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Condensed from
THE AMERICAN SPECTATOR
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In November 1994 the Internal Revenue Service mailed a notice to Paul Zwynenburg, whose brother Mark was killed in the terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland. "Notice is hereby given," the IRS announced, "of an estate tax liability of $6,484,339.39." Zwynenburg and his parents were given 90 days to pay or appeal to the U.S. Tax Court.

The Zwynenburg family had not received a single cent from Mark's death. With other relatives of victims, they had sued the airline, but no settlement had been reached. The IRS simply made a "guesstimate" of the final award for Zwynenburg's death. The agency refused to back down even after public ridicule.

Such treatment is a fact of life for too many taxpayers. "The IRS's power to investigate and examine taxpayers transcends that of any other law-enforcement agency," noted Daniel Pilla in a recent study for the Cato Institute. "Virtually all of the Constitutional rights regarding search and seizure, due process and jury trial simply do not apply to the IRS."

In 1989 Emil Pikul, a rookie agent, and his supervisor, Sherwin Stern, showed up at the home of Glenview, Ill., businessman Vince Han to discuss Han's audit earlier that year. Stern suspected that Han had lied when claiming outstanding debts of several hundred thousand dollars. Telling Han he owed $70,000 in back taxes, Stern pointed his finger at the taxpayer and said, "If you don't pay, you're going to jail." Han was given seven days to pay up.

In fact, Han owed the government nothing. The U.S. Tax Court would later find that agent Pikul had not bothered to read key documents in Han's IRS files. He had not a speck of evidence of tax fraud. Pikul merely

received only minor reprimands.

Recently the IRS has begun including "economic reality" questions as part of its audit routine. These are known as "Calvin Klein" audits because the IRS agent practically goes through a person's closet to see how expensive his jeans are.

IRS Commissioner Margaret Milner Richardson has written that the goal is to "audit the taxpayer, not just the tax return." The official IRS list of questions for 1993 included: "What is the largest amount of cash you had at any one time?" and "Do you have a safe deposit box? Where? What is kept in it?"

IRS officials have even encouraged private companies to secretly betray their competitors. At a 1990 meeting in California, an IRS agent distributed "snitch sheets" asking for information on illegal tax avoidance by other companies. The agent told attendees to mail the completed snitch sheets to him in unmarked envelopes, and promised to follow up on all leads—in effect, inviting them to use the government to ambush rivals.

The IRS recruits informants to turn in suspected tax violators. In 1981 St. Louis accountant James Checksfield provided the IRS with information alleging that one of his clients, businessman Steve Noles, was skimming money from his pizza business and not reporting the full income to the IRS. Checksfield had been investigated previously by the agency for allegedly failing to pay taxes for four years.

As *The Wall Street Journal* later reported, Checksfield had created a special bank account on Noles's behalf that came under scrutiny in 1985 when the IRS began an audit of Noles's business. During the audit, Checksfield continued to advise Noles despite the fact that he was still an informant for the IRS.

Federal magistrate William Bahn observed that the "tawdry facts" of the case "strongly suggest a lack of honesty and integrity" on the part of the IRS agent supervising Checksfield. Before Noles's case could go to trial, the Justice Department dropped the charges. The Missouri State Board of Accountancy found that Checksfield had violated ethics rules and revoked his license.

The agency's tax rules and regulations have exploded in recent decades, increasing from less than 200 pages in 1913 to over 17,000 today, filling more than 200 volumes. But "because courts have ruled over the years that the manual is not the law, the IRS can flout its own rules with impunity," noted *Money* magazine. The agency's often arbitrary and sometimes contradictory regulations and rulings mean that even the most conscientious taxpayer can run afoul at tax time.

Thousands of small businesses have been devastated. The conflict originates in federal regulations classifying workers. If a person is considered an employee, the employer must withhold and pay certain taxes. But if the person is an independent contractor, the business need only report how much it paid him; the contractor pays any taxes directly.

"The process of classifying work-

ers is confusing, complex, antiquated and unfair," admitted an official Internal Revenue Commissioner advisory report in 1990. Nonetheless, since 1988 IRS agents have assessed over $750 million in penalties and back taxes—finding that companies have misclassified employees as independent contractors over 90 percent of the time.

"The mind-set of the IRS," as former Rep. Richard Schulze (R., Pa.) once put it, "is to ensure that all American workers are easily tracked through corporate payroll accounting." Tax lawyer Harvey Shulman agrees. "One IRS auditor told me, 'By the time we finish audits of the computer industry in this state, there won't be any more self-employed computer consultants left here.'"

The IRS focuses almost solely on independent contractors who wish to remain independent. For instance, it has been zealously reclassifying Methodist ministers to employee status. The United Methodist Church estimates that more than a thousand Methodist clergymen have faced IRS audits over their employment status. The church is dismayed at the way the IRS treats a system of clergy selection and placement that has been in place for over 200 years.

To rein in the most egregious IRS abuses, Congress enacted the Taxpayer's Bill of Rights in 1988. But the act has thus far had little impact. Now Sen. Charles Grassley (R., Iowa), Sen. David Pryor (D., Ark.) and House Ways and Means Oversight Subcommittee Chairman Nancy Johnson (R., Conn.) are pushing the Taxpayer's Bill of Rights II. The proposed legislation would strengthen the right of taxpayers to recover against the IRS when its agents have acted negligently or recklessly, and make it easier for taxpayers to recover legal costs when they defeat the IRS in court.

Testifying last year before a Congressional committee, IRS Commissioner Richardson said, "My hope is that the overwhelming number of taxpayers who come in contact with us will come to know us as a genteel, Gulliver-like giant."

Unfortunately, too many people have experienced giant abuses of power instead. Stronger bonds of law may be needed to tie this Gulliver down.

Reprints of this article are available. See page 220.

Reversal of Fortune

Driving a fine new Harley-Davidson police motorcycle was part of my job on traffic patrol. When I saw a line of cars parked illegally, I pulled over and began ticketing them. Soon a man came running up. "Have you tagged my car yet?" he asked, pointing farther up the street.

"Not yet," I replied.

"This must be my lucky day!" he said. Then he climbed in and backed into my Harley-Davidson.

—Contributed by Jack Marks

asserted that Han "was not an honest taxpayer." It took an appeal and a four-year legal struggle for Han to recoup the huge legal fees involved in defending his innocence.

In ruling for Han in 1993, U.S. Tax Court Judge David Laro held that the IRS's case "was not justified in fact or law," and that the agency's treatment of Han was a "textbook example of how the IRS should not conduct an examination."

It is rare for agents to be punished for seizing assets or coming up with large payment demands during audits, even if the assessments do not hold up in court. As a result, taxpayers are at the mercy of overzealous agents. The General Accounting Office (GAO) found that in fiscal year 1993 the IRS wrongly charged billions of dollars in additional taxes and penalties.

The most frequent reason for the incorrect levies was sloppy bookkeeping. The GAO reported that in just one type of tax account, the IRS took an average of 316 days to log in tax payments, virtually guaranteeing that the taxpayer would be accused of failure to pay on time.

The IRS believes it is entitled to impose penalties and seize property for overdue taxes even if it sent the tax notice to the wrong address. Clayton and Darlene Powell moved from one Maryland town to another in late 1987, filing a tax return with their new address in early 1988. More than two weeks later, the agency sent a tax notice on their 1984 return to the old address.

The local post office, even though it had the forwarding address, returned the notice to the IRS. Nearly a year later, the Powells received a final tax notice at the new address: they had ten days to pay $6864 or have their property seized. The couple quickly filed an appeal with the U.S. Tax Court, seeking to dismiss the claim. The court rejected their petition. A federal appeals court later found the Powells "entirely innocent." The agency appealed to the Supreme Court, contending that as long as the IRS mails a tax deficiency notice to a taxpayer's "last known address," the taxpayer must be presumed to have received the notice, even when it is indisputable that the notice was not received. In 1992 the Supreme Court refused to hear the case.

Following the decision, the agency announced that it would not be bound by the appeals court ruling in other disputes. The judges, it said, had misinterpreted the law, leaving the agency free to declare "nonacquiescence." The agency gives itself license to disregard court decisions it disagrees with—making a mockery of due process and Constitutional rights.

Roughly half of the agency's 113,000 employees have access to private tax information. In August 1993 the agency revealed that 369 of its employees in one regional office alone had been investigated for browsing through the returns of friends, relatives, celebrities and others. Some had altered the files of neighbors and created fraudulent refunds. Most