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United States Senate
WASHINGTON, DC 20510-3403

November 22, 2004

The Honorable Mark W. Everson
Commissioner of Internal Revenue
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Mr. Commissioner:

A provision appeared in the conference report on H.R. 4818, which was considered by the full Senate on Saturday, November 20, that would require the Commissioner of Internal Revenue to grant the Chairmen of the Appropriations Committees in the House and Senate or their designated agents access to Internal Revenue Service (IRS) facilities, as well as to tax returns and tax return information. In addition, the provision would eliminate any penalties associated with improper or unauthorized disclosure of tax returns or tax return information. The text of the provision is as follows:

> "SEC. 222. Hereafter, notwithstanding any other provision of law governing the disclosure of income tax returns or return information, upon written request of the Chairman of the House or Senate Committee on Appropriations, the Commissioner of the Internal Revenue Service shall allow agents designated by such Chairman access to Internal Revenue Service facilities and any tax returns or return information contained therein."

I am extremely concerned about the genesis of this provision, since it has been alleged to have been drafted by IRS personnel and it appears to contradict the legislative intent as expressed by Representative Young, Chairman of the House Appropriations Committee and Representative Istook, Chairman of the Appropriations Committee's Subcommittee on Transportation, Treasury, and Independent Agencies. Mr. Istook issued the following statement this morning:

> "This language wasn't sufficiently reviewed because it was drafted by the IRS, so our staff presumed that it was okay. The IRS drafted this language at staff request, in an effort to make it clear that our oversight duties include visiting and inspecting the huge IRS processing centers – but NOT [sic] inspecting tax returns."

Chairman Young, in another explanatory statement, asserts:

> "The provision was simply an attempt to exercise our constitutional stewardship of the IRS's budget request, with no intention to review or investigate individual tax returns."

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The provision from the conference report quoted in full above goes significantly beyond what Mr. Young and Mr. Istook claim was its intent. I hope you can provide answers to the following questions:

1. Did, in fact, IRS personnel draft the language that appeared in the conference report? If so, who requested this action?

2. Given the fact that stringent restrictions apply to the tax-writing committees with respect to disclosure of returns and return information as a result of access granted to them under §6103 of the Internal Revenue Code, who recommended that the phrase "notwithstanding any other provision of law governing the disclosure of income tax returns or return information" be included in the provision?

3. Since Chairman Young and Chairman Istook now claim that there was no intention that there be access to tax returns or tax return information, who recommended that the provision specifically allow "agents" designated by the Chairmen of the Appropriations Committees access to "tax returns or return information contained therein"?

4. Did anyone at IRS discuss the ramifications of allowing access to tax returns and tax return information free of any legal restrictions on disclosure with the person or persons who made the request?

I look forward to your prompt reply.

Sincerely,

KENT CONRAD
United States Senator

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