



NATIONAL ARCHIVES ORAL HISTORY PROJECT

Oral History Interview

with

Tom Ernest Persky

February 6, 1985

at

Internal Revenue Service

Washington, D.C.

Interviewed by Rodney A. Ross (National Archives employee)

Basic summary abstract prepared by Donnie Eichhorst (National Archives volunteer)

Editorial revision by Rodney A. Ross

Tom Ernest Persky. Washington, D.C. February 6, 1985. Interviewed by
Rodney A. Ross.

Since February 1984 Persky has been on the staff of the Internal Revenue Service (IRS). He serves as the Commissioner's assistant for legislative liaison.

The interview focused on the concerns of the IRS that in the legislation establishing an independent National Archives no changes be made in the status quo regarding the confidentiality of tax returns.

The interview, less than a half hour in length, was conducted in Persky's IRS office.

Abstract of interview with Tom Ernest Persky in Washington, D.C., on February 6, 1985.

Interviewer: Rodney A. Ross.

Tape length: One side of a 60-minute cassette.

QUESTION: Background?

ANSWER: Persky was born in New York City on September 25, 1949. He went to undergraduate school at the University of California, and then attended the University of California law school at Davis. He practiced law for a couple of years in Sacramento before moving to Washington, D.C. Here in the capital he worked with the National Association of Manufacturers and the National Fair Trade Association on tax legislation. Persky joined the Internal Revenue Service (IRS) in February 1984 as the Commissioner's assistant for legislative liaison.

QUESTION: What are your responsibilities in your present position?

ANSWER: There are several components to the job. The legislative liaison function has classical lobbyist characteristics, like providing information to Capitol Hill on programs that affect the IRS. Other aspects involve coordinating efforts of the Legislative Affairs Division in the following ways: developing implementation plans for legislation after legislation has been passed; providing technical drafting assistance in the production of tax laws; and, answering the many letters per year from members of Congress (as many as 10,000 annually).

QUESTION: During 1984 one of your concerns was with S.905 and H.R.3987, both of which provided for independence for the National Archives. How did you first become aware that the IRS might have an interest that it wanted to make clear to Congress?

ANSWER: A member of the Legislative Affairs staff brought S.905 to Persky's attention shortly before it was scheduled to go to the Senate floor. The IRS has had a long-standing relationship with the National Archives. The Archives' Federal Records Centers house millions of IRS tax returns. Historically there has been tension between the IRS and the National Archives over the Archives' role as custodian of IRS records and the Archives' interest in IRS records. The Archives legislation, as presented by the Legislative Affairs staff member, raised questions on how the role of the Archivist would be changed by independence.

QUESTION: Where does the Office of Management and Budget (OMB) fit in terms of notifying agencies regarding legislation that might affect those agencies?

ANSWER: OMB has a legislative analysis group that is a central source for collecting information regarding legislation and spreading it out to various affected agencies. If an agency is interested in a piece of legislation, the agency will submit a letter of support for it to OMB and request clearance under the A19 clearance procedure. Under this procedure OMB distributes the proposed letter of support to agencies for comment. S.905 did not come to the attention of the IRS in this manner. The IRS saw the bill when it was about to go to the Senate floor.

QUESTION: S.905 did include the provision that the IRS wanted. How did it get into the Senate bill?

ANSWER: Persky noted "we" had contacted the SENate Finance Committee - Sen. Robert Dole's staff - and told them the IRS thought there was a confidentiality issue in 6103 and that they ought to take a look at it. They did and Sen. Dole identified it as an interest and the process began.

QUESTION: When you say "we" is it the Commissioner or you who determines what IRS policy is going to be in various pieces of legislation that come up?

ANSWER: Sometimes it is easy to determine. In this instance Persky talked with the Commissioner and the assistant for tax policy. He told them that this piece of legislation could be construed to give the Archivist access to protected tax return information.

This issue has gone on for years. The Archives has from time to time attempted to assert their ability to access 6103 records for archival records, while the IRS has consistently and routinely opposed the Archives on the issue.

QUESTION: Were there other aspects of the bill that the IRS expressed itself on, such as the Archivist's ability to determine what was record material?

ANSWER: Persky felt there were related issues, but the amendment added by Sen. Dole was overly broad in the sense that it said that 6103 would prevail with respect to all things. That is not what was intended. For instance, the IRS had not intended to set their own records schedule. The amendment was simple, straight-forward and artfully drafted but it went beyond the key issue which was confidentiality of tax return information.

QUESTION: For the House side Rep. Barber Conable had drafted and circulated a "Dear Colleague" letter on the subject, but did not offer an amendment on the House floor. Could you give some background about your work with the House and how things developed prior to passage of the House version of the bill?

ANSWER: The IRS did not work very much with Rep. Conable in trying to get his support for an IRS amendment.

Persky was surprised to see Rep. Conable suggest that the Archives should have have access to tax return information.

Most of the IRS's efforts on the House side are with the IRS's House oversight subcommittee, of which Rep. Charles Rangel is chairman. Persky works with that subcommittee on a regular basis on the 6103 related issues that come up from time to time.

There was an attempt to work with Rep. Jack Brooks's staff on the issue of confidentiality.

The rules of the House differ from those of the Senate. It is more difficult to change something once it comes out of a House committee than it is for something from a Senate committee because of the germaneness rule on the House floor. It would have been a major step, also, for Rep. Dan Rostenkowski, chairman of the Ways and Means Committee, to have demanded that there be a referral of such a bill to his committee.

QUESTION: The House and Senate passed different bill versions. Would you say the House version was inappropriate?

ANSWER: Persky responded that "inappropriate" wouldn't be the right term. The question always was whether the bill expanded archival authority. If the legislation was merely a reorganization bill, then the IRS had no interest in it. Persky felt this was why the IRS missed it in the earlier stages. The IRS was concerned that some of the language in the bill would tip the delicate balance in the area of confidentiality.

The Justice Department looked at the matter and published an opinion as to whether title 26 or title 24 prevailed on confidentiality. Justice considered it a very close call, but they felt the income tax rule prevailed. Considering the tenuousness of that decision and how close a call it is -- because the statutes are totally at odds and cannot be read together and be consistent at all -- IRS did not want to do anything to upset that balance.

Under current practice the IRS has control over all these records. If the Archives wants to look at tax information the answer is "no". That is the status quo: the Archives has no access to tax return information for archival purposes.

The Archives does get access from time to time to some tax returns because of mistakes which occur (such as some tax returns finding their way into the records of another agency). An example would be tax returns in FBI files. Under the rules of information-sharing the FBI is required to segregate that information and not turn it over to anyone else.

While the opinions the IRS had internally, and from the Justice Department, were that the IRS was right, the opinions weren't the most forceful ones ever written. The IRS was trying to maintain a balance of practice in saying the Archives didn't have the access in question.

QUESTION: How satisfied were you with the eventual language of the conference report on confidentiality in that it said that the status quo would prevail? What about the suggestion that the Archives might work out an arrangement with IRS similar to that it had with the Census?

ANSWER: As to the first question, the IRS was happy with the statute. The legislative history made clear the bill did not intend to expand the power of the Archives.

In regards to the suggestion that the IRS work out an arrangement with the Archives on how to solve the more longstanding problems, Persky thought it was an appropriate suggestion.

Persky pointed out that there are some IRS records which are not produced by taxpayers and are not voluntarily given to the IRS by taxpayers. These "other" IRS records are a part of the history of the United States. Persky thought, although this wasn't necessarily the standpoint of the IRS, that the IRS should cooperate in making that history available to historians. He also thought the IRS should support cooperation with the Archives to achieve those kinds of beneficial results.

On the other hand, Persky stressed that there was no room for negotiation on breaking the confidentiality of tax return information under title 26, whether with Census-type rules or any others.

QUESTION: During the month of August, after the House had passed its bill but before the conferees met, did OMB keep you informed of where things stood or did you simply act on your own initiative?

ANSWER: After the House acted, the IRS were done.

QUESTION: You didn't try to persuade the House conferees to accept the Senate version?

ANSWER: If your question is did the IRS work initially with OMB, the answer is "no".

The IRS learned of the bill on a very short time fuse. The IRS raised the issue of confidentiality and went to see Sen. Dole's people. They put together a group of people from Sen. Mathias's staff, plus Ira Shapiro from Sen. Eagleton's staff, and we had a series of meetings.

The IRS convinced Marion Morris and Ira Shapiro that the status quo meant no access. After that a bill report from OMB came out asking for IRS comments and the IRS told of its concerns about confidentiality. It happened that the final letter cleared by OMB did not include that material. Everybody started hitting the roof and the OMB process got going.

QUESTION: In trying to gain an understanding on my part of timing, was the letter you spoke about the one sent by Joe Wright to Sen. Mark Hatfield saying that OMB had no major objections to S.905?

ANSWER: No. It was a much later document.

QUESTION: Timing?

ANSWER: The OMB expression was made after the Senate markup but before the Senate floor action. It was Sen. Dole's objections on the floor that resulted in the adoption of the IRS amendment.

The deal IRS made with Sen. Mathias' and Sen. Eagleton's staffs was made before the OMB letter hit Persky's desk. When that letter came without the IRS language in it, Persky went back to Sen. Dole's and Sen. Roth's staffs and was assured the Senate would still pass a bill with the 6103 provision in it.

Persky's involvement with OMB began when he then called Mary Ann Chaffee and asked why the IRS concerns had not been raised in the letter.

QUESTION: When the staff members for the conferees were preparing the analysis for their members, you say you weren't involved at that point?

ANSWER: No, that is not correct. The IRS focused on conferees from the House side, including the staff of Rep. Jack Brooks. The IRS planned to make the same case it had made to Ira Shapiro and Marion Morris. The IRS wished to establish the practical and legal status quo. The IRS hoped the conferees would agree to clarify the issue and remove any language from the bill that the IRS found objectionable.

The removal of objectionable language was achieved, but the 6103 provision was not.

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

Legal Agreement Pertaining to the Oral History Interview of

Tom Ernest Persky

Tom Ernest Persky

In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms and conditions hereinafter set forth, I,

Tom Ernest Persky
(name)

of Bethesda, Maryland
(city and state)

do hereby give, donate and convey to the United States of America all my rights, title and interest in the tape recording and transcript of a personal interview conducted on February 6, 1985 at the IRS Building in Washington, D.C. and prepared for deposit in the National Archives. This assignment is subject to the following terms and conditions:

- (1) The tape recording shall be available to all researchers upon its being accessioned by the National Archives.
- (2) The transcript shall be available to those researchers who have access to the tape recording, as soon as the National Archives' processing schedule allows sufficient time for transcript preparation.
- (3) I hereby assign to the United States Government all copyright I may have in the interview transcript and tape.
- (4) Copies of the transcript and the tape recording may be provided by the National Archives to researchers upon request.
- (5) Copies of the transcript and tape recording may be deposited in or loaned to institutions other than the National Archives.

Tom Persky
Donor

Robert M. Ware
Archivist of the United States

February 6, 1985
Date

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Date