee on Ways and Means and, in its discretion, to the Senate and the House of Representatives, the results of its investigations, together with recommendations.[3] In addition, the Congressional Budget Act of 1974, as amended, provides that the revenue estimates of the Joint Committee on Taxation shall be the sole revenue estimates used by the Congress.[4]

Under present law, the Joint Committee on Taxation has broad powers under the Internal Revenue Code.[5] These powers include the power (1) to obtain data and inspect tax returns; (2) to hold hearings; (3) to require by subpoena (issued under the signature of the chairman or vice chairman) the attendance of witnesses and the production of books, (4) to administer oaths; (5) to take testimony; (6) to procure such printing and binding as it deems necessary; (7) to make such expenditures as it deems necessary; and (8) to secure information, suggestions, rulings, data, estimates, and statistics from the IRS or any other executive agency for the purpose of making investigations, reports, and studies relating to internal revenue taxation. The IRS, the Chief Counsel for the IRS, and all agencies are authorized and directed to furnish information, suggestions, rulings, data, estimates, and statistics to the Joint Committee (or the Chief of Staff of the Joint Committee) upon request.[6]

The Joint Committee is authorized to receive confidential taxpayer return information. The Chief of Staff of the Joint Committee is authorized to appoint agents to inspect such return information.[7]

III. Expanded Powers and Duties of the Joint Committee on Taxation

A. Expanded powers (sec. 401 of the bill)

In general

H.R. 2292 purports to increase the powers of the Joint Committee on Taxation by (1) specifically authorizing the Joint Committee to procure the services of experts and consultants in accordance with section 3109(b) of title 5, United States Code, (2) providing that the Joint Committee shall review all requests (other than requests by a Committee or Subcommittee of the Congress) for investigations of the IRS by the General Accounting Office and approve such requests if appropriate; and (3) providing that the Joint Committee staff shall provide assistance for two annual joint hearings of certain members of Committees with jurisdiction over the IRS to review the strategic plans and budget for the IRS.

I have the following comments with respect to this expansion of Joint Committee powers under the Internal Revenue Code.

Securing consultant services

The Commission's report indicates that, as appropriate to fulfill its statutory duties, the Joint Committee should hire outside consultants. The bill incorporates this recommendation by providing specific statutory authority for the Joint Committee to hire such consultants. The

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[3] IRC section 8022.

[4] Section 201(g) of the Congressional Budget and Impoundment Act of 1974.

[5] IRC section 8021 and 8023.

[6] IRS section 8023(b).

[7] IRS section 6103.

purpose of this provision of the bill is to ensure that the Congress, through the Joint Committee, has access to experts in various fields that can aid the tax legislative process and oversight of the IRS. The bill reflects the intent that outside consultants be used where appropriate.

With respect to the authorization to procure the services of experts and consultants, I would note that the Joint Committee on Taxation has historically had the authority to retain the services of experts and consultants on any matter that the Joint Committee deems to be appropriate. In this regard, the Joint Committee appropriation typically includes approximately $100,000 for other services, which includes the hiring of consultants for a variety of activities, including such things as computer assistance and data analysis. These consultants are hired to perform services that the Joint Committee does not have the time or the staff capability of performing. Thus, the hiring of consultants is not a new activity for the Joint Committee on Taxation.

Further, the provisions of section 3109(b) of title 5 of the United States Code apply to the securing of consultant services by an executive branch agency. Section 3109(d) provides that the Office of Personnel Management shall prescribe regulations for the administration of the provision. I do not know whether the application of an executive branch provision to a Committee of the Congress is unprecedented, but how it would apply and why it should apply are unclear. Given the fact that the Joint Committee's hiring of consultants has historically been governed by the legislative branch appropriations process, the application of section 3109(b) of title 5 would appear to limit, rather than expand, the Joint Committee's authority to hire consultants by imposing certain executive branch requirements that previously have not applied to the Joint Committee's use of consultants. If this is not intended, I would suggest that this provision of H.R. 2292 should be modified. I would like to work with the Committee to clarify the intent of the provision and to ensure that any change does not impair the ability of the Joint Committee to hire consultants.

Joint Committee review of requests for GAO investigations of the IRS

The bill provides that all requests for investigations of the IRS by the General Accounting Office ("GAO"), other than requests from Committees and Subcommittees, must be approved by the Joint Committee. The Commission recommended that all such requests be approved by the Joint Committee. The purpose of this requirement is to reduce the number of investigations of the IRS, which can result in the diversion of IRS and GAO resources from other matters, and to focus such investigations on significant issues.

The Joint Committee already reviews those requests for GAO investigations relating to the IRS that require access to confidential taxpayer information. Under present law, the GAO does not have access to such information unless approved by the Joint Committee (or the Chief of Staff of the Joint Committee). The Joint Committee does not routinely approve the requests of the GAO for access to taxpayer information, but reviews the purpose for such access. The Joint Committee has denied access when there does not appear to be sufficient need for the proposed study to be performed or has modified the proposed investigation.

We believe that, in order to ensure appropriate allocations of resources, both of the IRS and the GAO, it is important to coordinate requests for investigations. The proposal can aid in this regard by indicating Congressional intent that there should be further scrutiny of investigations relating to the IRS. The purpose of the proposal is to expand the authority to the Joint Committee with respect to GAO investigations. I am concerned, however, that the statutory draft may be perceived as overriding existing Joint Committee responsibilities, and would like to work with the Committee to clarify that the there is no diminution in current Joint Committee duties.

Staffing for annual joint hearings

The provision of H.R. 2292 requiring Joint Committee staff to provide support with respect to two annual joint hearings of certain Members of the Committees with jurisdiction over the IRS does not expand the powers of the Joint Committee so much as it formalizes the role of

the Joint Committee staff with respect to the new joint hearings that will occur. The Joint Committee has a longstanding history of providing support to all Members of Congress who request it and the Joint Committee staff will continue to provide assistance to all Members whether or not this role is formalized.

With respect to this provision, I would note that H.R. 2292 adopts the approach recommended by the staff of the Joint Committee on Taxation. The Commission report suggested that Congressional oversight of the IRS be coordinated through the creation of a new entity (a joint committee on IRS administration). The Commission report stated that, as part of this arrangement, the Joint Committee staff would reassume its statutory role as the focal point for IRS oversight and stated that the staff of the Joint Committee should be expanded to meet this responsibility. The Joint Committee staff believes that the Commission's goals can be achieved through the existing Congressional Committee structure with the formalization of the concept of annual joint hearings on IRS oversight.

b. Duties of the Joint Committee on Taxation (sec. 402 of the bill)

H.R. 2292 clarifies the duties of the Joint Committee on Taxation with respect to reports to be provided to the Congress. In addition to the duties of the Joint Committee on Taxation under present law, the bill requires the Joint Committee to report:

(1) annually to the Senate Finance Committee and the House Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system; and

(2) annually to the Committees on Finance, Appropriation, and Government Affairs of the Senate and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight in the House of Representatives with respect to the strategic and business plans for the IRS, progress of the IRS in meetings its objectives, the budget of the IRS and whether it supports it objectives, progress of the IRS in improving taxpayer service and compliance, progress of the IRS on technology modernization, and the annual filing season.

Although it is arguably within the present-law scope of duties for the Joint Committee on Taxation to report on many, if not all, of the matters listed above, the ability of the Joint Committee to report directly to Committees other than the Ways and Means and Senate Finance Committees is new. Since many of these matters are issues that are of relevance to Committees other than Ways and Means and Finance, it would appear that the direction to the Joint Committee to report to all of the Committees with jurisdiction over the IRS is appropriate. In this manner, the bill will assure that all of the Committees responsible for oversight of the IRS will receive consistent information on a regular basis. This type of approach should improve the decision-making capabilities of the Congress with respect to the oversight of the IRS.

I would note that the bill imposes upon the Joint Committee on Taxation specific responsibilities that must be performed at least once each year. Given the normal workload of the Joint Committee staff in responding to Member requests for revenue estimates and providing its regular assistance to the tax-writing Committees with respect to legislative proposals, it may be necessary to add additional Joint Committee staff to be responsible for preparing the annual reports required under the bill.

IV. Role of the Internal Revenue Service (sec. 421 of the bill)

H.R. 2292 provides that it is the sense of the Congress that the IRS should provide the Congress with an independent view of tax administration and that during the legislative process, the tax-writing Committees should hear from front-line technical experts at the IRS with respect to the administrability of pending tax legislation.

This provision in the bill indicates Congressional desire to hear directly from the IRS regarding administrative issues associated with present law and proposed legislation. The Joint

Committee shares the view that the tax legislative process could be improved with more involvement of IRS personnel familiar with day-to-day administrative and enforcement issues and development of forms. IRS personnel are in a unique position to evaluate the measures that will be needed to ensure compliance, whether it is reasonable to expect a reasonable level of compliance under information reporting, and what changes in IRS forms or procedures would be necessary. In the past, IRS personnel were at the drafting table to provide such views on administration; more recently, however, such participation has not occurred. We believe that the Congress, Treasury, and the IRS would all concur that legislative proposals could benefit from more input from the IRS.

I personally have been concerned, as have many of my colleagues who have worked on Capitol Hill, with the diminished role of IRS staff in the legislative process over the last 10 years. In part, this diminution of role occurs as Congressional and IRS staff leave and long-term working relationships are severed.

Under present law, the Joint Committee has, in theory, the authority to require that the views of the IRS be presented on any particular issue. However, at times, this access to the IRS has been difficult to secure.

I believe that it is vital to the legislative process for the Congress to have the ability to consult with IRS officials with respect to pending legislative proposals. Thus, I believe that H.R. 2292 should be amended to assure that IRS staff are closely involved in working with the Congress on pending legislation. The IRS should be closely involved in the drafting of proposals, should provide analysis relating to the administrability of proposals, and should have unfettered access to Committee staff. In addition, the IRS should be invited to testify at Committee hearings on legislative proposals.

Reestablishing the role of the IRS in assisting in the development of legislation need not and should not await the enactment of legislation. We would hope that the appropriate staff of the Congress and the Administration could work together to secure the direct participation of the IRS. Such a development could only aid the tax legislative process.

V. Tax Complexity Analysis (sec. 422 of the bill)

The bill would require that the Joint Committee provide a tax complexity analysis for each tax provision in a bill, resolution, amendment, or conference report. A point of order would arise if the required tax complexity analysis were not included. The bill would provide that the tax complexity analysis must address, with respect to each tax provision, the following factors: (1) whether the provision is new, modifies or replaces existing law, and whether hearings were held to discuss the proposal and whether the IRS provided input as to its administrability; (2) when the provision becomes effective and corresponding compliance requirements on taxpayers; (3) whether new IRS forms or worksheets are needed, whether existing forms or worksheets must be modified, and whether the effective date allows sufficient time for the IRS to prepare such forms and educate taxpayers; (4) the necessity of additional interpretive guidance (e g., regulations, rulings, notices); (5) the extent to which the proposal relies on concepts contained in existing law, including definitions; (6) the effect on existing record keeping requirements and the activities of taxpayers, complexity of calculations and likely behavior response, and standard business practices and resource requirements, (7) the number, type and sophistication of affected taxpayers; and (8) whether the proposal requires the IRS to assume responsibilities not directly related to raising revenue which could be handled by another Federal agency. The Commission report recommends that the tax complexity analysis, in addition to addressing these 8 factors, should also identify the kinds of complexity, the extent of that complexity and whether the provision could be recast to reduce complexity while still achieve its tax policy goals.

The Commission's recommendations are based on the Commission's finding that complexity of the tax laws is a major source of taxpayer frustration. I share the concerns regarding complexity of the Federal tax system and the view that it is one of the major issues of the present-law system. Complexity and frequent changes in the tax laws create new burdens for both the IRS and taxpayers. Failure to address complexity may ultimately reduce voluntary

compliance. Complexity often increases taxpayer frustration, as it becomes more difficult for those who wish to comply with the laws to do so, at least without hiring tax advisors. Complex rules can increase disputes between taxpayers and the IRS because complexity makes it more likely that individuals will make honest mistakes, and that the IRS and individuals will come to different conclusions regarding the appropriate result in the same circumstances.

Complexity and frequent changes in the law also place significant burdens on the IRS. Tax law changes often require new forms and instructions, which often must be prepared with very little lead time. Tax law changes and complexity also may make it difficult to train IRS personnel so that they can properly explain and apply the new provisions.

The most effective way to address complexity is for the Congress and the Administration to make reducing complexity a priority when drafting tax legislation. As discussed more fully below, it is unlikely that adding procedural rules, such as the proposed tax complexity analysis, will have an immediate impact on the complexity of the tax laws. Nevertheless, a tax complexity analysis may serve to focus greater attention on the need for simplification and may, over time, help to achieve greater simplification. In addition, such an analysis may help to educate the public and lawmakers as to the sources of complexity in the tax laws, and thereby foster a better understanding of why tax laws are complex, how to reduce complexity, and when other policy factors may outweigh the desire for simpler rules. The Administration should also be encouraged to provide a tax complexity analysis with respect to its legislative proposals.

The issues relating to the complexity analysis can be divided into two broad categories: (1) whether the complexity analysis is appropriate, and (2) design issues relating to what the analysis must contain.

With respect to the first issue, for the reasons set forth below, I believe it is unclear whether the complexity analysis will have much immediate impact on the tax laws.

First, the complexity analysis will not necessarily provide the Congress with additional information that it does not now receive. Contrary to the statement in the Commission report, there currently do exist mechanisms by which the Congress is made aware of potential complexities of proposed legislation. The hearing process provides comments on complexity. In addition, the Congress and their staffs meet with interested groups and taxpayers, many of which focus on the complexity of proposed legislation. One of the primary functions of the staff of the Joint Committee is to advise Members of complexities raised by legislative proposals, and to try to revise the proposals to reduce complexity while still achieving the policy result sought by the Member. The staffs of the House Ways and Means Committee, the Senate Finance Committee, and Legislative Counsel also provide such analysis, and many proposals are revised in accordance with the recommendations of the staffs in order to reduce complexity. I believe it unlikely that the complexity analysis will provide new information to the Congress, but it will serve to formalize the information already provided.

Second, complexity is only one of many issues involved in determining whether to adopt any tax legislative proposal and, in many cases, the Congress and the Administration determine that the complexity is outweighed by other factors. Other factors that are typically relevant include the effect of a proposal on the Federal budget, fairness, economic efficiency, and both tax policy and nontax policy objectives. For example, a proposal that makes the tax laws more complex may be adopted because the proposal provides a benefit to some taxpayers or makes the tax laws more fair. Often budgetary constraints require that a proposal be tailored to particular circumstances; such tailoring can result in complexity.

Third, the complexity analysis comes too late in the process to provide guidance with respect to the proposed legislation to which the analysis relates. If the Congress is going to address complexity, it must focus on that issue from the beginning of the legislative process, not wait until a bill is being considered on the floor.

Finally, in most cases much of the complexity of legislation arises during the conference on a bill, as compromises between the positions of the House and the Senate are made. Often,

differing provisions must be melded together quickly, which often leads to unexpected complexity. It is difficult to address issues that arise during the final hours of preparing a bill, and the complexity analysis will have no effect in such cases.

Even though the complexity analysis may not have an immediate effect on the particular legislation being considered, it is possible that it will have an effect over time. Like the list of provisions subject to the Line Item Veto, the complexity analysis is likely to be made public and will be the subject of press reports and may focus the attention of the public more on complexity. This heightened public awareness may make the Congress and the Administration more sensitive to issues of complexity, and may result in differences in drafting and more simplification. In addition, it may make Members reconsider proposals out of concern that a provision will be identified as complex, or to reanalyze proposals to be sure that other policy objectives are of such importance that the added complexity is appropriate.

In order to increase the likelihood that the complexity analysis will help to reduce complexity and provide meaningful information to the Congress, I believe that some modifications to the proposal should be made. In general, my comments regarding the content of the study are aimed at developing a form of analysis that provides meaningful information, can be completed within the short time frame generally allowed for the completion of legislative action, and helps to ensure that the analysis does not merely result in additional boilerplate language that is simply disregarded. A carefully considered analysis can serve not only to focus more attention on the need for simplification, but can also increase understanding of the reasons for complexity. To this end, I would make the following suggestions for modifications to the proposal. In addition, I look forward to continuing to work with the Committee to further refine the proposal.

First, the requirement that the analysis be made for all the provisions in a bill would be practically impossible to fulfil in a large bill, would detract staff resources from the drafting of the bill, and would likely result in a very simple analysis that includes no more than whatever specific requirements are imposed. I believe the purpose of the bill would be better served by providing that the analysis applies to provisions that affect some threshold number of taxpayers. In addition, it may be appropriate to limit the number of provisions for which an analysis must be provided, such as the 20 provisions that increase complexity the most. The analysis could also include, if appropriate, a statement that there are other provisions in the bill that also add significant complexity.

Second, the statute should not specify exactly what the analysis must address, but should leave some flexibility to the Joint Committee to determine what should be included. Complexity arises for a variety of reasons, and no set of factors is likely to apply to all situations. The Joint Committee will be able to provide a more accurate and thoughtful analysis if the list of factors are only a guideline. An analysis that describes why a particular provision is complex will provide better guidance to the Congress than a mere recitation of specific factors. In addition, if the requirements are too precise, it would increase the likelihood that the analysis will not meet the statutory rule due to administrative error, leading to the possibility of needless procedural delays.

Third, the factors that are to be taken into account in preparing the analysis should be modified. For example, the bill provides that the analysis must address whether the proposal uses existing definitions. However, a provision that relies on existing definitions will still be complex if the existing definitions or rules are themselves complex. As another example, almost any change of significance will require new forms, even if the change significantly simplifies the law. Whether a provision is new or modifies existing law has little bearing on whether or not it adds complexity. We would like to work with the Committee to determine an appropriate set of factors to guide the Joint Committee in its analysis.

Fourth, the analysis only address complexity, not provisions that simplify the law. In order for the Congress to gauge whether it is moving toward simplification, a discussion of the provisions in a bill that provide significant simplification should also be included in the analysis. Just as Members may modify provisions in order to prevent their discussion in the complexity

analysis, they may be encouraged to include provisions that will be identified as furthering the goal of tax law simplification.

I would like to add that the requirement that the Commissioner provide the Joint Committee with information necessary to prepare the complexity analysis will be useful, as in many cases IRS personnel will be in the best position to determine the effect a provision will have on forms and administration of the laws.

VI. Compliance Burden Estimates (sec. 424 of the bill)

H.R. 2292 requires the Joint Committee on Taxation to prepare a study of the feasibility of developing a baseline estimate of taxpayers' compliance burdens against which future legislative proposals could be measured. Such a compliance baseline might enable the Congress to evaluate the potential complexity of a legislative proposal as well as whether the costs of complying with a proposal outweigh the benefits that may result from the proposal. Although I do not specifically oppose the requirement that the Joint Committee prepare this study, I am highly skeptical that the Joint Committee staff will conclude that the development of a compliance baseline will be feasible.

Although it is theoretically possible to have a numerical estimate of the costs of compliance with a tax law provision, I suspect that there will be widespread debate as to whether any particular estimate is correct. There is no consensus among economists, public policy analysts, and the IRS as to how to measure the costs of compliance with the present-law Federal tax system. It would be difficult to develop a compliance baseline methodology that would be widely accepted. Any estimate of current compliance would have to be extraordinarily detailed in order to be of use as a baseline against which individual proposals are compared. Data necessary for such estimates do not currently exist. The collection of information of such a detailed nature, in itself, would impose significant taxpayer burden.

If it were possible to devise an accepted compliance baseline, there would likely be a great deal of debate as to whether an estimate of the additional compliance burden imposed by any particular provision is reasonable. Each individual estimate would require the solution to unique data and methodological problems. Some of these problems would be more difficult than others. For example, if a legislative proposal provided broad regulatory authority to the Treasury Department to prescribe reporting and recordkeeping requirements, it would be difficult to assess the additional compliance burdens presented by the proposal without knowing what types of reporting and recordkeeping requirements the Treasury Department contemplated.

VII. Conclusion

I thank the Committee for the opportunity to offer the testimony of the staff of the Joint Committee on Taxation with respect to certain provision of H.R. 2292 and look forward to working with the Committee in the consideration of this legislation.

Chairman ARCHER. Thank you, Mr. Kies. And once again our schedule gets interrupted by votes on the floor. I am going to have to shortly run over and vote, then Rob Portman will chair the Committee until I get back.

First, my compliments to you and to your staff for a very comprehensive analysis and anybody who sees this can see that it is comprehensive of this entire issue, which is going to be very, very helpful to the Committee.

There have been a number of problems that have cropped up, and I am not sure how much attention was given yesterday to the need of the Congress in its oversight function to have direct access to officials at the IRS. In the past, every time that we have wanted to have direct testimony or access, the Treasury has stepped in and said, oh, no, you cannot do that. The IRS can only be heard through a Treasury official. Which is, in effect, an insulator which has prevented us from having direct access. I do understand that the Joint Committee has in its authorized authority legislatively the right to demand and get direct access to the IRS, but that is very rarely used.

Do you have any suggestions as to what we should do as we restructure the IRS so that the Congress will have more direct input from the IRS in its oversight responsibilities?

Mr. KIES. Well, Mr. Chairman, I think there are a couple of things that could be done. One, during the legislative drafting process, it was the historic practice, at least up until the 1996 act, that representatives from the Internal Revenue Service would actually participate in all of the legislative drafting sessions to provide input into things like trying to make provisions easier to administer, to alert the Congress as to the difficulty that might arise with respect to development of IRS forms to implement new provisions.

We think a return to that practice is something that would be very helpful. That is what the sense of the Congress resolution that is contained in H.R. 2292 is partly intended to get at. We have already actually initiated discussions with the Treasury Department to try and make that happen immediately or at least in the near future. IRS participation and more direct participation in the legislative drafting process, I think, would be a major help.

The direct involvement of the Internal Revenue Service with the Congress on oversight with respect to administration, I think, is also an important step. The bill provides for a series of reporting responsibilities and hearings that should be considered to get that direct input from officials at the Internal Revenue Service. We think that would be a very positive step in improving the oversight role that the Congress should be playing with respect to the administration and operation of the IRS.

Mr. PORTMAN [presiding]. Thank you, Mr. Kies. I would like to echo the comments of the Chairman with regard to your analysis of the legislation and of the Commission's recommendations. It is thorough. It is probably the most helpful analysis that we have seen because it actually sticks to the language of the legislation

and your sense, given your experience and expertise, as to how it would work day to day.

I think it is extremely helpful to get your additional comments on the notion of having the IRS be more involved, not just in the development of legislation at this Committee, but through the process. As you and I have talked about often, legislation ends up getting written in conference committees, and any assistance that you can provide this Committee, I think, would be very helpful to come up with practical ways to be sure that Members of Congress understand the implications of what are often great sounding tax ideas, but might make life more difficult for the IRS and the taxpayer such as putting together forms and understanding what the burdens might be.

So, I think your suggestions there are very helpful and I hope that you will continue to work with the Committee on helping to solve that problem. I think, as you say, the restructuring legislation, H.R. 2292 has a good resolution, but maybe doesn't go far enough in that regard.

Other areas that you have looked at include the complexity of the Tax Code. I know this is a controversial one and I am sorry that I couldn't have been here for your entire statement. This is a tough one. I think there are a number of us on this Committee who feel strongly about it. I know Senator Kerrey and I did. We need to come up with some way to encourage Congress to simplify rather than to make the Code more complex.

In this legislation, H.R. 2292, the Joint Committee would be charged with a significant responsibility to highlight the complexity of legislation, to come up with an analysis of legislation. It would be helpful for me today and for the Committee and I think for the record, if you could tell us whether you agree on the need to raise awareness on tax complexity. And second, what you think is the most workable way to achieve that goal if you agree with that goal.

Mr. KIES. Mr. Portman, as I think my written and oral statement both say, we agree that one of the sources of discontent with the existing tax system is complexity. It is also a source of many of the problems the Internal Revenue Service has had in its administration function. We have said a couple of things in the testimony regarding the bill's complexity analysis.

The first is that requiring some level of greater attention to the complexity side of the legislative drafting process will not be a complete panacea. The Tax Code has inherent complexities, and the process by which legislation is drafted, which sometimes is very time-pressured, will frequently lead to complexity because of the pressures between revenue and other considerations.

However, we have said that we think a more consistent process by which we bring to the attention of the taxwriting committees complexity concerns is something that may very well help heighten the level of attention as, for example, the line-item veto has heightened the attention of Members to the possibility that provisions may be narrow in their focus. And so that over the long term, we may see some benefits to this type of approach.

We think perhaps the approach that is in H.R. 2292 may be too rigid and perhaps too complex itself, and that we want to work with the Committee to find an approach that is workable, but

which will address the objectives that you and Senator Kerrey and others have to heighten the attention to the complexity issue. And, indeed, one of the things we have said as part of that is perhaps we ought to also identify those instances in which the Congress simplifies.

For example, the bill that was passed this summer eliminates the need for over 1 million taxpayers to file dependent tax returns, and for over 250,000 people to make estimated tax payments. It eliminates the problems of almost all small businesses dealing with the corporate AMT.

Mr. PORTMAN. Capital gains for homeowners.

Mr. KIES. Capital gains for homeowners. Although we hope the States will follow suit so individuals don't have to keep records for State tax purposes. I think there is some reason to be optimistic the States will follow suit.

Congress sometimes doesn't get credit when they do some simplifying things and maybe we ought to bring attention to those as well as highlight new areas of complexities so that we minimize the extent to which that happens in the future.

Mr. PORTMAN. Whatever you can do with regard to title 4, subtitle C, which is the tax law complexity part of H.R. 2292 to make it less complex, I would appreciate that. This is something that we struggled with, particularly David Keating with the National Taxpayers Union, who was a Commissioner and who was very active in this area, as were a number of other members of the Commission.

I think the intent of this is clearly shared by you and the Joint Committee. If there is a way to do it that is more practical, I know that we would embrace it so long as there was an incentive that had real meaning to encourage Congress to simplify rather than the current status which works the other way. We have a point of order process here, as you know, which if this simplification analysis is not done, the questions are not answered as to what the implications are going to be on the IRS and the taxpayer, then any individual Member would have the right to stand on the floor of the House and stop tax legislation. How do you feel about that enforcement mechanism in the House?

Mr. KIES. I think if we get a set of provisions that are workable for trying to bring to the attention of the Congress the complexity concerns, that we would not see any problem with a procedural enforcement mechanism to comply with that requirement because we would fully expect that we would comply with it, as we have in the case of the unfunded mandate legislation that was passed in 1995, that now applies to tax legislation. And likewise in the case of the line-item veto responsibility that we now have as well.

So, I think if we get a workable set of rules, there should be no objection to a procedural enforcement mechanism to make sure that they are complied with.

Mr. PORTMAN. Again, I thank you. That is the critical thing that you help us with, that enforcement mechanism. I know that there will be other Committees of Congress and Members who may have concerns about this kind of enforcement mechanism. It is real and has teeth and has worked for unfunded mandates for that reason. It causes headaches for the leadership because of the power it gives

individual Members, but without that enforcement it would be unlikely to be an effective mechanism. So we need to work on the mechanism and make certain that it is workable, simple and I appreciate your help on that and we need your help and assistance.

I have a lot of other questions and Mr. Collins is here and I want to give him a chance before the vote. Yesterday, we had a lot of testimony from a lot of experts, including Members of Congress, but also academia and members of the Commission on all sides of the issue.

One thing we never heard, with the exception of Secretary Rubin, was who really supported Treasury's proposal. This includes Mr. Kettl from the Brookings Institution who Secretary Rubin had talked about and implied that he was supportive—and his testimony speaks for itself. He was not supportive of the Treasury proposal. That was really the story of yesterday's hearing. We either have status quo or the Treasury proposal, which seems to have little support or some more fundamental restructuring to change the culture at the IRS and help taxpayers, which is what this is all about.

I know that today this is more focused on the congressional side and that is where you have unique expertise, and I appreciate all your help there. But regarding how Treasury's oversight role might work, have you come up with improvements with regard to the structural reforms that are in H.R. 2292 for real oversight of the IRS?

Mr. KIES. Well, Mr. Portman, as you know, in the process of not only preparing the materials that were prepared for this hearing, but also in preparing for dealing with this legislation, we have gone through a series of meetings in the past couple of weeks. We have met with Commissioners from the IRS Restructuring Commission, and with former IRS Commissioners, going all the way back to Lyndon Johnson's Commissioner.

We have met with representatives of the tax section bar, and other tax practitioners. One of the themes that comes through clearly in our assessment of the status quo is that there has been inadequate oversight of the IRS on both the congressional side and on the executive branch side.

We think the congressional side improvements that are in your bill are a good step in the direction of getting Congress to be more attentive to its oversight function.

On the executive branch side, what we have heard from management experts, from chief executive officers, from other people who are experts in management, is that you will not have an effective oversight function if that entity that has oversight responsibility doesn't have some sort of significant power and responsibility. And I think that is the balance that is going to have to be struck as the Committee goes forward in trying to create an effective executive branch oversight function. We are prepared to try and work with you all on that.

I don't think that at this point we would say that we have a magic answer because I think it is a balancing act. But clearly I think for this entity to be effective, this oversight function is going to have to be real, and that, I think, is one of the sources of criticism of the Treasury proposal, is that it would simply be putting

in place another advisory body without significant power. And some would say without any power. That is where I think the Committee is going to have to strike a balance. We have identified some constitutional concerns that are going to have to be given attention, but we would hope that there is going to be an ability to structure a significant oversight function within the executive branch that will accomplish the purposes that I think you all have in mind, and still balance the reasonable concerns that Treasury has raised.

Mr. PORTMAN. Thank you, Mr. Kies.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. Mr. Kies, as we were working on the tax bill earlier this year, we had a lot of constituents andtrade association representatives come in, and talk about auditing. It seems as though there is a lot of discretion among regional directors of the IRS and their interpretation of auditing procedures. Sometimes varying region to region. Have you experienced any of this? Do you have any information in this area?

Mr. KIES. Well, Mr. Collins, I think we, too, have heard from taxpayer representatives who from time to time express the same kind of concern that you have identified that perhaps in one region of the country, one standard is being applied which may be different from the standard being applied in another region of the country.

Obviously, that creates problems because taxpayer confidence is eroded if they feel there are different standards being applied to taxpayers in comparable situations. And we think that is one of the areas in which congressional oversight is appropriate.

At the same time, we would hope that the Treasury Department, who under Congressman Portman's legislation would retain all tax policy functions, would be concerned about as well. And it is something that perhaps through the congressional oversight process could be formalized as an area of concern so that it is brought to the attention not only of Treasury, but IRS. I think it is clearly a cause for concern if it is, indeed, happening because it is obviously not fair to treat similarly situated taxpayers differently.

Mr. COLLINS. Well, it is a major concern. And it looks like there is a lack of proper management when those things happen. But another thing, too, in this same area, it appears that there may be compensation tied to the regional director's collections. And if you have a regional director who is in an area with a concentration of a certain type of industry that must comply with a set of very specific or unique tax laws or regulations, there is enormous movement toward increased audits. In addition, rules established by that director for his area often lead to additional audits and additional assessments, fines, penalties, and so forth.

This is a major concern. It really bothered me when I heard that sometimes compensation is tied to increased audits and collections. Are we in any sort of way with this legislation or in oversight looking at the fact that compensation is tied to collective resources?

Mr. KIES. Mr. Collins, let me say two things. First, one other point on your first question. That is, one of the reasons the IRS national office issues guidance at the national level through revenue rulings and coordinated issue papers, things like that, is to try to avoid the problem that you have identified. So I want to say that the IRS, itself, does try to get national guidance coordinated.

I think the instances in which these kind of problems arise tend to be on issues that have not made their way to the national level and so they are developing simultaneously in different regions and getting different interpretations.

On the issue of compensation, clearly that is an issue that would be appropriate for Congress to look at in the oversight function to see whether or not the method of compensation being utilized by the service is consistent with the fair administration of the tax system. Likewise, I think the Oversight Board would want to look at those types of things as well.

On the other hand, the job of the IRS is to ensure that taxpayers do pay what is appropriately owed. And so there is a balance there in terms of the responsibility they have. You don't want to have your compensation system structured so that it encourages behavior that is inconsistent with sound administration, but you also want to make sure that it is consistent with it.

I think this is an issue that the service has grappled with over the years, and many Commissioners have recognized that they have got to compensate their regional Commissioners on a wide range of issues, some of which may be related to collections, but others need to be related to taxpayer service, for example, whether or not they are conducting the education of their agents in a proper manner so that they can actually answer correctly questions that taxpayers have. I think there is a whole wide range of issues that should be taken into account in determining compensation other than just the efficiency of collection.

Mr. COLLINS. It bothers me not only in the area of compensation, but also in the area of promotions for agents.

Thank you.

Mr. KIES. Yes, sir.

Chairman ARCHER [presiding]. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman.

Welcome, Mr. Kies. I was wondering if you could give us your views, maybe a comparison, about the governance provision in the two pieces of legislation.

Mr. KIES. Well, Mr. Coyne, I was trying to answer some of that with respect to one of the questions Mr. Portman asked, that the legislation that you and Mr. Matsui and Mr. Rangel and others have introduced, which the administration has put forward, also creates an oversight function. So I think both the administration and the Restructuring Commission on which you served have recognized that there is a need for more consistent oversight at both the executive and the legislative branch levels.

I think that the difficult question that this Committee and the Finance Committee and the two Houses are going to have to address is how do you strike the right balance between, on the one hand, giving adequate responsibility and power to an oversight function so that you have some confidence level that it will be an effective oversight function, versus the concerns that have been raised by Secretary Rubin, and others, that you don't want to add too much of a privatized notion to the operation of the IRS. I think that is the balance that you need to strike there.

I do think that some of the concerns that have been raised about potential conflicts of interest on the part of the Oversight Board

perhaps are overstated; that the responsibility of the President under the Commission structure will be to find people that have quality management expertise, but which do not have the potential for conflicts of interest. And I think we should be looking to other than current CEOs, for example, to serve on that Board.

There are many people other than CEOs of Fortune 500 corporations that have management expertise. But I think that is the balance that the Committees, both here and in the Senate, are going to have to strike. How do you create an entity that has enough responsibility and power that it can serve an effective oversight function without unduly putting too much responsibility for the running of the IRS outside of the normal executive branch structure?

Mr. COYNE. Do you have any suggestions relative to the management and operation of the IRS and how to improve it?

Mr. KIES. Well, I must say, I agree with what I think is the underlying assumption of both the Treasury Department proposal and the Commission proposal. That is, that many of the problems that have arisen at the IRS—and not just the computer problem, I think the computer problem is merely symptomatic of a larger problem—are a result of a lack of consistent, long-term accountability. And that is the problem on the congressional side, too.

The Members that have served on the six Committees that have congressional oversight tend to turn over so that the people who are in the positions of overseeing the IRS 2 years ago may not necessarily be the people who are there today, so there is not a longer term picture of what really has happened over time.

Continuity is something that will improve the management at the IRS. I also think, and I say this as a tax lawyer, that putting a person with management skills rather than tax expertise into the position of Commissioner is probably a smart and wise move. Doing that, however, does make the position of Chief Counsel of the IRS much more important in terms of the tax policy function. And I think that is something this Treasury Department probably already does recognize. But I think getting a person with significant management skills into the position of Commissioner is a very wise move to run a 100,000-plus person organization.

Mr. COYNE. Well, I take it from your response about the governance issue that you do not have any problem with the proposed Oversight Board hiring the Commissioner?

Mr. KIES. Actually, Mr. Coyne, we have raised, in the pamphlet that we prepared, the fact that there are some constitutional issues that need to be thought through in connection with that power. The litigation that has occurred in this area involving the Postal Board would seem to imply that it can work constitutionally, but it is by no means a completely settled question. And, therefore, I think that the Committee is going to have to ponder that as they examine that feature of the Oversight Board to determine whether they are comfortable with that aspect of it. So we have identified that as an issue that you do have to think through in terms of how you proceed on that particular point.

Mr. COYNE. Thank you very much.

Chairman ARCHER. Mr. McCrery.

Mr. MCCRERY. Mr. Kies, just one question and that concerns the provision in the proposal for all the various legislative committees

of jurisdiction to meet together a couple of times a year with the IRS to hear about how their strategic planning is going and so forth. Have you had any chance to look at that and develop any thoughts on the advisability of that?

Mr. KIES. Yes, Mr. McCrery, we actually think that is a very sound recommendation. Again, we believe that many of the oversight problems with respect to the IRS can be traced not only to the executive branch problems, but to the fact that Congress' oversight has not been completely structured and coordinated. This recommendation is clearly intended to result in more coordinated, consistent oversight on the congressional side.

We think it makes a good deal of sense to do that. And it will provide for a structured periodic review on the part of the Congress, which will force the Commissioner and the Treasury Department to realize that they are going to have to come back and report how well they are meeting the goals that they set out 6 months ago, 1 year ago or 2 years ago. And that is a very effective mechanism to ensure that there is a more effective oversight and accountability function. So we think that is a very sound proposal.

Mr. MCCRERY. Thank you. Thank you, Mr. Chairman.

Chairman ARCHER. Mr. McDermott.

Mr. MCDERMOTT. Mr. Kies, I just have one question to follow up on what Mr. Coyne asked. Let's suppose that we pass a bill that gives the Board the ability to appoint the Commissioner and a lawsuit is brought and it is decided in the lower court—perhaps takes a year—and then moves up to the Court of Appeals and takes another year or more before it gets on the docket and goes to the Supreme Court and takes another year. So we are talking 3 years.

What do you anticipate would be the effect on the tax-gathering ability of the U.S. Government if the question of the appointment of the Commissioner and all the policies which he or she were to put in place were called into question. What would be the effect on the ability to require payments or penalties or assess fines or whatever?

Mr. KIES. Mr. McDermott, two points on that. First, we think if the Committee and the Congress were to proceed with this appointment mechanism, it might be advisable to try and structure some sort of expedited Supreme Court review to try and short-circuit or shorten the period of time that it might be necessary to get a Supreme Court decision, which was done with respect to line-item veto legislation.

Mr. MCDERMOTT. How long did that take?

Mr. KIES. Unfortunately, it didn't quite work the way it was intended because the Supreme Court concluded that there wasn't a case or controversy the first time around because there had been no exercise of the power. It only took about 9 months to get it through the Supreme Court.

In this case, the power would be immediate, so I don't think we would have that concern.

Mr. MCDERMOTT. But they could make the ruling that no one has been injured. The courts could turn it down as they have in term limit cases and other cases no one has been injured. So term limit cases are now only coming to fruition. They are ripening in

the courts because now people are being excluded from running for legislatures or the Congress or whatever.

So if they chose not to do it for ripening questions, how long? A year?

Mr. KIES. Well, it could be—could even be longer. And let me just say that to try and structure an expedited review is only one possible way to address what I think is a legitimate concern here. It may not be possible to make it work with complete efficiency.

I think the other aspect of my answer is perhaps more important though, and that is that we have actually looked at this issue of whether the actions of the Commissioner would be deemed invalid. Our preliminary conclusion is that they probably would not. But I think that is something that we need to take a very close look at because I think that is going to determine the extent to which you and the Finance Committee may be willing to make a decision that is in the gray area as compared to one that clearly does not raise a constitutional problem.

Mr. MCDERMOTT. Have you asked for an advisory opinion from the Justice Department or from anybody as to whether or not the decisions made by an improperly appointed or unconstitutionally appointed Commissioner could then be reversed or thrown out?

Mr. KIES. Mr. McDermott, we have not asked for an advisory opinion. Let me get back to you with a more specific answer. I believe there is case law that essentially says that the exercise of the responsibilities of the official, even though they might be inconsistent with the appointment clause, are nevertheless recognized until the Supreme Court holds that the appointment clause was not complied with. But let me give you a more specific answer on that. I know this is an issue that we have started to explore ourselves because we had the same kind of concern, that obviously is the basis for your question. So let me get back to you on that.

Mr. MCDERMOTT. I raise this issue because my experience in the State legislature was we had a school board member who once said, "We are elected as school board members and we appoint the superintendent and once we appoint the superintendent, our job is to rubber stamp whatever he or she decides." So that appointment process is key to the whole issue of whether or not the decisions made, whether the strategic decisions made or anything else that is made, are within the constitutional structure. And I think you would throw, or at least it is a real potential that you would throw the whole system into chaos for 3 or 4 years while the constitutional issue was being litigated in the courts. That is my major concern on this particular issue.

I would be grateful if you would give me the case law that makes you believe that you could have the decisions made by such an appointed Commissioner standard, even though they might later be constitutionally considered out of office.

Mr. KIES. I will be happy to do that. And I will just point out that this is different than the school board situation. Although it doesn't necessarily answer the constitutional issue, there is the fact that the Oversight Board under Mr. Portman's legislation clearly is intended to have an ongoing responsibility in terms of oversight of the decisions that are made by the Commissioner.

My staff just brought to my attention that the case that I was referring to is *Ryder* vs. *United States*, which held that the so-called de facto officer doctrine conferred validity upon acts performed by a person acting under the color of official title, even though it is later discovered that the legality of that person's appointment is deficient.

Mr. MCDERMOTT. Could you give me the cite of the case?

Mr. KIES. Absolutely. It is in our pamphlet, but I will give it to you specifically. It is 115 S. Ct. 2031 (1995).

Chairman ARCHER. Mrs. Johnson.

Mrs. JOHNSON of Connecticut. Thank you. Mr. Kies, I was reading the more detailed remarks in your written testimony in regard to the complexity analysis and the role that the Commission report seeks to develop for the Joint Tax Committee in helping the Congress write tax law that is more easily administered. And without question, simplicity is the issue out there for the public. Simple law that people can understand is fair because they know what is expected of them.

On the other hand, I am well aware of the case you make about why the proposed analysis will not meet our needs and where in the process that complexity occurs.

Do you have some recommendations as to how we could deal with this problem differently than in the report? And what are your thoughts on that?

Mr. KIES. Well, we have started to develop some recommendations and we are working on those. I have met with Mr. Portman several times to explore some different ideas. We want to make sure that the provision that is in the statute itself is workable. I earlier said we don't want a provision that is too complex to analyze complexity. So we are striving toward something that is administrable, but which will bring to the attention of the taxwriting committees on a timely basis the fact that a particular provision could be the source of significant additional complexity.

Mrs. JOHNSON of Connecticut. This is going to take longer than we have here today, but I would like you to look at a complexity analysis accompanying every tax bill introduced. When we introduce bills, often people will not sign on until they know what the cost is going to be and that has helped to discipline the process. And I think if people saw that often a good idea means that on the tax forms there will be five new items and how that interfaces with a lot of other tax law, that good ideas could be rethought as to how we accomplish that goal.

But I think that one of the points you make is that you have to notice this at the very beginning of the process. And that is one point we certainly ought to be able to address. I look forward to working with you on this particular issue of how we in Congress, deal with the issue of tax complexity, because both we and the executive branch talk simplification, but write complex laws.

Chairman ARCHER. Will the gentlewoman yield just to piggyback on that, and it will save me having to ask about it later?

Mrs. JOHNSON of Connecticut. Certainly.

Chairman ARCHER. Mr. Kies, what do you think about the suggestion that Gene Sterling made that we be given markup forms as we go through the markup process in the Committee so that we

can see graphically what is going to happen to the tax return as a result of the provisions that we are considering at that time?

Mr. KIES. Well, I think actually it has been done before. It has not been done frequently. And I think there might be some merit to it on provisions that are of wide application. I am not sure that I would recommend it on every provision that comes before the Committee. For one thing, I think it might cause the entire legislative process to grind to a halt because the development of forms does take time.

But on provisions of broad application, it might very well be useful to the Members to get a sense of what taxpayers are going to have to do to comply with the provision. And conversely what the IRS is going to have to do to administer it.

Chairman ARCHER. As the gentlewoman said, this is an issue that we need to expand upon and take a lot of time with it at another point in time. But let me simply point out right now that it is not just the lines on the return. In fact, the return frequently—and I will reiterate that I am the first Chairman of the Ways and Means Committee in memory who does his own tax return, and frequently the returns will leave out a line for simplification and you have a gigantic struggle to go through all of the explanations and the instructions to figure out where you are supposed to put something because there is no line on the return for it.

So in the name of simplification because it may be a relatively isolated item that is not used by the masses of taxpayers, they simplify the return and take a line off and there is no place for you to put what you are trying to put in, which the law requires that you put on the return.

The other thing neglected to be looked at, I would say to the gentlewoman from Connecticut, is not just lines on the form. It is now the developing work sheets that you have to go through that are not on the form, in order to be able to get the number to put on the line on the form. And these are where the real complications come, more than the number of lines that are on the form. So we deceive ourselves if we are only talking about how many lines are on the form. I thank the gentlewoman for yielding.

Mrs. JOHNSON of Connecticut. I agree absolutely with the Chairman. One of the real problems for us has been that often a major change in tax law will not have corresponding regulations for years. And so taxpayers are out there guessing at how to comply. And years later they learn they may or may not have guessed right. So I think this is a very, very significant issue.

At the very least, any major proposal introduced by a Member ought to have this backup and any proposal introduced by the administration ought to have certain backup administratively. We need to illustrate new proposals in a way that we get a real understanding of the administrative complexity and of the complexity for the taxpayer.

Thank you.

Chairman ARCHER. Ms. Kennelly.

Mrs. KENNELLY. Thank you, Mr. Chairman. I almost think I am listening to a plot as I sit here, and the plot is somebody will have to pull the Tax Code out by the roots if this continues because of complexity. And as we know, it is almost virtually impossible in a

markup to get an answer from IRS, but it is just as hard to get an answer from Joint Tax. And then if we ever put the tax complexity analysis on top of that, I don't know quite what Joint Tax would do.

But I was going to ask a question and we have a vote now, about the compliance burden estimates. Now, here is another level of complication and work that we are saying we are going to put on top of all these other things. Am I in the real world, or is it right for me to be highly skeptical that the Joint Tax staff could contract the compliance baseline? Can you carry out all of these things?

Mr. KIES. Mrs. Kennelly, we did say in our written testimony that we have some significant concerns about the ability, just technical ability to be able to develop a compliance burden index or measure because there are substantial disagreements among experts, whether they be economists, lawyers or accountants, about exactly how you go about measuring this type of thing, so we have expressed some serious reservations about that piece.

As you probably know, the Internal Revenue Service as a result of legislation that Congress passed some time ago is required to put on forms how many minutes it is anticipated that people will take to interpret the law, fill out the form, things of that nature. They are in a wholesale revisiting of those because there has been substantial questions raised about those measurement times being correct and exactly how you go about doing that.

So, on this piece in particular we share the concern that you have raised about how realistic it is to be able to quantify that. It doesn't mean that complexity isn't something that we ought to be more attentive to, but we have some serious question about whether it can be quantified.

Mrs. KENNELLY. I see that we are going in the direction of supposedly reform of the IRS becoming even more complex. The bill that we passed from the summer added to the complexity of the Code, and particularly in the area of the alternative minimum tax. So I almost think we should take a deep breath and stop a minute and see what we are doing here, because I don't know how individuals, let alone the IRS, is going to be able to deal with what we are looking at right now. It seems like every time we say we are going to reform, we just further complicate.

Thank you, Mr. Chairman.

Chairman ARCHER. Ms. Dunn.

Ms. DUNN. Mr. Chairman, no questions.

Chairman ARCHER. Mrs. Thurman.

Mrs. THURMAN. Mr. Chairman. Thank you. In listening to this conversation up here, I think, if we were to do the analysis of the reports of the tax issues, part of the responsibility would fall within these Committees that look at that and putting some kind of time limit on when we, or like a 24-hour time or 48-hour time where amendments would have to be done so that the proper analysis could be done, either through yourselves or through IRS telling us feasibility or how it would be implemented.

If we are talking about this, is that something that you would make that recommendation?

Mr. KIES. Mrs. Thurman, one of the reasons that we have, for example, suggested on the complexity analysis that perhaps it

should be limited to major provisions is there are practical considerations here. One has to recognize how the legislative process does work, particularly when you are under time pressure and things of that nature.

So I think we have to be a little careful about not developing complex procedural rules that may be very difficult to comply with in many circumstances because that will mean that we have not really accomplished much.

So, we would try and encourage the Committee to the extent it acts in this area to pass something that is flexible and that can be made to work, but which will go in the direction of accomplishing the goal of raising and heightening the intention of the tax writers to complexity issues. And we think you can strike a nice balance there. Clearly, we can do more.

I will say, slightly in defense of the staff, that we do, from time to time, under current practice, bring to the attention of the Committees that legislation under consideration may be complex. Many times the Committees accept that advice and act accordingly. Other times their decision is that, notwithstanding complexity, the proposal is consistent with our objective and we are going to proceed anyway. So we should not assume that whatever we are going to do here will be a complete panacea, because it will not. But by no means does that mean we cannot improve the situation.

Mrs. THURMAN. I know in the State legislature, there is a requirement that every bill go through an analysis. It gives us a public, a private, a government context of what potentially the changes, what the bill does today or what the law is today, what the changes would be. But we are given time so our staffs can prepare that. And even through the mandatory process there is a period of time in which you have a 24-hour time.

I recognize even going through the tax bill there were a lot of amendments going on and people wanting to know what the cost of it was and how it was going to be implemented. Our staffs were calling you and trying to put pressure on you all. I think there is some liability for us, at least in the consideration of looking at an analysis of this, that we should be giving you the consideration that it does take time and not to jump on people when they come before us because they cannot give us the answer. And I just would hope that that would be considered as we are talking about these kinds of analysis.

Thank you, Mr. Chairman.

Chairman ARCHER. The Committee will be in recess for the vote and return. Are there any other Members that wish to inquire of Mr. Kies other than the Chair? We will go vote and return. Mr. Kies, if you do not mind, I have a couple of questions I would like to ask you on return.

[Recess.]

Chairman ARCHER. Thank you for waiting, Mr. Kies. I will try and be brief.

As the Chief of Staff of the Joint Committee on Taxation, it is practical to note that you make recommendations or supposedly oversee various functions of Federal Government. There are many, I know, on the books; and we should take some, I think, informa-

tion from that when we begin to evaluate how we want to create a Board relative to the IRS.

Mr. KIES. Well, Chairman Archer, one of the things that we have done in our process of getting ready not only for this hearing, but also in just analyzing the legislation, has been to look at where there are other advisory boards within the Federal Government. And indeed one of the concerns that has been raised about some of those structures is that they are merely advisory and don't have significant authority or responsibilities, and that has been identified as one of the concerns about what is done here.

If you want it to be effective, you need to give it some more responsibility to be able to make it more than an advisory nature. And we haven't completed our analysis in that regard, but it is one of the things that we have looked at in trying to assess how you strike a balance on this entity that you want to create with respect to the Internal Revenue Service.

Chairman ARCHER. I don't think the information—I would rather it be a result of a conference of study on your part. But the anecdotal experience that I have had in talking to people who have served on various advisory boards over the last many years is that they really don't count for very much; that these people put in the time and in the end what they say, what they recommend, really doesn't count for very much, and an awful lot of people have even decided not to serve on these advisory boards because they think it is, "a waste of their time."

But those are anecdotal, and I would like to have something that is more comprehensively looked into, and I am glad you are doing that.

I think of one particular thing recently and that is the White House Conference on Small Business, and that was not an advisory board, but a lot of people were drawn in to make recommendations as to what the Federal Government should do for small business. They issued their report, and their number one priority was to reform the independent contractor rules. And you remember very well that we put that in our bill right here in this Committee to change the Tax Code to reform the independent contractor rules, which was the number one recommendation of that advisory board, and the President refused to accept it and threatened a veto of the tax bill if it was not removed. So clearly, in that instance, the highest possible recommendation of that advisory group was of no force and effect.

But in any event, I am glad you are looking into that.

In his testimony yesterday, Gene Steuerle suggested that the bill be amended to require the Treasury to submit a report to Congress every 2 years with review and comment by the Joint Committee staff for recommendations for a possible simplification or proposal for a number of matters related to tax administration.

Do you have any comments on that suggestion?

Mr. KIES. Well, Mr. Chairman, I guess my recommendation was, you shouldn't do that every 2 years. You ought to probably do it every couple of months. And indeed, as you know, in this most recent legislation, there were a number of simplification proposals included. The Treasury had made some recommendations which

picked up many of the provisions that were in the vetoed legislation from 1995.

But, clearly, we should be always looking for effective ways to try and accomplish simplification. And as you well know, one of the most significant constraints is revenue, but this most recently passed bill is a good example of where you can do some pretty significant simplifications on a cost-effective basis.

For example, the elimination of the requirement to file returns for dependent taxpayers cost only $37 million a year and eliminated the need to file 1 million returns a year, which is some fairly meaningful simplification for the cost involved. But I think that the Joint Committee, the Ways and Means staff, the Finance Committee staff and Treasury should always be coming back to the Members with recommendations whenever they find something that can be effective.

Chairman ARCHER. Well, I want to reiterate that I think we have got to be very cautious about creating expectations for simplification, again, simply by affecting one line on the form. It is simply on the form when you go to file as a head of a household on one line on the form, but the IRS has to ask you 42 questions before they can tell you whether you qualify as head of a household to use that one line on the form.

Now, the lines on the form are like the tip of the iceberg. What is unseen is everything that is below water level. And we cannot forget that and, again, of course, that leads me to my favorite subject.

I don't think we will ever solve this. I think we should tear the income tax out by its roots because it is inherently flawed, but everybody knows that.

Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. Along with that, Mr. Kies, the Commission recommended stable funding for the IRS for 3 years. And I apologize if this question has been asked previously, but they also are suggesting improved IRS service regarding telephone access, more funding for the exempt organization function, and so forth; and likewise, recommended that Joint Tax would have to pick up some additional responsibilities.

What are your thoughts on that?

Mr. KIES. Well, in terms of the stable funding, I think, Mr. Hulshof, that it would be very wise for the Congress to give the Internal Revenue Service a more long-range, stable funding plan so that they can do planning that goes beyond just the next fiscal year.

For example, just this simple area of education, which is so important, that IRS agents are getting comprehensive, up-to-date education. The Congress, in 1 year, appropriated 87-some million for that function and the next year, cut it almost in half. That obviously creates great disruption in terms of being able to have a consistent, comprehensive and thoughtful education process, which ties directly into taxpayer service, because it directly affects the ability to accurately answer questions that taxpayers have. So I think that makes good sense.

In terms of the Joint Committee's added responsibilities, we hope that the Congress has the wisdom to provide us some additional re-

sources to carry out those functions. We don't think they will be dramatic, but there will be some additional responsibilities.

We have said in our testimony that we think the Joint Committee can help coordinate the oversight role of the six Committees of the Congress that do have a function in this area and that the coordination of that oversight will make congressional oversight more effective. So we do believe that that is a very constructive recommendation that would improve the Congress' oversight responsibility, which is just as important as the executive branch's oversight responsibility.

Mr. HULSHOF. I appreciate that.

I yield back, Mr. Chairman.

Chairman ARCHER. Mr. Cardin, do you wish to inquire?

Mr. CARDIN. No, thank you, Mr. Chairman.

Chairman ARCHER. OK.

Mr. Kies, thank you very much.

Mr. KIES. Thank you, Mr. Chairman.

Chairman ARCHER. Our next panel is Phillip Mann, chairman of the Section of Taxation of the ABA; Paul Cherecwich, international president, Tax Executives Institute; Michael Mares, chair, Tax Executive Committee; and Richard Loengard, chair, Tax Section, New York State Bar Association.

Gentlemen, if you would take your seats there at the witness table. The Chair apologizes to you for keeping you waiting in the wings, but we are very eager to get you in here on this very important issue.

Mr. Cherecwich, would you lead off, please, sir.

Just to reiterate, according to the rules of the Committee, your entire written statement, without objection, will be inserted in the record; and we would ask you to be as brief as possible in your oral testimony and to attempt to limit that to 5 minutes. I know it is a short time, but we would appreciate it if you would help us with that.

Mr. Cherecwich.

STATEMENT OF PAUL CHERECWICH, JR., INTERNATIONAL PRESIDENT, TAX EXECUTIVES INSTITUTE, INC., AND VICE PRESIDENT, TAXES AND TAX COUNSEL, THIOKOL CORP., OGDEN, UTAH

Mr. CHERECWICH. Thank you, Mr. Chairman.

Chairman ARCHER. Also, will you personally identify yourself for the record before you begin to testify.

Mr. CHERECWICH. Thank you, Mr. Chairman. Although I am employed as vice president, Taxes and Tax Counsel for Thiokol Corp. in Ogden, Utah, I am here today as the president of Tax Executives Institute, the largest group of in-house tax professionals in North America.

The Institute's members work for the top 2,700 companies in the United States and Canada and interact with the Internal Revenue Service on a daily basis. We have day-to-day dealings with senior corporate management and corporate boards of directors, and accordingly, we know first hand the strengths and weaknesses of the corporate governance model. TEI is pleased to participate in this hearing on proposals to restructure the IRS.

TEI commends the National Commission on Restructuring the IRS for its efforts in identifying the issues of concern, seeking out the views of interested parties and crafting proposed solutions. Even though TEI disagrees with certain provisions of H.R. 2427, we are convinced that the proposed legislation holds great promise for bringing continuity, accountability and expertise to the management and oversight of the IRS.

Mr. Chairman, I believe it is appropriate to begin by acknowledging and asking the Committee to acknowledge that consensus has already been attained on a wide variety of issues, such as a fixed 5-year term for the Commissioner and, indeed, that significant progress has been achieved, for example, in improving the modernization of the IRS' computer systems.

TEI recognizes that there are sharply divergent views on how best to provide effective oversight of the IRS. We respectfully suggest that it is time to tone down the rhetoric on both sides of the debate and to focus on the substance of the various proposals. Hence, we urge the critics of the current system not to demonize the IRS or its employees, because unfounded and exaggerated attacks on the IRS not only undermine the public's trust in an agency that, like it or not, is indispensable, but also erode the people's faith in the entire government. The key is not or should not be scoring debate points or whose proposal wins, but rather on improving the management of the IRS and giving the American people the tax system they deserve.

That said, Mr. Chairman, I want to turn to particular proposals for improving the management and oversight of the Internal Revenue Service.

TEI is especially pleased that nearly all parties recognize that there is no single solution to what ails the IRS. What is needed is a balanced, integrated approach. One change, say the appointment of an oversight body, will not transform the agency unless it is effectively coupled with others, including coordinated and streamlined legislative oversight and simplifying the tax laws. Indeed, unless the horrendous complexity of the Tax Code is addressed in a meaningful way, the best management structure in the world will not enable the IRS to do its job efficiently and effectively.

Mr. Chairman, as has already been noted, the most significant disagreement between the administration and the Restructuring Commission lies in the area of executive branch oversight. With due respect, TEI believes there is an acceptable, workable middle ground between restructuring the Commission's private-sector-dominated board and the administration's government-only board.

Specifically, TEI recommends the establishment of a reasonably balanced Oversight Board whose members are appointed by the President and charged with the responsibility for overseeing the administration of the Internal Revenue laws. In our view, having representatives of both government and the private sector on the Board would afford the IRS the benefit of private-sector expertise in a large number of areas, which would be lacking on a government-only board, while recognizing the unique mission of the IRS as a tax collection agency.

Similarly, a board of limited size, say no more than 10 or 12 members, would likely operate more efficiently than a larger group.

Unlike the Restructuring Commission, TEI believes that the Commissioner of Internal Revenue should serve as a full member on the Oversight Board, as should the Secretary or Deputy Secretary of the Treasury. Beyond these two individuals, we believe members should be selected solely on the basis of their expertise in areas such as, general management, finance, technology and personnel. In other words, no particular group should be guaranteed a position on the Board.

TEI believes that the Oversight Board should be involved in reviewing the IRS' strategic plans, the Commissioner's plans for reorganizing the IRS and the agency's plans pertaining to modernization, training and education and other operational functions. The Board should also ensure that the IRS' budget supports the agency's annual and long-range plans and should also ensure appropriate financial audits of the IRS.

TEI agrees with the Restructuring Commission that the Board should have no tax policy responsibilities, though we note that the dividing line between policy and administration is not always easy to discern and maintain. For example, budgetary decisions regarding research or compliance programs could well affect how the tax law is interpreted or applied, thereby affecting policy. Hence, we acknowledge that the presence of private-sector representatives on the Oversight Board raises conflict-of-interest issues of real concern.

While these issues cannot be minimized or ignored, they should not be overstated. Institutional protections can and should be implemented, just as they have been in the private sector where the same individuals serve, for example, on multiple boards of directors. Moreover, it should be remembered that with or without a board, it is the Secretary of the Treasury who will remain ultimately responsible and accountable for the management of the IRS.

This brings us to another area where our views diverge from those of the Restructuring Commission. TEI strongly believes that the Commissioner should continue to be appointed by the President with the advice and consent of the Senate and not by the Oversight Board. Providing for Presidential appointment of the Commissioner would not only address certain legal and constitutional issues that have been raised, but would also recognize that the Commissioner will be responsible for all functions of the IRS, including those beyond the Board's areas of responsibility, such as specific enforcement and customer service functions.

TEI also believes that the President should retain the authority to dismiss the Commissioner, but suggests that the Board should play an advisory role in both the selection and retention of the Commissioner.

Hence, TEI believes that the IRS can learn much from the private sector. Even though the corporate governance model is not perfect, an oversight board will help to ensure that the IRS is held accountable for its operations. In the final analysis, however, it is not the oversight board to which the agency can or should answer; it is to the administration, to Congress, and to the American people.

Mr. Chairman, before concluding, I want to address one additional issue: the need to streamline congressional oversight of the

IRS. TEI agrees that responsible oversight by the legislative branch is absolutely essential. We suggest, however, that steps can be taken to streamline congressional oversight activities and to make it at once less reactive, more constructive, and more integrated. Changes are needed not only to conserve the agency's resources but to ensure that mixed signals are not being sent about what the IRS' priorities should be.

Mr. Chairman, Tax Executives Institute appreciates this opportunity to provide its comments on proposals to restructure the IRS. I should be pleased to respond to any questions you may have.

Thank you.

[The prepared statement follows:]

Statement

of

Paul Cherecwich, Jr.
Vice President, Tax and Tax Counsel
Thiokol Corporation

on behalf of

Tax Executives Institute, Inc.

on

Proposed Legislation to Restructure the Internal Revenue Service

September 17, 1997

Good morning. I am Paul Cherecwich, Jr., Vice President-Taxes and Tax Counsel for Thiokol Corporation in Ogden, Utah. I appear before you today as the president of Tax Executives Institute, the largest group of in-house tax professionals in North America. The Institute is pleased to submit these comments on proposals to restructure the Internal Revenue Service — H.R. 2292 and S. 1087, which have been styled *The IRS Restructuring and Reform Act of 1997* and embody the findings and recommendations of the National Commission on Restructuring the Internal Revenue Service, as well as the Clinton Administration's own proposals to enhance the management and oversight of the IRS, which have been set forth in H.R. 2427, *The IRS Improvement Act.*

I. Background

Tax Executives Institute is the professional association of corporate tax executives. Our 5,000 members are accountants, attorneys, and other business professionals who work for the largest 2,700 companies in North America; they are responsible for conducting the tax affairs of their companies and of ensuring their compliance with the tax laws. Hence, TEI members deal with the tax laws and with the Internal Revenue Service on almost a daily a basis. (Most of the companies represented by our members are part of the IRS's Coordinated Examination Program, pursuant to which they are audited on an ongoing basis.) They also have day-to-day dealings with senior corporate management and corporate boards of directors, and accordingly, know first-hand the strengths and weaknesses of the corporate governance model. TEI believes that the professional training and experience of our members enable the Institute to bring an important, and balanced, perspective to the issues involved in efforts to restructure and reform the Internal Revenue Service.

II. Setting the Tone for a Constructive Debate

At the outset, TEI commends the members of the National Commission on Restructuring the Internal Revenue Service and the Commission's staff for their efforts in identifying issues of concern, seeking out the views of interested parties, and crafting proposed solutions. We also commend the members of Congress who have cosponsored H.R. 2292 and S. 1087, which contain an integrated set of proposals to improve the management and administration of the IRS. Even though TEI disagrees with certain provisions of these bills, the Institute is convinced that the proposed legislation holds great promise. Finally, we commend the members of the Clinton

Administration (and the Treasury Department in particular), the sponsors of H.R. 2427, and commentators in the private sector, who have offered constructive comments on the Commission's proposals. We pledge our support for efforts to refine the proposals and to enact a meaningful set of reforms.

As the legislative process moves forward, TEI believes it is imperative that all parties — Congress, the Administration, members of the Commission, and stakeholders in the private sector — acknowledge that consensus has already been attained on a wide variety of issues. More fundamentally, except in a few, isolated quarters, everyone agrees that we cannot stay where we are: The need to effect significant changes at and in respect of the Internal Revenue Service in order to bring greater continuity, accountability, and expertise to the management and oversight of the IRS cannot be denied.

Change, however, should not be embraced merely for its own sake. Moreover, care must be exercised to ensure that whatever changes are adopted, especially in the management structure of the IRS, do not impede the agency's ability to do its job — collecting the revenue necessary to run the government in the manner that Congress decides and the American people demand — today and into the future. TEI recognizes that there are sharply divergent views on how best to provide effective oversight of the IRS, and we agree it would be unwise to minimize or paper-over the differences in philosophy that animate the ongoing debate. We nevertheless believe that it is time to tone down the rhetoric and focus on the substance of the various proposals. Hence, we urge the advocates of wholesale change, as well as those supporters of the current system, to check their contempt for one another's views at the door. The key is not — or should not be — "whose proposal wins" but rather which proposal (or combination of proposals) holds the most promise for improving the management of the IRS and restoring rationality to the critically important roles of Administration and congressional oversight. TEI remains confident that common ground can, and will, be found.

TEI is especially pleased that nearly all parties recognize that there is no single solution to what ails the IRS. What is needed is a balanced, integrated approach. One change — say, the appointment of a board of directors — will not transform the agency unless it is effectively coupled with others, including coordinated and streamlined oversight, stronger leadership by the Commissioner and senior IRS management, an increased focus on customer service, and the assurance of balanced, effective performance measures. Indeed, one of TEI's primary concerns is that the establishment of an oversight board (whatever its composition) not become merely the insertion of yet another layer of bureaucracy into the IRS; by itself, such a board will not make the agency more responsive and may even impede the government's ability to improve the development and administration of our tax laws. In tandem with other changes, however, enhanced Executive Branch oversight of the IRS can increase management accountability and contribute to a tax system that properly focuses on customer service without minimizing the importance of ensuring taxpayer compliance.

Once again, TEI submits that the focus of these hearings should be on the future — on clearly defining expectations, on streamlining and strengthening oversight of the agency, and on providing the IRS with sufficient (and stable) budget resources to modernize its systems, to serve the public, and to ensure compliance with the tax laws. To the extent that we have a criticism of the Restructuring Commission's report (and the reaction it has provoked by members of Congress and other commentators), it is that its language sometimes "plays to the gallery" and is unnecessarily critical of the Internal Revenue Service and its personnel. To be sure, the management of the IRS can be improved, but there is plenty of blame to go around. For example, it is Congress that bears a full measure of responsibility for the unbelievable complexity of the tax laws and the burdens they impose on taxpayers and the IRS alike. Unfounded, misplaced, and exaggerated attacks on the agency may have surface appeal and score well in public opinion polls, but in our view, they are not constructive; they are part of the problem, not the solution. The key is to be forward-thinking and to give the American people the tax system they deserve.

III. The Emerging Consensus: Necessary Steps to Improving Tax Administration in the 21st Century

H.R. 2292 and its Senate counterpart (S. 1087) are intended to implement the findings and recommendations of the National Commission on Restructuring the Internal Revenue Service. H.R. 2427, which was introduced on September 8, represents the Clinton Administration's own proposals for improving the management and administration of the IRS. In many respects, the competing proposals for improving the day-to-day management and operation are similar. Indeed, consensus appears to exist on many, if not most, of the recommendations to increase the continuity, accountability, and expertise of IRS senior management. The most significant disagreement lies in the area of Executive Branch oversight, where the Restructuring Commission has proposed the establishment of an independent board of directors (whose members would overwhelmingly come from the private sector) and the Clinton Administration has issued Executive Order No. 13051 (62 Fed. Reg. 4607) establishing an IRS management board (whose members would be drawn exclusively from the Treasury Department and other federal departments). (H.R. 2427 would codify the Administration's management board proposal, as well as its intention to establish a private-sector advisory board.) After setting forth our views on the principal area of disagreement — ensuring effective oversight of the IRS — TEI offers its comments on other issues addressed in the legislative proposals.

A. Ensuring Effective Oversight of the Internal Revenue Service

As previously explained, Tax Executives Institute supports the Restructuring Commission's efforts to bring continuity, accountability, and expertise to the management and oversight of the Internal Revenue Service. To this end, the Institute supports the proposals to institutionalize enhanced Executive Branch oversight of the IRS. Specifically, TEI recommends the establishment of an oversight board, whose members are appointed by the President and charged with responsibility for overseeing the administration of the internal revenue laws, not the establishment of tax policy[1]. We note that both the Restructuring Commission and the Clinton Administration have offered proposals to establish oversight bodies, and although their proposals differ significantly in terms of the board's composition and duties, we view their agreement that some type of board is required as a positive. We also believe that the establishment of a board by itself will not solve the IRS's problems. Indeed, unless care is taken in establishing the board, it may become just another layer in the bureaucracy, impairing the IRS's ability to manage its affairs rather than facilitating it.

1. *Composition of the Oversight Board.* TEI believes that the boards proposed by the Administration and the Restructuring Commission both suffer from a similar flaw: Their composition is not balanced. Hence, H.R. 2292 and S. 1087 call for the establishment of a nine-member board with all but one of the members (the Secretary or Deputy Secretary of the Treasury) coming from the private sector,[2] whereas the Administration's board would consist of at least 20 Executive Branch employees. In our view, the composition of the oversight board should be reasonably balanced between private-sector and government representatives and ideally have fewer than a dozen members. Having representatives of both government and the private sector on the

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[1] TEI employs the term "oversight board" advisedly. We share the concern expressed by some that there are far too many governmental "advisory boards" and that far too few of them are constructive. We thus believe that using the term "advisory board" might signal too much a business-as-usual approach toward the IRS, and that is clearly not what is needed. At the same time, we believe that the key to improving the IRS is enabling it to manage itself, by providing strategic direction, managerial flexibility, stable funding, and finely honed oversight from both the Executive Branch and Congress. Thus, we eschew the term "management board" because it may bespeak too bureaucratic an approach to an issue that is multidimensional and the term "board of directors" because in our view it does not adequately reflect the fundamental differences between government agencies and profit-oriented enterprises. In the final analysis, what the body is called is irrelevant; what it does is critical.

[2] One member of the Restructuring Commission's board would be a representative of an organization representing a substantial number of IRS employees; hence, although representing the IRS workforce, the member would not be a government employee.

board would afford the IRS the benefit of private-sector expertise in a large number of areas (which would be lacking on a government-only board) while recognizing the unique mission of the IRS as a tax-collection agency. Similarly, a board of limited size would likely operate more efficiently than a bloated board.

TEI believes that the Secretary (or Deputy Secretary) of the Treasury and the Commissioner of Internal Revenue should both serve on the oversight board: the Secretary (or Deputy Secretary) because he or she is ultimately accountable for the proper oversight of the IRS, and the Commissioner because he or she effectively serves as Chief Executive Officer of the agency. Beyond these two individuals, however, members should be selected solely on the basis of their expertise in areas such as general management, finance, technology, and personnel. In other words, no particular group should be guaranteed a position on the board. We also believe that in-depth knowledge of the tax laws could beneficially be among the skill sets of one or more board members.

2. *Duties of the Oversight Board.* The principal function of the oversight board should be to oversee the Internal Revenue Service in the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws, related statutes, and tax conventions to which the United States is a party. The board should be involved in reviewing the IRS's strategic plans, the Commissioner's plans for reorganizing the IRS, and the agency's plans pertaining to modernization, training and education, and other operational functions. The board should also ensure that the IRS's budget supports the agency's annual and long-range strategic plans, and should also ensure appropriate financial audits of the IRS.

TEI agrees with the Restructuring Commission that the board should have no responsibilities with respect to (i) the development and formulation of federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions; and (ii) specific law enforcement activities of the IRS, including compliance activities such as criminal investigation, examination, and collection. We note, however, that the dividing line between policy and administration is not always easy to discern and maintain. (For example, budgetary decisions regarding research or compliance programs could well affect how the tax law is interpreted or applied, thereby affecting policy.) Hence, we agree that the presence of private-sector representatives on the oversight board raises conflict-of-interest issues of real moment. While these issues cannot be minimized or ignored, they should not be overstated. Institutional protections can and should be implemented (just as they have been in the private sector where the same individuals serve, for example, on multiple boards of directors). Moreover, it should be remembered that, with or without a board, it is the Secretary of the Treasury who will remain ultimately responsible and accountable for management of the IRS.

TEI disagrees with the Restructuring Commission, however, in respect of the appointment of the Commissioner of Internal Revenue. TEI strongly believes that the Commissioner should continue to be appointed by the President, with the advice and consent of the Senate. The President should also retain the authority to dismiss the Commissioner, who will be responsible for all functions of the IRS, including those beyond the board's areas of responsibility (such as specific enforcement and customer service functions). We nevertheless believe that the board should play an advisory role in the selection and retention of the Commissioner.

In summary, in TEI's view the board should serve in an oversight rather than a decision-making capacity, more in the nature of trustees of the agency rather than managers. Hence, although we believe the IRS can learn much from the private sector, we recognize that the corporate governance model is not perfect. The board can help ensure that the IRS is held accountable, but given the IRS's critical governmental function, it is not the board to which the agency can or should answer: It is to the Administration and Congress. That said, we believe the establishment of a reasonably balanced board would benefit tax administration.

B. Other Measures to Improve Tax Administration

TEI believes that there is an emerging consensus on a number of other issues raised by the Restructuring Commission, and we urge Congress to move responsibly to enact legislation addressing the following subjects.

1. *Continuity of Management.* TEI agrees that the Commissioner of Internal Revenue should be appointed for a five-year term, and that the Commissioner should be given greater flexibility in hiring, firing, and salary decisions. The goals of continuity and accountability at the top of the agency will be advanced by appointing the Commissioner for a fixed term.[3]

Equally important, however, are proposals to accord the Commissioner greater discretion in recruiting, rewarding, and retaining the agency's top managers. Indeed, continuity among the IRS's senior managers — assuming they are qualified to do their jobs — is essential if the IRS is to operate efficiently and regain the trust of Congress and the American people. Thus, we believe care must be exercised to balance the twin goals of flexibility and stability; in our view, the last thing the IRS needs is massive turnover in senior management ranks whenever a new Commissioner is appointed.

2. *Stability of Funding.* TEI agrees that the Internal Revenue Service should receive stable funding. If the leaders of the IRS are to undertake the proper planning to rebuild the agency's credibility and effectiveness, the agency must be assured that programs initiated and funded in one year in furtherance of the IRS's strategic plan are not eviscerated in the next.

To be sure, the nature of government is such that Congress will retain authority to set the IRS's budget and to readjust priorities as times change and developments warrant. At the same time, more can be done to stabilize the IRS's operational budget and insulate the agency from the political winds. Hence, TEI supports the Restructuring Commission's recommendation that the IRS be afforded certainty in its operational budget by providing that funding for tax law enforcement and processing, assistance, and management will be maintained at current levels for the next three years; we are also supportive of the Commission's recommendations concerning Congress's increasing spending limits for the IRS in appropriate circumstances. Finally, although recognizing that Congress remains ultimately responsible to the American people for how the IRS is managed (and how it spends appropriated funds), we believe the overall management of the agency would benefit from the implementation of multi-year budgets.

3. *Streamlining of Congressional Oversight.* TEI agrees that congressional oversight of the agency should be streamlined. Reforming the Internal Revenue Service requires more than the IRS — and the Executive Branch officials who oversee it — getting its own house in order. With due respect, it requires Congress to get its house (or houses) in order. The Restructuring Commission noted that currently there are seven congressional committees and subcommittees that engage in oversight activities and, further, that the U.S. General Accounting Office not only undertakes projects assigned to it by one of those bodies but also "self-initiates" numerous projects each year. And each of those projects — regardless of whether they lead to hearings or legislation — consumes considerable IRS resources and may send mixed signals to the agency and the public about the proper direction for tax administration.

While responsible oversight is absolutely essential, TEI agrees that steps can be taken to streamline congressional oversight activities and to make it at once less reactive, more constructive, and more integrated. In our view, coordinated, as opposed to reactive, sometimes disjointed oversight by Congress must be part of the drive toward continuity and accountability. Thus, TEI believes that the Restructuring Commission's recommendations that the Joint Committee on Taxation coordinate GAO studies and that joint hearings be held annually to review the IRS's strategic plans and budget merit careful consideration. In our view, the involvement of the oversight

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[3] As previously discussed, TEI believes that the Commissioner should continue to be appointed by the President with the advice and consent of the Senate.

board in reviewing the IRS strategic plans and budget should imbue them with greater credibility and contribute to a more positive reception of the agency by Congress.[4]

Finally, we recommend that Congress carefully weigh the potential benefits of requiring the IRS (or its constituent offices or advisory groups) to complete numerous studies (as H.R. 2292 and S. 1087 would do) and to make periodic reports on various specific subjects (such as electronic filing). Congress's role should be to provide oversight and ratify the IRS's strategic decisions, not become involved in managing day-to-day operations. In our view, the oversight board's involvement in the IRS's strategic planning and budget processes should help restore congressional confidence in the agency, thereby facilitating coordinated and streamlined legislative oversight.

4. *Strengthening Taxpayer Rights.* TEI agrees that further steps should be taken to preserve and strengthen taxpayer rights. Thus, we support the Restructuring Commission's goal of ensuring that "taxpayers are treated fairly and impartially by the IRS, are able to seek redress or review of IRS actions by the courts, and are able to resolve conflicts creatively and expeditiously with IRS cooperation."

TEI is especially supportive of proposals to expand the Internal Revenue Code's current provisions relating to awarding taxpayer costs where the IRS's position is not substantially justified and to rectify the harsh inequities that flow from the Code's imposing a higher interest rate on tax deficiencies than it pays on tax refunds. As to the former issue, we urge Congress to carefully weigh proposals to eliminate the "net worth" limitations on awarding costs and attorneys fees (which currently operate to deny most corporations any relief even where the IRS's position is wholly unsupportable). We also commend the Restructuring Commission for proposing to eliminate the so-called interest rate differential which penalizes taxpayers who simultaneously owe and are owed funds by the IRS. We note with concern, however, that H.R. 2292 and S. 1087 would effect this change by periodically adjusting the single rate to be charged on underpayments and overpayments in order to ensure that the change is revenue neutral. TEI respectfully submits that the Code's interest provisions should be designed without regard to their transitory (and possibly ever variable) revenue effect; instead, they should be reformed to generate (for either taxpayers or the government) no more and no less than an appropriate charge for the use or forbearance of money.[5]

5. *Encouraging Electronic Filing.* TEI agrees that the IRS must develop a strategic marketing plan to make paperless filing the preferred and most convenient means of filing for taxpayers. Although we have some qualms about deferring the filing deadline for electronically filed returns (on the ground such an action might be viewed as encouraging procrastination more so than electronic filing), we believe all options should be fully explored and that appropriate incentives, for taxpayers as well as return preparers, should be considered. We also strongly believe that electronic filing must become a viable option for corporate taxpayers as well. To this end, TEI pledges its continuing support to the IRS in streamlining Form 1120 and developing corporate electronic filing systems.

6. *Ensuring a Competent, Qualified, Well-Equipped, and Respectful Workforce.* TEI agrees that the IRS must address training, operations, technology, culture, and taxpayer

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[4] Under H.R. 2292 and S. 1087, the board is to review and approve the IRS's budget, which would then be submitted to the Secretary of the Treasury; the legislation further provides that the Administration is to provide a copy of that board-approved budget, without revision, to Congress at the same time it submits the President's annual budget request for the IRS. Although TEI agrees that the IRS can benefit from having an oversight board involved in the development and review of its budget, we have qualms about requiring the submission of the board-approved budget directly to Congress. In the final analysis, accountability for the IRS — and its budget — properly rests with the Treasury Department and the President, and we are concerned that the proposed legislation might blur the lines of accountability or heighten the possibility of conflict between the board and the Administration.

[5] In addition to our policy concerns about the interest equalization proposal in H.R. 2292 and S. 1087, we are concerned about the administrative burdens spawned by frequent interest rate adjustments and, more fundamentally, the various parameters that might be taken into account by the Secretary in determining the appropriate interest rate to ensure revenue neutrality and the effect any of those parameters might have on the interest rate swing from one period to another.

education if the agency is to operate more efficiently and with greater customer focus. To this end, TEI believes it is critical that the IRS refine its performance measures. The IRS must also update its technology and treat taxpayer information as a strategic asset to improve both its customer service and compliance functions. Hence, although customer service is and must remain a key, the IRS's compliance and enforcement efforts should not be given short-shrift. In other words, the fundamental difference between government and business cannot be lost. Hence, TEI submits that if one of the first principles of tax administration is customer service, another surely is compliance and enforcement. That said, it is clear that the IRS can improve. It is clear that taxpayers should be treated with respect and efficiency by a workforce that is competent, courteous, and accountable.

7. *Simplifying the Tax Law.* TEI agrees that simplification of the tax law is necessary to reduce taxpayer burden and facilitate improved tax administration. Indeed, we believe that the complexity of current law is a primary impediment to the effective operation of the tax system and the efficient management of the Internal Revenue Service. (If the law is unadministrable, how can the IRS be expected to administer it in an efficient manner?) Thus, TEI commends the Restructuring Commission's proposals to require Congress to focus more finely on the complexity of tax law proposals. We have long supported proposals such as those contained in H.R. 2292 and S. 1087 to require the preparation of a "tax complexity analysis" in respect of proposed tax law changes, to enable members of Congress to raise a point of order where such an analysis is not prepared, and to have representatives of the IRS testify on the administrability of proposed changes. While no single change will operate as a panacea, taken collectively the proposals may effect meaningful incremental changes. Hence, we support proposals to devote part of the legislative process to exploring the relative complexity of a proposal and whether less complex alternatives exist. And often the IRS will be the best suited entity for addressing complexity (for example, by designing a prototype form). At the same time, we believe it would be imprudent to divorce totally the IRS's role in evaluating the administrability of legislation from the Treasury's tax policy responsibilities; it should be the Treasury that is ultimately responsible — and accountable — for determining the Administration's position on proposed legislation.

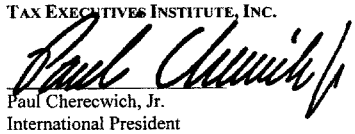
In addition, we would be less than candid if we did not express some pessimism over the effect of such changes (even if they were enacted), based in large measure on the undeniable complexity visited on practically all taxpayers by the recently enacted Taxpayer Relief Act of 1997. In our view, the recent tax bill takes complexity to new heights. As Winston Churchill might have said, never have so many provisions inflicted so much complexity for so (relatively) few tax benefits. We respectfully submit that the availability of tax law complexity analysis, with or without a complementary point-of-order mechanism, would not have solved the problem: the troublesome provisions were enacted not because their mind-numbing complexity was unknown but because it was ignored. TEI well appreciates that other policy objectives may sometimes outweigh the goal of tax law simplification, but until the Administration and members of Congress (and, concededly, private-sector interest groups) go beyond paying lip service to simplification and exercise self-discipline in championing complex measures, the goal of tax law simplification will remain illusive.

IV. Conclusion

Tax Executives Institute appreciates this opportunity to provide its comments on proposals to restructure the Internal Revenue Service. I should be pleased to respond to any questions you may have.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

By: 

Paul Cherecwich, Jr.
International President

Mr. PORTMAN [presiding]. Thank you, Mr. Cherecwich.

I would urge all members of the panel to try to keep their oral statements to 5 minutes so we have more time for questions.

Mr. Mann.

STATEMENT OF PHILLIP L. MANN, CHAIR, SECTION OF TAXATION, AMERICAN BAR ASSOCIATION

Mr. MANN. Thank you. My name is Phillip Mann, and I am appearing before you today on behalf of the American Bar Association, Section of Taxation. The section has been privileged to work with the Commission members and staff as they have developed the Commission's report. We particularly appreciate the courtesy that Congressman Portman extended to us during this process.

As a preliminary matter, we endorse the conclusions of the Commission that the complexity of the tax law leads directly to difficulties in tax administration and frustration with the IRS. Simplification of the tax law is an urgent necessity.

But let me move now to the topic of executive branch governance and congressional oversight, which is the purpose of today's hearing. First, governance. The recommendations that we present today are guided by seven current needs for our tax system. These are the needs for clear accountability within the IRS and within the executive and legislative branches, effective oversight of the IRS by the executive and legislative branches, continuity of IRS management, integrity assurance for the IRS, Presidential responsibility for Federal revenues, private-sector assistance for IRS management, and oversight and better integration, not separation, of tax administration and tax policy. These ideas are further developed in the written testimony, but I want to move now to our proposed recommendations.

Taking into account these needs, the section believes that the following management and oversight structure would be appropriate:

We believe the President should remain the ultimate authority over the Internal Revenue Service, appointing the Commissioner and Chief Counsel and controlling its budget. Therefore, we recommend that the Service remain an agency within the Treasury Department, subject to its authority and accountability. Consistent with our view that private-sector expertise should be made available to the Service's senior management and should be involved in the oversight process, we recommend that Congress create an Internal Revenue Service Board of Review.

This Board would be made up exclusively of private-sector members serving staggered terms. Either the President or the President and the Congress would appoint the board members, who would be subject to existing laws relating to disclosure, recusal and conflicts of interest. The precise tasks of the Board would be specified by Congress in the implementing legislation.

The most important power of the Board would derive from its duty to make periodic independent reports directly to the President and to the Congress concerning its assigned tasks. It would also provide a consultative resource for the IRS on major management

issues and, in addition, the Board would be available to consult directly with and testify before the Congress on the progress and problems of the agency.

We do not support the Commission's recommendation that approval of certain management decisions be shifted from the Treasury to the Board and neither do we support membership on any IRS Board by other executive branch personnel. We believe this would raise concerns about potential political influence, as well as confuse loyalties.

As a result, we do not support the IRS Management Board created in President Clinton's recent Executive order and proposed in H.R. 2428.

Finally, we believe that Congress should establish the new position of Under Secretary of Taxation. While we concur in the Commission's assessment that oversight of the Service has been limited and uncoordinated, we are skeptical that its proposed Oversight Board is the answer. Instead, we believe a new Under Secretary of Taxation, charged specifically with that responsibility, together with the task of coordinating the entire tax system, both tax administration and tax policy, would work.

Creation of a new position of Under Secretary of Taxation would avoid the prospects of management by Committee, assure greater coordination of fiscal management of the Service tax administration and tax policy, and together with the Board of Review reporting directly to Congress, the Under Secretary would provide a clear focus of responsibility, authority and accountability.

Let me switch briefly to congressional oversight. We strongly agree with the Commission's conclusions that within both the executive branch and the Congress the proliferation of entities responsible for some aspect of the tax system makes the development of a coherent legislative, administrative and budgetary policy virtually impossible, and we endorse the Commission's proposal to establish a joint oversight panel.

In conclusion, we have attempted to set out for the Committee a plan for the future governance and oversight of the Service that we believe will be most successful. We do so with only one objective and that is to improve the Nation's tax system for the benefit of all Americans. We will do our best to assist the Ways and Means Committee as it works to craft a plan for the future of the Internal Revenue Service.

Thank you, Mr. Chairman, for the opportunity to appear today.

[The prepared statement and attachments follow:]

STATEMENT OF PHILLIP L. MANN

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

Wednesday, September 17, 1997

Mr. Chairman and Members of the Committee:

My name is Phillip L. Mann. I appear before you today in my capacity as Chair of the American Bar Association Section of Taxation. This testimony is presented on behalf of the Section of Taxation. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The Section appreciates the opportunity to appear before the Committee today to discuss the report of the National Commission on Restructuring the Internal Revenue Service (the "Commission"). Although I will refer most frequently to the Commission's report, our comments also have been influenced by our review of H.R. 2292, the "Internal Revenue Service Restructuring and Reform Act of 1997," introduced on July 30, 1997, by Messrs. Portman and Cardin, and by our brief review of H.R. 2428, the "Internal Revenue Service Improvement Act of 1997," introduced on September 8 by Messrs. Rangel, Coyne and Matsui and others.

Because of the limited scope of today's hearing, our testimony focuses solely on issues of Executive Branch governance, Congressional oversight of the Internal Revenue Service ("Service" or "IRS") and certain recommendations regarding efforts to simplify future tax legislation. At an appropriate time, we would be pleased to present our views on other issues addressed in the Commission's report.

Since the creation of the Commission, the Section of Taxation has been privileged to have had the opportunity to consult with certain of its members and members of its staff as they reviewed issues and developed the Commission's report. We particularly appreciate the courtesy that Congressman Portman has extended to us during this process and his willingness to consult with us. During the same time period, the Section also has consulted with representatives of the Treasury Department, including Secretary Rubin, and we likewise appreciate the willingness of the Treasury to consider our views.

We believe the Commission report identifies crucial issues regarding the management of the Internal Revenue Service and attempts to deal constructively with those issues. While the Section does not agree with all of the solutions proposed by the Commission, we believe the thoughtful way in which the Commission presents the issues will aid the Congress in designing a workable solution. We also have been impressed with the attention to IRS management issues given by Secretary Rubin and others within the Treasury Department, and we hope their efforts also will be productive. And, of course, we hope the testimony we present today contributes to the goal of a better tax system for our country.

As a preliminary matter, we wish to emphasize and forcefully endorse the conclusions reached by the Commission on the relationship between the complexity of the tax law and the difficulty of tax administration. As we will discuss in greater detail, there is little question that many of the perceived failures of the Service are closely linked to the complexity of the Internal Revenue Code. Unless there are meaningful legislative and administrative efforts to simplify the tax law, any changes in IRS governance that may result from the Committee's efforts will lose their effectiveness.

I. GOVERNANCE

Principles and Predicates

In reaching the conclusions and developing the recommendations on governance of the Service that we present today, we have been guided by the following principles:

1. Clear Accountability

Clear lines of authority and accountability must be established both within the Internal Revenue Service and within the Executive and Legislative Branches to whom IRS management is responsible.

We indicated in our April 17, 1997 testimony before the Commission (in the context of the Administration's management proposal) that we welcome the concept of institutionalization of IRS oversight within the Treasury Department. Inconsistent attention has been devoted by Treasury to tax administration in the past. Understandably, Secretaries of the Treasury have been required to devote far more attention to matters of economic and tax policy, international finance, and other fiscal matters. As a result, all too often, the Service's management issues have received short shrift, with the Service gaining correspondingly greater degrees of independence.

The present Administration has done a laudable job of reversing this pattern. We note, however, that this reversal came about in part because of the perception that some problems within the Service had reached crisis proportions. We are concerned that the pattern of inattention could return in succeeding Administrations.

The Tax Section agrees with the Commission that the lack of consistent management on the part of Treasury cannot be allowed to continue. In order to assure IRS accountability, there must be a strong authority within the Treasury Department, reporting directly to the Secretary, specifically charged with management oversight responsibility.

2. Oversight

Adequate and continuous oversight of the Internal Revenue Service must be established.

We believe adequate and continuous oversight is a necessary corollary to the accountability discussed above. To be effective, oversight must be exercised proactively and continuously, rather than only in reaction to crisis or scandal. Moreover, it must be carried out in a coordinated and integrated manner, rather than being diffused among multiple entities and individuals within the Administration and in Congress.

To date, oversight has been anything but continuous and coordinated. Both within the Treasury and Congress, attention seems to be paid to the Service primarily when a problem arises. Problems in an agency the size of the Service are inevitable, and lack of effective oversight will only make matters worse. Therefore, the Section believes that it is appropriate and timely to revisit the means by which oversight of the Service is carried out.

3. Continuity

There must be continuity both in the management of the Internal Revenue Service and among those charged with oversight.

The Commission identified lack of continuity in the management of the Service as one of its principal problems. We concur.

It is the nature of a bureaucracy to resist change and to move glacially once change has been decreed. In order to overcome this natural tendency, it is crucial that those with the vision to initiate and implement change remain in their roles long enough to see the change carried out. The difficulty in assuring continuity has been compounded by the inconsistency of Congressional

oversight, especially with respect to long-term goals. By shifting its focus from year-to-year, Congress has been unable to ensure that important goals identified one year are implemented within the next few years.

To counteract this tendency, it is important that there be a long-term commitment on the part of the top management of the Service and those charged with IRS oversight. Any restructuring initiative must try to ensure that those who propose and institute changes will be present to achieve their completion. To ensure continuity, there also should be overlapping tenures among those involved in the management review and oversight processes.

4. Integrity

The Internal Revenue Service must be free from improper political influence and the potential for corruption.

Compliance with our voluntary self-assessment system will erode rapidly if taxpayers perceive that those individuals with the "right connections" receive favorable treatment from the tax collector. Whatever structure is created must assure that the Service is sufficiently insulated to avoid any perception of such favoritism or from political and economic coercion and corruption. Adequate checks and balances must be in place so that any attempts to induce the Service to deviate from the "straight path" are promptly detected and stopped.

Almost as important is the avoidance of any structure that creates an appearance of political influence. Little will be gained from management or oversight changes if the public perceives, even if incorrectly, that the potential for influence exists.

The Section believes that the Service generally has maintained a high level of integrity throughout its history. We would be concerned with any proposal that could weaken this standard.

5. Maintenance of Presidential Authority

Ultimately, the Internal Revenue Service must remain the responsibility of the President of the United States.[1]

The President is the one official charged with ultimate responsibility for administering the laws and the Executive Branch of the Federal Government. There can be no more fundamental aspect of such administration than collection of the government's revenues. Any diminution or shift of the President's authority, we believe, would diminish accountability, rather than strengthen it.

In addition, we are not convinced that such a fundamental shift of power, with its uncertain effect on our political institutions, is necessary to achieve the ends sought by the Commission. As we will discuss below, the Section believes the goals identified by the Commission can be achieved in another way. Conversely, we are convinced that any effort to separate day-to-day management authority from the overall authority of the President over the Service is neither necessary nor wise.

6. Assistance from the Private Sector

The Service's senior management and the oversight process will benefit from private sector input.

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[1] This principle is based solely on our views regarding administration of the tax system. We note, however, the existence of questions regarding the constitutionality of any proposal that moves the governance of an executive branch agency from the President to an independent governing body, although we do not offer any views on these questions at this time.

Substantial benefits could be achieved by making available to the Service highly-qualified individuals from the private sector. The Commission makes a compelling case that bringing the appropriate expertise from the private sector to bear on major management issues could greatly assist the Service. As we noted in our testimony before the Commission, private sector individuals could provide invaluable help to the Service, including access to resources; differing world views; technical expertise; creativity, judgment, and wisdom; and legitimacy. We believe the key issue is whether such input can be integrated into IRS management in a positive way and in a manner that does not compromise integrity, fairness, or the ultimate authority of the Executive Branch for operation of the Service.

Private sector participation in the oversight process also is very important. Individuals with substantial management experience and relevant technical expertise who are not affiliated with the Administration or the Congress may be expected objectively and candidly to evaluate the Service's plans and performance. Such evaluations should substantially aid the Congressional oversight process and, by making these individuals available to all relevant Congressional committees, should contribute to coordinating the legislative oversight process.

7. Integration of Administration and Tax Policy

Management issues relating to tax administration, enforcement of the tax laws and tax policy should not be separated.

We do not believe it is possible to separate successfully the fiscal management of the Service from tax administration, law enforcement, and tax policy. Management of the tax administration and collection functions is fundamentally and inextricably linked to fiscal, personnel, and information technology issues. Any major management decision -- such as allocation of resources among functions -- necessarily involves important policy choices. It simply is impossible to make business-type management decisions regarding information systems development; selection, training, compensation and deployment of personnel; or appropriate National Office, Regional, Service Center, and District structures, without affecting revenue collection and law enforcement. Conversely, changes in tax policy cannot be made without a significant impact on the administration of the tax laws.

Accordingly, we believe it is unwise to create a structure that has, as its fundamental premise, the notion that overall governance of the Service should be split from responsibility for tax policy, including specific matters in the areas of interpretation or enforcement of the tax laws. Instead, any legislation should seek to create a stronger link between the two.

Proposals

Based on the foregoing principles and predicates, the Section recommends the following management and oversight structure:

1. The Service should remain an agency within the Treasury Department.

As we have indicated, we believe the President is, and should remain, the ultimate authority over the Internal Revenue Service. Management of the agency charged with collection of virtually all of the revenues of the Federal Government is, fundamentally, an Executive Branch function. We believe this is consistent with the Constitutional notion of separation of powers and the management notion of accountability.

Moreover, we believe it is impossible, as well as unwise, to split the fiscal management of the Service from other issues involving tax administration, enforcement and policy. Therefore, these functions should be retained by the only branch of government capable of carrying out both simultaneously -- the Executive Branch -- and should continue to be lodged in the Treasury Department, the Cabinet department charged with administering the Government's fiscal affairs.

2. The President should appoint the Commissioner and Chief Counsel.

If the American people are to hold the President ultimately responsible for the performance of the Service, then the President must have the authority to appoint the Commissioner and the Chief Counsel, subject to Senate confirmation. Moreover, both officials should continue to serve at the will of the President.

We agree with the Commission that a statutorily fixed term for the Commissioner is desirable.[2] While not binding on any individual, a fixed term may have the practical effect of achieving more of the continuity we think would be desirable.

3. The President should retain control over IRS budgeting.

Control over an agency of government necessarily requires control over its budget. Indeed, the Commission recommended leaving the ultimate budget authority in the Executive Branch, although it did recommend giving the Commission's proposed Oversight Board a form of approval authority over the budget. Our recommendation that the President retain responsibility for operation of the Service makes it appropriate that the President also retain control over the Service's budget.

4. Congress should establish an Internal Revenue Service Board of Review.

Consistent with our opinion that private sector expertise should be made available to the Service's senior management and should be involved in the oversight process, we recommend that Congress create an Internal Revenue Service Board of Review. This Board would be made up exclusively of private sector members. No government officials would be permitted to serve on the Board, nor would any government official serve in an *ex officio* capacity. We suggest that the size of the Board be kept relatively small; five or six members would seem optimal.

As recommended by the Commission with respect to its proposed Oversight Board, members of the Board would serve staggered terms and would receive appropriate compensation (including reimbursement of expenses). We recommend that Board members be appointed by the President, confirmed by the Senate, and removable at the will of the President, although an equal number of Presidentially-and Congressionally-appointedmembers would not be objectionable. The members would be subject to existing laws relating to disclosure, recusal and conflicts of interest. In general, the Board should not be governed by the Federal Advisory Commission Act[3] and should not have access to confidential taxpayer return information.

The role of the Board would be specified by Congress in the implementing legislation and would be somewhat similar to the role recommended by the Commission. For example, the Board would be expected to review the Service's proposed budget, short-term and long-range strategic and operational plans, and major proposed management initiatives. In addition, the Commissioner would be expected to consult with the Board regarding the appointment, evaluation, and compensation of the Commissioner's senior management team. The Board also would be expected to recommend to the President qualified candidates for the positions of Commissioner and Chief Counsel.

The Board would meet regularly, at least quarterly. Service and Treasury officials would be required to be available to meet with the Board to discuss any proposals or plans within the Board's statutory review authority. Proposals and other decisions subject to Board review would be required to be submitted to the Board prior to implementation. The Board would be provided

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[2] While not recommended by the Commission, it also may be desirable to provide a fixed term for the Chief Counsel.

[3] We understand there may be specific instances in which application of FACA would be advisable, however.

access to the Service's annual financial audits and other non-taxpayer specific data needed to evaluate matters under consideration. The Board should be assigned a small staff that would report exclusively to the Board. In addition, the Board should have access to other IRS resources on an as-needed basis.

The most important power of the Board would be its duty to make periodic (probably semi-annual) independent reports directly to the President and the Congress concerning its assigned tasks. It would be expected that such reports deal in a candid and uncensored fashion with the successes and problems of the Service, as well as any management initiatives which Congress must approve. Members of the Board would be available to consult directly with, and testify before, the Congress on successes and problems of the agency.

Finally, and as importantly, we visualize the Board's role to include bringing to bear the relevant expertise of private sector professionals as a consultative resource for the Service and the Treasury on major management matters. This role should be specified in the implementing legislation. A properly recruited Board could make considerable resources available to the Service and could complement the management skills of the Commissioner by making available expertise in areas with which the Commissioner may be less familiar.

The authority of the Board would flow from its statutory mandate and the direct reporting responsibility to the President and the Congress provided by the enabling legislation. Through such legislation, Congress, in effect, would set the Board's agenda and require that the agenda be fulfilled. Rather than involve the Board in direct management of the Service, we conceive of its role as an extension of Congressional oversight. It would serve as the eyes and ears of Congress with respect to the Service, directly involved in reviewing the major management decisions affecting the Service without disrupting the normal Executive Branch authority.

Importantly, creation of a Board with oversight responsibility, but no direct approval authority over management matters, would eliminate any concern about perceived conflicts of interest on the part of Board members. We believe it is crucial that the public view the operation of the Service as untainted by the potential for corruption, partisanship or partiality. We fear that any management board with members drawn from the private sector, which has approval authority over certain IRS actions or functions, would be hard pressed to avoid the appearance of potential conflict, whether or not any real conflict exists. That appearance of conflict will not exist where, as we suggest, the Board exercises statutorily mandated oversight responsibilities and must regularly report in some detail to Congress.

We are convinced that a Board of Review, operating as we propose, would attract very high caliber members from the private sector. We are confident that ultimately the Service and the Treasury would recognize the substantial value these individuals could add to the analysis and review of management issues, and Congress would view the Board's role as an adjunct to its oversight responsibility. Because of the important impact the Board of Review will have on improved management and oversight of the Service, we think there will be no shortage of top quality private sector individuals willing to serve.

The Section believes that day-to-day management functions should remain within the Treasury Department, and that the Board of Review should function in review and oversight capacities only. Consequently, we do not support the Commission's recommendation that approval of certain management decisions be shifted to the Board. By retaining all such authority within the Executive Branch, clear management accountability will be maintained.

Neither do we support membership on any board by Executive Branch personnel from outside the Treasury and IRS. It is not clear to use what such individuals would add, particularly when compared to the potential contributions of private sector members, and, we believe, they would raise serious concerns about potential political influence, as well as confused loyalties. As a result, we do not support the Internal Revenue Service Management Board created in President Clinton's recent Executive Order and proposed in H.R. 2428.

5. Congress should establish the position of Undersecretary of Taxation

As noted earlier, we concur in the Commission's assessment that Treasury oversight of the Service has been "limited and uncoordinated." We propose that this problem be addressed directly by creating within the Treasury Department a new Undersecretary of Taxation charged specifically with that responsibility, together with the task of coordinating the entire tax system, both tax administration and tax policy. The scope and importance of this new position dictate that it should be filled only with an individual having significant experience with the tax system.

The Undersecretary would be responsible for Treasury Department oversight of the Service and would be answerable to the Secretary. In addition, the Undersecretary would be required to assure Treasury's participation with the Commissioner and other IRS management in the development of long-range planning for the Service. The Commissioner and the Assistant Secretary of the Treasury for Tax Policy would report directly to the Undersecretary. The Chief Counsel of the Internal Revenue Service, who currently reports directly to the Treasury Department General Counsel and has dotted-line reporting responsibility to the Commissioner, also would have dotted-line reporting responsibility to the Undersecretary,[4] as would the Assistant Secretary for Management and others as deemed necessary and appropriate.

In this way, the Undersecretary would serve as the point of intersection between tax administration and tax policy, with the clear mandate to coordinate these functions. In turn, the Undersecretary would report directly to the Secretary, the individual charged by the President with overall responsibility for the Treasury's tax function.

The Undersecretary would be required to make periodic reports to the Secretary, who in turn would be required to report regularly to the Congress. The Undersecretary and the Commissioner would be required to attend meetings of the Board at such times as the members of the Board determine, and would be responsible for reporting to and advising the Board about impending management proposals. The Undersecretary also would be available to the relevant Congressional committees to report and consult on matters relating to the Service.

The statutorily-mandatedjob description of the new Undersecretary that we have in mind differs from those of prior Treasury undersecretaries. For example, early in President Reagan's administration, an Undersecretary for Economic Policy had supervisory authority over the Assistant Secretary for Economic Policy and the Assistant Secretary for Tax Policy. We do not envision the proposed position as involving economic policy. Rather, the tasks assigned to the new Undersecretary should be limited strictly to those relating to the management of the Service and those relating to tax policy.

Creation of the position of Undersecretary of Taxation would assure clear, continuing and coordinated accountability within the Treasury Department that, to date, has been absent. This would avoid not only the prospect of management by committee, but also assure the greater coordination of fiscal management of the Service, tax administration and tax policy that we believe is essential. Together with a Board of Review reporting directly to Congress, the Undersecretary will provide a clear focus of responsibility, authority and accountability.

II. CONGRESSIONAL OVERSIGHT

We strongly agree with the Commission's conclusions that, within both the Executive Branch and the Congress, the proliferation of entities responsible for some aspect of the tax system makes the development of coherent legislative, administrative and budgetary planning virtually impossible. To this point, we have focused on suggestions for dealing with this and other issues within the Executive Branch. We turn now to the Congress.

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[4] The Chief Counsel would report to the Undersecretary on matters involving tax and compliance policy and legal interpretation of the tax laws. The Chief Counsel would continue to report to the General Counsel on litigation and personnel matters.

As the Commission noted, there are seven Congressional committees (and their respective subcommittees) with responsibility for oversight over various components of the tax system. The jurisdiction of each of these committees differs, and it is not practical to suggest a solution that would place all tax system matters within the jurisdiction of a single committee. Nonetheless, it is abundantly clear that the tax system in general, and the Service in particular, would benefit from a structure and process that would make relevant information available to all of the committees of jurisdiction on a timely basis and with procedures to ensure better coordination among the various committees.

The Commission has suggested the creation of a new joint committee to coordinate IRS oversight. This committee would be comprised of a limited number of members of the existing committees with jurisdiction over the Service. The Commission envisions that this new committee would hold hearings on matters of importance to tax administration, and that such hearings would serve as the primary forum for interaction between the Congress and whatever body or individual is responsible for IRS administration. This new committee would be directed to issue annual reports on Service budgets and operations to assist the committees of jurisdiction in making decisions about IRS issues. The Commission Report suggests that much of the staff work for this new committee would be performed by the staff of the Joint Committee on Taxation, together with the staffs of the existing committees.

We endorse the Commission's proposal to establish a Congressional entity to coordinate IRS oversight efforts. A joint panel, composed of members from the various committees of jurisdiction, would provide a focal point for examining the full scope of IRS management and budget issues. In addition, it would coordinate the sharing of information on Service operations among the committees of jurisdiction. Finally, a joint entity could play a constructive role in providing a forum for enhanced communication among the various committees of jurisdiction and between the Congress and the IRS and Treasury.

The existence of a new joint committee will aid the Service by avoiding duplication and overlap in oversight among the existing committees of jurisdiction. A tremendous amount of IRS resources is devoted to addressing oversight issues. To the extent that duplication of effort can be avoided, more Service resources will be available for its primary missions of taxpayer service and collection of revenue.

While this new entity will require its own staff, we agree that members of this joint panel should rely primarily upon the expertise found within the staffs of the committees of jurisdiction, and the Joint Committee on Taxation, in particular. As the Commission has recommended, the new joint panel would expect the staff of the Joint Committee on Taxation to resume its statutory responsibility for IRS oversight. Under this structure, the primary responsibility for preparing the reports envisioned by the Commission would fall on the staff of the Joint Committee on Taxation. Obviously, sufficient financial resources must be given to the Joint Committee to enable it to meet these broadened responsibilities.

Finally, we also endorse the idea of requiring that all requests to the GAO for investigations of the Service be reviewed by this joint panel. In this manner, Congress can better manage the effectiveness of GAO investigations and the ability of the Service to respond to such inquiries.

III. TAX SIMPLIFICATION AND COMPLEXITY ANALYSIS

The Commission has focused on tax simplification as a major step in improving the administration of the tax law. We strongly agree.

The Commission proposed a Tax Complexity Analysis be required as a formal part of the legislative process. The Section shares the Commission's objective of providing relevant information with respect to the complexity of tax legislative proposals to those responsible for their enactment. Indeed, we suggested a similar process in our testimony before the Commission.

In our view, the specifics of the Commission's proposal are not as important as assuring that, with respect to provisions of broad incidence, members of the tax-writing committees in particular, as well as other members of Congress, be informed, in understandable, descriptive terms, of the complexity and compliance burdens associated with proposed legislation. We believe any such analysis should be prepared by the staff of the Joint Committee on Taxation because such an analysis complements the traditional role of that staff in the legislative process.

We acknowledge that there may be concerns about the scope of the Commission's proposal. For example, the Commission's recommendation would require a Tax Complexity Analysis for every legislative proposal formally considered. If this recommendation is determined to place an unacceptable workload burden on the Joint Committee staff, consideration could be given to limiting the analysis to provisions of more general applicability, determined by one or both of a combination of revenue or affected taxpayers.

It also should be emphasized that the analysis contemplated by the Commission is not quantitative, and it should not be. It is much more important to require the staff to provide a well-informed qualitative analysis of the administrability and complexity of a proposal.

The Commission also has recommended that the complexity analysis be incorporated formally into the tax legislative process so that Budget Act enforcement mechanisms (including a Budget Act point of order) would apply to the failure to comply with the requirement. On further reflection, we have some concern about the wisdom of this requirement. While it would formalize the requirement, it also would create one more procedural issue that could result in more friction in the legislative process. It might be sufficient to have the requirement adopted as a committee procedural rule, leaving enforcement with respect to floor amendments in the hands of the manager of the bill.

Finally, there is the question whether a complexity analysis requirement should be imposed solely on the Congress. Since the Treasury has recognized the importance of tax simplification, it should not be too much to expect a similar analysis to be performed by the Executive Branch with respect to its own proposals as well as those emanating from the Congress.

We recognize that no procedure automatically guarantees that simplification objectives actually will be achieved in the legislative process. However, we think the Commission's recommendation, modified as the Committee deems appropriate, will increase the public focus on tax law complexity. We are confident that such focus will have a positive effect on efforts to simplify the tax law.

IV. CONCLUSION

We have attempted to set out for the Committee a plan for the future governance and oversight of the Service that we believe will be most successful and suggestions regarding efforts to monitor the complexity of the tax law. We do so with only one objective -- to improve the Nation's tax system for the benefit of all Americans. We will do our best to assist the Ways and Means Committee as it works to craft a plan for the future of the Internal Revenue Service.

Mr. Chairman, thank you for the opportunity to appear before the Committee today. I will be pleased to respond to any questions.

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October 21, 1997

The Honorable Bill Archer
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.

Ways and Means
Committee Hearings -
- Restructuring of the
Internal Revenue
Service -- Employee
Benefits and Exempt
Organizations

Dear Mr. Chairman:

On September 17, 1997, I appeared before the Committee on Ways and Means on behalf of the Section of Taxation of the American Bar Association. As requested by the Committee, our testimony was limited to certain issues raised in the Report of the National Commission on Restructuring the Internal Revenue Service ("Report") and H.R. 2292. In our testimony, we spoke to issues relating to Executive Branch governance and Congressional oversight of the Internal Revenue Service ("Service"), as well as certain recommendations regarding efforts to simplify future tax legislation. We indicated that, at the appropriate time, we would appreciate the opportunity to present our views on other issues addressed in the Commission's Report.

Since we understand the Committee may meet later this month to draft legislation relating to the restructuring of the Service, we think it is appropriate to supplement our earlier testimony at this time. Our supplement relates to the employee plans and exempt organizations (EP/EO) functions within the Service.

In its Report, the Commission made recommendations with respect to the EP/EO functions. H.R. 2292 would amend the Internal Revenue Code to strengthen the provisions in existing law which contain a special authorization for funding those functions. The Commission makes this recommendation notwithstanding its general predisposition to simplify tax administration by limiting the "non-core" functions assigned to the Service. The Report concludes that, insofar as employee plans and exempt organizations are concerned, the Service has demonstrated its ability to carry out its regulatory activities effectively. The Report, therefore, recommends that the Congress should support the allocation of sufficient resources to ensure the Service's continued ability to achieve this objective. Indeed, the Report states that "the Employee Plans and

Exempt Organizations operation is recognized as one of the most innovative and efficient functions within the IRS."

With respect to funding the EP/EO functions, H.R. 2292 would retain existing law, which provides for an authorization of appropriations equal to the Section 4940 excise tax on investment income (assuming a 2 percent excise tax rate), plus the greater of the same amount or $30 million. H.R. 2292 would strengthen these provisions by specifying that this authorized appropriation may be used solely to carry out the Service's EP/EO functions. The bill also provides an additional funding source: all user fees collected by the Employee Plans and Exempt Organizations Division would be dedicated to carry out EP/EO functions.

On September 16, 1997, the Staff of the Joint Committee on Taxation ("Joint Committee") issued JCX-44-97, "Description and Analysis of Proposals Relating to the Recommendations of the National Commission on Restructuring the Internal Revenue Service on Executive Branch Governance and Congressional Oversight." The Joint Committee document contains a description and discussion of the provisions in H.R. 2292 and the Report relating to the structure and funding of the Employee Plans and Exempt Organizations Division, and reviews in detail both the size of the employee plans and exempt organizations sectors and the decline in Service personnel dedicated to enforcement of the tax laws applicable to those sectors. The Joint Committee document provides a thorough and well-documented frame of reference for Congressional consideration of the EP/EO funding issue.

The Section of Taxation has two large and active committees -- Exempt Organizations and Employee Benefits -- the membership of which have extensive experience with the Service's administration of the Internal Revenue Code provisions pertaining to employee plans and exempt organizations. Our committees strongly support the conclusions of the Report regarding the Service's performance with respect to the regulation of EP/EO and the need to provide adequate funding to accomplish this purpose. Indeed, our Committees have concerns that, without such funding, the Service's ability to regulate and enforce the tax laws applicable to the employee plans and exempt organizations sectors will be in serious jeopardy.

With respect to the manner of achieving adequate funding of the Service's EP/EO activities, our committees have some concern about the formulaic budget authorization mechanism contained in existing law and endorsed by H.R. 2292. While H.R. 2292 evidences an intent to provide a mechanism for adequate funding of these functions within the Service, that mechanism is not self-executing and would require specific appropriations, as does existing law. To date, there have been no such appropriations, and there is little reason to expect that the provision in H.R. 2292 would, standing alone, be any more effective in achieving the intended objective. In addition to the historical ineffectiveness of the provision, the Joint Committee document referred to above points out that the dedication of a particular revenue source to fund the EP/EO functions could lead to fluctuations in funding which would make organizational planning difficult.

In our view, as a practical matter, the provision of adequate funding for the Service's EP/EO activities requires collaboration and cooperation among the Service, the Treasury Department, and the tax writing and appropriations committees of the Congress. We believe this probably can best be achieved within the traditional budget authorization and appropriations process.

In our September 17 testimony, we recommended that Congress establish the position of Undersecretary of the Treasury charged with the responsibility, among other things, of coordinating the activities of the Treasury Department which involve tax administration and tax policy. One of the responsibilities of the Undersecretary, as we see it, would be to evaluate the resource requirements in the various functions of the Service and to influence the final budget allocations on behalf of the Administration. Based upon the information and data contained in the Report and the Joint Committee document, the Undersecretary would be in the best position to achieve the necessary resource allocations to the Employee Plans and Exempt Organizations Division. This is exactly the kind of issue which prompted our recommendation for establishing a high-level position within the Treasury Department responsible for overall coordination of tax administrative and policy matters. The Undersecretary also would be in a position to provide information, and be accountable, to the tax writing and appropriations committees of the Congress on this subject. These committees, we hope, then would be able to ensure the availability of adequate funding for the EP/EO functions within the context of the Service's overall budget.

We appreciate your willingness to allow us to submit this supplemental statement, and we request that it be made a part of the September 17 hearing record. We would be pleased to meet with you, other members of the Ways and Means Committee or your staff to further discuss this matter.

Sincerely,

Phillip L. Mann
Chair
Section of Taxation

cc: The Honorable Charles B. Rangel

bcc: Pete Singleton, Ways and Means Committee Majority Chief of Staff
Janice Mays, Ways and Means Committee Democratic Chief Counsel
Kenneth J. Kies, Chief of Staff, Joint Committee on Taxation
Lindy L. Paull, Finance Committee Majority Staff Director
Mark Patterson, Finance Committee Minority Staff Director
The Honorable Donald C. Lubick, Acting Assistant Secretary (Tax Policy), Department of the Treasury
Michael P. Dolan, Acting Commissioner, Internal Revenue
The Honorable Stuart L. Brown, Chief Counsel, Internal Revenue

I. INTRODUCTION

Mr. Chairman and members of the Committee: Thank you for inviting the American Institute of Certified Public Accountants ("AICPA") to testify before you today. I am Michael Mares, Chair of the AICPA's Tax Executive Committee. The AICPA is the national, professional organization of more than 331,000 certified public accountants. The Institute's members advise clients on Federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, small and medium-size businesses, as well as America's largest businesses. It is from this base of experience that the AICPA offers its comments.

Overall, the AICPA supports the report of the National Commission on Restructuring the Internal Revenue Service and H. R. 2292, the *Internal Revenue Service Restructuring and Reform Act of 1997*. In today's hearing, we will limit our comments to the issues of IRS governance and oversight. The AICPA anticipates presenting testimony and written comments on taxpayer rights issues at a later date.

II. SPECIFIC COMMENTS

Independent Oversight Board

The IRS is a large, complex organization; the structure and governance processes which have served it well in the past will not do so in the future. Thus, the AICPA supports the H.R. 2292 proposal to create an independent Internal Revenue Service Oversight Board ("Board"). However, we take exception with some of the criteria for selection of members, as discussed later. The Institute believes a fundamental change in the governance of the IRS is needed to provide the IRS with consistent direction and to enable the IRS to benefit from private sector experience and expertise. While we recognize Treasury's concerns regarding the Board, we believe a new approach in governing the IRS is warranted and, of the proposals presented, the Board is the best way to provide the IRS with the expertise, continuity of oversight and direction needed.

There is a need for changing the way the IRS is governed. There is public consensus, agreement within Congress and the Administration, among tax professionals and, importantly, within IRS management, that the agency requires revitalization and renewal. The expertise needed to govern the IRS can no longer be easily categorized into the two broad components, tax policy and tax administration. Instead, IRS Commissioners now wrestle with massive information systems projects, the need to dramatically improve financial management, re-engineering IRS work processes and providing dramatically improved customer service. At the same time, the traditional expectations of increasing voluntary compliance, handling non-compliance and collecting tax revenues must still be met. This must all be done with smaller budgets. Thus, the need for additional and different perspectives on managing these broad challenges is very clear. This is not an indictment of the present structure. It is, however, a recognition that the unprecedented challenges facing the IRS require a different approach and new mix of governance skills and abilities.

Creating more independence for the IRS will improve tax policy deliberations. While concerns have been expressed that separating the IRS from Treasury will undermine tax policy effectiveness, we believe it will actually have the opposite effect. Independence will provide the IRS with the ability to provide needed input into the impact of tax policy and legislative proposals on compliance. We understand that this input will be limited to taxpayer burdens and administrative complexity inherent in such changes. This is important information, however, which should be, but currently is not always, made available to Congress or the public. The current relationship between the IRS and Treasury does not give the IRS an independent voice on such issues.

For example, IRS tax administrators were extremely concerned about the difficulty and complexity involved in administering the earned income tax credit when the concept was first introduced. Those concerns were not expressed to the Congress because the IRS was limited in its ability to discuss the impact of tax policy on administration except with Treasury's guidance. It was several years before Congress and Treasury took notice of IRS's concerns. Creating more independence for the IRS would allow the IRS to more clearly articulate its views when such debate is underway, thus reducing the practical problems in implementing specific provisions.

A Board of presidential appointees specifically assigned for a fixed term to govern the IRS will increase continuity of oversight as well as accountability. Under the proposal in H.R. 2292, the Board members (other than the initial Board members) would serve five-year staggered terms. This structure would provide much-needed continuity in the overall governance of the IRS and contrasts markedly with the very limited governance continuity under the current system. Further, since Board members would be appointed by the President, confirmed by the Senate and could be removed at will by the President, there would be controls in place to ensure integrity and accountability.

A properly constituted and managed Board, focused on overall governance of the IRS, not specific law enforcement matters, can avoid conflict of interest problems. Much has been written and said about the potential for conflicts of interest if there is a primarily private sector Board for the IRS. We believe the proposal adequately addresses these concerns. The Board is to focus on the overall governance of the IRS, not to deal with day-to-day decisions or specific law enforcement matters in the IRS, so conflicts should not arise. The Board members will be "special government employees" subject to conflict of interest rules in Title 18 of the *United States Code*. It thus appears that there are adequate statutory safeguards. If not, we believe that additional safeguards could be drafted to prevent conflict of interest problems.

It also should be noted that the conflict of interest discussions seem to be concerned with potential members of the Board who would serve as executives of business enterprises at the same time they serve on the Board. Even if it were determined that potential conflict of interest problems could not be adequately addressed with respect to such individuals, we believe there is a large pool of highly qualified individuals who could serve on the Board, for example, retired business executives, retired professionals, or educators, all of whom could meet the criteria for serving on the Board, without raising the specter of a potential conflict.

Board members should be selected for their expertise, not for their representation of special interest groups. H.R. 2292 specifies that the private sector members of the Board are to be selected "solely on the basis of their professional experience and expertise" so that collectively, the members can contribute to the Board expertise in management of large service organizations, compliance, information technology, organization development, and the needs and concerns of taxpayers. The AICPA strongly supports the concept of stated areas of required expertise for the current Board, especially the need for individuals with practical experience and expertise in compliance and the needs and concerns of taxpayers. The AICPA also strongly believes that all Board positions, other than the position reserved for the Secretary or Deputy Secretary of the Treasury, should be filled based solely on the qualifications of the individuals and the needed expertise of the Board. The AICPA, therefore, believes no position on the Board should be reserved for representatives of special interest groups such as the IRS employees union.

Public confidence must be restored in the Internal Revenue Service. The professional men and women who manage and work for the Internal Revenue Service have been the subject of unprecedented criticism over the past three years. Some of the criticism is valid, but much is not. Obviously, there have been operational problems such as the documented difficulties with the Tax System Modernization program. We understand that additional hearings will be held next week to review instances of alleged abuses of power by the IRS. While problems such as these, when discovered, need to be addressed, the AICPA believes it is time to focus on the future direction of the IRS as well. The proposed Board would serve as the catalyst to do so.

The tax system and the IRS are a part of this nation's infrastructure, just like the highways and airports. The tax administration infrastructure is in need of attention, repair and reconstruction. A part of the renewal of the infrastructure is a restructured IRS. The proposed Board provides a focused direction critical for this effort, undistracted by the broader issues that the Treasury Department must address daily. The Board would also recreate credibility about the governance of this vital effort.

Coordinated Congressional Oversight

H.R. 2292 calls for two joint hearings a year, to be attended by representatives of the six Congressional committees/subcommittees having oversight responsibility with respect to the IRS. One of the purposes of the proposal is to eliminate overlapping investigations and inquiries.

Nevertheless, there is no language in H.R. 2292 that would reduce or limit the numbers of hearings each of the six committees/subcommittees can hold. Some restrictions should be provided so that the result of the two new joint hearings is not an increase, but rather a decrease, in the number of hearings.

III. CLOSING COMMENTS

The AICPA appreciates the opportunity to offer comments at today's hearing and is willing to provide your committee with additional assistance and comments as requested. Thank you for your attention.

Mr. PORTMAN. Thank you, Mr. Mann.
Mr. Mares.

STATEMENT OF MICHAEL E. MARES, CHAIR, TAX EXECUTIVE COMMITTEE, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Mr. MARES. Good morning, Mr. Chairman, Members of the Committee. My name is Michael Mares, and I am the chair of the Tax Executive Committee of the American Institute of Certified Public Accountants. Our 331,000 members provide tax preparation and tax advice for millions of American businesses, individuals and not-for-profit organizations. It is from this base of experience that the AICPA offers its comments.

First, we strongly believe that the structure on oversight that has served the Service in the past will not serve it in the future. Thus, we support the creation of an independent IRS Oversight Board as referenced in the legislation. But we oppose the reservation of any seat on such a board for any special interest group.

We believe the IRS must change the way it is governed. Today, and for the foreseeable future, the IRS faces multifaceted challenges such as technology, improving customer service and enforcing compliance with the tax laws. These challenges are not easily separated into the traditional tax policy or tax administration camps, but cross several boundaries. There is a need for additional different and creative ways to address these challenges, something we believe the Board will provide.

We see several advantages to the creation and implementation of the Board. First, we believe the Board will improve tax policy deliberations and perhaps the legislative process. A more independent IRS will provide input on the administratability of legislative proposals, perhaps even suggesting improvements based upon the practical experience and implementation of tax laws. Tax policy decisions would remain with Treasury. Treasury or the Congress could elect to pass legislation, irrespective of difficulty with administratability, but at least the Congress and Treasury would recognize if administratability is going to be difficult.

We also believe the Board will create continuity of oversight and accountability. The 5-year staggered terms that are proposed will, as in the private sector, enable the Board to provide continuity of oversight.

Second, we see a real advantage in that the staggered terms will allow the appointment of members to specifically address the problems that the IRS faces at that particular point in time.

Finally, we believe that the governance limitations proposed in the legislation reduce the potential for conflicts of interest. Obviously, a board must not have any conflicts of interest. Obviously, it is important that the Board be viewed with integrity as an integral part of the tax system.

The Board's focus would not be on the day-to-day management, but on the overall governance of the Internal Revenue Service. Also, the statutory controls, specifically the appointment of board members and designation of board members as special government employees, are sufficient to address the issue. We are also confident that if it is determined that that, in and of itself, they are not sufficient, additional safeguards can be implemented that would avoid the problems.

Finally, we believe that, even if it is deemed that such conflicts of interest for active participants in businesses, tax practitioners, and so forth, could not be avoided, there is a large pool of qualified individuals in this country who could be appointed, such as retired executives, practitioners who are out of practice, educators, and so forth, who have the qualifications and could provide distinguished service without raising the specter of a conflict of interest.

We believe very strongly that all board members should be selected for their expertise based on the criteria set forth in the legislation, not because they represent any specific group. We believe that anything less than this will create the impression that the Board is comprised of special interest groups and not a board of integrity, as we have discussed previously.

It is our firm belief that public confidence must be restored in the Internal Revenue Service. An independent board focusing on the IRS problems, on strategic issues that must be addressed and faced, bringing to the table diverse private-sector experience, is the catalyst for this effort. We believe that the Board is a good way to move the IRS back to both credibility and to effectiveness.

Another issue I would like to address briefly is the issue of congressional oversight. While we support the concept, as specified in the legislation, of two joint hearings a year for representatives of the current oversight committees, this should not be allowed to result in more meetings than are now being held, but should serve as the focal point for reducing the meetings that Congress has dealing with IRS oversight.

Finally, I would like to thank this Committee for the opportunity to present our views today. The AICPA, as always, stands ready to offer our assistance and whatever additional comments we can to the Committee.

Mr. PORTMAN. Thank you, Mr. Mares.

Mr. Loengard.

STATEMENT OF RICHARD O. LOENGARD, JR., CHAIR, TAX SECTION, NEW YORK STATE BAR ASSOCIATION, NEW YORK, NY

Mr. LOENGARD. My name is Richard Loengard, Jr., and I am appearing as chair of the Tax Section of the New York State Bar Association.

First, I would like to thank the Committee for giving us the opportunity to express our views on the recommendations of the National Commission on Restructuring the IRS with respect to executive branch governance and congressional oversight of the Service. The Tax Section wrote letters to, among others, Chairman Archer, Congressman Rangel, and Congressman Portman on August 13, 1997, commending the Commission for its analysis of the issues and commenting on certain of its proposals.

A copy of the letter to Chairman Archer has been attached to our written statement. We ask that it be included in the record.

As we noted in that letter, we are attorneys who practice in the tax area, but we are neither management consultants nor computer experts, and our comments are limited to those areas of the Commission's report and the IRS Restructuring and Reform Act of 1997 as to which our professional activities have given us some insight.

I think that the principal comments contained in our letter may be summarized as follows:

We recognize the difficulty of the task facing the Internal Revenue Service. It is a tax collection agency, and those who deal with it do not come to it voluntarily or necessarily with a desire to cooperate with it. Although we think most IRS personnel try to be helpful to taxpayers, the Internal Revenue Service will never be universally popular.

Having said that, we recognize that the Internal Revenue Service has not always done as good a job as it might in facilitating taxpayer compliance with our laws. IRS personnel are occasionally peremptory or even abusive to taxpayers. Lack of funding results in inadequate staffing, which diminishes the Service's ability to assist taxpayers, as well as its ability to carry out its audit function.

Especially we recognize that the Service's use of computer technology has not been successful, and that this has made both voluntary compliance and IRS enforcement more difficult. However, in reviewing the work of the Service, we agree with the Chairman that the complexity of the tax law lies at the heart of the problem, not only impeding the Service's ability to function, but also impeding voluntary compliance with the law by taxpayers. We heartily commend the Commission's emphasis on the need for simplification, as well as its concern for the frequency of substantive changes to the law. These factors make it vastly more difficult for the Service to cope with its interpretive function and to train its personnel. We note, however, with dismay that the recently adopted amendments to the Code, while including some simplification provisions, have added other provisions introducing significant additional complexity affecting many taxpayers.

So long as the Code continues to be as complex as it is and is changed so frequently, it will be difficult for taxpayers to understand the rules needed to calculate their tax and it will be difficult for the Service to give guidance on the application of those rules. Under such circumstances, conflicts are bound to arise, and taxpayer frustration with the Internal Revenue Service is certain to increase. To place the blame for this situation primarily on the Service is clearly unfair.

Hence, we commend section 6 of the Commission's report dealing with the need to simplify the Internal Revenue Code. We also note

with favor that section 422 of the Restructuring and Reform Act provides for a "Tax Complexity Analysis," although we do not have enough relevant experience to enable us to evaluate the likelihood that it will successfully reduce the complexity of the Code. However, we do have some reservations with provisions of that act which create an independent role for the Internal Revenue Service in making the "Tax Complexity Analysis."

While we think that the Treasury Department should consult with the Internal Revenue Service on such matters and should incorporate the views of the Service in the Treasury's tax complexity analysis presented to Congress, we think it is better that the executive branch speak with one voice on issues of complexity as these necessarily involve questions of policy and enforcement, areas in which the Treasury Department retains ultimate responsibility.

We have also considered the proposal of the Commission, as incorporated in the proposed act, to establish a board of directors, with a small staff, to oversee the management of the Internal Revenue Service. The Board will appoint the Commissioner, but it will not have oversight over several aspects of the Service's activities, including issues of tax policy and enforcement activities, such as examinations, criminal investigations and collection.

On the other hand, the Board will have a role in creating a budget for the Service, which it will send to the Treasury Department and which will accompany the President's budget for the Internal Revenue Service when that is submitted to Congress. It will not appoint the Chief Counsel, who will be appointed by the President. The board of directors will have nine members, seven of whom will be from the private sector and will serve on a part-time basis.

We note that many have expressed reservations about the board of directors on the grounds of conflicts of interest and similar issues. We do not disagree with those comments. For example, we are concerned that no matter how careful the members of the Board are to insulate themselves from issues in which they or their companies have an interest, the perceived possibility of such conflicts will further weaken, rather than enhance, the public's regard for the Internal Revenue Service and its faith in the Service's impartiality.

However, our principal concern with the proposal is that we do not think that the dividing line between the administration on the one hand and policy and enforcement on the other is easily identifiable, nor do we think such a division will be a practical one. Furthermore, we do not see how issues of policy and enforcement can be separated from the budget process. Hence, we believe that there will inevitably be jurisdictional and budgetary conflicts between the Treasury Department and the Board, which will share responsibility for a single administrative agency.

The position of the Chief Counsel, whose work is primarily in tax policy and enforcement, areas for which the Treasury has responsibility, but who will report to the Commissioner, who in turn reports to the Board, seems unclear at best. We are concerned that this division of authority between those responsible for the tax policy and enforcement functions of the Service and those responsible for its administrative functions, including its budget, will lead to confusion within the Service as to who is in charge and what poli-

cies are to be implemented. If this occurs, the act, rather than enhancing the ability of the Service to function, will reduce it.

Again, we thank you very much for the opportunity to appear here today, and we will be happy to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF RICHARD O. LOENGARD, JR.,
CHAIR, TAX SECTION OF THE NEW YORK STATE BAR ASSOCIATION

COMMITTEE ON WAYS AND MEANS

SEPTEMBER 17, 1997

Mr. Chairman and Members of the Committee —

My name is Richard O. Loengard, Jr. and I am Chair of the Tax Section of the New York State Bar Association. I am accompanied by Harold R. Handler, the Second Vice Chair of the Section.

First, I would like to thank the Committee for giving us the opportunity to express our views on the recommendations of the National Commission on Restructuring the Internal Revenue Service with respect to Executive Branch governance and Congressional oversight of the Service. The Tax Section wrote identical letters to, among others, Chairman Archer and Congressman Rangel on August 13, 1997 commending the Commission for its analysis of the issues and commenting on certain of its proposals. A copy of the letter to Chairman Archer has been attached to our written statement, and we ask that it be included in the record. As we noted in that letter, we are attorneys who practice in the tax area, but we are neither management consultants nor computer experts and our comments are limited to those areas of the Commission's report and the IRS Restructuring and Reform Act of 1997 as to which our professional activities have given us some insight.

I think that the principal comments contained in our letter may be summarized as follows:

We recognize the difficulty of the task facing the Internal Revenue Service. It is a tax collection agency, and those who deal with it do not come to it voluntarily or necessarily with a desire to cooperate with it. Although we think most IRS personnel try to be helpful to taxpayers, the Internal Revenue Service will never be universally popular.

Having said that, we recognize that the Internal Revenue Service has not always done as good a job as it might in facilitating taxpayer compliance with our laws. IRS personnel are occasionally peremptory or even abusive to taxpayers. Lack of funding results in inadequate staffing, which diminishes the Service's ability to assist taxpayers, as well as its ability to carry out its audit function. Especially we recognize that the Service's use of computer technology has not been successful, and that this has made both voluntary compliance and IRS enforcement more difficult.

However, in reviewing the work of the Service, we agree with the Chairman that the complexity of the Tax Law lies at the heart of the problem, not only impeding the Service's ability to function, but also impeding voluntary compliance with the law by taxpayers. We heartily commend the Commission's emphasis on the need for simplification, as well as its concern for the frequency of substantive changes to the law. These factors make it vastly more difficult for the Service to cope with its interpretive function and to train its personnel. We note, however, with dismay that the recently adopted amendments to the Code, while including some simplification provisions, have added other provisions introducing significant additional complexity, affecting many taxpayers. So long as the Code continues to be as complex as it is and is changed so frequently, it will be difficult for taxpayers to understand the rules needed to calculate their tax, and it will be difficult for the Service to give guidance on the application of those rules. Under such circumstances, conflicts are bound to arise, and taxpayer frustration with the Internal Revenue Service is certain to increase. To place the blame for this state of affairs primarily on the Service is clearly unfair.

Hence, we commend Section 6 of the Commission's report dealing with the need to simplify the Internal Revenue Code. We also note with favor that Section 422 of the Restructuring and Reform Act provides for a "Tax Complexity Analysis", although we do not have sufficient relevant experience to enable us to evaluate the likelihood that it will successfully reduce the complexity of the Code. However, we do have some concerns with the provisions of that Act creating an independent role for the Internal Revenue Service in making the "Tax Complexity Analysis." While we think that the Treasury Department should consult with the Internal Revenue Service on such matters and should incorporate the views of the Service in the Treasury's tax complexity analysis presented to Congress, we think it better that the Executive Branch speak with one voice on issues of complexity, as these necessarily involve questions of policy and enforcement, areas in which the Treasury Department retains ultimate responsibility.

We have also considered the proposal of the Commission, as incorporated in the proposed Act, to establish a Board of Directors, with a small staff, to oversee the management of the Internal Revenue Service. This Board will appoint the Commissioner, but it will not have oversight over several aspects of the Service's activities, including issues of tax policy and enforcement activities, such as examinations, criminal investigations and collection. On the other hand, the Board will have a role in creating a budget for the Service, which it will send to the Treasury Department and which will accompany the President's budget for the Internal Revenue Service when that is submitted to Congress. It will not appoint the Chief Counsel, who will be appointed by the President. The Board of Directors will have nine members, seven of whom will be from the private sector and will serve on a part-time basis.

We note that many have expressed reservations about the Board of Directors on the grounds of conflicts of interest and similar issues. We do not disagree with those comments; for example, we are concerned that no matter how careful the members of the Board are to insulate themselves from issues in which they or their companies have an interest, the perceived possibility of such conflicts will further weaken, rather than enhance, the public's regard for the Internal Revenue Service and its faith in the Service's impartiality.

However, our principal concern with the proposal is that we do not think that the dividing line between administration on the one hand, and policy and enforcement on the other, is easily identifiable, nor do we think such a division will be a practical one. Furthermore, we do not see how issues of policy and enforcement can be separated from the budget process. Hence, we believe that there will inevitably be jurisdictional and budgetary conflicts between the Treasury Department and the Board, which will share responsibility for a single agency. The position of the Chief Counsel, whose work is primarily in tax policy and enforcement, areas for which the Treasury has responsibility, but who will report to the Commissioner (who in turn reports to the Board), seems unclear at best. We are concerned that this division of authority between those responsible for the tax policy and enforcement functions of the Service and those responsible for its administrative functions, including its budget, will lead to confusion within the Service as to who is in charge and what policies are to be implemented. If this occurs, the Act, rather than enhancing the ability of the Service to function, will reduce it.

Again, we thank you very much for the opportunity to appear here today and will be happy to answer any questions you may have.

Mr. PORTMAN. Thank you, Mr. Loengard.

Mr. Rangel would like an opportunity to welcome you and to initiate the questioning. He has another commitment, so I would like to yield now to Mr. Rangel.

Mr. RANGEL. Mr. Loengard, let me thank you for coming and also say thanks to the New York State Bar Association for giving the Congress guidance, but more importantly, giving me guidance.

We are dealing with a subject matter that the whole country agrees has to be dealt with. In addition to that, we are dealing with the perception of the IRS. If everyone starts saying, just pull the IRS up by the roots, and that the tax collection system is not working, we on the Committee must continue making every attempt to correct this situation, but at the same time not make it partisan. We are splitting America as to what we should or should not do.

Mr. Portman, in his Commission, worked with Mr. Coyne and Ben Cardin. Mr. Coyne—he is the Democratic leader. We try not to get partisan here. All of us are working together to make certain we end up on the same page. The only way the American people are going to believe that we are serious is that we have a bipartisan solution. That is where the New York Bar, I hope, will continue to work with me until we reach a conclusion. That is, who is going to establish tax policy and who is going to be in charge of the tax collection system of this country?

Now, we have got preconceived ideas about this issue. People come to this with their own experiences as to what they are going to do and what they are going to concentrate on. Some of us believe that a person as high as the IRS Commissioner is the person or the body that should control tax administration policy. If you can help us to reach the correct conclusion, and include the safeguards that people could believe in, remembering that the government is accountable for what we are trying to do here, it would be very helpful.

I see a situation where there is bipartisan support for the objective. As always, there's a possibility of a clash in terms of how we reach the end result. I hope that you would help me to make certain that this is a bipartisan effort, and that what we send to the President will work. So I am going to thank you for your leadership, as well as other Members of the Committee. But most important, we are so close to the forest—you know, we work with the IRS every day, and we hear taxpayers' complaints. You are out there maybe better able to see the solution.

Thank you, Mr. Chairman.

Mr. PORTMAN. Thank you, Mr. Rangel.

Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman. I want to join Mr. Rangel not only in welcoming you but welcoming your advice on these issues. And we are struggling to pass legislation that will be bipartisan in the way that it restructures the Internal Revenue Service.

Mr. Loengard, I want to, if I might, just ask you to clarify some positions in your statement. You point out in your August 13 letter

that the bill that was filed was different from the Commission's report but did not materially affect the views that you expressed. And then you go on expressing your concern about the jurisdictional and budgetary conflicts between the Treasury Department and the Board, talking about tax policy.

The bill that was filed is different from your letter in that the Chief Counsel is appointed by the President, not by the Commission. The Board does not have an independent staff; it uses the staff of the IRS. And there were two points that you had mentioned in your August 13, 1997, letter. It seems to me that they are significant changes; at least it was highlighted in your letter to us. But yet your footnote indicates that there were no significant changes. That concerns me a little bit.

But I guess I would ask that you tell me where in the legislation you draw a concern about the jurisdictional and budgetary conflicts.

The legislation is pretty specific in saying that the Board has no power over tax policy and the budget submitted—like the Social Security Administration, for informational purposes to Congress, the budget goes through the Secretary of the Treasury and the OMB and the President to Congress.

Mr. LOENGARD. Well, if I can address a few of those questions in order.

First, we—I thought with respect to the legislation and to some extent I am speaking here without having discussed it with other people in the New York State Bar, Tax Section, we thought with respect to the legislation that while it did change the status of the Chief Counsel as to who appointed him, as I mentioned in my testimony today, he still reports to the Commissioner. He still has a sort of bifurcated role in which part of him is reporting, it seems to us, to the Treasury, part of him is reporting to the Commissioner and the Commissioner, in turn, seems to be responsible to the Board.

Mr. CARDIN. And where do you draw that from in the legislation, where he would be responsible to the Board and potentially involved tax policy in—I don't see that in the legislation. And if there is a need to clarify it, I would appreciate if you could, because the legislation is pretty clear that the appointment is by the President.

The Chief Counsel is involved with the policy—the policy, the Board has no role to deal with it. The Chief Counsel actually works with the Secretary, more so than the Commissioner. The Secretary clearly doesn't report to a board. I am not sure I understand where you draw the conclusion that the Chief Counsel has to report at all to the Board.

Mr. LOENGARD. Well, I thought—perhaps I am in error. I thought that the Chief Counsel would, under the legislation, continue to report to the Commissioner. He would be evaluated by the Commissioner, that the Commissioner would recommend whether he should be retained or was otherwise doing a suitable job. And in that sense, I thought that there was a problem there for the Chief Counsel, as to whether his loyalties were to lie with the Treasury or to lie with the Board, and to some extent that might confuse the lines of authority. I don't know whether that is an answer, and I think maybe it could be dealt with by clarification.

I thought with respect to the Board's staff, which you mentioned, that it wasn't clear to me, when I read the legislation, for how long people were to be transferred to the Board by the Commissioner, whether that was to be a temporary assignment or a permanent assignment. I also think that to some extent for a board to function effectively, whether it is a board such as the Treasury is suggesting or a board such as included in H.R. 2292, there is a need for some staff if the Board is not to be wholly dependent on what it gets from the people that it is supposed to be administering. And that is a problem which I think is inherent in any board structure, whether it is the Board structure recommended by the Treasury or the Board structure recommended in the legislation.

Mr. CARDIN. I thank you for that.

Let me just read from page 19 of H.R. 2292, the duties of the Chief Counsel. "The Chief Counsel shall be the chief law enforcement officer of the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary of the Treasury." I think—so it is—I don't know how we could make it much clearer than that.

We are always open for more clarification, but we have said, no, the responsibility for tax policy is not in the Board. The Chief Counsel is appointed by the President; duties prescribed by the Secretary of the Treasury.

For the life of me, I just don't see the concern that you raise here; and we are always open to try to clarify these points, and we welcome any additional information that you could bring forward on this issue.

Mr. LOENGARD. Well, if we were mistaken, I apologize.

Mr. CARDIN. Thank you.

Mr. LOENGARD. I think in response to one of your other questions, we do see that the distinction between tax policy and tax enforcement on the one hand and the management of the IRS on the other is not a clear line; and we also do think that the budget process is inherently intertwined with the issues of tax policy and tax administration, which are being left in the hands of the Treasury Department.

Now, we recognize that the budget is merely an advisory budget, and yet, nonetheless, it would seem to me that people in the Internal Revenue Service will play a role in creating the budget that is going to be presented by the Board to the Secretary.

Mr. CARDIN. But it is going to be passed by the Congress. The Congress is going to make that decision. The budget that is submitted by the President is the President's budget. The information submitted by the Board is additional information for the Congress in order to be able to act on what it thinks is appropriate budget support for the agency.

Again, the Social Security model has shown that it is useful to have more information in Congress as to what is necessary, what an independent group believes is necessary in order to carry out a mission.

I don't see the conflict, but I am always willing to, if you have specific recommendations for change in the legislation, that may be useful. But I can tell you, we agonized over this to be extremely careful to maintain the legal authority within the President and

the Secretary of the Treasury as it relates to the budget, with ultimate responsibility resting with the Members of Congress.

Mr. PORTMAN. Thank you.

Mrs. Johnson.

Mrs. JOHNSON of Connecticut. Mr. Cherecwich, I was pleased to hear Mr. Mann comment that he didn't think executive branch participants on the Board was a good idea. I think in these hearings, we really haven't focused enough on the difficulties created by executive branch people from other agencies participating in an advisory board, both the political implications of that number of political appointees being involved in the governance of the IRS and also the dearth of evidence that they in their own departments have been able to meet the kinds of challenges the IRS is faced with.

But I think both you and Mr. Mann carry a burden that you have not yet met today.

You know, the proposal to change is in response to the failure of the current system. The current system includes an advisory board. It includes independent studies by the GAO. The GAO has come to us for years. This is my third year as Chairman of the Oversight Committee, and my predecessor heard reports, too.

The GAO does excellent work. They bring reports. It is very hard for the Congress to use those reports to force change, because we are not close enough to the problem. And an advisory board that has the kind of expertise envisioned by this advisory board, every month sitting down with the Commissioner and saying, what progress are you making, what progress are you making, it seems to be very important.

Now, you are in the business. I don't know how familiar you are with the Taxpayer Bill of Rights, but we asked in the Taxpayer Bill of Rights to have the taxpayer advocates report to us what problems they were seeing, so we could get a better understanding of what problems ought to be resolved.

The bureaucracy is so ladened that we couldn't get that.

Now, it is going to take us another year, but we are going to get that. But it does seem to me that an outside board would have understood what we were asking for.

Now, that is only one example. We also asked for IRS to develop a system of overseeing—you know, of tracking personnel performance, so that those agents that are abusive to taxpayers out there would be held accountable. At least we would know who was receiving complaints. To this date, they haven't.

It does seem to me there are some routine management practices that an outside board would bring to this, that the advisory board hasn't been able to because the appointments don't last. People are in for 1 year, they are in for 2 years, they are in and out. They meet quarterly. It simply doesn't work.

The board members proposed by the Commission aren't just casual appointees. These folks are appointed by the President, confirmed by the Senate, which is a very big deal, and have a real responsibility for 5 years. That is entirely different from any kind of private-sector involvement or input or conversation that we have ever tried to bring to this agency. If anything stands out from past experience, it is that we need oversight—we need to make plans and we need to implement plans.

We make plans; we don't implement plans. That takes constancy. It takes continuity. It takes experience, broad experience, outside of government bureaucracies.

So I think the burden is on you to demonstrate that your advisory committee is going to perform differently than those in the past, and that outside reports are going to have any more effect than the excellent outside reports we have already had.

After all, if this doesn't work, we will fix it. If there are problems, we will fix it. But really, you are not dealing, I don't believe, seriously enough with the failure of the very mechanisms you are recommending.

So I wish you would address yourself to those, why you think they will work when they have not in the past.

Mr. CHERECWICH. Thank you for your comments, Mrs. Johnson. I think that we are not that far apart in our perception of what needs to be done. We do believe that an oversight board, rather than an advisory board, is very, very appropriate. In our written testimony, we take care to distinguish these terms because we, too, are concerned that we do more than just the same old solution and the same old Band-Aid. I think that oversight board, that has some very specific responsibilities as suggested by the Commission, is very, very appropriate.

About the only major difference we are having with this is that we think that the Board's composition should be more balanced.

As Mr. Rangel said a few moments ago, perception of the public is very important, and we do have to recognize that the Internal Revenue Service is responsible for tax collections in this country. By having a more balanced board, I think we would be able to take advantage of private-sector expertise while still maintaining the role of the executive branch and performing the basic functions of the Internal Revenue Service.

So I do believe that we are very, very close in what your concerns are.

Mrs. JOHNSON of Connecticut. And would your board have essentially the same powers, except for the appointment of the Commissioner, as the Board in the Commission's report? You didn't go into that in great detail in your testimony.

Mr. CHERECWICH. In our written testimony, we do lay out the role that we thought the Management Board should have, and we do think that they should be responsible for oversight and review of the strategic plans, giving guidance to the Commissioner on budgetary matters and other things like training of employees.

Mrs. JOHNSON of Connecticut. How about——

Mr. CHERECWICH. I think that the Board should have some responsibility for accountability, yes. The manner in which they would exercise that responsibility ultimately would be in making some strong recommendations to the President to remove the Commissioner if the Commissioner is not doing his or her job.

Mrs. JOHNSON of Connecticut. I would ask you to have your people do some research and see if there is any instance in which an advisory board has ever made recommendations to either the Congress or the President that have been implemented. I say that in seriousness. I have seen excellent people serve. I helped to estab-

lish the Expert Council in the Department of Commerce to try to get private-sector input and saw their terrible frustration.

Help us make sure. We have to have an effect here. So if you can help us account, and you can look yourself at powers and what has actually—where we can see a model of action, I think that is what we are looking for.

Mr. MANN. Mrs. Johnson, let me say that I share your concern that an advisory board of the kind that we have had in the past is not adequate. I have served on those advisory committees and I know exactly what you are talking about.

I think that the Tax Section's ideas are a little different from TEI's ideas. We have the same concern that you have expressed in terms of wanting private-sector expertise added to the management expertise of the Service. But also with respect to the oversight. We think that private-sector oversight is very, very significant. What we have proposed is a kind of two-headed approach to that. The first would be a review board appointed by the Congress with specific statutory duties with reviewing and reporting directly to the President and the Congress, probably semiannually. We think that that is very likely to be the prescription that we need for true accountability and oversight.

We have added to that what we also believe is important, which is daily oversight by recommending that we have an Under Secretary of Taxation whose personal responsibility is to assure that the oversight function is continuous and effective within the Internal Revenue Service, and he will be the person, or she will be the person, where the buck stops. There will be no way to avoid the accountability there.

Mrs. JOHNSON of Connecticut. Unfortunately, my time has expired, but I think you need to ask yourself what are our hiring practices? How effective has anyone been in overseeing? Even this Secretary, who really has been very interested, hasn't had the time to be proactive. I worry about having one person. What breadth of experience will he bring to the oversight activity? How much will he be listened to? You will still have that Deputy Secretary and the Commissioner. Will there be conflicts there? Now, you have hired two people to do basically the same job.

I think we have to look at hiring practices, who we would be able to make available in that niche and whether or not they could bring to the table, without actually being the Commissioner, that breadth of pressure and outside view.

So I appreciate your thoughtfulness, and we look forward to working with you on a solution that I hope will be impressive to all. Thank you.

Chairman PORTMAN. Mr. Coyne.

Mr. COYNE. Thank you, Mr. Chairman. I thank the panel for their helpfulness.

I wanted to ask Mr. Cherecwich questions relative to your concerns about the Management Board. You referred to the Management Board outlined in the administration's proposal as a government board staffed by government employees and indicated you didn't think it could be as effective as the Oversight Board in H.R. 2292. But I was wondering if you were aware that there is also an advisory board proposed in 2428 that would fill some of the obliga-

tions that are proposed for the Oversight Board in 2292. So it is not just a management board—the Advisory Board in 2428 would fulfill some of those oversight roles.

Mr. CHERECWICH. I am aware of that, Mr. Coyne. Part of the concern that TEI has is that the Advisory Board might be no more effective than other advisory boards, as Mrs. Johnson has just challenged me on. And for that reason, we strongly believe that we need to have an oversight board that is reasonably balanced between the government and the private sector. I think we are going to get the best of both worlds with a small oversight board that has representatives from both government and the outside world.

Mr. COYNE. Do you have trouble with the proposed Advisory Board in 2292 approving the budget? It seems to me that what you have attempted to provide for us today is that the Oversight Board in 2292 would review and have some oversight, but would not be able to approve the budget of the IRS.

Mr. CHERECWICH. We believe that ultimately the budget has to be the responsibility of the President and the Secretary of the Treasury—and, of course, Congress. We see the role of the oversight Committee in working with the Commissioner in the development of the budget and helping the Commissioner to ensure that the budget is there to achieve the strategic plans that have been established.

Mr. COYNE. Thank you.

Mr. Mares, you indicated that you were somewhat concerned about any oversight board that would have special interest groups represented.

Could you define what you mean by a special interest group? I mean, it seems to me that anyone who comes into a board like that is going to have some special interests of their own.

Mr. MARES. There are two points I would like to make. First of all, we believe that Treasury should have a seat on the Board or any board as it may ultimately be constituted. So Treasury, we specifically exclude from our definition of special interest groups.

I think what our concern is that a board member should be chosen based upon that particular board member's meeting the legislatively mandated criteria, not because that member represents a specific group or a specific group has the right to select someone who then, in turn, is appointed to the Board, subject to the approval of the Senate, and so forth. So our concern is not that individuals will come to the Board with their own experience, which will give them certainly some bias; our concern is with any specific group having an assigned seat on the Board.

Mr. COYNE. Thank you. Thank you, Mr. Chairman.

Mr. PORTMAN. Thank you, Mr. Coyne. Mr. Hulshof.

Mr. HULSHOF. Thanks, Mr. Chairman.

Mr. Mann, in your written statement and testimony you mention the Internal Revenue Service must be free from improper political influence and the potential for corruption, and I couldn't agree with you more. It has been testified or mentioned by a couple of you, I think Mr. Cherecwich just mentioned public perception. I think there is a growing perception among the American people that politics too often plays a role in IRS' decisions. Recently, the press headlines that an individual who has litigation ongoing with the

President of the United States is now being subject to audit, being one of those examples.

Let me ask you, do you think that the Treasury's idea of a management board, which consists largely in my mind of political appointees, many of whom may have scant knowledge of tax administration law, do you believe that that creates a greater risk of politicizing the IRS?

Mr. MANN. Well, Mr. Hulshof, I think that the testimony says that we think that one of the risks of having the Board with other executive branch personnel on it is that it raises at least the perception that there may be political influence, as well as confused loyalty. So both of those points I think we would make in opposing other executive branch personnel on any kind of a review board.

Mr. HULSHOF. Let me ask, Mr. Cherecwich, putting aside the issue of the governance, the executive branch governance, does TEI believe that the rest of the recommendations in especially H.R. 2292, does that help us put the IRS on the right course?

Mr. CHERECWICH. There are a very large number of recommendations that we think are very, very appropriate that we detailed in our written testimony. We think that the continuity of management with a 5-year term is very important. We think the concepts of stabilized funding, consideration of a 3-year budget so the IRS can get on with the job is extremely important. Streamlining of congressional oversight in order to avoid many of the demands that have taken place on the people trying to get the job done is really significant to us. We think, for example, that the GAO ought to have to come to Congress for permission to do yet another audit of the Internal Revenue Service.

And speaking specifically of oversight, we do know that the legislation includes the requirement for independent reports back to Congress, not only from the Oversight Board but from advisory groups and various offices within the IRS. We really think that Congress needs to think twice about legislating the requirement for additional reports from the IRS and take care of it through an oversight board.

We think that some of the items in there for strengthening taxpayer rights are really very, very appropriate. For instance, we urge you to carefully weigh proposals to eliminate the net worth limitations on awarding costs and fees to taxpayers when the IRS has been proven in court to have absolutely no basis. There should be no reason why, just because a corporation has been raked over the coals inappropriately, that they should be treated any differently from an individual who has been raked over the coals inappropriately.

We also think that the comments regarding interest that are in the legislation are a step in the right direction, although we have some specific concerns about equalizing interest between overpayments and underpayments based upon some sort of revenue neutrality has us a bit confused. We would like to address that issue and help you work with that.

Mr. HULSHOF. I appreciate that. My time is expiring.

Mr. Mares, the American Institute of CPAs states that one fundamental aspect of public accounting is providing independent objective advice to clients. And I think your organization—certainly

members have significant experience in resolving potential conflict of interest situations.

Are you comfortable with the idea of private-sector experts helping to provide oversight to an agency like the IRS? There has been a lot of talk about conflict of interest or potential conflict of interest and I would like to have your thoughts.

Mr. MARES. First of all, I think that the point is not only conflict of interest but also the perception of conflict of interest. And yes, we are comfortable with the proposal that this outside or oversight board can accomplish its goals without violating the conflict of interest rules.

And again I go back to my comments, which include the fact that the designation of these individuals as special government employees, thereby putting them under the auspices of title 18, certainly goes a long way toward that. If it is believed that that is not enough alone to deal with the perception of a conflict of interest, we feel very confident that additional safeguards can be presented so that there isn't an issue over that.

Mr. HULSHOF. Thank you, Mr. Chairman. I yield back.

Mr. PORTMAN. You were actually past your time but your questions were so good that we were happy to have them. Mrs. Thurman?

Mrs. THURMAN. I don't have any questions.

Mr. PORTMAN. Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman.

I think during the 2 days of testimony that we have received here that the term that has been most frequently used and applied has been the term "accountability" and how best to ensure the integrity of the agency, and at the same time maintain a sense of accountability to the taxpayers as a whole.

What you find around here these days under the guise of accountability is that we ought to have term limits so that there won't be accountability, and then when we think the public is not looking we ought to be able to change that rule so that the Chairman can stay on afterward.

Then we think we should have the line-item veto so that we are less accountable, and then we transfer that power down to the White House. Then, we think we ought to have a balanced budget amendment so that we are less accountable for the day-to-day expenditures, even though we have demonstrated we can balance the budget. Now, the IRS becomes the latest example of what we ought to focus on.

I thought yesterday Chairman Archer did a very good job in a very even-tempered manner in which he said that there are an awful lot of problems that confront the IRS today, we hear about them frequently in our congressional offices and this raises accountability. Accountability is what has contributed to this discussion and has, I think, helped to shape and change the national debate.

As I listen to some of the witnesses this morning speak to these various issues, I thought again that the term "accountability" was applied regularly. Now, the argument is made that if we simply take tax compliance away from the Federal Government of the United States and turn it over to a private-sector board, who will

also be allowed to appoint the Commissioner, that that is going to give the taxpayer more accountability. When the truth is that many of us complain here about rules that are typically made by agencies of the Federal Government who we argue are less accountable, despite the fact that it has been Congress that has relinquished their authority time and again for making those very decisions.

The best accountability remains your ability to get ahold of your Congressman or your Congresswoman to protest the action of a Federal agency which in the end brings about this sort of hearing.

Now, Mr. Mann, in your testimony, I heard you speak to the issue of accountability and how best to do that. Would you argue today that turning the appointment authority for the IRS Commissioner over to a private board is accountability?

Mr. MANN. Well, it is certainly one kind of accountability. We recommend quite a different kind of accountability. We believe that because the President really is responsible for the revenues, and the Treasury is responsible for the revenues, that we think the Commissioner ought to be appointed by the President, and responsible to the Treasury Department. That is our view of what is the best accountability.

Mr. NEAL. The idea that the President who has to stand for reelection and Members of Congress who have to go back home and face the public, that somehow that accountability doesn't make any difference anymore. That if we simply do not like the IRS, we give it to a private board and let them do it, that somehow all will be well.

Mr. MANN. I think that is right. And I think the confusion comes that people want the Internal Revenue Service to have an integrity about the way they go about doing their business, and they are confusing the word "integrity" sometimes with "independence" from the President and the Treasury Department. We would urge that there is that tension between accountability and integrity, but it can be done, and we would urge that this relationship remain in the Treasury Department.

Mr. NEAL. Thank you. In democracy, there is supposed to be some tension. That is, in the end, what sheds light on an issue. A little bit of sunshine and accountability and standing in front of the public at election time is still the best description of a viable democracy.

The other members of the panel, I hope that you would feel free to comment within the limited time that I have left.

Mr. CHERECWICH. Thank you, sir. I believe that the President should appoint the Commissioner, that we should maintain an accountability much in the same manner that you do, and that the Commissioner should be on the Oversight Board.

I sincerely believe that the private sector can be of some assistance, and hope that the proponents of both pieces of legislation could resolve their differences, because we are not very far apart in achieving something truly good for the IRS and for the country.

Thank you.

Mr. MARES. We have recommended to the Commission, after the release of the reported legislation, that the Commissioner be appointed by the Board, but subject to confirmation by the Senate in

line with the way effectively the Chief Counsel, under the legislative proposal, would be.

But I think it is important to point out that there is still executive branch accountability throughout this. The President would have the right to appoint and dismiss the board members. The Secretary of Treasury or the Deputy Secretary would serve on the Board as created. As to the budget process and tax policy—ultimate approval of budget process for the agency would remain with Treasury and tax policy would remain with Treasury. So there is plenty of accountability. I think what the Board does is create an accountability source for the management of the Internal Revenue Service, and management of the IRS is one of the problems that we see needs to be addressed.

Mr. LOENGARD. I think that we agree with everybody on the panel that the Commissioner and the Chief Counsel should be essentially people who are appointed by and eventually report to the executive branch, the Secretary of the Treasury and through the Secretary of the Treasury to the President. And that the Secretary and the President are ultimately responsible for tax policy and the enforcement of the tax laws and that that probably, because we feel it is a web, includes the administration of the Internal Revenue Service ultimately. We do not think those functions can be divided.

We also, I think, have no opposition to the setting up of an advisory board, a board which would include non-Internal Revenue Service or Treasury people, outsiders, private people, who would play a role in oversight of the Internal Revenue Service and its various functions.

Mr. NEAL. Thank you. I don't know if you noticed or not that I was attempting to needle my colleagues in this institution and point out to them that the best accountability is still standing in front of the voters every 2 years. Thank you.

Mr. PORTMAN. Thank you, Mr. Neal. I think that was not an advertisement for term limits. And I appreciate the panel.

I would point out, Mr. Neal, two things. One, you talk about the regulatory agency needing to be accountable. Treasury retains, as you know, the ability on the regulatory side that they have now. So you have that accountability. And, second, what you propose, and what all our constituents are not happy with, is the status quo with regard to the other side of the accountability.

What we are talking about with accountability is keeping the IRS' feet to the fire and making the computer systems work and the phones work and so on. And this is the great challenge that we have before us. And all four of you have given us a lot of input today and you have helped shape the proposal in H.R. 2292.

As you know, we have heard testimony from three other organizations extensively, before the Commission, and we heard it at the Committee level and the Subcommittee level. We thank you for your help on that.

You agree on a lot, not only among yourselves but with regard to what is in H.R. 2292 regarding congressional oversight on simplification. I think it is fair to say that every one of your organizations has made that a top priority over the years, and you continually tell us it is your number one or number two priority.

This was not necessarily, as Mr. Coyne will confirm, in the mandate of the Commission. And yet we did it. We took it on. And I would hope that you not only acknowledge that but now support us in this effort, because it is not going to be easy to get what we were able to get through the Commission and to this level with regard to making the Tax Code less complex. And I think that is one of the great things about the proposal and we need your help on that. I hope you will help.

I would also make one other comment, and that is that we very much appreciate hearing from the bar and the tax lawyers represented by other groups, very much appreciate hearing from the folks in the corporate world who handle the tax function, the executive vice presidents for tax, Mr. Cherecwich, such as yourself, as well as from the accountants.

The major challenge at the IRS, though, is, in my view, really an operational challenge, an organizational challenge. And as I mentioned earlier with respect to what my friend, Mr. Neal, was concerned about, which I am too, the accountability. This is really about, again, a computer system that works, phones that work, taxpayer service.

Have all of you been to service centers?

Mr. MANN. I have.

Mr. MARES. I have.

Mr. CHERECWICH. I have.

Mr. PORTMAN. Have you been to a service center, Mr. Loengard?

Mr. LOENGARD. No, I have not.

Mr. PORTMAN. I happen to have one in my area, so I have been there a lot.

Again, I greatly appreciate your comments on the Oversight Board, and the computers and the information technology challenge, and the other challenges we have. But we have to keep in mind that, as Mr. Loengard said in his testimony very clearly, you are not computer experts, you are not management experts, you are tax lawyers. And just to keep that in mind, I think the Committee needs to keep that in mind as we hear this testimony.

Having said that, again, I think we are all very much in agreement on 90 percent of the report. Actually, we are very close on the proposal.

I would ask one general question of all four of the panelists, if I could. As you know, yesterday, the Secretary testified about Treasury's proposal, which has been introduced here in the Congress now, and it includes a management board, as Mr. Hulshof said, made up largely of political appointees. That is factual. It would probably also have some career civil servants on it. We have heard Mr. Mann's concerns with that and that he would not support such an approach.

Is there anyone on the panel who does support that approach? I hear a deafening silence.

Mr. CHERECWICH. Mr. Portman, TEI has recommended that we have a balanced board.

Mr. PORTMAN. OK. My question was, do you support the Treasury proposal, yes or no?

Mr. CHERECWICH. No, sir.

Mr. PORTMAN. Thank you.

Just quickly with some of the specific issues, Mr. Mann, I think your Under Secretary for Tax idea sounds intriguing. I have talked to you privately about it and you raised it publicly now. You have made the point to me that back in the seventies we had such an Under Secretary and I think again in the eighties for a short period of time.

Why didn't it succeed before? And what were the problems with having an Under Secretary? Why did it not continue? Why do you think it would succeed today?

Mr. MANN. I am going to have to speculate with you a little bit, Mr. Portman, because I actually don't know. But I think it is my information that it had more to do with the number of Under Secretary slots that the Treasury Department was permitted under whatever deal that they made with OMB and the Budget Committees, and that there was no Under Secretary slot left over to be this.

I do not think that you should regard that as particularly a comment on this proposal, because of the difference in the times. I believe that faced with the difficulties that the Internal Revenue Service has today and the need in a global economy to keep our tax administration and tax policy coordinated better, I believe it makes all the sense in the world to have an Under Secretary of Taxation with the oversight responsibility and the responsibility to coordinate tax policy and administration.

Mr. PORTMAN. Let me ask you a followup question. I heard your testimony this morning and read it and I understand how you come down on the management side. But my question to you is the Under Secretary for Tax, this idea of really coordinating Treasury's role in this, is that inconsistent in any way with the Oversight Board notion that is in H.R. 2292?

Mr. MANN. The problem that we have identified, Mr. Portman, is that on page 12 in the general responsibilities, and the exception itself says that the Board has no responsibility for the formulation of tax policy or specific law enforcement activities and some other specifically delegated things having mostly to do with procurement policy, I believe.

We do not actually think that you can separate tax administration, tax policy, and these procurement activities very easily. There can be specific instances when you can do it easily, but there are so many more when you cannot. So we are worried that when you try to make an artificial or nonfunctional kind of a division of authority like that, that it may not work. So I would say just in that sense there may be inconsistencies there.

Mr. PORTMAN. But one could follow that by saying that your notion of an Under Secretary for Tax at the Treasury Department who combines some tax administration with tax policy functions would, in fact, complement what is in H.R. 2292 for the very reason that you state.

Mr. MANN. You can——

Mr. PORTMAN. In a sense it would be an improvement from today.

Mr. MANN. I think we would agree that that is an improvement from where we are today, yes, sir.

Mr. PORTMAN. Yesterday, as you know, we had testimony from various experts and much of what they said is consistent with what we are hearing today. These are people from academia, Commissioners who were involved in this yearlong process and so on.

One of the aspects of your testimony today, Mr. Mann, that I thought was interesting, was that you said with regard to the private sector that they do have a role to play. Your testimony says the oversight process will benefit from private-sector input. The Commission makes a compelling case that bringing the appropriate expertise from the private sector to bear on major management issues could greatly assist the service.

Later in response to a question from Mrs. Johnson you said you think private-sector oversight is very important and it has to be true accountability, not advisory.

Given all that, your views on the private sector and their input, do you think it is accurate to say that the American Bar Association specifically rejects the transfer of important IRS management decisions to an outside board?

Mr. MANN. Well, in the first place I speak for the Tax Section and not the whole ABA. But I think that the Secretary's testimony yesterday, in which I believe that testimony is present, doesn't accurately state what the ABA's or the section's position is. What we said was we don't support the Oversight Board that you have in H.R. 2292. Neither do we support the notion that the Treasury Department has in 2248 or whatever it is. We do not support the Treasury's Board.

Mr. PORTMAN. But do you reject that the private sector has a role to play in the management of the IRS?

Mr. MANN. We do not. No, I think that the only quibble we have, Mr. Portman, is whether the powers of the Board are as we suggest, which are to review and to report to the Congress and the President or whether the Board has the power to, for example, appoint a Commissioner, approve the budget or something of that nature.

Mr. PORTMAN. How about approving the strategic plan of the IRS?

Mr. MANN. As I remember what the legislation says now, that is one of the functions where there is approval, the strategic plan of the IRS. And I don't think we have a position that directly addresses that.

In my personal opinion that wouldn't be a bad idea. I don't know that we need to—I guess our institutional view, Mr. Portman, is that we don't need to do that once they review it and report directly to the Congress.

Mr. PORTMAN. I would just make the suggestion that the Secretary's comments yesterday, which were quoted from by myself earlier, are not accurate, and also make a further comment that the American Bar Association is indeed a different body than the Tax Section and we need to keep the Tax Section focus on this because you really are the experts among the bar.

Mr. MANN. Indeed, sir.

Mr. PORTMAN. Thank you for that clarification.

Mr. Cherecwich, again as I go through your written and oral statement today, you agree with most of where we are, if not al-

most all of it. And your strong statements on simplification, congressional oversight and so on, some of which could have been taken from my testimony yesterday—maybe I plagiarized from you, I am not sure. But we are there. The strong support that you have for an oversight body is consistent with H.R. 2292.

The two things that I see are, one, balance. That you would like to see more government political appointees on this Board than we currently have. Now it is at two—arguably two to three depending on how you view the National Treasury Employee Union representative. So balance is number one. And the second is the appointment of the Commissioner.

With regard to the budget, you said, in essence, in response to a direct question, that you were not sure you supported H.R. 2292 and then you proceeded to say what you supported, something which sounded to me precisely like H.R. 2292.

Just to clarify that for a moment, I don't think we are going to get any agreement on the appointment of the Commissioner or the balance issue necessarily today, but on the budget let's be very clear.

The Commissioner, as you know, would be responsible for putting together the budget just as he or she is now. That budget would then go to the Board, which would include the Secretary of the Treasury. That Board would then be in a position to review that budget, work with the Commissioner to approve a budget for the IRS that is then sent to the Secretary, and goes through the same vetting process the current budget does, which would include competition with Customs Service and ATF and other functions of Treasury, and then into the unified budget process with OMB and competing with all the rest of government. And then it would come up here as part of the President's request.

When the President's request came, Members of Congress, TEI, the American public, also would have the benefit of seeing what the Board, with the Secretary on the Board, thought was the appropriate budget for the Internal Revenue Service.

Do you disagree with that?

Mr. CHERECWICH. We still have a few little qualms about requiring the submission of the Board-approved budget directly to Congress, because in the final analysis, accountability for the IRS and the budget does rest with the Treasury Department. We are also concerned that the proposed legislation might blur the lines of accountability or might heighten the possibility of conflict between the Board and the administration. We do, however, certainly believe that the IRS can benefit from having the Oversight Board heavily involved in the development and review of its budget.

Mr. PORTMAN. Thank you. We will leave it at that.

Mr. Mares, thank you, again, for giving us input on this again. You were helpful in putting together the proposal that we have before us.

One of the fundamental aspects of public accounting, of course, is providing independent objective advice to clients, and, as such, your members have a lot of experience in identifying and resolving potential conflict of interest situations. Let me ask you again, are you comfortable with the idea of the private-sector experts helping in an oversight role in the IRS?

Mr. MARES. Yes, we are, Mr. Portman.

Mr. PORTMAN. Mr. Loengard, Mr. Cardin went over some of the points that I was going to make just to clarify where we are now in the legislation. I think we have made some progress since your last thorough analysis, and I just wanted to make that further point. Chief Counsel, I think, the dialog between you and Mr. Cardin will be helpful to the staff in putting together their final mark on that.

I think we are where you want us to be. I understand your difference with regard to the appointment of the Commissioner, but I think you will find it more acceptable to you.

The idea of a staff with the Board, as you know, is something that we looked at in the Commission. I think it was part of the Commission recommendation. We chose to not pursue that in the legislation for a number of reasons, including the fact that we do not view this as a kind of exercise which would be contrary to the Commission; rather, it would be working with the Commissioner of the IRS and we think that kind of overlap of staff through delegating staff is consistent with that idea.

The New York State Bar has consistently said the most significant problem facing the IRS is the complexity of the tax law and basically your statement spends 80, 90 percent of your time talking about that. And although I can suggest to you being a Member of Congress now and looking at it from the inside as opposed to where I was before, trying to practice law and take clients through some of this, it is unlikely that in the short term we are going to see the kind of complexity that you advocate, although I do believe that if legislation is passed would urge Congress to move toward that. I don't think this latest tax change would have been as complicated if this discipline had been in place.

But do you think that the IRS also needs substantial reform, even given the fact that we are going to have a rather complicated Tax Code at least for the short term?

Mr. LOENGARD. We believe that there are several facets to the problem. One is, of course, funding. Dealing with taxpayer questions, answering phones and all the rest of it, you need staff. You need staff to issue the regulations that Congresswoman Johnson referred to as sometimes being very long delayed after legislation gets enacted. So that is one facet of the problem.

There is no question in our view that the computer technology that the Service has is inadequate to its task and that that needs improvement from whatever source it can get help. We understand—as we said earlier, we are not computer experts, that there has been progress made there. So certainly the Service could be improved in the way it functions. And we certainly believe that. And we think that—I have not had a chance to fully study the proposal made by the American Bar Association, but it is probably, speaking personally now, not for the New York State Tax Bar, not very different from what we might consider and propose.

[The prepared statement and attachment follow:]

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August 13, 1997

The Honorable Bill Archer
Chairman
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

RE: Report of the National Commission on Restructuring the Internal Revenue Service

Dear Congressman Archer:

The Tax Section of the New York State Bar Association has reviewed the report of the National Commission on Restructuring the Internal Revenue Service and discussed its proposals[1]. We commend the Commission for its probing analysis of this important series of issues. There is no question that the work of the IRS, and its relationship with the tax-paying public, is a vital function of the Federal Government. The Commission's Report should stimulate a worthwhile debate on methods for improving the service provided by the IRS.

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1 Since the Tax Section's consideration of the Commission's Report, the IRS Restructuring and Reform Act of 1997 was introduced. We have reviewed that Bill and do not believe it would materially affect the views expressed herein.

FORMER CHAIRS OF SECTION:
Howard O. Colgan, Jr., Charles L. Kades, Samuel Brodsky, Thomas C. Plowden-Wardlaw, Edwin M. Jones, Hon. Hugh R. Jones, Peter Miller, John W. Fager, John E. Morrissey, Jr., Charles E. Heming, Ralph O. Winger, Martin D. Ginsburg, Peter L. Faber, Hon. Renato Beghe, Alfred D. Youngwood, Gordon D. Henderson, David Sachs, J. Roger Mentz, Willard B. Taylor, Richard J. Hiegel, Dale S. Collinson, Richard G. Cohen, Donald Schapiro, Herbert L. Camp, William L. Burke, Arthur A. Feder, James M. Peaslee, John A. Corry, Peter C. Canellos, Michael L. Schler, Carolyn Joy Lee, Richard L. Reinhold

As tax professionals, we work with the Treasury and the IRS on a continuing basis, both in respect of professional responsibilities for clients, as well as serving as representatives of the Tax Section which has for years provided non-partisan technical assistance to government personnel on matters of tax policy, interpretation and administration. We recognize that IRS personnel are faced with a most difficult task, i.e., collecting the overwhelming portion of government revenues from taxpayers who frequently resist paying, because they sincerely disagree as to their legal obligation to do so, because they willfully disobey the rules or because they lack the money to do so. Hence, the IRS and its personnel will never enjoy universal popularity. Moreover, as more fully described below, it is virtually impossible for the IRS to function in a timely and completely effective fashion in the face of constant legislative changes bringing increasing complexity to the Internal Revenue Code. While we have found IRS personnel generally to be thoughtful and cooperative, we recognize that this is not always the case, but we regard that to be inevitable given the size of the operation and the essentially coercive nature of its task. We also recognize that the modernization of the IRS through better use of technology has not been successfully implemented. Hence, while we do not think the IRS is primarily a "service" agency, there is no question that steps can be taken to improve performance of its tax administration and enforcement functions, and the manner in which it deals with the public.

We are not management consultants, and, as a consequence, we do not have significant comments on sections of the Report dealing with the culture of, and incentives for, IRS personnel, the efficiency and modernization of electronic filing, or computerization of the IRS. While we have not involved ourselves in issues relating to funding, we believe that more widespread audits and, as a result, more even-handed

enforcement of the law would increase taxpayer respect for the IRS and for the tax law in general. We are confident that several of the commission's proposals could achieve significant benefits in these areas.

We do, however, have sufficient experience on technical and tax policy matters to comment on the efficacy of certain of the proposals contained in the report. In summary, we believe that the law's complexity and the frequent legislative changes to it are at the heart of the IRS difficulties, and, while we support the proposals made by the Commission in support of simplification, we would urge an even greater effort to this end on the part of the Treasury Department and the Congress. Second, we are concerned, for the reasons set forth below, that the introduction of a Board of Directors into the management structure of the IRS will make it less able to perform its difficult role as a government agency.

I

We believe the Commission should be applauded for its clear and unequivocal conclusions found in Section 6 of the Report--Tax Law Simplification. We agree that there is a "clear connection between the complexity of the Internal Revenue Code and the difficulty of tax law administration and taxpayer frustration". (Report at page 35). In fact, we believe that this is a principal reason for the perceived failures of the IRS, and the consequent taxpayer frustrations. If anything, the Report has failed to draw an even closer connection between this issue, and the perceived failures of the IRS. Unless steps are taken to address the issues raised by this Section 6, all of the other changes recommended by the Commission will be ineffective, since a newly restructured IRS will continue to have to confront the complexities engendered by the legislative process and the "frequency [and complexity] with which Congress and the President change the tax law", (Report at page 35). For example, we note with dismay the headlines in

the "Tax Report" column of the Wall Street Journal on July 30th: "Mind-numbing complexity of the budget pact is good news for tax advisers" and in the New York Times on Sunday, August 2nd: "Professionals Will Profit From Bill's Mind-Numbing Complexity."

Certainly, the "Tax Complexity Analysis", or a similar process, would be a start. Even a cursory review of the two bills recently considered by the conference of the House and Senate would demonstrate the need for such an approach. For example, a Tax Complexity Analysis would have certainly pointed out that the various child related credit provisions found in both House and Senate versions of the Tax Reconciliation Bill and the indexation provisions of the House bill would add wholly new concepts of great complexity to the Code.

But we have a concern with the process for implementing this Analysis. Tax policy cannot be separated from tax administration, and it is impossible to vest sole responsibility for tax policy in the Treasury Department (as the Report suggests) and yet call for an "uncensored view" on administrability from the IRS. The Commission's Report does not adequately address the inherent inconsistency of calling for independent views from an IRS, governed by a board of directors independent of the Treasury Department, while leaving Treasury, and a presumably subordinate IRS, with its traditional responsibility for tax policy and the expression of the views of the Executive Branch on tax legislation. We believe that seeking more than one government view on issues relating to proposals for tax legislation will undoubtedly confuse the legislative process, diffuse accountability and lead to a less coherent statute. While the proposal for administrability to be considered for each significant piece of tax legislation is an excellent suggestion, in our view it would be far better to mandate that this analysis be undertaken as an element of the tax policy function of the Executive Branch. This analysis

should include consideration of the new forms (and accompanying instructions) and the additional taxpayer record keeping which will be needed to implement any proposed changes in the Code. Treasury should continue to be obliged to consult with the IRS on legislative matters as part of undertaking this analysis, and to incorporate, in the Department's comments and recommendations to the Congress with respect to the legislation, the IRS' views (subject to the Treasury's modifications where appropriate) on the effect of proposals on simplification. Moreover, a similar process should be established for legislative proposals arising in Congress. But the tax policy function, including issues of administrability, should always be the province of one Executive Branch agency only.

II

We are also troubled by the introduction into the governance of the IRS of a board of directors principally consisting of persons from the private sector with management experience. This board of directors is to have a small staff. It is supposed to play a role neither in management of the IRS nor in the making of tax policy, but it is to have power to appoint the Commissioner and the Chief Counsel and to play a role in other senior staff appointments. Its members, in turn, are to serve at the pleasure of the President. The two government representatives are from the Treasury and from the employees' union.

It is extremely difficult for us to see how the IRS and the Treasury could carry out their traditional functions under this kind of arrangement. Either the board of directors has power, in which event it--and its staff--will represent a major intrusion into the decision-making functions of the IRS, or it seems to serve very little purpose except to confuse lines of authority. If it does play a role in the functioning of the IRS, we do not see how that role will not encompass issues of

administration and policy. For example, the budget necessarily involves decisions as to how the law is to be enforced, which, in turn, implies policy decisions as to what is important to the enforcement of the law. In the case of the Internal Revenue Service, we think that the allocation of funds in the budget and the management of the Service are inexorably linked, and that both influence, and are influenced by, issues of tax policy.

Similarly, the board's influence on personnel decisions necessarily will require it to pass on the job performance of various employees of the Service, and obviously those employees will look to the board, and its staff, for guidance as to how to perform their functions so as to merit approval by the board. Under the circumstances, it seems to us that authority over the IRS, which has historically been vested in the Commissioner, who in turn reports to the Secretary of the Treasury, will now become bifurcated. Furthermore, it is difficult for us to see how the board, acting as a board and performing its services on a part-time basis, can exercise this authority from its own knowledge and experience. Consequently, we would anticipate that either the board would look to its own staff for guidance or would rely on the Commissioner and the Chief Counsel for guidance; not only do we think that if the former turns out to be the case, there will be uncertainty within the IRS as to who is in charge, but it is quite likely to engender significant conflict between those who are officially designated to manage the IRS and the staff of the board.

We note that others have also expressed deep reservations about the board of directors on grounds of conflict of interest, confidentiality, accountability and other issues. While this letter has not focused on those problems, we believe many of those concerns are justified. In particular, we have a serious concern that the public's perception of the impartiality and non-partisanship of the IRS may be compromised by the

fact that the majority of the board of directors are from the private sector. However, our greatest concern is that the impact of the board will be to make the IRS less, rather than more, effective in carrying out its difficult mandate.

We are under the impression that in suggesting a board of directors for the IRS, the Commission was influenced by the role that such a board plays in corporate governance throughout the United States, including the role played by the board of directors in operations such as the Post Office. However, we do not think that one can constructively treat the functions of the IRS as parallel to those of an ordinary corporation or even the Post Office. The purpose of such entities is relatively clear, i.e., to realize a profit by selling goods and services, which are in turn produced as efficiently as possible. Conflicts between long-term goals and short term benefits may arise, but the decision to be taken is always made in the context of the long-term profitability of the enterprise. If it is successful, it attracts customers, and, if it is unsuccessful, the customers go away. The Service, in contrast, does not lose its customers, whether they are happy with it or not. The Service's principal job is to collect the revenue needed by the government to function, and, as noted above, it is given extensive enforcement powers to accomplish this (since taxes are not voluntary contributions). Nevertheless, it is incumbent upon the Service to perform its primary function in a way that does not anger the public, both because our tax system depends on voluntary compliance and because, in the end, it must be politically acceptable to the majority of the people. This conflict, between the need for popular support of the Service and the need for it to enforce the law, requires a unique combination of efficiency and understanding, and this makes management of the Service a daunting task. No other agency of the government comes in such constant contact with the people of this country. Given the vital nature of the role of the Service and the complexity of its task, we doubt very much that the

introduction into the system of a board of directors made up of part-time managers with limited experience in the tax law is going to help the Service reach its conflicting goals.

An identical letter is being sent to those on the attached list.

Very truly yours,

Richard O. Loengard, Jr.
Chair

The Honorable J. Robert Kerrey
Co-Chair
National Commission on Restructuring
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United States Senate
Washington D.C 20510

Congressman Rob Portman
Co-Chair
National Commission on Restructuring
the Internal Revenue Service
House of Representatives
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The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
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The Honorable Daniel P. Moynihan
Ranking Minority Member,
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The Honorable Charles B. Rangel
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The Honorable Ted Stevens
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The Honorable Robert C. Byrd
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The Honorable Bob Livingston
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Mr. PORTMAN. Gentlemen, I thank you very much.

Are there any other questions of the Committee Members? Thank you gentlemen very much. We will continue our dialog.

I would like to call the next panel. We are now pleased to have before the Committee Donald C. Alexander, former Commissioner of the IRS, a partner in Akin, Gump, Strauss, Hauer & Feld; Sheldon S. Cohen, former Commissioner of the Internal Revenue Service and a partner in Morgan, Lewis & Bockius; Morgan Kinghorn, Jr., former Controller and former Chief Financial Officer of the IRS and now director of Government Consulting Practice of Coopers and Lybrand; and Phil Brand, director of Internal Revenue Service Policies and Dispute Resolution at KPMG Peat Marwick and former Chief of Compliance at the Internal Revenue Service.

Gentlemen, thank you for being here and again for all the input you have already given us through the Commission and these proceedings.

Mr. Alexander, I would like you to begin your testimony. And I urge you to keep your oral statement to 5 minutes. You can submit anything longer to the record.

STATEMENT OF HON. DONALD C. ALEXANDER, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE, AND PARTNER, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

Mr. ALEXANDER. Thank you, Mr. Chairman. I will not repeat any of my statement.

I was delighted to hear this morning the dialog between Mrs. Johnson, the Chairman, and Mr. Kies about actually doing something useful about not imposing burdens on individual taxpayers like some that have been imposed in the 1997 act, and having mockups of individual tax returns. I am not talking about a corporate return or a narrow issue; I am talking about broad matters that affect millions of individual taxpayers and vastly increase the burdens on those taxpayers and on the Internal Revenue Service.

If the committees, the taxwriting committees, would actually look at mockup returns before they make final decisions, it would be extremely helpful to make sure that the system would not be gamed by IRS apparently trying to make the returns too complicated. Joint staff should have the right, maybe the duty, to review those mockups, and both Majority and Minority staff of the taxwriting committee should have that duty.

I hope that comes about because I continue to believe that many of the problems that the Restructuring Commission addressed in its constructive report and its constructive bill are laid at the incredible complexity of current tax law.

I support much of H.R. 2292, and I want to note that much of it is paralleled in H.R. 2428. I think the Commissioner ought to have a 5-year term. The President who appointed me decided to fire me less than 3 months after I was in office, and I don't want others to have to endure that sort of precarious existence. Presumably, the President can rid of a Commissioner, but he or she would have to show cause rather than pure personal dislike.

And I support many of the other constructive proposals that have been made to implement the Restructuring Commission's concerns, its findings, its views. But I do have some questions, as I mentioned before, about the Board as presently constituted and with its present duties. I do not think that a board composed largely of private individuals should have the right to discharge the Commissioner. I hope that that will be reconsidered.

Thank you.

[The prepared statement and attachment follow:]

STATEMENT OF DONALD C. ALEXANDER
BEFORE THE COMMITTEE ON WAYS AND MEANS
SEPTEMBER 17, 1997

My name is Donald C. Alexander and I served as Commissioner of Internal Revenue from 1973 into 1977. I am appearing before the Committee to express my personal views on the recommendations, embodied in H.R. 2292, of the National Commission on Restructuring the IRS. I support most of H.R. 2292, but I cannot support a few proposals in their current form.

It is clear that there is widespread dissatisfaction with the Internal Revenue Service at the present time. Some of this undoubtedly stems from the highly publicized problems and failures of the Service in its Tax Systems Modernization project. Some stems from frustration with a perceived inability of the Service to deliver prompt, responsive and accurate service to taxpayers. Also, some IRS agents and revenue officers seem to believe that all taxpayers are dishonest and some of their supervisors seem to share this belief. While it is factitious to pretend that *all* taxpayers are always honest, it is equally wrong to believe that they are all dishonest. Taxpayers should be treated fairly and courteously, and some of them have not received such treatment. But part of the dissatisfaction, I believe, stems from a pervasive antigovernment attitude nurtured in part by political rhetoric. Because of its wide-ranging contacts with voters and its duty to try to collect the nation's revenues, IRS is in the forefront. In his recently-released instructions for candidates, Mr. Frank Luntz stated:

> Don't forget the IRS. Nothing guarantees more applause and more support than the call to abolish the Internal Revenue Service. . . . The IRS should be a major focus of Republican efforts over the next two years. I urge you in the strongest of terms to allocate significant time and attention to this political "winner".

Unfortunately, some have apparently followed Mr. Luntz' advice.

In considering what legislative and administrative changes should be made in the IRS, a basic question is: "What is the job of the Internal Revenue Service?" This issue deserves analysis. In section 2 of H.R. 2292, we are told that IRS should be transformed to a "world class service organization". We are also told that the bulk of Federal revenue is generated through voluntary compliance. This is true, and most drivers stop at red lights and, usually, at stop signs. But how long would you expect compliance with the traffic laws to last if no traffic police enforced such laws? Are the tax laws so different (is money worth less than time?) that voluntary compliance at the present high level would continue if there were no meaningful enforcement of the tax laws? I think the job of the Internal Revenue Service is to try to collect the proper amount of revenue due under the Internal Revenue Code. While this job necessarily includes assisting taxpayers to meet their responsibilities and to assert their rights, should taxpayer service be the *primary* function of the Internal Revenue Service? I continue to differ with those who pushed the so-called "Compliance 2000" strategy that is apparently based on the notion, unrealistic to me, that substantially all taxpayers will comply if the Internal Revenue Service exhibits a happy face and educates them about their responsibilities. Moreover, I question whether "taxpayer satisfaction" must be IRS' goal, for the Internal Revenue Service does not have an obligation to satisfy such taxpayers as Leona Helmsley.

Having expressed these antediluvian views, I support most of the Commission's recommendations, and I am pleased to see that many of these recommendations are paralleled in H.R. 2428, the Treasury's proposal.

An initial recommendation is that the Commissioner should be appointed for a five-year term. While the Commissioner could still be removed within such period, the Commissioner's tenure would not be nearly so precarious as it was in my Watergate time. This is important for long-range planning and administrative effectiveness. If this proposal is enacted, future Commissioners should commit themselves to serving the full statutory term. I

also favor the proposal to revise the IRS Chief Counsel's position and job title. The Chief Counsel should not be an Assistant General Counsel of the Treasury Department.

The proposals in Subtitle C of Title IV, dealing with tax law complexity and the role of the Internal Revenue Service in the tax legislative process are sound and long overdue. If these or similar measures were already in effect, perhaps both the taxpaying public and the Internal Revenue Service might have escaped the monstrous obligations imposed upon them by the "Taxpayer Relief Act of 1997". Attached is a copy of an article expressing my views on the subject. The IRS is regularly blamed for complexities, ambiguities and just plain mistakes enacted by Congress and signed into law by the President. How could any private "world class service organization" cope with an everchanging mess like this?

And I don't subscribe to the argument that the Administration and Treasury must speak with one voice (Treasury's); this argument muzzles the IRS until after the mistakes (Hope scholarship, child credit and multitudinous IRAs) are made. However, there is substance to the "one voice" argument, and if it continues to prevail, at least Joint Committee on Taxation staff could be directed to work with IRS in developing mock tax returns so that the tax-writing committees could see, in advance, what they propose to do to the American public.

Subtitle B's proposals with respect to IRS budget are highly constructive. IRS badly needs funding in excess of the discretionary caps, and IRS also needs funding stability. Multi-year budgets, if feasible, are highly desirable, if not essential, for long range planning.

Similarly, the proposals in Subtitle A expanding the powers of Joint Committee on Taxation are useful, and the effort to centralize and coordinate oversight responsibilities (although perhaps unrealistic) is sound.

Most of the recommendations in Title III to strengthen taxpayer protection and rights appear unobjectionable but I have some specific and narrow concerns. For example, section 302, expanding the authority to award costs and fees, contains a provision (p. 32) in its definition of prevailing party that literally would render the IRS' position "not substantially justified" *unless* IRS had prevailed on the same issue in at least three Courts of Appeal. I think the intent is to reward the taxpayer and punish the IRS if the IRS continues to force trial of an issue after it has *lost* in at least three Courts of Appeal.

Easing the present restrictive personnel rules is a highly meritorious idea, and I am glad to see that this issue is addressed in H.R. 2292 (Section III) as well as the Treasury bill. Also, both bills promote electronic filing. Since electronic filing is in the interest of both taxpayers and the Internal Revenue Service, promotion of electronic filing by legislation is a sound concept. However, I hope that this objective can be attained without imposing restrictive mandates on the Internal Revenue Service and taxpayers.

The Commission proposes a basic change in governance of the Internal Revenue Service in Title I, Subtitle A. It creates a nine-member Oversight Board that would share responsibility with the Treasury for the "administration, management, conduct, direction and supervision of the execution and application of the Internal Revenue laws or related statutes and tax conventions to which the United States is a party." Exceptions to this general grant of authority are (i) the making of tax policy, (ii) "specific law enforcement activities" of the IRS, and (iii) certain other specific activities under procurement and other delegation orders. While the Board includes a union representative (presumably Mr. Tobias), and the Secretary of the Treasury (or Deputy Secretary) is a member, the Commissioner is not a member. The other seven members are part-time government employees appointed on the basis of experience and expertise in management of large service organizations, customer service, compliance, information technology, organization development, and the needs and concerns of taxpayers. The Board would have the authority to select and remove the Commissioner.

I think that such a Board, with the composition and the authority assigned to it by the present wording of H.R. 2292, could and likely would create serious operational and other problems for the Internal Revenue Service. The first problem is the presence of the head of the union on a Board having the right to select and remove the Commissioner. As I have said before, I think the union head has no business whatever being on such a Board. Secondly,

I think the Commissioner should be a member of the Board. Third, I don't think the Board should have the right to select and remove the Commissioner. The Commissioner should be appointed by the President for a five-year term and the President should retain the right to remove the Commissioner for cause. The President's power to remove the Board is, in my judgment, insufficient.

If the changes suggested above should be made, I would be much less troubled by the Board. However, problems will still remain so long as the Internal Revenue Service remains a component of Treasury. One of these is to whom the Commissioner actually reports and to whom he or she is accountable. Is it the Secretary of the Treasury or is it the Board? What if there is a flat disagreement as to a major matter?

Secondly, the authority given to the Board, even with the limitations on such authority, present the perception, and possibly the reality, of conflicts of interest. While Board members are forbidden from participating in "specific law enforcement activities", they have major duties with respect to IRS' plans, programs and budget. These projects involve the assignment of IRS enforcement personnel and the allocation of such personnel among IRS' service and enforcement responsibilities, not excluding the coordinated examination program through which the IRS regularly audits the largest corporations in America. What if the Board should decide that IRS' primary role is indeed that described in the Commission's findings and it is devoting far too much of its resources to enforcement such as examining the tax returns of large corporations? Would a skeptical public believe that a budget decision to beef up taxpayer service and weaken compliance activities directed at large corporations (including those that had employed or were currently employing Board members) was done entirely for proper reasons?

Furthermore, the efforts evident in H.R. 2292 to prevent Board members from interfering in specific administrative and enforcement actions are insufficient. Since Watergate, a time when the Internal Revenue Service was sorely tested and came through well, I think there have been extremely few, if any, instances of improper interference with specific taxpayer audits or collection actions. However, there have been a number of efforts, some successful, to cause IRS to reverse itself and concede, through a ruling, an industry-wide action or otherwise, an interpretative position which IRS is taking in the examination of a particular group of taxpayers or a particular industry. This is where the problem exists. What if a Commissioner, facing a Board with the authority to remove him or her and faced with the duty to decide a material issue affecting the tax treatment of a particular industry, as well as a personnel question on which the union is taking a strong stand, faces a Board among whose dominant members are an executive from the particular industry and the union executive? What if the Commissioner decides, solely on a sound analysis of the law, to concede the issue? Would the public believe that there had been no improper influence by the Board?

Therefore, while I think that there is genuine merit in having an outside Board with responsibilities and duties much greater than those of the advisory groups now providing outside assistance to IRS, I have serious questions about the Board as now constituted and with the right to appoint and remove the Commissioner. If the Board were reconstituted and its powers limited as suggested above and if the IRS were an independent agency, a Board would be not only helpful but probably necessary to guide IRS during this difficult period and to deflect unjustified criticism.

One further point: Under the Bill just about all of us who have had the privilege of serving as Commissioner of Internal Revenue for the last 45 years would be ineligible for appointment. Section 102 now provides: "[T]he appointment [of the Commissioner] shall be made on the basis of demonstrated ability in management and without regard to political affiliation or activity." I like the latter requirement; politics should be irrelevant. But neither I, nor about all of my successors and living predecessors, could show the required "demonstrated ability in management". My managerial experience consisted of co-managing a Cincinnati law firm and managing the lives of more than 200 men in World War II. Maybe we have all done lousy jobs since the Internal Revenue Service was removed from politics, but I don't think that a tax professional should be forever barred from serving as Commissioner. I understand that this problem will likely be corrected.

WASHINGTON POST
August 27, 1997

Donald C. Alexander

This Is Not How You Spell Relief

In April 1997, Congress's Joint Economic Committee issued a report titled "The Inefficiency of Targeted Tax Policies." This report stated:

Virtually all economists agree with Joseph Stiglitz, former Chairman of President Clinton's Council of Economic Advisors, that "three main traits define a well-designed tax system: fairness, economic efficiency and simplicity." Generally, targeted tax policies do not meet any of these three criteria.

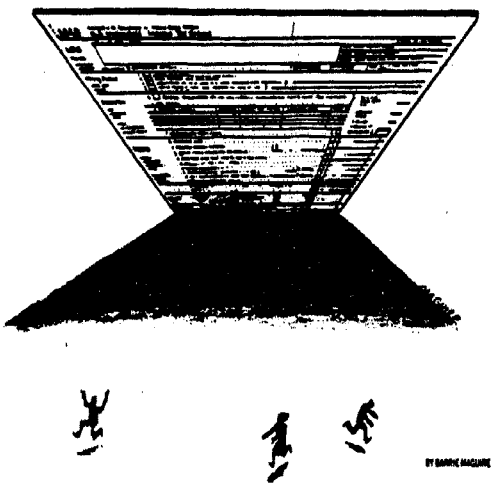
After evaluating the then-proposed tax credits for education and employment and finding them wanting, the report concluded:

By artificially distorting relative prices, targeted tax rate cuts alter taxpayers' choices and disrupt the efficient operation of markets. Their inefficiency prevents policy makers from lowering the tax rate to the greatest extent possible, so that tax credits have little, if any, impact on working, saving and investing. . . .

In contrast, broad-based tax reductions minimize loopholes in the tax code, allowing for the lowest tax rates possible. The lower tax rates encourage work, saving, and investment so that more resources may be channeled toward production.

It's a great pity that both Congress and the administration ignored these views.

Many proponents of tax reduction are fond of claiming that the money belongs to those who earn it and that they should be allowed to keep it. "It's their money," they say. Assuming that "earning" includes the ability to invest and to inherit wisely, a simple way exists to return tax revenues to the people who earn it: reduce rates. Another way, with a tinge of social engineering to it, is to increase the dependency exemption. An alternative is to increase the existing child care credit. If our educational system needs further governmental support, the sensible way to do it is to expand the present system of Pell Grants and similar programs, thus targeting grants to those most in need and most deserving. If we want to encourage further retirement savings, we can raise the limits or broaden the base of our existing complex menu of individual retirement accounts, cash and deferred plans, tax-deferred annuities, defined contribution plans and defined benefit plans.



BY DAVID MACLAURE

But what did Congress and the administration do? First, they rejected the proposition that the way to reduce taxes is to return money to those who earn it. A single person earning a good salary but without capital gains (or an expensive residence to sell) receives no benefit from the 1997 act. Social engineering and the perceived need for political credit for benefits that particular groups of taxpayers can actually see replaced any notion that the sound way to reduce taxes is to do it as simply as possible. Straightforward tax reduction, less evident to taxpayers than targeted benefits, lacks a political constituency.

Next spring, and particularly the spring of 1999, we can be certain that many of those who have been proudly claiming credit for passage of the 1997 law will be again bashing IRS for its alleged failures to administer the law properly. If IRS is indeed the "troubled agency" that many in Congress, as well as the Restructuring Commission, claim, why would a rational Congress assign to it a much expanded task? Why would Congress make a code, already too complex, much harder for the public and the IRS to understand? If we need additional wage supplements or welfare grants, we have a Department of Health and Human Services to administer such programs. If we need to spend more money on education, we have a Department of Education in place. Why assign welfare grants or wage supplements to the Internal Revenue Service through new credits? Why transfer the administration of new educational grants and subsidies from the Department of Education to the Internal Revenue Service? If we want to encourage additional savings, better ways can be found to do it; we don't need to enact a complex web of individual retirement accounts (including one named for the chairman of the Finance Committee) that undoubtedly will mystify the middle-class savers for whom they were apparently designed.

As a popular feature, Money Magazine likes to put a complex (and trick) question to a number of different tax return preparers and then print all the different answers the magazine receives. Next year—and certainly the year after, there may be no right answer to many questions raised by the complex new legislation and there may be several right, although different, answers to others. I defy anyone to read the new capital gains provision once and understand it. Next year's Schedule D will be far more complex than this year's, and individual tax returns for 1998, when the full impact of the new credits, allowances and IRAs take effect, will be horrifying. Tax practitioners will be in hog heaven, but taxpayers themselves will find it difficult, if not impossible, to prepare their own returns. Politicians, conveniently forgetting who put the additional burden on the IRS, will rant that IRS doesn't deliver sufficient prompt, friendly and accurate customer service.

This is not to say that the entire 1997 Tax Act is bad or that Congress didn't enact some helpful simplification provisions around the edges. Some arcane pension rules were dropped and, for example, an overdue relaxation of the look-back rule for long-term construction contracts was adopted. But these comparatively narrow simplifications affect few taxpayers. Overall, the bill vastly complicates an already overly complex law.

The Urban Institute's Gene Steuerle has proposed that the tax-writing committees be required to review mock-up forms showing the effect of their proposals on taxpayers. He is right; such action would have been highly therapeutic in the development of the 1997 tax bill. If Congress and the administration had been forced to see what they were doing to the public and the tax system, maybe they wouldn't have done it, particularly in plain view of the press and the public. I would like to add a rule that would prevent inclusion in the Internal Revenue Code of *any* targeted benefit promised in a political campaign.

The writer was commissioner of Internal Revenue from 1972 to 1977.

Mr. PORTMAN. Thank you, Mr. Alexander.
Mr. Cohen.

STATEMENT OF HON. SHELDON S. COHEN, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE, AND PARTNER, MORGAN, LEWIS & BOCKIUS, LLP

Mr. COHEN. Mr. Portman, these are my views, not my firm's nor my clients'. I will start by saying that.

I do not think anybody disagrees with. The goals of the Commission as outlined, there are a number of bullet points on my submission that reflect the ones of the Commission. I think everybody wants a better Internal Revenue Service. They want better management, more control, they want more strategic planning, all of those things.

What I have heard this morning, and what I have read before, and what my testimony says is I don't think they have the right way to get there. That is, this outside board is going to create more problems than it is going to solve. There are enough conflict of interest issues that arise every day in the Revenue Service with one Commissioner and one Chief Counsel than with a board of nine people who have a variety of interests, political and otherwise, and social and otherwise, business and otherwise.

I have pointed out in my testimony a number of ways I think they will get into deep trouble and that trouble will then reflect on the Revenue Service. Nobody will say it was the Board or the board member; they will say it is the management of the Revenue Service, and I think that is a deep problem, and I don't think it is susceptible to cure by the techniques suggested by the Commission.

Having said that, I need to come up with an answer. The Revenue Service is a good organization. I think there is a lot of dirt being dumped that isn't meant to be dumped. The system that collects $1.6 billion or $1.7 billion, is a model for most of the rest of the world. So something down there is going right. Now, a lot of things are going wrong. And in a big organization on any given day, a lot of things are going to go wrong. They had a lot of bad starts on their electronic data processing system. That is clear.

Now, major changes have been made in the management of the Revenue Service by hiring and bringing in new people. The new Commissioner has skills in this area. That problem seems to be on the road to being cured.

Now, whether the other problems are deep enough to require this great change—I mean, here we are dealing with a system. I used to sit down there in sheer terror that anything I did would deteriorate the system by as much as 1 percent, because 1 percent of the revenue is so big, my budget would pale beside it. And here we are trying to make this major surgery on an organization I just don't think is warranted, and that is what I have said.

The 5-year term for the Commissioner I think is fine, although I don't believe it is going to happen. That is—I am one of those three since the reorganization who served for a full 4 years. No agency I know of that has fixed terms has anybody who really

served that, except for the Controller General. The Controller General is about the only one. But for 20 years now we have had a 10-year term for the head of the FBI and no one has served as much as 4. So we will see. Maybe Mr. Freeh will break the record.

I am going to skip most of the rest of this.

The complications problem is very serious and the communications with the Revenue Service is very serious. When I was Commissioner, Mr. Mills used to invite me to his office probably as much as once every 4, 5, or 6 weeks and we would talk about administrative problems and pending legislation. So it can be done. It can be done informally; you don't need change in law—there was no law, there was no great mechanism, he just invited me to come up and talk.

We need more respect for the Internal Revenue Service. We need more respect for government employees generally. The deterioration of service has something to do with that. But it has something to do with the complications that you folks pile on. Nobody on the private side of the aisle—our side of the desk is ever going to complain about a complex provision that benefits them. It is only a complex provision that causes them problems.

The Revenue Service's curse has been its ability, in most instances, to be able to handle those complex provisions. So you pile on more. You say, oh, they are pretty good at doing this. They will find a way to handle it. They will develop a form or procedure that will get through these complications and we do not have to worry about it. But, you see, you do have to worry about it because you have piled on so many that it is beginning to break the system. And I applaud any of those efforts that, by oversight or otherwise, would do to simplify the system.

Now, I testified before an oversight committee in 1987 on the use of foundations in political campaigns. Recently, somebody called me when this problem arose and said, do you have anything, and I said, yeah, I testified before an oversight committee in 1987, and I xeroxed it and sent it to this reporter, and she said to me, you wrote that 10 years ago? It reads like it was written for yesterday.

Well, the point was that the Congress knew about the problem and was concerned about it. The hearing report expressed concern, but Congress never did anything. So those kinds of issues where you could clean up an area are not sexy enough. There is really no constituency out there lobbying you to clean those areas up. You have to be self-starters in that respect.

One of the problems, of course, here is that the Revenue Service doesn't send you a report on legislation. You get the report from the Treasury. The report that the Service sends to the Treasury might be enlightening on occasion because they sometimes say different things, because they are not concerned so much with the overall policy as with the administration. And if you are really concerned about administration, you ought to get involved. You have to. I mean, you have to get your hands dirty, unfortunately.

You know, customer service is great, but remember, you are dealing with an organization that is not helping me finance my credit card purchases; they are taking money away from me, or at least I view it that way. So I am not going to be kindly toward them no matter how good the service is. If they give me an answer I don't

like, the answer could be courteous or kind or fast, I am still not going to like it if it wasn't the answer I wanted to hear.

There are some alternatives, by the way, to oversight and I have suggested a couple, and I am sure there are others in which you can get an outside group which has some accountability and which has answerability to you or to whomever you think is appropriate, but would not overly burden the structure and management of the Revenue Service, which I think is a problem.

And I think I will stop right there and maybe we will have more time for questions.

Thank you, sir.

[The prepared statement follows:]

Before the
Committee on Ways and Means
U.S. House of Representatives

Re: Hearing on Report of the Restructuring Commission on the Internal Revenue Service

Statement of
Sheldon S. Cohen
Morgan, Lewis & Bockius LLP
Washington, D. C.
September 17, 1997

Mr. Chairman and Members of the Ways and Means Committee: I am pleased to appear before you today at the request of your staff. I have been asked to give you my views on the recent Report of the Restructuring Commission on the Internal Revenue Service and the Treasury Department's proposals. My testimony represents my own personal views and is not on behalf of any client nor of my law firm.

My experience is as a practitioner who has worked in the Internal Revenue Service on two different occasions; once in the early 1950's as a legislative draftsman (1952-1956) in the Eisenhower era and later as Chief Counsel (1964-65) and Commissioner (1965-69). I have also been a member and officer of the National Academy of Public Administration and in that role I have been on several panels which have studied various aspects of tax administration. I have served as a consultant to the Comptroller General and his staff. Likewise I taught tax and accounting subjects at The George Washington University Law School and several other universities over the years and have provided services as a consultant to the United Nations Development Program on tax administration issues in developing countries.

The Introduction to the Commission Report suggests that the President, Congress, Treasury and IRS must:

- develop and maintain a shared vision with continuity;
- set and maintain consistent priorities and strategic direction;
- improve accountability of senior management;
- develop appropriate measures of success;
- ensure that budget and technology support and strategic direction; and
- coordinate oversight and identify problems at an early stage.

On these ideas just about everyone can agree. Thus, the goals are fine. My problem with the Commission's Report in some respects is in the means of achieving these goals. It seems to me that it has chosen inappropriate means in at least the governance structure.

The Commission leadership has stated that its central recommendation is the creation of an outside board of directors that would select the Commissioner and other key officials and oversee the budget and direction of the IRS. This board would determine the pay and working conditions in the IRS and set its strategic goals. These are all inherently Executive Branch functions. In order to overcome Constitutional separation-of-power objections, the Commission would give the President, as head of the Executive Branch, the right to remove those appointed by the board or to overrule its budget determinations. This is inefficient at best and an invitation to political firestorms at worst. No other agency is so managed, and there is no precedent to suggest that such an approach would enhance rather than detract from sound tax administration. The director of the Brookings Institution's Center for Public Management

has strongly recommended against such a board. He feels it will degrade accountability and create new conflict of interest problems. The IRS is the major fund-raising entity in the federal government; we cannot risk making its operation worse. The first rule in making any changes should be "first do no harm."

If the Commissioner and board were to have sharp policy differences on collections, audits or criminal investigations or any detail which may be at odds with the President, or the Secretary, what happens? There is no explanation of this possible issue. In the first year of a new President's term (of whichever party), he will have control over only two votes on the board: the Secretary or Deputy Secretary and one appointee (in fact, on the first day he will have only the Secretary). Thus, the board could be moving in completely different management directions from that which the President and Secretary may wish: more corporate audits; less corporate audits; more collection activity or less collection activity; more criminal enforcement or less; more concern for foreign corporations doing business here or less; and so on. This is not the recipe for a smooth working IRS and Executive Department.

The IRS is responsible for carrying out one of the two most essential government functions -- the collection of taxes and the enforcement of internal revenue laws. (The other being defense, which is paid for by the funds collected by the tax system.) The Congress cannot and should not allow privatization of such an integral part of the government. The Commission adopts a schizophrenic approach which looks to corporate America and yet creates something that is neither a private corporate model, nor a government model.

The board will have many inherent conflicts, both real and perceived, and the Commission fails to recognize how these may undermine the credibility of the Internal Revenue Service. How does a board member and the President of Y corporation handle himself when an issue which affects Y corporation arises, or when an issue affects his or her industry, or indeed when the issue affects a competitor? Some conflicts will be so obvious that recusal may work, but some will be so subtle that they may not be recognized until it's too late. The Commission attempts to address this concern by stating that the new board will deal only with budgetary and strategic planning and not be involved with tax policy, audits or enforcement. Will the public really believe that, and even more important, will it be true? The power to set budgets is the power to set priorities and policies. Budgets have a direct role in tax policy and law enforcement. How the IRS spends money determines tax policy. What it is willing to enforce is the real policy, not what is said. Moreover, the appearance of conflicts may be almost as damaging as the conflicts themselves. Even if each board member comports him or herself perfectly, the inevitable coincidence of issues will raise perception problems with the public and will drive the press and Congress to a frenzy on occasion. An example will illuminate this. Suppose the audit of the company employing one of the board members ends fantastically well. Suppose further that the board member comports himself perfectly and never mentions it at any meeting. Who will believe it when the great result comes out and the news-making journalist draws the coincidence to its illogical conclusion?

As a safety valve the Commission says that the Treasury could overrule the new board on budget. Look at how complicated this could be for a new management strategy and think of the extra time consumed in this negotiating process. There are presently four sets of negotiations to make a budget after those within the Service itself: first at the Treasury, then at OMB, then two on the Hill (or perhaps three with the Conference Committee). We would add another fifth at the beginning of this process, and it would be in public so we can fight about the details in public. This process can add months to an already arduous process.

We recently saw criticism of Commissioner Richardson because she had worked on the Clinton Campaign in 1992. Now we are to have a large board, each of whom will have potential soft spots in his or her career, each of whom have political friends or enemies, and each of whom will be criticized for one reason or another. And so each will put a blemish on everyone's perception of IRS management at some time during his or her term. This will be so regardless of the realities. We need better IRS management, but in my view decentralizing it to a board does not make it better. The present system has the advantage, it has worked well over

the years because it centralizes responsibility. If we are unhappy at the moment, we can appoint a new manager (which is being done), and let him move forward with bringing better management to the IRS. The very issue which gives rise to the creation of the Commission, the failure of the new computer system, seems to be fading. The appointment of a new person, Arthur Gross, to manage the computer system and now with the appointment of another Commissioner, Charles Rossotti, with fine management experience we are seeing new confidence in the IRS' ability to develop a workable and advanced computer system.

The Commission wants a fixed five-year term for Commissioner. I am in favor of a four to five-year term. The Commissioner provides a fresh voice from outside with new and different ideas. It is good to have a new perspective every four or five years so that new ideas and views are introduced. However, I should point out that only three of the last 15 Commissioners (since the Reorganization in 1952) have served four years. Fixed terms do not bring long service. Many agency heads have five, ten or even longer terms; very few people actually serve that long. Since Mr. Hoover's death, the FBI Director has had a fixed 10-year term, however, no one has served the full term.[1/]

I found that four to five years was about all my blood pressure would take; I served a year as Chief Counsel and four as Commissioner. My experience tells me that few people serve five years now, so pretending they are going to do it will not make it so. I too favor longer terms and more continuity, but I would do so by making the request come from the President and by the Congress having a more understanding and cooperative attitude. Too many combative hearings and heavy criticism of minor items will not be good for one's digestion, and my wife for one was happy to have me out of the meat grinder.

It is more important that the top career staff have long continuity. I disagree strongly with the Commission on this point. They seem to feel that the career service of the IRS has too much longevity. During my term as Commissioner, there were 15 top staff members: a Deputy Commissioner, seven Assistant Commissioners in charge of functional areas and seven Regional Commissioners. In my four years in office there were only two changes in this group, the Deputy Commissioner was appointed as Deputy in another agency and was replaced by an Assistant Commissioner, and one Regional Commissioner retired. Thus, the people who planned the installation of the IRS's first computer system were the people who installed it and made it operational and that is why it was a success.

Pay in the 1960's was better in comparison to private industry, and more important, government workers were respected. A beginning lawyer in my day received about 80% of outside pay (now it is about 50%), that difference, considering the opportunity to develop expertise and work on cutting edge issues encouraged the best people to come to the government to work. It was that respect and the opportunity to do new and important things which kept the workforce steady and refreshed. The continuity of the career staff is important in accomplishing long term projects and providing a history of what works and what has failed. I would agree with the Commission that introducing career officials from other agencies is a healthy objective. It adds new points of view and ways of doing things.

Statements of the respect and honor we ought to give to our public servants will not help, if we do <u>not</u> really follow through with that respect. The current climate of suspicion and nit-picking is conducive to rapid turnover and consequently lower levels of service. No one wants to work for a boss (the Congress) which never compliments you, but always finds a career person to target as the cause of the problems.

Many of the problems in our tax system are created in the legislative process. This year is not much different from other years. This Committee worked up its draft legislation and revealed it on June 9th and 10th. The bill passed the House less than a month later. No hearings were held on the actual bill. It was funny (if that is the proper word) to watch the

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1/ Mr. Hoover served over 48 years, although he had no fixed term.

Chief of Staff of the Joint Tax Committee on June 12 describe the bill to the members. He was speaking at a rapid pace, so fast that most of the members could not possibly have understood him. I, as a tax expert, had a very tough time in following his rapid explanation. He answered questions very narrowly, and there was a vote. A few good lobbyists got advance word and were able to change a few things, but most of us only watched in awe or disbelief that this was the way to make a law. We are only now, more than two months later, coming to know what is really in the House or Senate bills. The President has now signed a bill which adds more, not less, complexity to tax administration. Indeed, we are now learning of errors in this bill and a bill will soon be introduced to correct obvious errors.

Thus, the Congress which promised us simplification has produced a bill and explanation of about 1200 pages. The Commission wants a simpler tax law; if this is the Congress that will bring us simplification, I will be shocked. We can have a simple law only when the Congress has the discipline to say that every problem in America does not have a solution which must be in the Tax Code. This Congress, like those that have gone before it, clearly does not have that discipline. Incidentally, the Administration was not much better than the Congress in this respect. I will comment on that later. In the Eisenhower days, the planning for the 1954 Code began in January 1953. There was a one-year study period, the bill was then introduced in January 1954. Hearings on an actual bill were held in both Houses and the law passed in August 1954, twenty months from start to finish. There were fewer errors or corrections needed, people had a chance to comment and think about the legislation and its consequences. I don't believe quick legislation is the way to go.

The Commission believes that the oversight function of the IRS should be better coordinated by creating a new entity to handle this oversight function. I suspect that everyone at the IRS and Treasury would applaud this recommendation if it were to occur. Back in 1926 the Congress created the Joint Committee on Taxation ("JCT") for this express purpose. However, oversight has not been as "sexy" as legislation, so the oversight function at the JCT has withered until it is almost nonexistent. Instead of recommending the abolition of a committee or the reinvigoration of a committee, the Commission does what Commissions usually do, it wants to create a new entity. How will this mesh with the oversight function of the Congress?

I do not see the substantive committees, House Ways and Means and Senate Finance, giving up their right to ask the IRS probing questions on its functioning under a statute which those committees drafted. Likewise, does anyone believe that the Appropriations Committee will not probe into how the money they appropriated is being spent, or for that matter the Governmental Affairs Committees of each House when they are moved to examine an area. Thus, the suggestion about the need for one oversight group is good. The Congress ought to have one committee to oversee the IRS and it should be bipartisan and coordinated by the House and Senate. That is easier said than done and the Report gives us little reason to believe it will succeed. The Congress is great at criticizing the Executive Departments for redundancy or overlapping jurisdiction. While the idea is good, the implementation would repair a kind of coordination in Congressional Committees that I have not seen before.

The Commission wants stable funding for the IRS; three years is its goal. The IRS wants stable funding; the President wants it. What stands in the way is the appropriations process. What fun is it to be on the Appropriations Committee if you cannot hold hearings on how the IRS is doing on this or that sexy item, and give line item instructions to the Service to do this, or not do that? A large IRS initiative is like a large aircraft carrier; it may take several years to recruit and train the people needed to do the job. It is only then that you get the payback. So stable funding is a necessity.

What happened to the Hoover Commission recommendation for performance-type budgeting? The Congress tried it for a few years in the 1960's and it worked very well. Under such a budget, the agency is given a budget and an agreed mission. It is up to the Commissioner then to accomplish the mission within the agreed budget. However, new people came and did not remember Herbert Hoover and detail budgeting came back with all its

inefficiencies. See what some of your sisters and brothers up here do annually to the issue of "employee" versus "independent contractor" or with electronic tax payments. The Congress is unhappy with the IRS' position but cannot decide what its role will be.

The Commission seems to want the IRS to have more political appointments in the management of the IRS. I was happy with only two. It was great to be able to say that only the Chief Counsel and the Commissioner are political appointees. The last thing we need is a return to the 1950's when every collector (there were over 60) was appointed through the political process. I believe we want our tax system to be run in an apolitical manner. Thus, we do not need to return to the days when politics regularly entered the decision-making process. This type of change can lead to less respect for the IRS, not more. (Indeed, I have seen adverse comments on the Administration's proposal because too many political appointees are in the process.)

As to flexibility of pay for the Commissioner and the top staff, this is a good idea that I would applaud. However, there is no discussion of the fact that this type of decision has been rejected by the Congress time after time. Each member of Congress feels that the problems in his or her state and in other agencies are just as important as those in the IRS, so Congress has refused this idea many times, both for the IRS and other agencies. Also performance-type pay is usually a "no-no" in a tax-raising agency. You want the staff to do the right thing, not necessarily the thing which brings in the most revenue. If you set the incentive system it will change behavior, not always for the good. That is why the IRS never operates on a quota system for revenue agents or collections personnel.

The Commission feels that Customer Service is a vital element of a good tax system. So do I, and most of those who have served as Commissioner agree. Yet a past Administration cut the funds for taxpayer service, and the Congress went along with those cuts. The Congress vacillates; one year it wants enforcement and collections, the next it wants niceness and service. The IRS gets into trouble when the Congressional pendulum swings.

The IRS used to have a rule that they would be nice to the taxpayer (but strict); the nice people deserved it and the nasty ones would not be able to complain. Then came years of low budgets and cuts in training and the taxpayer services got cut. Congress often decrees cuts in training, believing that this will save money. It does not; in fact, it may cost money by making the IRS less effective. The public may judge the IRS by the service they get from the best customer services organization, and indeed the IRS should give that kind of service. However, we all realize that sometimes we get shunted on the phone line from one number to another in a commercial outfit without the ability to talk to a human. Even private enterprise has these problems.

The Commission seems to feel that Customer Services comes first before compliance and efficiency. It may, and most IRS employees I deal with are courteous and respectful. However, they are doing things which many of my clients don't like. They are questioning how taxpayers treat an item. Thus, this is not like dealing with a bank or credit card company. Banks are assisting me in financing my purchases; they are not questioning my purchases, or my motives. Thus, I suspect the Commission was comparing peaches with pears. They are both fruit, but they are different.

The Report talks constructively about improving compliance through research and preventive measures. The integration of research and compliance efforts is a worthy goal. However, recently Congress has not shown proper appreciation of TCMP. TCMP is the test audit program which provides data from which returns are selected for audit. Some in Congress discourage this program. If the IRS is to undertake adequate research it will need larger appropriations, which the Commission did not address. If it gets the test data, it will audit the returns which really deserve an audit; without that data it is guessing and will audit nonproductive returns. This means more bother to taxpayers who should not be audited.

While there are some good ideas in the Commission's Report, much of it is a rehash of old ideas, some good, some bad. The Commission could have suggested that the Congress and others stop some of its IRS bashing. The IRS gets the blame when it enforces the rules which Congress writes. Individual members of Congress make gleeful exercises in blaming the IRS for trying to enforce tax rules they write. I suspect this IRS bashing has more to do with IRS morale and improvement than any of the other ideas.

Your staff asked me to comment on the Treasury proposals to improve IRS governance. Like the Commission proposals, I find the intent good, but some of the proposals are not constructive. Everyone's intentions are good. All of us want a better IRS operating a tax system that is smooth running and fair. However, I find problems with the Treasury proposals also.

The Treasury has suggested two boards, one which it feels is like a Board of Directors composed of officials of OMB, OPM, NPR, etc. These people are all government officials and serve in various government agencies. Most have relevant experience in management, personnel and computers, though none are tax experts. I am concerned that this is not what the Service needs. This group, as individuals, may have fine experience and may be good people from whom the Commissioner may want to seek advice, but I hesitate to add additional political levels of review of the IRS. As I discussed in my comments on the Commission proposal, it adds too many cooks to the broth. It may raise political issues and that is the last thing the IRS needs at this time, or at any time.

Then the Secretary recommends an IRS Advisory Board. This looks quite a bit like the present IRS Commissioner's Advisory Group. I would like to give you a little history here.

When the Advisory Group first stated it was a valuable asset, ten to twelve well known persons with tax, business, computer and other valuable experience met with the IRS Commissioner and top staff four times per year for one or two days at a time. The meetings were private and confidential. Then came the Advisory Committee Act which required that such meetings be held in public with the press in the back of the room. These meetings became "Show and Tell." No more candid discussion, only remarks intended for the press in the back of the room. So the value of this group declined. I don't know what the rules are but I suspect that the Secretary's proposal and the board that the Commission suggests would both have this defect.

Serious discussions of flaws in the tax system cannot be held in public, unless you want to alert every tax cheat of how to do it better. I would applaud something like the Advisory Board if its meetings were closed, or at least if portions could be closed to accomplish real reform of the tax system. Perhaps appointment by the Secretary or even the President would enhance the prestige of the group and help get the very best people to participate.

I applaud more participation by the Secretary and Deputy Secretary. Secretary C. Douglas Dillon and later Henry H. Fowler were very much involved in my time. I found this advice and support very helpful. Secretary Rubin has indicated that he and the Deputy Secretary intend to be more involved. That is good.

An interesting alternative comes to mind here. The Comptroller General of the United States has a consultants group. I have served on this group for over 15 years. The group meets as a group with the Comptroller General and his top staff for two days at least twice a year. The Comptroller tries out on this group new ideas or tough problems he faces. The group is composed of corporate presidents, investment bankers, lawyers, accountants, retired military types and former government officials. A broad range of experience is represented. Subsets of this group meet periodically within various divisions of the GAO to assist them in developing work plans or in evaluating their work product. A small subset of this group acts as the Audit Committee of the GAO. (I am privileged to Chair that Committee.) This group meets periodically over the year with the Comptroller General and his staff and also meets privately with the outside accounting firm which audits the GAO. This process allows the GAO the

benefit of fresh outside ideas and reviews on a regular and ongoing basis. Another example is the trustees of the Social Security system. They likewise exercise an oversight function.

The Secretary has suggested a five year term for the Commissioner. I commented on that earlier.

I find the comments of the Secretary on simplification just as unhelpful as those of the Commission. The Secretary and his staff were just as involved with the 1997 Act as was the Congress. I did not find real simplification in that bill; I found it made the tax law more complicated. While some of the programs may be good, they did not need to be effectuated in a tax measure. Many are merely spending programs wearing a tax costume.

Taxpayer Rights.

I am concerned that the Congress may go overboard in the taxpayer rights area. First, I should say that the IRS should turn square corners with all taxpayers. It should do so with the honest and cooperative taxpayers, because they deserve courteous treatment; the nasty or dishonest ones should also receive fair attention because that is their right and also it will give them nothing to complain about. Being fair does not mean you need to be a wimp. Tax collection is not always a gentle sport so the IRS needs to be prepared for tough treatment. On occasion I authorized special agents to accompany revenue officers in collection cases where there was violence threatened. You cannot walk away just because the taxpayer is not a nice person.

In collection matters, remember the debt is usually acknowledged. The taxpayer owes the money. Most other taxpayers have paid and paid on time. Any extension of time is a privilege, not a right. Hence, much of this is a judgment call as to what is a "serious hardship" or whatever standard you wish to apply. If you want the agency to be liberal, take a position and tell them the standard you want applied. Remember when you give relief to someone who is late in filing or paying, your act may cause a decline in compliance. It is tough to judge when you can be gentle, and when such action will encourage more people to slow up their payments.

The Commission recommends that the IRS be required to pay damages after it has lost in three circuits . That may look reasonable but you must remember that these circuits are not the Supreme Court. We don't know for sure what the law is until the Supreme Court speaks. I can recall at least one case where seven or eight circuits were adverse to the government's position, but the Supreme Court decided the case in the Government's favor.[2/] It is your prerogative to do what you think is right since you are writing the law, I am just saying go a little slow and think it through, unemotionally.

I am not sure that telling a taxpayer why he is being audited is always a good idea. Most audits have been as a result of computer selection, or selection because of relationship to another taxpayer under audit, i.e., the principal offices of a corporation are usually audited at the same time as the corporation. Where there is any informant or the audit results criminal investigations, letting the taxpayer know may give up rights which the government does not need to give up, and probably should not give up. Please go slowly in this area. It is something which looks nice, but causes deeper problems.

In closing I would like to thank the Committee and its staff for allowing me to give you my views on IRS management issues. We all want to make the tax system work better. A good system poorly administered will not work properly. A poor system well administered will succeed.

2/ Comm'r of IRS v. LoBue, 351 U.S. 243 (1956).

Heretofore we have had a pretty good system and excellent administration. One of the IRS's burdens has been its ability to make a complex system work. Unfortunately that has encouraged various Administrations and the Congress not to the be concerned about the complications they have added to the Code. Like the straw which breaks the camel's back, all this catches up to you after a while. My own view is that we still have very good tax administration. I say that from my experience working in the system, working with clients caught up in audits, collection issues and the like, and viewing it from outside the U.S., we are still the model for most countries around the world. It can be better, and I believe Secretary Rubin and the new Commissioner, Charles Rossotti will address the issues of concern to the Congress and the rests of us. Radical solutions may kill the patient; I am in favor of incremental and significant improvements.

Mr. PORTMAN. Mr. Kinghorn.

STATEMENT OF C. MORGAN KINGHORN, JR., FORMER CONTROLLER AND FORMER CHIEF FINANCIAL OFFICER, INTERNAL REVENUE SERVICE, AND DIRECTOR, GOVERNMENT CONSULTING PRACTICE, COOPERS AND LYBRAND CONSULTING, McLEAN, VIRGINIA

Mr. KINGHORN. My name is C. Morgan Kinghorn, and from April 1990 until August 1995, I was honored to serve as the first Controller of the IRS and then its Chief Financial Officer. I am currently employed with Coopers and Lybrand Consulting, but my attendance here reflects my own views as a former IRS employee and not necessarily those of Coopers and Lybrand.

I think I have some unique opportunities to share with you. I was the first outsider to be appointed a chief, reporting directly to the Deputy Commissioner and Commissioner. Sheldon tells me there was another outsider that he appointed several years ago. But, in effect, in recent years I was certainly the first outsider to be brought in on at senior executive level. And I was an outsider who was anchored in one of the functions, financial management, but took a key interest in using those functional powers to help the core mission of IRS and help bring about fundamental reform.

I would like to touch today on the key areas and I agree with the Chairman, are the key issues, and those are the governance questions facing the IRS. You cannot talk about governance really without talking about culture. This is not some fuzzy management concept. The cultures of organizations—and I have learned this certainly in the last 2 years in my consulting work—really affect the management and the decisionmaking powers and authorities within an organization.

IRS, as I think you have learned, is a closed-loop system, or has been, and by that I mean there has been no consistent insertion of external perspectives through the recruitment of individuals at the executive level except, of course, for the Commissioner, who can truly bring new ideas or different ideas to the Service.

While the Service has certainly attracted excellent individuals at all levels, the numbers who have been able to make it through the system have not been sufficient, in my mind, to make much of a difference for the long term.

I also observed the closed-loop nature of the Service has helped to make the Service a very risk-averse organization, generally distrustful of new ideas that were not generated from within its own ranks. That is probably because the Service for decades and decades was best at what it did and probably did not see the need to have outside expertise.

But I believe the intense internalization of discussions within the organization and, in effect, among others who talked the same way and have been brought up in the organization for 25 to 30 years, can greatly limit the perspective and, over time, limit choices that are available to senior executives making decisions in a very difficult environment.

On accountability, which was discussed today, it is hard to find accountability in most large public sector organizations, and this is no less true in the IRS. Obviously, the Commissioner is the single focus, at least in a political sense, but what about the accountability of the 110,000 people at IRS at the executive managerial level? It is one of the most difficult tasks in the public and private sector to define.

At IRS there is, I think, a primary reason for some confusion on accountability, and, again, I believe that is the functional stovepipe organization structures that really minimize accountability, because no one really manages an entire large-scale process. Problems in returns processing can be blamed on the system's failures; low collection rate downstream can be blamed on examinations done earlier; the failure of a new systems initiative can be blamed on the fact that the program office was constantly changing its requirements. So it is difficult to pin down accountability.

An executive at the IRS once told me, the good news is, the IRS is politically naive; that is why we have a Commissioner; but the bad news is that the IRS is politically naive.

IRS is in many ways very ill-prepared for the kinds of challenges to its mission that are currently under way. It traditionally does not deal well with outside oversight. It has for so long operated in isolation; yet it is a fragile machine that belies its tough image. In order to better deal with the governance issues that result from a bureaucracy that is inherently inward looking and an operating environment that is strategically and constantly changing, there are several key questions surrounding governance that you have focused on and I think are generally consistent with your approach in the legislation.

First, and I think most important, we do need to develop the mechanisms that you discuss in the legislation to bring new and diverse talent from the outside into the IRS executive and managerial ranks at the earliest possible timeframe. I think that is probably one of the most essential moves that can be done.

We need to look at mechanisms to inject on a more regular basis practical and useful oversight and outside views of the core activities of the Service to inject at a strategic level outside views of operations, customer service, and technology. I think the Board concept that you are recommending is part and parcel of that approach.

The closed-loop system is beginning to change, and I think we have to give IRS credit. My experience is 2 years old, and in very recent weeks, for instance, clearly the process for technology investments has been opened up to outside views and there is tremendous interest in looking at alternative ways of partnering with the private sector to look at approaches.

IRS is now looking for outside assistance and advice in restructuring its entire training programs and executive development efforts, and very recently the IRS is moving out beyond its own expertise generally anchored in paper processing to get outside views on approaches on expanding electronic filing. I think these are evidence of the fact that the organization is listening and beginning to respond to some of the criticisms and some of the objectives that you are trying to reach.

IRS needs organizational structures that reflect broad business practices rather than bureaucratic fiefdoms. Some work was done on that in the IRS over the last 5 years, and I think, hopefully, will be reexamined when the new team comes in.

Finally, structure increasing amounts of flexibility and discretion in day-to-day business process and improvements for the field; in effect, empowering people in the field to make changes that will not affect the issue of unfairness and tax treatment but will get to being able to manage some of the management processes in ways that make most sense for those particular working environments.

What is most critical at this juncture is to move on and with some due haste, provide the government's framework for the IRS, and give the IRS room to respond and change to the new mandates, and I am sure it will.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT
of
C. MORGAN KINGHORN, JR.
before the
COMMITTEE ON WAYS AND MEANS
of the
U.S. HOUSE OF REPRESENTATIVES
on the subject of
RECOMMENDATIONS OF THE
NATIONAL COMMISSION ON RESTRUCTURING THE IRS
on
IRS GOVERNANCE
September 17, 1997

Mr. Chairman and Members of the Committee:

My name is C. Morgan Kinghorn. From April of 1990 until August of 1995, I was honored to serve as the first Controller of the IRS and then as the Chief Financial Officer. I am pleased to have been asked to discuss with you my views on some key governance issues facing the Internal Revenue Service. I am currently employed with Coopers and Lybrand Consulting as a Director in their Government Consulting Practice. My attendance here today, however, reflects my own views as a former employee of the IRS and not necessarily those of C&L.

In 1990, I accepted the position as the Controller of the Internal Revenue Service because I liked challenges and because I was promised the unwavering support by the Commissioner for what I knew would be a difficult job. That personal promise of support for financial management reform was kept by the Commissioner and was maintained by the next two Commissioners. The positions of Controller and Chief Financial Officer were the result of recommendations from a GAO Management Report on IRS management that were made in 1989. That Report dealt with fundamental issues of governance, decision making and operational reform very similar to some of the issues still facing the IRS.

In 1990, as I was told by many IRS executives, I entered the service as the first outsider at the senior executive level in a quarter century to be brought into the Service. Whether or not that was really the case, it gave me some idea of the culture that was waiting for me. However, my more than five years with the Service became the most rewarding yet most challenging portion of my 25 year career in Federal Service. The IRS is in many ways a special institution that has been rightly regarded throughout the world as the finest of its kind. But times change; techniques change; and stakeholders change and IRS still struggles with meeting those challenges of change.

The IRS is in its own way a very fragile institution and its restructuring needs to be done carefully, with great precision, but with diligent haste.

My comments here today are entirely designed to help you work your way through some of the difficult issues facing the Service. I believe I bring a unique perspective to the discussions:

- the first outsider at the executive level who was invited into the institution to bring fundamental reform to a major functional arena;
- an outsider whose original appointment was not universally supported by the leadership of the institution
- the first outsider to be appointed a Chief reporting directly to the Deputy Commissioner and Commissioner;

- an outsider who while anchored in financial management, took a keen interest in understanding the core mission of the IRS and help bring about its fundamental reform.

I would like to touch on a key area -- governance issues facing the IRS, and I would like to conclude my remarks with some generic suggestions as to how to proceed in resolving some of these issues.

Governance at the IRS

You cannot talk about governance without talking about organizational culture. This is not some fuzzy management concept: the culture of organizations, particularly those with the strong internal focus of the IRS, is often the driving force in organizations. I believe one of the most important impacts of a variety of elements in the IRS culture is the impact on decision making processes.

First, the IRS culture is *a closed loop system.* In that I mean there has been no consistent insertion of external perspectives through the recruitment of individuals at the executive level, except of course for the Commissioner, that could truly bring new ideas or more important new perspectives into the institution. IRS has attempted to recruit external talent through its Executive Development Program. While it has attracted some excellent individuals, the numbers who have been able to "make it through" the program have not been sufficient to make much of a difference.

I also observed that the closed loop nature of the Service has helped to make the Service a *very risk adverse* organization generally distrustful of new ideas that were not generated from within its own ranks. This is more true of the executive cadre than it is of the rank and file who consistently produce new ideas and concepts for improved business processes. I believe that the intense internalization of discussions within the organization -- in effect among others who talk and reason on issues in similar ways -- greatly limits the perspective and over time limits choices available to its most senior executives:

- I found this the most disturbing in situations which demanded analytic questioning of initiatives. The unwillingness and sometimes inability to think outside of the box limited choices that decision makers could make;
- I saw time and time again Commissioners who were not well served because of a lack of complete analysis on alternatives or situations where the analysis was so soft that none of the choices were completely worked;
- furthermore, there is not a questioning atmosphere where issues can be heatedly debated where necessary without individuals feeling there are winners and losers; this atmosphere, which is pervasive throughout the organization and not a product of just the national office or just the field, leads to alternatives selected from too short and too shallow a list;
- executives at most senior levels tend not to ask tough questions; the belief is that a Task Force worked them out and all that needs to be done is to pick a box. Executive's jobs are to challenge the status quo and bring their own leadership perspective to what are, admittedly, very difficult choices to be made.

Defining Accountability

Its hard to find accountability in many large public sector organizations. This is no less true in the IRS. Obviously, the Commissioner is the single focus at least in a political sense, but what about the accountability of the thousands of executives, managers, and employees. It is one of the most difficult tasks in the public and private sector to define. At the IRS there are some reasons for the confusion on accountability:

- the functional stovepipe organization structure minimizes accountability because no one really manages an entire process: problems in returns processing can be blamed on the systems group; a low collection rate can be blamed on examinations problems; the failure of a new systems initiative can be blamed on the program office for constantly changing requirements;

- IRS tends to staff out analytic subjects, such as reorganization by creating task forces which because of their multi functional make-up tend not to enforce accountability for the product. Furthermore, Task Forces blur accountability because they are constructed of executives from a variety of functions. The transition between the Task Force's cross-functional nature and the command and control operating environment makes it hard to find who is in charge of the implementation once decisions are made.

Concluding Thoughts

Another individual at the IRS told me that: The good news is that IRS is politically naive; That is why we have a Commissioner. That bad news is that IRS is politically naive!" IRS is many ways is very ill-prepared for the kinds of challenges to its mission that are currently underway. It has for so long operated in isolation. The IRS is an incredible machine operated by over 100,000 truly dedicated people. Yet it is a fragile machine that belies its tough image. In order to better deal with the governance issues that result from a bureaucracy that is inherently inward looking and an operating environmental that is strategically and constantly changing, there are several key questions surrounding governance that need your focus:

- most important, develop mechanisms to bring new and diverse talent from the outside into the IRS executive and managerial ranks at the earliest possible timeframe to work with the existing talent to challenge the status quo;

- mechanisms to inject on a more regular basis, practical and useful oversight of the core activities of the Service to inject at a strategic level outside views of operations, customer service, and technology;

- organizational structures that will reflect broad business processes rather than bureaucratic fiefdoms that have operated for decades in roughly the same manner; and

- structure increasing amounts of flexibility and discretion in day to day business process improvements to the field units, including personnel, procurement and other reforms.

What is most critical at this juncture is to move on with some due haste, provide a new governance framework for the IRS, and give it some room to respond and to change to the new mandates.

Mr. Chairman and Members of the Committee, I would be glad to respond to questions.

Mr. PORTMAN. Thank you, Mr. Kinghorn.
Mr. Brand.

STATEMENT OF PHIL BRAND, DIRECTOR, INTERNAL REVENUE SERVICE POLICIES AND DISPUTE RESOLUTION, KPMG PEAT MARWICK, LLP, WASHINGTON, DC

Mr. BRAND. Mr. Chairman, I am Phil Brand. I am director of IRS policies and dispute resolution for KPMG Peat Marwick. The views I express today, however, are my own and do not represent the views of KPMG.

I was employed with the Internal Revenue Service for 26½ years. I retired in 1995. I most recently held the position of chief compliance officer for the IRS in the Washington national office. My perspective was influenced by the fact that I enjoyed my career at IRS. I was treated extraordinarily well by Treasury officials, by the Commissioners and Deputy Commissioners, and the other people I worked with. I have fond memories of the men and women I was privileged to lead and enormous respect for the difficult job that tax administrators must undertake.

I followed the work of the National Commission on Restructuring the IRS closely from its establishment to the final report. I worked with the AICPA and the National Association of Enrolled Agents in helping them understand and respond to the Commission's review support report.

I am hopeful that the upcoming debate and any resulting legislation, structural change, and guidance will be the product of congressional and administration consensus on the future of the IRS. Improving the efficiency, the effectiveness, and making the IRS more user friendly are important goals. Once clarity is reached on how best to achieve these goals, I urge that the IRS be given the breathing space to implement the reforms in a constructive environment of oversight.

The past 2 years have produced unprecedented criticism of the IRS. I know that IRS career employees understand the need for the agency to renew and refresh itself. The men and women of the IRS need the opportunity to do so over a period of time, with the constructive help of stakeholders, but in a less intense environment.

There must be more stability in the IRS budget process. The tax system and the revenue flow it produces are a vital part of the Nation's infrastructure. This infrastructure requires ongoing investment and replenishment. Just as our highway and air transportation systems require continuous maintenance and upgrading, so does the tax system.

In summary, I am pleased to be a part of this debate. I appreciate the difficult task that Congress has in deciding on how to renew the tax administration infrastructure. I encourage you to rethink the process in this context. I will, of course, be available to answer questions at this particular point in time.

[The prepared statement follows:]

Testimony of
Phil Brand

On

Recommendations of the National Commission on Restructuring the IRS On Executive Branch Governance and Congressional Oversight of the IRS

Before

The House Committee on Ways and Means

September 17, 1997

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today. I am the Director of IRS Policies and Dispute Resolution for KPMG Peat Marwick, LLP. However, I am here today in my private capacity. Thus, the views I express today are my own, and do not necessarily represent the views of KPMG Peat Marwick LLP.

I was employed by the Internal Revenue Service (IRS) for 26 and 1/2 years. I retired in 1995. I most recently held the position of Chief Compliance Officer for the IRS in the Washington National Office. My perspective is influenced by the fact that I enjoyed my career at the IRS and was treated extraordinarily well by all of the Commissioners and Deputy Commissioners and other people I worked with during my career. I have great memories of the men and women I was privileged to lead and enormous respect for the difficult job that tax administrators undertake.

I followed the work of the National Commission on Restructuring the IRS closely from its establishment to the final report. Importantly, I am hopeful that the upcoming debate and any resulting legislation, structural change and guidance will be the product of Congressional and Administration consensus on the future direction of the IRS. Improving the efficiency and effectiveness of the Service and making the IRS more user friendly are important goals.

Once clarity is reached on how to best to achieve these goals, I urge that the IRS be given the breathing space to implement the reforms in a constructive environment of oversight. The past two years have produced unprecedented criticism of the IRS. I know that career IRS employees understand the need for the agency to renew and refresh itself. They are capable of doing so with clearly established goals and objectives. The men and women of the IRS need the opportunity to do so over a period of time with the constructive help of stakeholders and in a less intense environment.

In commenting on the recommendations specifically related to governance, management and oversight, I am mindful of the fact that the Commission's Report stresses that the recommendations need to be viewed as a package of complementary initiatives. Based on my experience I am highlighting some of the recommendations, that I view as being particularly important.

1. There must be more stability in the IRS budget process. The tax system and the revenue flow it produces are a vital part of the nation's infrastructure. This infrastructure requires on-going investment and replenishment. Just as our highway and air transportation systems require continuous maintenance and upgrading, so does the tax system. The budget process should be reformed to create more budget certainty over a longer time horizon. Dealing with the annual changes in the budget was one of my biggest management challenges as Chief Compliance Officer. In 1995, for example, the IRS was funded for and hired 5000 additional compliance personnel. In 1996, by contrast, my successor at the IRS was instructed to reduce compliance personnel by the same number. This was not a unique experience.

In the context of a multi-year budget, I also specifically support a stable and adequate source of funding for EP/EO - the IRS's oversight function for employee plans and exempt organizations. It is critically important to ensure that EP/EO remains an effective guardian of the retirement income security of the nation's citizens, of public trust in charitable organizations, and of the $126.5 billion in annual federal tax expenditures in this area.

2. The IRS should be included in the process of drafting new tax laws. Complexity comes in three forms: the law itself, the taxpayer's burden in complying with it, and the cost of IRS administration. Use of a complexity index similar to one suggested by the American Institute of Certified Public Accountants, can help highlight the technical complexity of new tax legislation. Experienced tax administrators can advise on the difficulties in administering the law. Prior to proposing and voting on such legislation, the executive and congressional participants should understand what administering the law entails. The IRS was given administration of the Earned Income Tax Credit several years ago. While there has been some simplification in determining eligibility for the credit, the administration of this non-core tax function has been extremely difficult. There was only cursory involvement of the IRS in the original legislative process. The end result was extreme administrative complexity.

3. A set term of five years for the Commissioner will provide added stability and continuity for the IRS. One of the most difficult processes the IRS faces is the historical turn-over of Commissioners. Frequently, their tenure has been less than 3 years. Given the tremendous challenges facing the IRS continuity at the top would be a major asset. I also believe a set term could encourage future Commissioner's to adopt a longer term strategic view of how to approach and solve the issues IRS constantly faces.

In summary I am pleased to be a part of this debate. I appreciate the difficult task Congress has in deciding how to renew the tax administration infrastructure. I encourage you to think of the process in this context.

Mr. PORTMAN. Thank you, Mr. Brand. And thank you, gentlemen, for all of your good input. I am going to yield to my colleagues here. Some of them may have other commitments.

Mr. Coyne.

Mr. COYNE. I have no questions. Mr. Chairman.

Mr. PORTMAN. Mr. Hulshof.

Mr. HULSHOF. Mr. Alexander, I looked for some softballs, and I couldn't find any. I know you feel strongly that the primary job of the IRS is to, in your words, collect the proper amount of revenue due under the Internal Revenue Code. And I take it you question the Commission's goal of turning the IRS into, "a world class service organization." Is that a fair summary of your belief?

Mr. ALEXANDER. It is fair. One of the goals set forth in the bill is to convert the IRS into a world class service organization. And I am not sure that that is the primary duty, anyway, of the IRS. The duty of the IRS is to try to make the system work, and that duty is a very difficult one. And since most of our revenues come in voluntarily over the transom to the IRS, the IRS has a duty to those taxpayers to try to educate them and try to support them.

However, if IRS is directed, as a notion called Compliance 2000 that was recently espoused by a couple of former Commissioners, that its primary goal is to educate taxpayers and turn a happy face toward taxpayers, I am skeptical that the many that comply voluntarily may not believe that they are being played for suckers, because IRS would not be then in a position to call on taxpayers that do not meet their obligations, like Leona Helmsley, to step up and pay their taxes.

Now, perhaps that is an archaic, outmoded view, but it remains mine.

Mr. HULSHOF. And I guess we toss around the acronym "IRS" so often, I think we forget, though, that IRS stands for Internal Revenue Service, and certainly by collecting taxes as part of the Service. But I think the Commission's recommendations regarding being more accessible or taxpayer friendly is one of the goals.

Let me follow up. I know you have some concerns, Mr. Alexander, about the union representative on the Board. I think that under H.R. 2292, you have some concerns about the Board's authority to appoint a Commissioner. But putting those aside just for a second, do you believe that a board with members from the private life, with expertise, say, in management or technology issues, could they not bring or help bring greater continuity and expertise to the Internal Revenue Service?

Mr. ALEXANDER. Of course, they could. Of course, they could bring very valuable skills, knowledge, experience, and judgment to the IRS. So a board itself is probably necessary at this particular time when IRS is under such severe attack; some of it justified, some of it not, of course.

The problems that I have, as I mentioned, are to some extent with the composition of the Board but largely with the powers and authority of the Board.

Mr. HULSHOF. OK.

Mr. Cohen, you mentioned—and you are nodding your head because you also mention, I think, at page 6 in your written testimony, the appointment of Mr. Gross, Arthur Gross, to manage the computer system. He has testified in front of our Committee—again, someone from the private sector to try to get a handle on Tax Systems Modernization efforts.

So would you also then agree generally that outside individuals could provide some additional continuity and expertise?

Mr. COHEN. Yes, sir. I said in my testimony when we had an advisory group back in the sixties, it was not subject—there was no act that required those Committees to meet in public, and, therefore, we had candid discussion. We could talk about sensitive subjects and not worry about it being on the front page of the New York Times or one of the tax publications the very next day.

Once the Advisory Committee Act came in, the Commissioner's advisory meeting became "show and tell." Everybody looked to the back of the room, although they may not have physically looked, but mentally they were looking to the back of the room, and they would not say anything that they didn't want to be on the front page of the tax publications the very next day.

Yes, it is wonderful to have smart people who are involved in the system or who have a stake in the system to comment on it, whether it is by an advisory group or whether it is by some kind of oversight group. I mean, you can play with that kind of design.

But I have the same fears that others have expressed that the Board, as composed, is likely to have serious conflict-of-interest problems, I don't think it is going to help that much, because it is going to involve the Service in that much more controversy. Just those kind of innocent things that I mentioned and other people have mentioned in their testimonies are going to come up, and then we are all going to be diverted to worrying about those kinds of things instead of what really is going on.

The Service is a big organization, 100,000 people out there. If each one of them made one mistake a month, you could spend forever looking for the mistakes. The point is to try to find a system that minimizes the mistakes and has a technique for correcting them when they are made, because you cannot focus on the hole in the donut, you ought to focus on the donut.

Mr. HULSHOF. Thank you, Mr. Portman.

Mr. PORTMAN. Mrs. Thurman.

Mrs. THURMAN. Thank you, Mr. Chairman.

First of all, I want to thank our witnesses on this panel. I think having people who have been there and have seen, they come with a little more candor, because they are not being threatened anyway, I guess, in the debate with what happens with the Board and what doesn't happen with the Board.

I particularly am interested because, Mr. Alexander, I actually do kind of agree with you that I think that we do use certain agencies and departments, depending on what Committees we serve on, to beat up on them to protect our own kingdoms or fiefdoms or whatever. So I do believe that we are part of the problem. So now we are here to be part of the solution.

In the time that any of you spent there, let me use the idea of the issue of the computers and the modernization, if you had the

right to go in—I have looked at the way we do RFPs and how we are able to get equipment. It takes us 3 years to get through getting the equipment. By the time we get the equipment, it is outdated and we are already behind the curve instead of in front of the curve.

Are there some suggestions, just using that instance that you saw working there, from your perspective, that as Congress tries to move ahead, that we can be doing that would satisfy and help IRS become more modern?

You could take it from Mr. Kinghorn, who talks about thinking out of the box; to Mr. Alexander, who believes that we might potentially be some of the problem. And, Mr. Brand and Mr. Cohen, I would love to hear some of your comments and suggestions that you could give us that would work.

Mr. ALEXANDER. That would work. Perhaps you want us to go in order?

Mrs. THURMAN. I don't care. Flip a coin. It doesn't matter.

Mr. ALEXANDER. I don't have any coins. We might then go in order.

First, I think there are some pretty good recommendations to try to meet some of these problems in both bills, particularly the budget recommendations in H.R. 2292. You have to plan long-term even though, in my tenure at least, I had to be ready to step out of the office any day. But I stayed almost 4 years.

You also have to try to sell the administration and Congress on the need for long-range planning and particularly for a long-range approach toward a data processing system.

I was lucky on selling the administration. I was unlucky that Congress decided they did not want the IRS have to an efficient and up-to-date data processing system because of the concern about "Big Brother watching over you." So we missed out during my tenure—I think Sheldon did better in his earlier tenure—because of the Big Brother syndrome and perhaps some concerns by unsuccessful bidders.

The IRS is badly in need of the new Commissioner coming on soon with his data processing background and with his acceptability to what is needed now in room 3000, someone with a managerial and data processing background. IRS is lucky to have hired Art Gross, who I am sure will be helpful in turning around IRS' recent problems, frequently overstated, with its data processing upgrade.

Mr. COHEN. I was lucky. The beginning of the design of the computer system was started with Dana Latham—to give you an illustration of time lines, when Dana Latham was Commissioner of Internal Revenue, and that was 1959–1960. I became Chief Counsel in 1963, and I became Commissioner in the beginning of 1965. We were beginning to install the system. We finished in about 1967 or 1968. We had state-of-the-art equipment. We were first in line. Every computer designer wanted to do it, because we were big and we were an example.

The Congress did not know much about computers, so they did not bother us. Luckily, about the time the Congress began to ask me questions, it was working. The first few months, we were having an awful time. When I left, I had instructed the staff to prepare

a system that would be installed sometime in the midseventies. That is the system that Don was talking about.

The staff began design work in about 1967 or 1968, right along there, and, as he indicated to you, it was not installed in the seventies. Again, in the eighties, a new system was thought about, designed, and the President, President Reagan in that instance, would not ask for it. So the Service was basically stuck with an archaic system which was state of the art when it was put in, and worked well, and fell into disrepair.

And Roscoe Eggers put in some peripheral changes to the system, but basically the design was the old design. And if you are going to think about this long term, as I say in my testimony, it is like building an aircraft carrier; it is not any different. You have got to think about it in terms of 2 or 3 years in design, 3 or 4 years in installation. That is what it takes. This is a great big system you cannot turn around on a dime, and if you tried, you would have a collapse. These fellows can tell you better than I can.

Mr. KINGHORN. There are really sort of three perspectives on sort of the technology. One is technical, and one of the issues that IRS and many other Federal public agencies have is that we do not have a very good record in this area; the requirements keep moving. No one can lock anybody in the room and come out with an agreement between the information technology folks and the program staff: "This is what we are going to do, and we are not going to change, at least until you build the first one."

Second, things got too big in terms of growth and what we want this thing to do, and there were times at IRS where we basically all at the end of the day said "let TSM do it." No one knew quite what that meant. So there was tremendous growth in the size of these thing and which also increased the timeframes and all the problems associated with that.

And then the problem of trying to be first on the block with some technology that you are going to be the beta test on; those are the technical issues. And I think what you are doing in terms of bringing in outside experience through a board mechanism and other mechanisms will help bring some reality to the discussion.

The second is looking outside, and when I was there, then—this was quite a while ago—I tried to get the head of the taxpayer service and the call site programs to come with my staff to American Express in North Carolina. We had a contact with American Express. They were providing some help to us. I couldn't get anyone in IRS to go except a district person from Baltimore. They just didn't get it.

And I think, again, what you are doing bringing in outside expertise is to have an environment where people will be questioned. There may be a conflict of interest, as you hear, but we have to get people in a room with IRS who understand customer service at the call site and have done it successfully. IRS does some of it successfully, but there are elements it does not.

Finally, you cannot put this all on the back of Art Gross or the CIO. Everyone is thinking Art is going to do it. That is the same thing as, "TSM's going to do it." I think the program offices—I think this is happening, and I give Art credit for it—have got to

get them back in the room, as they are doing, and get the requirements solidified.

I think your approach of opening up the IRS and getting a variety of mechanisms where there will be additional substantive questions at a strategic level, much like Mrs. Johnson was suggesting, I think is the approach to go.

Mr. BRAND. Mrs. Thurman, just to point out two quick examples. I think the multiyear budgeting—in 1995, as Chief Compliance Officer, I was authorized to hire, and did hire, 5,000 additional compliance officers. In 1996, my successor was told to get rid of 5,000 compliance officers. That is hard to do in terms of managing, and it doesn't make sense in the way you manage an agency strategically.

I think the second part is the need for the IRS at the drafting table in the legislative process. I think of the earned income tax credit. I make no value judgment on the goodness or badness of it, but I think about the complexity of the earned income tax credit and the fact that the IRS was not at the drafting table during the initial drafting of that legislation, and it has turned out to be a tremendous burden both administratively and in terms of the cost to the government over the years. Two examples.

Mrs. THURMAN. Thank you.

Mr. PORTMAN. Mr. Neal.

Mr. NEAL. No questions.

Mr. PORTMAN. Gentlemen, again, I thank you for the input.

Mr. Alexander, I have to start off by full disclosure. You are not only a close friend, but you are a former resident of the district I now represent. Notwithstanding that, we don't agree on everything, but yet we have learned a lot from you through this process.

I want to start off by just asking you a question that relates to your optimal solution to the IRS. You have written, I think publicly now through an op-ed that I saw, and I think privately we have talked about this, that you think independence from Treasury altogether might be the better route. Is that your thought as to where the IRS should optimally be placed?

Mr. ALEXANDER. At times, I have pretty strongly promoted the idea of the IRS as an independent agency. If it were an independent agency today, a board of some sort would be an absolute necessity. I don't think IRS would be permitted to function independently without it.

There is much, I think, to be said for IRS as an independent agency, with private-sector input, with very strong and continuous oversight by the proper Committees, the taxwriting committees, more than Gov. Op. Committees in the Congress.

Mr. PORTMAN. We always appreciate hearing that on this Committee. So thank you.

Mr. ALEXANDER. I am strongly opposed and, frankly, quite surprised at the American Bar Tax Section proposal for an Under Secretary of Tax in Treasury. That idea was abandoned back in the Eisenhower years. It was not reinstituted in 1980. The gentleman given that particular title was kicked sideways upstairs on his way out, I think, as ABA people of long tenure would well know. And I don't think that would work at all.

If IRS stays a part of the Treasury Department, the Commissioner ought to report to the Secretary of the Treasury, sometimes through the Deputy. But that ought to be the reporting mechanism, not to some subordinate official in Treasury. It is bad enough now.

Mr. PORTMAN. Thank you.

The issue raised earlier by Mr. Hulshof with regard to customer service is interesting. In your testimony, you say that you believe the quality of IRS' interaction with taxpayers has deteriorated since you were Commissioner. And I understand your response to Mr. Hulshof that this is, after all, a collection agency and an enforcement agency. But given that comment, which I have no reason to believe is not correct, don't you think improving customer service should be a priority in this day and age?

Mr. ALEXANDER. Of course it should be "a" priority. The question is whether it should be "the" priority. Back in my day when we strengthened customer service, or taxpayer service, as we then called it and I still think might be a better name, we had strong resistance from the private sector. They thought that we were competing unfairly with them. And some of the tax preparation organizations lobbied strongly to try to get rid of any taxpayer service element in IRS on the grounds that we were intruding on their domain and, even more important, on their wallets.

That, thank God, has diminished, if not disappeared, and now the question is what IRS' role is. Certainly, IRS has a role in taxpayer service, and a strong one. Certainly, IRS could not demand that millions of individuals file accurate tax returns and tell them, by the way, we are not going to help you in that difficult job.

But does IRS also have a duty, and perhaps some slightly more significant duty, to make sure that the proper amount, not too much, but hopefully not too little, will be collected.

There is no one else out there, there is no one in the private sector, that fills that particular role. And that role remains a very demanding, difficult problem of IRS, because many taxpayers do not like to be separated from that which they rightfully owe their government.

Mr. PORTMAN. Let me try to give you a little bit of comfort on a couple of comments you made in your written statement. You talk about the concern that there might be some mandates in the electronic filing recommendations. Just to be clear on that, because there was some confusion about that with Treasury's testimony—I think it was 2 weeks ago now—there are no mandates. We went through that and made a deliberate choice to not put mandates in. And you make a good point there, I think. That was covered in the Subcommittee under Chairwoman Johnson.

Your comment on the legislative language on demonstrating ability in management, I think you make a good point there, and I think it is something we might want to work on. And, as you know, that certainly was not the intent of the Commission, to require that as a way of precluding people from being Commissioner, but it was a notion that management is important, which I think you said earlier that you also would agree with.

Finally, your issue as to the Oversight Board. I do appreciate your suggestion that private-sector input is helpful and good and so on. Your main concern seems to be on the advisory versus over-

sight role: How much oversight, how much advisory. Your concern on that seems to be related to the conflict of interest possibility.

Your question is: Would a skeptical public believe that a budget decision to beef up taxpayer service and weaken compliance activities directed at large corporations was done entirely for proper reasons?

I would just again make the point that if you look at how this budget would work, not just read the legislation—I know you have, carefully—but how it actually works in practice, these kinds of budget decisions I don't think would raise conflict of interest, because this Board is not ultimately deciding the budget.

As all of us have come to realize over the last few weeks looking carefully at this budget issue, ultimately it is Congress that makes that decision. But certainly it is not that Board. The Board does send an advisory budget up with the President's request, but the President's request goes through Treasury, OMB, and that whole process. But I think if that is really your concern, maybe I can give you some comfort there.

There are so many questions, Mr. Cohen, I would like to ask you. Just quickly, because you talked about having served one of the last full terms. In response to Mrs. Thurman's question, you were talking about the need to turn around the information technology challenge over time, making the analogy to turning an aircraft carrier, I think. And yesterday we heard testimony that this would be a 3- to 6-year project and that there is the need for continuity.

You said that you were one of the last Commissioners to serve a full term. When was that?

Mr. COHEN. From 1965 to 1969. I was the first appointment of President Johnson in his full term, and I left on January 20, 1969.

Mr. PORTMAN. The percentage of taxpayers at that time who were audited was higher than today; is that correct?

Mr. COHEN. Yes, the numbers were counted differently, but it was approximately 4½, though they counted some computerization office audits a little differently than they do now. But it was much higher than it is now.

The problem is like a traffic policeman. I think Don has used the same illustration. If you drive out on interstate route 270 or any of the other major highways around here, and there are no traffic police, they are just nonexistent that day, you will see everybody going 5 to 10 miles an hour above the speed limit. If you see a traffic cop or there is a traffic car parked on the side with a radar gun, everybody behaves. They may go 4 or 5 miles above the speed limit, but they do not go wild. The same analogy is here.

Mr. PORTMAN. Do you think that the compliance resource initiatives that we now have, the document matching and so on, makes it unnecessary to have the level of auditing that we had back in the sixties?

Mr. COHEN. I think that document matching is terrific. It started with me. We were the first to do document matching. The first year we put in the computers, interest and dividend reporting went up 26 percent, 26 percent in 1 year. We could have put a bale of straw out there and said it was a computer, and it would have had the same effect. It just proves that there was a lot of cheating.

Why do we have a lesser reporting of interest and dividends than we do of salary today? It is not astronomically different, but it is significantly different, because there is withholding on salary. In other words, compulsion has an effect in this; Don and I agreed on that. And the question is how much, and I don't think 0.6 or 0.8 of 1 percent in auditing is enough.

I think the fact that I know my friend or my neighbor or somebody I am acquainted with has been looked at this year makes me behave a little more carefully. There is an old Yiddish expression which, translated to English, my father used to use it, and it is a wonderful expression. It says: He thinks he is an honest man who is not given an opportunity to steal.

Windows—you put locks on your windows and you put locks on your doors to keep honest people from becoming thieves. A good thief can get in anyway. That is the object here, is to keep the vast majority of citizenry who are relatively honest, better—a little better than they would be if there were not that system.

Mr. PORTMAN. I appreciate and understand your concern on the compliance enforcement side. I don't think it is inconsistent with where we came out on the Commission. There is some discussion as to whether we should have focused more on that in terms of our objectives for the Commission for the IRS.

Mr. COHEN. Some of us had the impression that you thought the money would come over the transom forever, and, believe me, it will not.

Mr. PORTMAN. Eighty to 90 percent of the taxpayers are voluntarily complying with our system. We have got to pay attention to that and make sure that does not fall apart. But also, we need to target enforcement better, including on the audit side.

There has been discussion here among all four of you about political issues, political interference with the IRS. The Treasury proposal is for a management board made up of 20 individuals perhaps, mostly political appointees. Do any of you support the Treasury proposal?

Mr. COHEN. Well, you can ask that question: Do I support the Treasury? No. But I don't support yours either. So to be fair, if you were asking for Sheldon Cohen's support, which is not terribly important, there would have to be modifications in either proposal.

Mr. PORTMAN. You made that statement in your testimony, but my question is on the Treasury alternative.

Mr. Alexander, do you have comments on the Treasury alternative?

Mr. ALEXANDER. I have deep concerns about the Treasury's Board and the Executive order, and I understand the Executive order is still outstanding; I don't think it has been revoked. And, sure, I have some deep concerns about that, because I think it runs the risk of politicizing the IRS. There are some people on there that shouldn't be on there.

Nobody from the Vice President's office should be on such a board, whatever they call the National Performance Review, and so forth, because the Vice President is always running for President.

The Under Secretary for Enforcement has no business whatever being on a board in charge of IRS, because that person is always

trying to get his hands on Intelligence Division, or Criminal Investigation Division, as it is called today.

I could give further examples, but a brief answer to your question is no, I don't support it. I think they have improved it some in H.R. 2428, but I think it still has problems.

Mr. PORTMAN. Do you support that legislation?

Mr. ALEXANDER. H.R. 2428?

Mr. PORTMAN. Yes, sir.

Mr. ALEXANDER. No, I don't, for the reason that I expressed. I would be concerned about that board. I think the Commissioner, so long as IRS remains a part of Treasury, should report to the Secretary of the Treasury, perhaps through the Deputy, but I think the Commissioner should have direct access to and reporting responsibilities to the Secretary of the Treasury and no other person.

Mr. PORTMAN. Mr. Kinghorn, do you support the Treasury proposal?

Mr. KINGHORN. I don't. I have worked probably for 30 political people in my career and came to the IRS. One of the reasons that I came was that I wanted to go to an organization that was nonpolitical. And I worked for three Commissioners, and you could not tell day to day, hour to hour, what political party they were part of. That issue is important to me.

More substantively on the board, I saw the board basically as an attempt to bring in again some special experience. And I think on the Board you might want to have some career expertise, say, from the Social Security Administration that deals with the call centers and perhaps someone from the Financial Management Service that deals with electronic transfer of data. But that would be the level of board.

And I really saw predominantly as an external private-sector board of people that would come in and assist the IRS with sort of a sequence of tenure on issues that were important over the next 2 years. Obviously, right now the use of technology and information management is a key issue.

So I didn't quite understand the purpose of having a board composed of political appointees in the administration, particularly coming close to the IRS.

Mr. PORTMAN. I will get back to your other points in a moment.

Mr. Brand, do you support the Treasury proposal?

Mr. BRAND. No, sir, I do not. And pragmatically, aside from the other reasons that have been outlined here, I think the size of the Board itself renders it almost impossible to be effective. You cannot put 22 people or so in a room and basically have that to be a very meaningful discussion or oversight, in my judgment.

Mr. PORTMAN. Mr. Kinghorn, a lot of the discussion in this room over the last 24 hours has been about the Oversight Board. I think it is important and a critical part of the overall plan to push change through the system, but we have ignored a lot of other important recommendations, one of which is allowing the Commissioner to hire and fire his or her own top people and bring in outside expertise. Have you had a chance to look at H.R. 2292's proposals in that regard?

Mr. KINGHORN. I have had more opportunity to look at the Commission's report. On hiring and firing people, I always believed—

and I think Phil probably felt the same way—if the Commissioner came in and told me, "We really don't want you to be part of the team," I wouldn't want to work in that environment and I would find something else to do.

But I do think the IRS in general—this is such an important point—I think your budget recommendations are critical. You have an organization that can return 5, 7, 10, 12 to 1 on revenue, and I think at this point the numbers are pretty reasonably trustworthy. Those recommendations are fine. I think bringing in new people—and I think the concept of the Board makes a great deal of sense in terms of looking at these issues.

I think there is already a lot of flexibility in the Federal personnel system. But, again, we are at a crossroads with the IRS that some of the recommendations, at least that I saw in the Commission's report, probably make some sense to give the Commissioner additional authority.

But I think the IRS is a very responsive place. I think probably to a person, certainly in the executive level, if in an appropriate and professional way the Commissioner says, "I really need someone else on my team"—you might have to find them something else in IRS to do, and I think that is legitimate—those people would be willing to move on. There may be exceptions, but within the IRS I think there is a way to make that happen now. But I think additional authority could be useful.

Mr. PORTMAN. I think the objective in the legislation is precisely what you talked about in your written statement, and that is bringing in people laterally that have experience, and if you would take a look at H.R. 2292 and see if you have any improvements that you might suggest—you are probably the recent guinea pig at least on bringing in someone with experience from the outside, and you have seen the culture from the inside and the outside. It would be helpful to get your comments on that.

Mr. Brand, you spent most of your career at the IRS and succeeded there in the sense that you went up the ladder to be chief compliance officer, I believe, and therefore your testimony here today is very significant. You said you haven't been there for how long?

Mr. BRAND. Two years now.

Mr. PORTMAN. And some things have changed in the last 2 years, but that certainly is a perspective that we need to hear from.

The Oversight Board has received, again, probably too much of the discussion over the last 2 days and not enough in terms of changing the system. As you know, we have the National Treasury Employees Union supporting this proposal for some of the same reasons that you support it, which is, they really think that the management has been insufficient and that if you are going to create an IRS that works better for taxpayers, it will also work better for the employees.

Do you have any thoughts on some of the changes that we have recommended, some of which are not even in the jurisdiction of this Committee but have to do with increased personnel flexibility in the system?

Mr. BRAND. One of the reasons that I have been supportive in my work with the AICPA and the National Association of Enrolled

Agents is the thought process that I think the Service will benefit immensely by additional outside perspective in its management councils and in its thought processes.

Again, the example of Art Gross, the new CIO, being brought in from the outside has the opportunity. I think the appointment of a Commissioner with a different background has the opportunity of creating a different set of perspectives and debate and discussion which is extremely important.

It is sort of unfortunate in one respect. I understand why, but the focal point of all this debate has been on the Board, and yet when you go through this report, 90 percent of this report I suspect you could get agreement on. And it is frustrating to me to see the Congress and the administration juxtaposed over probably what could come to a sensible conclusion and bring this outside influence, which I think is just paramount for the Service.

You need the right blend of the professional tax administrators that are going to run the place and be there, but with renewal and refreshment. I would like to see the debate move beyond the Board, when possible, into these other areas, because they are extremely critical and thoughtful suggestions, and I am just hopeful it works that way.

Mr. PORTMAN. I agree with you, and, as you know, through our process, the Board has changed quite a bit in response to Treasury's concerns. Now the President has the ability to remove at will, which was not initially going to be in the Commission report. That was changed at the last minute.

We also made some changes with regard to the responsibilities of the Board, even in the legislation, in essence giving it a more narrow set of responsibilities with regard to approval as compared to advisory-type capacity with the Commissioner.

The one final thing I want to ask you is one of the specific things that I think is important. H.R. 2292 has a provision that would seek to provide an independent source of funding—which has been an issue Congress has dealt with in the past—for the employee plans and exempt organizations function. Do you think that is necessary?

Mr. BRAND. Absolutely. I strongly endorse it. I have been instrumental in trying to help people focus on it.

I think people are unaware—some people are unaware of the size and scope and the complexity of exempt organizations and the whole issue of employee plans. I think it is a real requirement.

Mr. PORTMAN. Thank you.

Thank you again, gentlemen, for all of your input. We look forward to the continued dialog. And the Committee is now adjourned.

[Whereupon, at 1:45 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Committee on Ways and Means of the U.S. House of Representatives

Hearings on the Recommendations of the National Commission on Restructuring the Internal Revenue Service on Executive Branch Governance and Congressional Oversight of the IRS
September 16 and 17, 1997

Statement of Carmen Delgado Votaw, Chair
Human Services Forum on Government Relations

Recommendations issued by the National Commission on Restructuring the IRS highlight an important issue affecting all tax-exempt organizations—the need to adequately fund the Employee Plans and Exempt Organization (EP/EO) Division of the Internal Revenue Service. The Human Services Forum on Government Relations[1] believes that both the public and charities themselves benefit when the Internal Revenue Service is able to provide prompt, analytically sound, legal interpretations and conduct audits at a rate sufficiently large to deter and punish wrongdoing.

America's charities face unprecedented challenges. The delivery of health care has altered dramatically over the past decade, with no indication that the metamorphosis is complete. The welfare system now is undergoing and even more radical and rapid transformation. Changes in government policy and public attitude are a significant part of the reason for these changes. However, another important factor is our increasingly service-oriented economy where, in part due to changes in government policy, businesses are finding markets in areas that once were served primarily by government and nonprofits.

Many charitable organizations are responding to these challenges by experimenting with new kinds of relationships with businesses, but their ability to do so is severely hampered by the lack of clear, legally-binding rules to help them structure alliances and partnerships that do not jeopardize either their missions or their tax-exempt status. The EP/EO division is a key player in the development of regulations and revenue rulings interpreting the portions of the Internal Revenue Code that govern tax-exempt organizations. However, the division's ability to provide these interpretations has been seriously undermined due to recent cut-backs in its funding. This problem is not confined to the EP/EO Division—other divisions of the Internal Revenue Service and of Treasury also need additional resources if exempt organization/employee plan issues are to receive the attention they require.

The ability of the IRS to audit exempt organizations is an essential component of the nonprofit community's own efforts to assure that tax exempt organizations remain faithful to their public trust. Most charities do so without supervision, and will continue to do so in the future. Nevertheless, charitable organizations are human institutions that are vulnerable to human failings. The EP/EO division is the only national authority with the power to patrol

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[1]The mission of the Human Services Forum is to improve the partnership between government and voluntary human service organizations by monitoring and influencing laws and regulations affecting the administrative management of human services organizations and their ability to participate in collaborative efforts with government. Its members are the government relations representatives of the following organizations: American Association of Homes and Services for the Aging, Association of Jewish Family and Children's Agencies, Association of Junior Leagues International, American Red Cross, Big Brothers Big Sisters of America, Boys & Girls Clubs of America, Camp Fire Boys and Girls, Evangelical Lutheran Church in America, Family Service America, Girl Scouts of the USA, Goodwill Industries International, Inc., The Salvation Army, Travelers Aid International, United Way of America, Volunteers of America, Women in Community Service, YMCA of the USA, YWCA of the USA.

the boundaries between legitimate and illegitimate behavior by charities. An adequate audit level is a key component of the division's role as police officer for the nonprofit community.

The principal function of Subchapter F of the Internal Revenue Code is to define the institutions, purposes and activities that society has chosen to refrain from taxing, not to raise revenue. Regrettably, the result is a natural tendency to give a lower priority to funding for the EP/EO division than to other IRS functions that have a greater multiplier effect on revenue production. We urge Congress to correct this situation by providing an adequate level of funding for the division and assuring that funding levels will remain stable for the future.

National Association for the Self-Employed

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September 16, 1997

The Honorable Bill Archer
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Archer:

I am writing with regard to the Committee on Ways & Means hearing held today on H.R. 2292, the Internal Revenue Service Restructuring and Reform Act of 1997. As the President of the National Association for the Self-Employed (NASE), representing 325,000 self-employed and small business persons residing in every Congressional district, I would like to express my appreciation to Rep. Rob Portman and Rep. Benjamin Cardin for introducing H.R. 2292. We support the principle of the legislation - to ensure that the IRS becomes a more customer oriented agency in its treatment of taxpayers and in its collection practices.

However, the NASE would like to note one major concern with the legislation. H.R. 2292 requires the establishment of a nine person IRS Oversight Board. This Board is the centerpiece provision of H.R. 2292; its long-term objective is to restore the **public's confidence** in the federal tax collection agency. Representation on the Board includes the Secretary of the Treasury, a spokesperson for IRS employees, and seven persons with expertise in the areas of management of large service organizations, information technology, and organization development. These latter individuals are likely to come from larger enterprises. These views should be represented; but so should those of smaller enterprises. The NASE does not believe that full public confidence can realistically be restored in the IRS without some explicit small business representation on the IRS Oversight Board.

Small business is a critical stakeholder in the IRS restructuring debate - more than 90% of all American businesses have fewer than 100 employees. Small business persons and lower income taxpayers generally are the least able financially to "contest" an IRS audit, collection proceeding, or tax penalty. Thus the NASE believes small business should be explicitly represented on the IRS Oversight Board.

On behalf of our members and all of the nation's small businesses, I thank you for considering our recommendations regarding H.R. 2292.

Sincerely yours,

Bennie L. Thayer
President/CEO

cc: The Honorable Charles Rangel
The Honorable Benjamin Cardin
The Honorable Charles Grassley
The Honorable Robert Kerrey
The Honorable Rob Portman

Statement of Joseph F. Lane, EA
Submitted for the Record on behalf of
The National Association of Enrolled Agents
at a Hearing
on the Governance Provisions of H.R. 2292
before the
House Committee on Ways & Means
September 16, 1997

Chairman Archer and Members of the Committee, my name is Joseph F. Lane. I am an Enrolled Agent engaged in private practice in Menlo Park, California. I am the Chairman of the Government Relations Committee of the National Association of Enrolled Agents and I am pleased to have the opportunity to present this written testimony for the record on behalf of NAEA's more than 9,000 Members on the governance provisions of H.R. 2292. Under House rules, I am required to advise you that NAEA receives no federal grants or contracts.

Enrolled Agents are licensed by the Department of the Treasury to represent taxpayers before the Internal Revenue Service. The Enrolled Agent designation was created by legislation signed into law by President Chester Arthur in 1884 to insure ethical and professional representation of claims brought to the Treasury Department. Today, Enrolled Agents represent taxpayers at all administrative levels of the IRS. Since we collectively work with millions of taxpayers and small businesses each year, Enrolled Agents are uniquely positioned to observe and comment on the average American taxpayer's views about the Internal Revenue Service.

Representatives of NAEA testified at five public hearings conducted by the National Commission on Restructuring the IRS and we submitted written testimony for the record for a sixth hearing. In addition, our National staff attended numerous informal meetings with Commission staffers and Commissioners. We praised the work done by the Commission in focusing on constructive ways of improving our tax administration system and making the IRS more responsive to taxpayer input. We support the Commission's recommendations which have been incorporated into the pending legislation as we believe the true bipartisan nature of the Commission's deliberations and the earnest give and take of the democratic process have produced a set of recommendations which are carefully woven together and interdependent upon each other to effect the change all agree is necessary in the way our tax administration system works.

IRS Oversight Board

We strongly endorse the concept of establishing an IRS Oversight Board. It became clear to everyone who attended the hearings and deliberations of the Commission over the past year that the IRS had significant lapses in the skills sets needed to manage the technology conversion process they have underway; to guide the enhancements needed in expanding their customer service focus; and to steer the marketing of their new initiatives. We have often expressed our concern about a trend toward greater centralization of decision making authority into the IRS National Office and believe this contributed to a major degree to the problems the Service has encountered in recent years. The Commission's contribution has been to force the Service to consider outside input on a far greater scale than at any previous time. Healthy developments have already occurred as a result. We have had the first IRS Commissioner with significant technology integration experience nominated to the post. We have seen the Service select a new Assistant Commissioner for Electronic Tax Administration from private industry who has extensive experience with marketing electronic tax services, and we have seen the issuance of a request for proposals from the private sector for ways the IRS could improve its overall systems.

Many organizations spent considerable time and resources to help the Commission in its deliberations to insure that the recommendations were going to improve the tax administration system and insure IRS was able to reverse the decline in taxpayer confidence in its ability to impartially and efficiently manage its resources. The final recommendations were the result of

compromise in the best sense of the word. Not everyone got what they wanted or thought would be best from their perspective but we believe the blend of different views resulted in a package which, when implemented, will significantly help get our tax system back on its feet and restore the Service to the ranks of the best managed government agencies.

We truly believe that the Oversight Board is precisely what the Service needs at this moment in time and prefer to focus on the positive aspects to be derived from its establishment. If we focus on the true nature of the Commission's objective - to make the IRS more responsive to America's taxpayers - especially the 85% who comply with all of their tax obligations every year - we see that instead of presenting a threat the Oversight Board could bring an outstanding group of advocates for the Service to the table. These advocates, given the status of their own professional accomplishments and positions, would enjoy significant credibility with the Congress and the taxpaying public.

In past times of crisis we have seen Presidents appoint outside Boards to help government fulfill its mission. During World War II, President Roosevelt used many "dollar-a-year" men to guide our efforts and relied on extensive input from corporate and civic leaders outside of the federal government to resolve problems. We prefer to view the potential of the Oversight Board in the same light. Let it help IRS redefine its relationship with the American taxpayer. Let it bring to the table the best ideas, the best people, and the best systems to deal with our complex problems. The nomination of Charles Rossotti to be the new IRS Commissioner is a prime example of how this new system will work. We understand that Mr. Rossotti was identified as a possible Commissioner candidate by Josh Westin, CEO of ADP and a member of the National Commission on Restructuring the IRS. Mr. Rossotti's background in technology and management make him superbly qualified for the critical tasks IRS is facing, although he does not have any tax law expertise. One has to ask whether his name would ever have surfaced if the process for his nomination had been business as usual.

We are well aware that the Department of the Treasury has announced its opposition to the establishment of the Oversight Board and we are very concerned that the position is contrary to the bipartisan message of the Commission. If the Commission identified anything it exposed the fact that there are significant problems with the way Treasury has performed its oversight role in past years. While we understand the nature of "empire protection" in government bureaucracies, this issue is too important for the future health of our voluntary compliance system to permit the debate to now devolve into petty "turf" battles.

We have previously noted, in testimony before the Commission, that one of its most interesting hearings featured a debate between the Treasury General Counsel and legal scholars over the constitutionality of the use of an Oversight Board. We believe there are sufficient safeguards written into the proposed legislation to insure the IRS will not be deterred in its mission. In our opinion, the Service could work effectively with an Oversight Board in much the same way they currently work with the Commissioner's Advisory Group. The one benefit the Oversight Board brings to the table is the planned management focus lacking in the more procedural and regulation orientation of the Commissioner's Advisory Group. We see the Oversight Board as working hand in glove with the Commissioner to bring much valuable peer viewpoints on key management issues that arise.

We offer only one suggestion for modification to the statutory language of the Oversight Board proposal: we believe the composition of the Oversight Board needs to be adjusted somewhat to specify that there will always be representatives from both the small business and tax practitioner communities as these two groups have extensive interaction with the IRS at all levels. It may also be advisable to insure that the Small Business Administration's Office of Small Business Advocacy is included to foster closer working relationships between these two government entities.

We also believe that additional thought should be given to the compensation of the board members as we believe that once they get into motion they will find their initial work will require much more than monthly meetings.

Five Year Term for IRS Commissioner

We recommended this change to a five year term in our testimony before the Commission and endorse the proposed change to the statute. We believe that a fixed term of office for the IRS Commissioner, like those for the Director, Federal Bureau of Investigation, and Director, Central Intelligence Agency, provides for greater public confidence in the non-partisan nature of these vital positions.

Appointment of the Chief Counsel of the IRS

We do not agree with the recommendation that the IRS Commissioner recommend candidates for the position of the Chief Counsel of the IRS. The Office of the Chief Counsel has traditionally functioned as a "law firm" with one client, the Service, but has always maintained the important distinction of not being under the control of the client. In a sense, they are not in-house counsel but an independent voice with their own channel of reporting responsibilities. We believe it is a system which works well; insures public confidence that the issues that are litigated are receiving another look; and serves an important potential check and balance on any abuse of the tax administration system. The Chief Counsel's Office ought to continue to be part of the Treasury Department's General Counsel's Office and report only through that channel to preserve its independence.

Assistant Commissioner for Employee Plans and Exempt Organizations

We support the legislative proposals with respect to this organization. This is especially important given the recent controversy surrounding the examination of tax exempt organizations. The public needs to know that the Service impartially selects organizations for examination and that the actions it was accused of last year were carried out with the total impartiality critical to public perceptions of even-handedness.

Position of Taxpayer Advocate

We agree with the proposals in the legislation. We suggested the same in our prior testimony before the Commission and believe that in order for the Taxpayer Advocate to fully meet the expectations laid down in Taxpayer Bill of Rights II that the individual selected must come from outside the Service. We believe it is completely unfair to civil servants to place them in the position where they are expected to issue reports and recommendations to Congress that may be in opposition to their superior's wishes. It creates an untenable situation in which no one could perform well. Our only suggestion for change to the statutory language would be to prohibit any current IRS employee from appointment to the position. We would like to see a requirement that if the President wishes to nominate an IRS employee to the job, that person must either resign or retire before confirmation. This would insure a completely independent Advocate.

Other Measures

We support the other legislative proposals which would modify the current laws with respect to posts of duty, employee details to other functions, compensation schemes and bonus and award structures. These changes could go a long way towards making the upper management of the Service more competitive and more motivated and help the Service retain more of the truly excellent people they have working in their executive ranks.

Summary

We appreciate the opportunity to offer our insights and views on the Commission's legislative recommendations. The IRS has long talked about partnership in tax administration with the practitioner community. The time has come for this talk to become reality and foster true working relationships that provide for valued input and benefit to both sides. There are many hard-working, dedicated employees within the IRS who share this desire for progress. We are confident this legislation will provide the necessary framework for a more successful IRS.

STATEMENT ON THE
PROPOSED LEGISLATION TO RESTRUCTURE THE
INTERNAL REVENUE SERVICE

BY THE
NATIONAL ASSOCIATION OF MANUFACTURERS

SUBMITTED TO THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
FOR THE HEARING RECORD OF SEPTEMBER 17, 1997

Based on past history, we believe that existing Treasury Department and congressional oversight has proven inadequate to create and maintain an IRS which is publicly perceived as representing good government. We are grateful to the members of the National Commission on Restructuring the Internal Revenue Service and its staff, as well as the sponsors of H.R. 2292 and S. 1096, for bringing forward several salutary proposals. We also appreciate the fact that the Administration has endorsed several of these proposals.

The NAM believes the creation of an Oversight Board which exclusively focuses on oversight of the IRS, but does not replace existing government oversight and responsibility, will serve a useful function. Such Board, unlike the Treasury Department or members of Congress, would have IRS oversight as its sole responsibility. The Board would be limited to overseeing the administration of the Internal Revenue laws. We suggest it be composed of the IRS Commissioner, two appointees of the Chairman of the Senate Finance Committee, two appointees of the Chairman of the House Ways and Means Committee, and four Presidential appointees from the private sector.

We believe the responsibilities of the Oversight Board should encompass an advisory role in the selection and retention of the IRS Commissioner by voting "confidence" or "no confidence" as to any nominee for such position or with respect to any serving IRS Commissioner. We believe the Commissioner, however, should continue to be appointed by the President, and not by the Board. The Board would issue an annual report to both the Secretary of the Treasury and Congress on the status of federal tax administration. The Board would also be charged with the following:

- providing a written statement to both the Secretary of the Treasury and the Congress with respect to the IRS's proposed budget and how that budget relates to the strategic objectives of the IRS;

- specifically indicating its "approval" or "disapproval" of the criteria being used to measure the performance of IRS personnel at all levels;

- indicating its "approval" or "disapproval" of IRS compensation programs relating to the compensation of personnel at all levels; and

- providing commentary as to the IRS's strategic plans as well as any plans for substantially restructuring the IRS, outsourcing functions, or other major IRS operational items.

The Commissioner should be appointed for a period of five years, except his/her appointment may be shortened by the President in the event of a "no confidence" vote by

the Board. The Commissioner should be given the maximum flexibility in acquiring and retaining competent personnel as well as in terminating unqualified or non-productive employees. The Commissioner should be held accountable for developing an IRS staff which is competent and respectful to all its constituencies. A staff which strives to obtain the correct tax due in a professional manner rather than focusing on the magnitude of proposed tax additions. If necessary to meet this goal, it is suggested that exemption from the civil service rules be sought for the Internal Revenue Service. The IRS should be required to establish a performance management system and be given great flexibility in terms of both compensation and staffing.

In addition, the IRS should have as established goals the proper training of IRS auditors and IRS personnel that have the ability to resolve issues upon first contact with an individual taxpayer.

The Commissioner should be required to testify as to the ability of and cost to the IRS to administer proposed tax law changes as well as provide an estimate of the ability of and cost to taxpayers to comply with proposed tax law changes. In this regard, the NAM reiterates its concern about the continuation of the alternative minimum tax with its attendant complexity and compliance cost burdens.

In addition, the NAM endorses the proposals contained in H.R. 2292 and S. 1096 with respect to strengthening the position of the Taxpayer Advocate who would be appointed by and report directly to the Commissioner. Although such appointment should not be subject to approval by the Oversight Board, the Taxpayer Advocate should provide quarterly status reports to such Board. The proposal to increase electronic filing, including permitting corporate taxpayers to use this medium, should be adopted. The NAM also supports strengthening the oversight functions of the Joint Committee on Taxation and enhancing taxpayers' protections and rights, except cost reimbursement should be available to all taxpayers without regard to net worth, number of employees, or other such criteria where an IRS position is deemed to have not been substantially justified.

In conclusion, we believe there is a need for persons outside the Administration and the existing congressional oversight structure to focus attention on the quality of services provided to the people of this country by its Internal Revenue Service. We do not believe a fracturing of responsibility would further this cause. Rather, we believe an independent Oversight Board which functions to publicly review and comment on the IRS's performance would serve to provide taxpayers, Congress, and the Administration a focused advocate for good tax administration. We also believe that a Commissioner needs the tools to be successful in attracting, retaining and motivating competent personnel to provide the level of service which the American people expect and need on matters as important and pervasive as taxation. Together with the other changes indicated above, we urge both the Congress and the Administration to take this opportunity to move forward to enhance the credibility and effectiveness of the Internal Revenue Service.

TESTIMONY of

Ann Mitchell Sackey
Executive Director of

The National Council of Nonprofit Associations

The National Council of Nonprofit Associations, an umbrella network of state and regional associations of community nonprofits, strongly believes that a credible system of regulation and oversight offers essential support to ensure a healthy nonprofit sector.

Nonprofit organizations enrich their communities by providing vital services, but their growth and continued existence relies on public belief that these organizations are open, honest, accountable, and effective. Maintaining this public trust requires not only responsible management and efforts within the nonprofit sector itself, but also active government oversight at the state and federal level. The public needs to know that someone watches how nonprofits conduct their business, and that incidents of fraud and abuse will be discovered and prosecuted. Without this watchdog function, individual cases of fraud are likely to tarnish the reputation of charitable organizations and undermine support for all that they accomplish in America's communities. Ultimately, no accountability system exceeds the effect of its enforcement.

The U.S. Internal Revenue Service needs adequate resources to provide this oversight. Without it, donors, volunteers, policy makers, and the general public will have a greater difficulty knowing that charitable contributions will be appropriately used. Among its many responsibilities, the IRS helps to enforce the requirement that every nonprofit disclose all major facts about its operation, governance, and balance sheets. The IRS's Exempt Organizations Division also watches for misuse of funds in the nonprofit sector, ensuring that the government will take legal action, ultimately assessing fines, and closing organizations when necessary.

As a national organization, NCNA is concerned about the continuing reductions in staff levels of the IRS' Employee Plans/Exempt Organizations Office of the Assistant Commissioner (EP/EO), particularly in the national office staff of the Exempt Organizations Division (EO). EP/EO is widely recognized as one of the most innovative and effective offices in the Internal Revenue Services.

Recently, EO Division Director Marcus Owens observed that staffing has been reduced from a high of 120 full time employees in 1980 to about 65 today. Staff levels continue to ratchet downward. Thus, the technical staff of the major nonprofit watchdog has been reduced by half at the same time that the number and wealth of charitable organizations have doubled. Sixty-five specialists cannot provide meaningful technical guidance to 1.1 million tax exempt organizations and 340,000 churches. The technical staff consists of professionals with many years of experience in interpreting the rules that apply to exempt organizations. Their expertise is essential for providing guidance to Congress and the Administration and for helping assure a uniform application of the laws throughout the country.

Our sector is dynamic, and as new ways of approaching societal problems emerge, important regulatory questions are frequently raised. The health care field exemplifies this concern. Yet, the recently published Revenue Ruling 97-21 represents the first revenue ruling in the nonprofit health care area in 11 years. Imagine similar delays by the federal Securities Exchange Commission in the business arena. Regulatory issues affecting tax exempt organizations must not be ignored or addressed in an untimely and uncoordinated manner, but rather be thoughtfully resolved by experts in the field. From the viewpoint of the smaller nonprofit, diminishing resources applied to taxpayer service and the Service Centers will result in many simple questions not being answered promptly. Furthermore, the EO Division has produced some very helpful "plain language" publications aimed at smaller nonprofits; with adequate resources they could produce more of these pamphlets. We understand that several publications are under consideration: one entitled roughly, "So Now You Have a Tax Exemption--How Do You Keep It?", another on the obligations of churches, and a third on

intermediate sanctions. These texts would be very beneficial to the nonprofit community. Like the very useful Continuing Professional Education (CPE) texts that have been suspended because of lack of funding, these publications will not be issued unless adequate resources are made available.

The National Council of Nonprofit Associations strongly urges support for adequate funding for regulation of the nation's 1.1 million tax exempt organizations. Both the general public and the nonprofit sector benefit from maintaining a skilled and respected oversight agency with the power and resources to provide needed guidance and correct abuses. Nonprofit managers support this oversight authority, knowing that it helps preserve the delicate public trust and a positive charitable giving environment. Preventing the misuse of nonprofit funds unquestionably represents a very high priority for the nonprofit sector. A strong IRS Exempt Organizations Division will help us ensure that nonprofits remain effective, responsible, and accountable to the nation's communities and to the people they serve.

An umbrella network of state and regional associations of community nonprofits, the National Council of Nonprofit Associations advances the vital role and capacity of the nonprofit sector in civil society. NCNA fully supports the rights and immunities accorded to nonprofits because of their important role as independent centers of initiative, criticism, and public service. In this context, NCNA recognizes the inherent responsibilities of nonprofits to: benefit the public; account to the public for the effective use of resources; and protect the sector's independent role in the democratic process.

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September 26, 1997

The Honorable Bill Archer
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Re: September 16-17, 1997 Hearings on Restructuring of the IRS

Dear Mr. Chairman:

The Senior Executives Association is a professional organization representing the interests of career members of the Senior Executive Service and other career executives in equivalent positions. The purpose of this letter is to provide our comments on the various legislative proposals to restructure the IRS which are being considered by your Committee.

BACKGROUND

The most important and crucial issue before the Committee is ensuring the integrity of the tax administration system of the federal government. The tax administration system must be viewed by the citizens of this country as devoid of partisan politics, ensuring equal treatment of all taxpayers before the law, and ensuring that those who administer the tax laws do so for the good of the nation, not for any personal interests or partisan political interests. It was not that long ago, in the late 1950s, that this country underwent the wrenching realignment and reorganization of the Internal Revenue Service after terrible scandals about politically-appointed tax collectors in each state. We urge that the Committee members and staff review the testimony of those hearings and the turmoil that surrounded our tax system then, and compare it with the regard for the honesty of the tax administration system in the country today. Anything which the Congress does that even appears to return the country to the days of corrupt collectors and partisan politics must be avoided at all costs. A wise axiom in the medical profession is especially apt here: "First, do no harm."

HR 2292/S 1096

Board of Directors:

We would like to comment first on the Kerrey/Portman bill (HR 2292/S 1096) establishing a Board of Directors composed of individuals who are not full-time federal officers or employees. In our view, the administration of the IRS by individuals who are not federal employees would be an absolute disaster. Even if the persons chosen for such a commission were those of highest integrity, their motives would be suspect, and their impact on the over one hundred thousand employees in the IRS would be negative. By analogy, we point to the various "Independent Counsels" who have been appointed by the judiciary to investigate individuals within the Administration who have been accused of violating criminal laws.

Without question, the three judge panel which selects the Independent Counsels have searched diligently for individuals with reputations of absolute integrity who are highly regarded by their peers and by the nation in general, to serve in these positions.

However, in nearly every instance, the Independent Counsels have been accused by special interest groups and the media of conducting partisan political witchhunts, and wasting taxpayers' money. We assert that exactly the same thing would happen to those appointed to serve as members of the IRS Oversight Board provided in the Kerrey/Portman bill. These allegations will destroy the credibility of those who serve and, in turn, could destroy the credibility of the entire tax administration system of the Government.

Regardless of one's political persuasion or beliefs about the necessity for tax enforcement, and how vigorous such enforcement activities should be undertaken, few would argue that Social Security, Medicare, Medicaid, national defense, and the FBI, as well as other programs and agencies, would be threatened by the inability to collect taxes due. The IRS is the "goose that lays the golden egg" which Congress appropriates each year in the form of education loans and grants, Social Security payments, veterans benefits, disability payments, drug enforcement efforts, military defense, and other programs. We firmly believe that a Board of non-federal officials could inadvertently result in "killing the goose" and thus, diminishing, if not destroying, the "golden egg" of the federal government's necessary revenue stream. (We take no position on what is or is not "necessary.")

In addition, no matter what organizations the individuals on such a Board were affiliated with in the private sector, those organizations would receive "special treatment," either positive or negative, by IRS employees. Every organization in this nation deals with the IRS. All non-profit organizations must be concerned about the grant of non-profit status by the IRS; each church must be concerned about the grant of its status as a religion in order to retain its tax exempt status; all charities must be concerned about their exemption grants; all businesses must be concerned about their tax obligations; and all individuals must be concerned about tax audits. IRS employees would either be extremely wary of administering the tax laws in ways which could affect those who are members of the Oversight Board, or would do so with a vengeance, in order to demonstrate a lack of partiality. Even if the reality was absolute impartiality, the "appearance" of partiality would be continuously alleged. An oversight board of non-federal employees outside the IRS is a no-win situation which should be dismissed by Congress because it is totally unworkable.

In addition, we do not believe that the representative of the IRS employees union should sit on any management board of the IRS. We recognize that this Administration has supported "partnerships" between management and labor. In many instances, these have improved labor/management relationships in government agencies. However, in no agency has labor participated in the "Board of Directors" of the agency where personnel and compensation decisions are determined and then put in place. A number of years ago, the President of the United Auto Workers was placed on the Board of Directors of Chrysler. After serving for a few years in that position, he resigned from the Board stating that, while he had enjoyed his service, it was not necessarily beneficial to his union's membership for him to be part of the management team.

While the relationship between labor and management need not be adversarial, it should also not necessarily be hand-in-glove. In some instances, management has to make decisions which are unpalatable to employees. This is especially true in a law enforcement agency where many of the employees are responsible for primary interaction with the citizens of this country and where Congress changes the law nearly annually. It is incumbent on management to facilitate the employees' ability to do their jobs, to provide training, and to make many hard decisions about who are

or are not effective employees. For labor to be part of the management decision-making process, rather than part of a negotiating process looking for a cooperative middle ground, is very inappropriate in our view, particularly given existing Executive Branch requirements for labor-management partnerships. Therefore, we would object to a union representative of IRS employees serving on any oversight board. This reflects the views of every executive with whom we spoke.

Appointment of Commissioner and Chief Counsel:

We have no problem with the Commissioner of IRS being appointed for a specified term, but we object to such an individual being appointed by a Board. The President and the Secretary of the Treasury are the ones charged by the citizens of this nation with the administration of the IRS. The Commissioner should be an individual of their choice, and the Secretary and the President should be responsible for the individual whom they choose. A fixed term might give a Commissioner the needed independence from partisan political pressures from others within the Administration which appoints him/her. Therefore, we would support a term appointment.

We feel the same about the Chief Counsel of the IRS. Again, the President and the Secretary of the Treasury are responsible for that individual's performance and should retain the authority to appoint that person, also for a term of years if that would serve to insulate the Counsel from partisan political pressure. The "Watergate" investigation uncovered partisan political pressure for tax audits of Democrats during the Nixon Administration, while, in the present Administration, such pressures have been alleged to have caused audits of Republican leaning organizations. Congress should do all it can to ensure that partisan politics is absent in the administration of the IRS.

Labor Union Authority:

Section 9301 of HR 2292 requires that the personnel administration of the IRS conform with merit system principles. We agree. It then goes on, however to give the union representing IRS employees an absolute "lock" on issues of compensation, classification and pay, performance management, staffing flexibilities, and demonstration projects as they relate to bargaining-unit employees. On the one hand, this legislation gives management additional flexibility in those areas; on the other hand, it states as an absolute requirement in section 9301 that these flexibilities can only be implemented as to bargaining-unit employees with the written agreement of the labor organization representing such employees. The bill gives additional authority to management, and then turns around and hands the authority to the labor union.

In effect, the labor union has a veto on this bill as it applies to any member of the bargaining-unit, the great majority of IRS employees. Because a written agreement is required, the union, by refusing to enter into a written agreement, could effectively veto the implementation of this legislation and Congress' efforts would be for naught. The career managers and executives in government are absolutely opposed to such requirements. Subpart F, Chapter 71 of 5 U.S.C. very carefully and thoroughly spells out the relationship between labor and management in the federal government and should be incorporated into this bill just as the bill incorporates the merit system principles and prohibited personnel practices spelled out in Title 5.

Senior Executive Service:

In general, we support the proposals to establish a performance management system such as that proposed in the statute. In addition, we believe that providing flexibility for the Commissioner to provide additional cash awards, institute pay bands, and try out demo projects are well thought out and justified.

We do, however, strenuously object to the provision in Section 9304(b) which would allow the removal or reassignment of career executives without restriction upon appointment of a new Commissioner. Currently, there is a statute that provides what is known as a "120-day get acquainted period" (See 5 U.S.C. § 3592). This period was designed by Congress as part of the Civil Service Reform Act to allow career executives the opportunity to prove themselves to a new political superior. Whether the public knows it or not, the administration of the IRS code is a complex process, requiring extensive knowledge and experience. To remove any restrictions on a Commissioner's ability to move his or her career executives in or out of positions without first learning the capabilities of the executives and what they do, is foolhardy. We strongly believe that the 120-day rule should be retained. Four months is not too long to require a new Commissioner to learn the ins and outs of the IRS system, including position functions and executives' capabilities, before they start shoving their career executives "hither, thither and yon."

We support the proposals in the bill that would allow the Commissioner to pay salaries and bonuses at a higher level to employees for superior performance and accomplishments, and would allow cash awards to employee groups on the basis of financial savings, commonly known as "gain sharing." We also support the Commissioner being provided with additional freedom to provide recruitment and retention bonuses and allowances.

SUMMARY OF COMMENTS TO HR 2292

In sum, we strongly recommend that Congress not enact any law establishing an IRS oversight board which contains members of the private sector. We believe this would immediately compromise the appearance of integrity in the tax administration system, and could ultimately have substantial adverse effects on the trust placed in the fair tax administration of government by the citizens of this nation.

HR 2428 AND S 1174

We now turn to providing comments on HR 2428 introduced by Mr. Rangel in the House and Mr. Moynihan in the Senate, apparently on behalf of the Administration. We believe this bill contains some reasonable proposals, while protecting the integrity of the tax administration system. We do not object to a five year term for the IRS Commissioner, so long as the Commissioner is appointed by the President.

We support the establishment of an IRS management board. However, we strongly object to a union representative of the IRS employees holding membership on the board. For reasons we previously stated, we do not believe that the union should be in a position of influencing the personnel and management decisions affecting other than bargaining-unit employees. The union has this power now under Chapter 7 of Title 5 U.S.C. through collective bargaining whenever bargaining-unit employees are involved, and there is no other demonstrated need for further input. Every career executive at the IRS with whom we have discussed this proposal also objects to the union having a seat on the oversight

board.

Personnel Flexibilities:

Turning to specific comments on Section 301 of HR 2428, we specifically object to Section 9501(c) of the bill which would require that, before any of the personnel management flexibilities could be utilized by the IRS, the union would have to agree in writing with the proposal. As previously stated, this gives the union veto power over the ability to implement the statute for bargaining-unit employees, and effectively nullifies any provision of the law which the union does not like or does not choose to see implemented. We are adamantly opposed to this provision for numerous reasons stated above, but also because we do not believe that the tax administration of this country should be subject to the veto power of a labor union representing IRS employees.

Pay Authority and Political Appointments:

We have major concerns over Section 9503 of the bill, entitled "Streamlined Quick Critical Pay Authority." This provision is mislabeled, because it does not really deal with pay authority, but with the authority of the Commissioner to make 5% of all the senior management positions, GS-15 and above, into political appointments who serve at the pleasure of the Commissioner or the Administration.

Because the appointments are limited to four years, they can be seen as even more partisanly political, since they would conform to a President's term. Essentially, the IRS would become nothing more than a politically-led organization under the control of partisan political appointees who enter the IRS with every Administration. This is anathema to the concept of a non-partisan agency. It goes to the very heart of the integrity of the IRS. There is no reason why a Commissioner cannot hire individuals from outside government as career members of the SES under an expedited procedure and with special pay authority, when needed. However, to set aside a specific number of positions for four year term appointment and salary rates far above other federal executives in the agency is tantamount to setting aside these positions for political appointees of the current Administration. Having no screen on 5% of the appointees to the most senior level positions in the IRS, along with the ability to pay the highest level of compensation available in the Government, would turn these jobs into the choicest of "political plums."

While this bill proposes to pay these appointees the same as the compensation plan for the Office of the Comptroller of the Currency, it should be noted that plan would allow compensation today of up to $178,384 per annum. In addition to the $178,000 salary, as we understand it, OCC pays geographic differentials of up to 38.1% of salary, depending upon where one lives. For example, the geographic differential in Washington, D.C. is 15.1%, in San Francisco it is 38.1%, and in New York it is 26.7%. A portion of this differential is shifted into base pay each year. This base pay is then used for retirement and disability computations. These are "top dollar" salaries in the federal government today and approach the level of the President's compensation. Granted, they are not outrageous as are some compensation levels in the private sector, but they are substantially higher than the salary level any career member of the SES could possibly achieve. To hope that these would not become political plums to be used by an Administration stretches credulity.

Again, current flexibilities exist within the SES system, and/or can be devised within the SES system, to provide the

Commissioner the necessary flexibility to hire non-partisan career SES employees from outside government for specific positions, with increased salary provisions as included in the bill, if necessary. We should note, however, that agencies currently have authority to pay SES recruitment and retention bonuses. The benefit of the SES system is that a Qualifications Review Board (QRB) composed of career SES employees from various agencies, under the direction of OPM, would have to ensure that in fact the qualifications sought were actually the qualifications held by the individual being hired, and that this was not a political appointment. At least some check on the potentially abusive appointment of political appointees to these positions would be maintained under the career SES system.

We have no problem with Section 9504 dealing with recruitment, retention, and relocation incentive increases, nor do we object to most provisions of Section 9595 dealing with increased performance awards and performance bonuses or to a pay cap being the maximum amount of total annual compensation paid by the Comptroller of the Currency.

Senior Executive Service Appointments:

We do, however, strenuously object to Section 9506, whereby career reserve positions could be filled by "limited emergency" or "limited term" SES appointees. By definition, the criterion for making a position "career reserved" is that it should be done so "only if filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the government." See 5 U.S.C. § 3132(d)(1). Also by definition, neither limited term appointees nor limited emergency appointees are required to be career employees, or to meet the criteria necessary to achieve the position of career appointee.

The proponents argue that this flexibility is needed to fill jobs on a short term, as-needed basis. Nothing in law or regulation today prohibits OPM from granting the IRS additional career positions for a specific term or for a limited period. OPM could, for example, authorize the IRS an additional 50 career SES positions tomorrow, 25 of which could be for one year and 25 of which could be for two year terms. Again, all provisions necessary to expedite the hiring process of an employee from outside government for a career position (i.e., one who must actually have the qualifications necessary to fill a position as verified by the Qualifications Review Board) currently exist. We would have no objection to the establishment of an expedited process for filling important positions by the Commissioner, even at higher pay levels, so long as the individuals hired meet the qualifications of "career employee" before being placed in a "career reserved" position. Again, failure to follow this process would, by definition, violate the very purpose of career reserved positions, which is to ensure the public's confidence in the impartiality of the IRS and its administration of our federal tax system.

Other Personnel Provisions:

We have no problems with the proposals set forth in Section 9507 dealing with greater demonstration project authority. Nor do we object to the establishment of a new general workforce performance management system under Section 9508. We believe increased authority for dealing with employees who are performing unacceptably, and for providing gain-sharing to employees and groups of employees for outstanding performance, are important and positive steps, which should be enacted.

While we do not object to the provisions that allow extended

details beyond 120 days, we question the wisdom of management decisions which, by necessity, require that employees be detailed for extensive periods of time away from their home offices. In general, it is not cost-effective to pay employees per diem for an extended period, and it is extremely hard on the employee's family for the employee to be gone for an extended detail. We understand that in some law enforcement situations extended details are necessary, but we question the wisdom of the use of such details in other situations. Reassignments, where the employee and his or her family are given the opportunity to remain together, are much preferable in the long run and further the morale of the workforce.

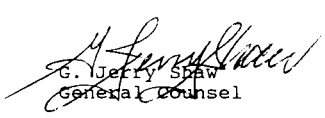
SUMMARY OF COMMENTS TO HR 2428

In sum, we believe that HR 2428/S 1174 is much preferable to HR 2292/S 1096. However, as with HR 2292, we object to the employee union being given veto authority over provisions of the bill, and the union placing a representative on the oversight board. In addition, we strongly oppose any proposal which could allow the appearance of the IRS becoming a politicized organization by the incumbent Administration. Current SES flexibilities are sufficient, and, if not, we would happy to cooperate with the Subcommittee in drafting appropriate flexibilities in the SES system to ensure that the integrity and impartiality of the tax administration process is both real and perceived to be such.

Thank you very much for the opportunity to comment. We would be pleased to answer any specific questions that the Committee might have. We request that a copy of this statement be entered into the record of the hearing. We also stand ready to meet with Committee staff and assist in any way that the Committee believes desirable.

Sincerely,

Carol A. Bonosaro
President



G. Jerry Shaw
General Counsel