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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| SUSAN B. LONG, et al., |) | |
| |) | |
| Plaintiffs, |) | No. C 74-724S |
| |) | |
| v. |) | DECLARATION OF SUSAN B. |
| |) | LONG IN SUPPORT OF |
| UNITED STATES INTERNAL REVENUE |) | MOTION TO ENFORCE THIS |
| SERVICE, |) | COURT'S 2006 ORDERS AND |
| |) | ITS 1976 CONSENT ORDER |
| Defendant. |) | |

1. My name is Susan B. Long. I submit this declaration in support of my Motion to Enforce this Court's 2006 Orders and its 1976 Consent Order.

2. Pertinent background information about me, my Freedom of Information Act (FOIA) requests, and this Court's 1976 Consent Order may be found in my declarations filed in this action on January 5, 2006 (Dkt. 9), January 30, 2006 (Dkt. 20), and June 19, 2006 (Dkt. 44), and in this Court's Orders of April 3, 2006 (Dkt. 21) and August 2, 2006 (Dkt. 54). This declaration will try not to repeat the information in those declarations and orders but will refer to them as needed to support particular factual statements.

1 **The IRS's Initial Response to This Court's April 3, 2006 Order**

2 3. Within two weeks of this Court's Order of April 3, 2006, the IRS provided
3 me, through counsel, with CDs containing digital copies of what were represented to be the
4 AIMS Table 37 reports covering the period from the beginning of Fiscal Year 2002 though
5 March 2006, the most recent month for which Table 37 reports had then been run. The
6 reports were in a Microsoft Word format, unusual for compilations of large quantities of
7 data.

8
9 4. I reviewed the reports and noticed that they did not appear to be complete in
10 certain respects. Among other things, I noticed that it appeared that the reports included
11 only summary tables at the national level, rather than the breakdowns of statistics by IRS
12 division and area offices that I understood Table 37 to contain. In addition, the tables did
13 not appear to be complete because they did not break down audit information by taxpayer
14 income level as completely as the IRS has previously done in data that it provided me that
15 was derived from Table 37. More broadly, I noticed that they had page numbers indicating
16 that each monthly report was thousands of pages long, but, based on gaps in the numbers,
17 it was apparent that thousands—indeed most—of those pages had not been provided to me
18 for each month's report.

19 5. In addition, I ascertained that the IRS had provided me with cumulative
20 monthly Table 37 reports for each of the first 11 months of each fiscal year (that is,
21 October through August), as well as a "final" year-end report run in November of each
22 fiscal year including data from October through September. The IRS, however, had not
23 provided copies of its first and second "preliminary" fiscal year-end runs of Table 37 for

1 FYs 2002, 2003, 2004, and 2005. Based on the Internal Revenue Manual, I had learned
2 that the IRS generates three versions of the fiscal year-end report. The first is run shortly
3 after the end of the final month (that is, around the same time as the regular monthly
4 reports for the other 11 months of the fiscal year); the second is run in October; and the
5 final is run in November. According to the Manual, the three reports are run so that the
6 IRS can correct any errors in that data and make the final version “as accurate as possible.”
7 Only the November version of the year-end reports was included in the tables provided in
8 April 2006.

9 6. My counsel, Scott Nelson, raised these issues of the completeness of the
10 IRS’s Table 37 production in a letter to counsel for the IRS, Gerald Role of the United
11 States Department of Justice (DOJ) on April 26, 2006. A true and correct copy of Mr.
12 Nelson’s letter is attached as Exhibit 1.

13 **The IRS’s Abortive Appeal and the Negotiations That Followed**

14 7. Before the IRS responded to the April 26, 2006 letter, it filed a notice of
15 appeal in this case on June 2, 2006. At or around the time of that filing, DOJ informed me,
16 through counsel, that the notice of appeal was a “protective” one because the time for
17 appeal was about to expire, but DOJ had not yet obtained authority to pursue an appeal on
18 behalf of the IRS from the Solicitor General of the United States, who must approve all
19 such appeals.
20

21 8. As this Court is aware, the IRS filed a motion for stay in this Court shortly
22 after it filed its notice of appeal, in which it argued that it should be permitted to redact
23 from Table 37 any cells of data containing information concerning only one or two

1 taxpayers because, the IRS argued, provision of that data would violate 26 U.S.C. § 6103,
2 which prohibits the IRS from releasing taxpayer return information (but exempts from the
3 prohibition compilations of data that would not identify individual taxpayers).

4 9. My Supplemental Declaration in Opposition to Defendant's Motion for Stay
5 Pending Appeal, filed June 19, 2006 (Dkt. 44), explained how the IRS's position on
6 redaction was inconsistent with its prior release, as recently as 2004, of statistical data
7 containing cells with information on one or two taxpayers and with its current practice of
8 releasing "microdata files" containing information from individual tax returns with
9 identifying information deleted. I also explained that the information in Table 37 did not
10 provide any information that would allow someone reviewing the reports to identify the
11 individual taxpayers whose information was included in cells of one or two.

12 10. While the motion for a stay was pending before this Court, my attorneys
13 received notice from the United States Court of Appeals for the Ninth Circuit that the
14 IRS's appeal had been assigned to the court's appellate mediation program, and that
15 briefing would be deferred pending exploration of the possibility of settling the case
16 through the mediation program. As a result, Mr. Nelson began discussions with a DOJ
17 appellate lawyer, Terry Milton, about resolving issues posed by this case, including the
18 issues of compliance with this Court's orders that had been raised in Mr. Nelson's April
19 26, 2006, letter to Gerald Role.

20 11. On August 1, 2006, Ms. Milton sent my attorneys a letter informing them
21 that the IRS had "discovered" that Table 37 included many more tables than had been
22 provided to me in April, including Small Business and Self-Employed Division (SBSE)
23

1 area tables, and Large and Mid-Size Business Division (LMSB) industry tables. A true
2 and correct copy of Ms. Milton's letter (minus the DOJ logo, which did not transmit
3 correctly to my attorney's computer) is attached hereto as Exhibit 2. Within approximately
4 two weeks after Ms. Milton sent her letter, the IRS provided me, through counsel, with
5 CDs containing additional tables for the Table 37 reports it had produced in April.

6 12. Ms. Milton's letter (Exhibit 2) also stated for the first time that the IRS was
7 withholding the preliminary year-end reports for FYs 2002, 2003, 2004 and 2005 pursuant
8 to FOIA Exemption 5, on the ground that the "deliberative process privilege applies to the
9 preliminary and non-final AIMS reports."

10 13. This Court denied the IRS's stay motion in its Order of August 2, 2006.
11 The IRS did not thereafter seek a stay from the Ninth Circuit.

12 14. Because this Court's August 2 Order required the parties to meet and confer
13 concerning redaction of Table 37, and because the issue of the application of 26 U.S.C.
14 § 6103 was one of the issues that was part of the IRS's appeal, Mr. Nelson and counsel for
15 the IRS agreed that they would meet and confer regarding redaction as part of their broader
16 effort to resolve the issues on appeal through mediation.

17 15. Because the Court's April 3 Order required the IRS to produce Table 37 on
18 an ongoing basis "upon request," I have made regular requests for monthly Table 37
19 reports postdating March 2006, the first two of which were the April and May 2006
20 reports. Those regular requests have continued up to the present time. In late August
21 2006, shortly before a scheduled meeting between Mr. Nelson and DOJ and IRS attorneys
22 to discuss the redaction issue and the other issues posed by this case and the Consent
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1 Order, the IRS provided me, through counsel, with electronic copies of some Table 37
2 reports for April and May 2006. Although this Court's August 2 Order prohibited the IRS
3 from redacting cells with data on one or two taxpayers until either the parties agreed to
4 redaction through the meet-and-confer process ordered by the Court or the Court modified
5 the 1976 Consent Order, the copies of the April and May Table 37 reports were
6 electronically redacted, with black bars appearing in the files where cells containing
7 information on one or two taxpayers were located.

8 16. On Friday, September 1, 2006, Mr. Nelson met at DOJ's main offices with
9 DOJ and IRS attorneys to discuss possible resolutions of the issues in this case. The
10 parties did not agree on any resolutions, but did agree to continue discussions (with
11 periodic reports to the Ninth Circuit mediator).

12 17. Upon further review of the files that the IRS had provided in August 2006, I
13 again became concerned that the IRS had not provided me with all of Table 37. First, a
14 number of table series provided for April 2006 were not in the May copies, other table
15 series provided for May were missing from April's copies; and neither set contained other
16 table series that had been provided earlier for March 2006 and earlier months. Further, I
17 noted that none of the files contained data on examination of returns by the Wage and
18 Investment Income Division (W&I). The IRS later told me that (1) detailed breakdowns of
19 W&I audit data were not contained in AIMS Table 37, but (2) Table 37 did contain some
20 "inventory" tables for W&I audits.

21 18. I carefully reviewed the tables that the IRS had provided me and found no
22 "inventory" tables covering W&I audits. I also found hundreds of pages of gaps in the
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1 page numbers (Table 37 is continuously paginated) where tables appeared to be missing
2 from my copies.

3 19. Discussions between Mr. Nelson and the DOJ appellate lawyer, Ms. Milton,
4 continued into early December 2006 but did not result in any agreement. While those
5 discussions were ongoing, the IRS did not provide me with any Table 37 reports postdating
6 May 2006. In September 2006, the IRS did, however, provide me with a sample report
7 generated by its A-CIS system, which provided a small subset of the examination data
8 contained in Table 37, as well as certain additional data.

9
10 **The Dismissal of the Appeal and the End of Negotiations**

11 20. In December 2006, Ms. Milton informed Mr. Nelson that the Solicitor
12 General had decided not to authorize pursuit of the appeal in this case, that the appeal
13 would be dismissed by the IRS, and that Ms. Milton would no longer participate in
14 discussions aimed at resolving the case because it was no longer an appellate matter and no
15 longer subject to the Ninth Circuit mediation program.

16 21. On December 22, 2006, Mr. Nelson wrote a letter to Mr. Role and Ms.
17 Milton of DOJ inquiring whether the IRS wished to continue discussions of a possible
18 resolution of the case. A true and correct copy of the letter is attached hereto as Exhibit 3.
19 Mr. Nelson noted that the IRS seemed to have ceased its production of data, and stated that
20 I was not willing to continue discussions unless the IRS agreed by January 15, 2007 to
21 provide, at a minimum, updated data in the form of the sample A-CIS report it had
22 provided in September by the end of January, and on a monthly basis thereafter.

23 22. By January 15, 2007, the IRS had not agreed to provide the data described

1 in Mr. Nelson's December 22, 2006 letter, nor had it provided any further Table 37 reports.
2 However, on January 23, 2007, the IRS did send me a letter *denying* my request for
3 preliminary year-end Table 37 reports for FY 2006, invoking Exemption 5 and contending
4 that the reports were subject to the "deliberative process privilege." A true and correct
5 copy of the letter is attached hereto as Exhibit 4.

6 23. On January 25, 2007, having not received agreement from the IRS to
7 provide the data requested in the December 22, 2006 letter, Mr. Nelson sent Mr. Role a
8 letter stating that I was discontinuing discussions of a possible resolution of the case in
9 light of the IRS's failure to respond to the conditions expressed in the December 22, 2006,
10 letter. A true and correct copy of the January 25, 2007, letter is attached hereto as Exhibit
11 5. Unbeknownst to Mr. Nelson when he sent the letter, Mr. Role of DOJ had just sent him
12 a letter stating that the IRS wished to continue discussions and would provide the A-CIS
13 data by January 31, 2007. On receiving that information, Mr. Nelson retracted his letter of
14 January 25, and the IRS provided the A-CIS data by the end of January.

15 24. Thereafter, however, the IRS did not respond to Mr. Nelson's efforts to
16 resume discussions, nor did it provide updated A-CIS data in February or March. As a
17 result, on March 27, 2007, Mr. Nelson wrote another letter to Mr. Role of DOJ. A true and
18 correct copy of that letter is attached hereto as Exhibit 6. The letter concluded: "[I]t is our
19 position that the parties have more than satisfied Judge Pechman's requirement that they
20 meet and confer with respect to the issue of redaction of Table 37. They have been unable
21 to reach agreement on that issue, as they have also been unable to reach agreement on any
22 alternative to full compliance by the IRS with the orders in the Seattle litigation. It is now
23 up to the IRS to comply with the court's orders or to seek relief from the court if it wishes

1 to redact Table 37 or otherwise avoid the court's order that Table 37 be produced in its
2 entirety. Of course, Ms. Long reserves the right to seek additional relief from the court to
3 see that the IRS satisfies its obligations under the court's orders."

4 **The IRS's Eventual Production of Additional Table 37 Reports**

5 25. The IRS never answered Mr. Nelson's letter of March 25, 2007. Shortly
6 after the letter was sent, however, the IRS provided updated A-CIS data, and has been
7 providing some data on a monthly basis since then. In addition to the A-CIS report, the
8 IRS's monthly production has also included some additional statistical data on its
9 collection and enforcement efforts. The A-CIS report and the other data provided on a
10 monthly basis is not coextensive with Table 37: it is much less extensive and detailed than
11 Table 37, and at the same time contains some information not in Table 37. The IRS also
12 redacts the A-CIS report to avoid production of cells with data on one or two taxpayers.
13 Despite Mr. Nelson's letter, however, the IRS did not resume production of Table 37 in
14 March 2007, nor did it seek modification of this Court's orders requiring production of
15 Table 37.

16 26. Also soon after Mr. Nelson's letter, IRS officials contacted my colleague,
17 David Burnham, directly and asked if he and I would be interested in meeting with two
18 Deputy IRS Commissioners, Kevin Brown and Linda Stiff, to discuss the possibility of
19 resolving our differences with the agency over various FOIA matters. We agreed to meet
20 with the Deputy Commissioners, with the caveat that we would not discuss issues that
21 were directly involved in this litigation.
22

23 27. The meeting ultimately took place in June 2007, when Mr. Burnham and I

1 met with Mr. Brown (who by then had become Acting Commissioner of the agency) and
2 Ms. Stiff. The meeting did not result in any significant agreements. The IRS officials did
3 inform me that the IRS's willingness to continue to produce the abbreviated monthly A-
4 CIS reports and the other data accompanying them was not dependent on any
5 developments in this litigation and was not conditioned in any way on my giving up rights
6 under this Court's orders. During the meeting, Mr. Brown also referred to the IRS's
7 position that 26 U.S.C. § 6103 requires redaction of cells in statistical tables with data on
8 one or two taxpayers and stated that it was dictated by the IRS's Chief Counsel and that he
9 felt compelled to follow the Chief Counsel's advice.

10 28. After my meeting with the Acting Commissioner and Deputy
11 Commissioner, the IRS showed no further signs of compliance with this Court's order for
12 nearly two months. By mid-August 2007, I had received no additional Table 37 reports for
13 nearly a year, despite my regular requests for monthly and year-end Table 37 data. Then,
14 on August 20, 2007, the IRS sent me paper copies of Table 37 reports for June and July
15 2006; on September 28, 2006, it sent paper copies of Table 37 for October 2006, and on
16 October 1, 2007, it sent copies of the final year-end report for FY 2006 (that is, the
17 November 2006 final run of the September 2006 report). On November 13, 2007, we
18 received paper copies of Table 37 for August 2006 (sent under cover of a letter dated
19 October 31, 2007), which the earlier productions had skipped over. That production,
20 however, did not include any tables concerning SBSE examinations; the IRS explained that
21 its photocopier had broken down and the SBSE tables would be provided later. The IRS
22 did not provide the SBSE tables for August 2006 until January 11, 2008. With the most
23 recent release, the IRS is now over one year behind in its production of Table 37 reports;

1 that is, the most recent period covered by reports it has provided is October 2006, whereas
2 the Table 37 report for January 2008 should by now be available.

3 **Deficiencies in the IRS's Production of Table 37**

4 29. The paper copies of the June through October 2006 Table 37 reports, like
5 the electronic copies of the April and May reports supplied in August 2006, were redacted
6 to avoid provision of any cells in any table containing data on only one or two taxpayers.
7 Unlike the electronic copies, which were blacked out using some form of software, the
8 paper copies supplied this fall were manually redacted, apparently by marking over cells of
9 one or two with a marker pen, then photocopying the pages.

10 30. The IRS's redaction of Table 37 includes not only cells of one or two, but
11 also the totals in any column that contains a cell with information on one or two taxpayers.
12 The apparent purpose of redacting the totals is to prevent calculating the numbers in the
13 redacted cells by adding up the unredacted cells and subtracting them from the total. But
14 the IRS redacts totals even when there are two or more cells in a column that have been
15 redacted because they contain information on one or two taxpayers. Of course, in those
16 circumstances, it would be impossible to calculate the figures in the redacted cells even if
17 the totals were provided. Thus, even on its own theory, the IRS has substantially over-
18 redacted. A true and correct copy of an example of a Table 37 page containing such over-
19 redaction is attached hereto as Exhibit 7. This is not, however, an isolated instance.
20 Rather, the IRS's uniform practice appears to be to redact totals whenever one or more
21 cells in a column have been redacted.
22

23 31. I have also reviewed the recently produced copies of Table 37, as well as

1 the electronic copies produced in 2006, and concluded that the IRS has not produced all of
2 Table 37. Based on gaps in the page numbers that appear on each page of each report, it
3 appears that at least several hundred pages of each month's report have not been provided
4 to me by the IRS. For the copies received on paper, there were many more gaps in the
5 page numbers, so that over a thousand pages appear to be missing. Many table series
6 present in earlier months' Table 37 reports were not included in the paper shipments. I
7 have not located W&I inventory tables, which the IRS has admitted are part of Table 37, in
8 any report that has been provided to me. I do not know what other tables not present in
9 any releases may not have been provided to me, because the IRS has never been willing to
10 provide me with a complete listing of the component tables of Table 37.

11 32. Based on my review of the Table 37 reports that have been provided to me
12 between August 2006 and the present, I also continue to stand by what I said about Table
13 37 in my Supplemental Declaration in Opposition to Defendant's Motion for Stay Pending
14 Appeal (Dkt. 44) as to the impossibility of identifying individual taxpayers based on the
15 statistical data in Table 37. Although the IRS has produced many more of the tables that
16 Table 37 comprises than it had at the time of that declaration, the data in the additional
17 tables that the IRS has provided is still broken down into very broad geographic and
18 industrial categories and broad ranges of taxpayer income, such that even a cell with data
19 on only one taxpayer would pose no genuine risk of identifying that taxpayer.

20 33. The IRS's very recent decision to provide paper copies of the Table 37
21 reports rather than electronic files, as it did when it provided me with copies of Table 37 in
22 2006, has significantly impaired the usefulness of the data. Providing a print-out of
23 information in a database or a digitally structured set of tables does not provide the

1 requester the same information as an electronic copy of the database for a number of
2 different reasons. First, a database is “structured”—information about a specific attribute
3 is always stored in a set location (“field”), information is linked together, and information
4 both about the structure and the linkages is stored as part of the database. Because of the
5 structured way the information in a database is linked or joined together, a person using a
6 database can more readily locate specific data of interest because of the way the records
7 and fields are linked. The “structure” of the information is thus a very important part of a
8 database, and this structure is not transferable to paper. Thus, when an agency responds to
9 a request for a database by providing a print-out of information from the database, it is not
10 the same document or record because the “structure” and “linkages” in the database are not
11 transferable to paper.

12 34. In addition, databases are stored in a digital language. The values or
13 features of the digital language allow you to easily combine information, summarize
14 information, and search for information through the use of queries. Digital language,
15 however, cannot be copied onto paper, and when information is printed from a database a
16 different language is printed on paper. And this non-digital language on paper is nowhere
17 near as useful as the digital language. When an agency responds to a request for a database
18 by providing a print-out of information from the database, the agency is therefore not
19 providing the same document or record because the “digital language” of the electronic
20 database is not transferable to paper.

21 35. There are many practical consequences when an agency provides a
22 requester a print-out of information from a database, rather than an electronic copy of the
23 database containing the “structured” information in a “digital language.” For example, the

1 speed of access to the information is much greater in an electronic copy of a database
2 rather than a print-out of information from the database. This is because having structured
3 information in a digital language allows a computer to perform functions that a human
4 would otherwise have to perform. For example, a user of Table 37 could total examination
5 hours provided in different sub-tables in a matter of minutes or even seconds. In contrast,
6 if someone had to go through thousands of pages to manually calculate this sum it would
7 take much longer and therefore cost more to perform the same function.

8 36. In addition to the speed of access to information, the structure and digital
9 language of databases also results in more reliable information. For example, a user who
10 was able to perform calculations on Table 37 data electronically would receive an answer
11 that is more reliable than if a person performed this calculation. And this is because there
12 is a much greater chance of a human error in performing the calculation (adding figures
13 line by line for hundreds of pages) versus a computer performing the function. Thus, in
14 addition to having speedier access to the information, the structure and digital language of
15 a database also results in information that is more reliable. In addition, while digital
16 information is precise as to the numbers recorded, the numbers on paper printouts may be
17 fuzzy or unclear so that many numbers cannot be accurately read with certainty.
18 Furnishing copies of the printouts often compounds the problem of legibility. This further
19 source of unreliability was a problem in the printouts of Table 37 we received.

20 37. The structure and digital language of a database, and the corresponding
21 speed of access to the information and reliability, results not only in greater access to the
22 information, but also significant cost-savings due to the ability for computers to perform
23 the work that persons would otherwise have to perform.

1 38. Due to the reliability of the information, the ability to access and analyze
2 information, the speed at which these tasks can be performed on a computer, and the
3 corresponding cost-savings, it is now unusual for government agencies to store information
4 on paper. We thus live increasingly in a digital age. And one of the benefits of this digital
5 age is that this electronic information provides the means for public oversight, to see what
6 the government is doing, in ways which were not economical to do before. For example,
7 the information TRAC has obtained from various government agencies consists of more
8 than a terabyte of data, which is the equivalent of about 500 million printed pages. With
9 this large body of data and the use of computers, TRAC has efficiently analyzed the
10 information and issued reports on such topics as whether the IRS audits poor people at a
11 greater rate than rich people, whether there is a large judge-by-judge disparity in the
12 decisions on requests for asylum, whether a doubling of border patrol staff results in
13 increased apprehensions, whether charges involving domestic terrorism are increasing or
14 decreasing, and many more topics. If TRAC had to do its analyses on paper, with paper
15 records rather than electronic databases, the services TRAC provides could not be done
16 because there would be nowhere near enough resources to perform the analyses.

17 39. Accordingly, it is important that individuals, the news media, and
18 organizations receive the same information government agencies maintain and use so that
19 they can independently analyze and assess how the agencies are performing. Public access
20 to electronic records is therefore vital to ensure the oversight and effectiveness of
21 government.

22 40. The only apparent excuse for the IRS's decision to produce the Table 37
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1 reports on paper is the claimed need to redact cells in the tables that contain data on one or
2 two taxpayers. Even leaving aside the question whether the redaction is appropriate (or
3 permissible), however, redaction does not in any way necessitate providing the records in
4 paper form. As the IRS's production of electronic files with redacted Table 37 data for
5 April and May 2006 demonstrates, the agency is capable of redacting electronic copies of
6 Table 37.

7 41. Indeed, for many of the same reasons that electronic records are more useful
8 than paper records, redaction of electronic records is also much easier, more accurate, and
9 less time-consuming and costly than redacting paper records. When an electronic file is
10 redacted, the person performing the task can easily, precisely, and accurately search for
11 and find the exact cells of data to be redacted, and then use electronic means to remove or
12 efface them from the file with the click of a mouse or a simple keystroke. Most readily
13 available software packages permit such search and replace operations. By contrast, the
14 type of manual redaction performed by the IRS on the paper copies of Table 37 that it has
15 produced over the past six months is a tedious, labor-intensive process that requires, first, a
16 complete printout of the report; then an exhausting, and potentially inaccurate, manual
17 review of thousands of pages to identify the cells to be redacted; then, the crude marking
18 out of the cells to be redacted with a pen; and, finally, the recopying of the entire report so
19 that the recipient will be unable to read the redacted numbers through the ink or by
20 examining the back of the paper. As the example of the alleged photocopier breakdown
21 that led to over two months of delay in providing me copies of the SBSE tables for October
22 2006 makes clear, the necessity of photocopying thousands of pages not only needlessly
23 wastes paper but can, by itself, significantly slow the process.

1 42. In a conversation with an IRS FOIA officer assigned to handle my FOIA
2 requests, I was informed that the reason the reports I was provided this year were manually
3 redacted while the ones provided last year were redacted electronically was that the Chief
4 Counsel's Office, which handled the production of the reports last year, has software for
5 electronic redaction, while IRS disclosure offices, which handle FOIA requests and have
6 been assigned the task of producing the reports this year, do not.

7 **The IRS's Refusal to Provide Other Reports Covered by the Consent Order**

8
9 43. As the Court is aware, the 1976 Consent Order provides that statistical
10 reports containing data similar to that in the listed reports are to be made available to me
11 upon proper request, and statistical data on IRS examination of tax returns falls within the
12 scope of the Consent Order. AIMS Table 37 is not, of course, the only IRS statistical
13 report that contains such information. However, both before and after this Court issued its
14 2006 Orders concerning Table 37, my requests for other regularly generated IRS statistical
15 reports have continued to meet resistance from the agency.

16 44. At the same time as my initial request for Table 37, I identified and
17 requested another AIMS statistical table, AIMS Table 38. Based on information in the
18 Internal Revenue Manual, I concluded that AIMS Table 38 contained examination
19 information comparable to that in AIMS Table 37 for examinations carried out by
20 personnel at the former IRS service centers, which have now been replaced by regional
21 "campuses." My understanding is that Table 38 includes information on correspondence
22 audits and W&I examination activities that is not found in Table 37. A true and correct
23 copy of my November 8, 2004, letter requesting AIMS Table 38 (as well as AIMS Table

1 37) is attached hereto as Exhibit 8.

2 45. Although I was initially uncertain whether Table 38 continued to be
3 produced in light of the elimination of IRS service centers, the IRS has subsequently
4 confirmed its continued existence and my understanding that it contains examination
5 information comparable to but not found in Table 37. Specifically, in response to my
6 inquiries contesting IRS's closure of my FOIA requests for comprehensive audit statistics,
7 the IRS stated in a letter dated November 30, 2006, that detail on W&I examinations is
8 provided in Table 38. A true and correct copy of the November 30, 2006, letter is attached
9 hereto as Exhibit 9.

10 46. I have made regular monthly requests for Table 38 since November 2004.
11 The IRS has never responded to any of my requests for Table 38.

12 47. I similarly identified two other AIMS reports, Tables 35 and 36, which,
13 according to the Internal Revenue Manual, provide concise analytical information
14 concerning examination of returns and are generated on a monthly basis at regional IRS
15 locations (formerly at service centers). Again, these reports, as described by the IRS,
16 contain data similar in nature to that in Table 37 and hence should also fall within the
17 scope of the Consent Order. Beginning in November 2004, I have made regular monthly
18 requests for monthly Table 35 and 36 data. A true and correct copy of the first of these
19 requests is attached hereto as Exhibit 10.

20 48. The IRS has never responded to any of my requests for Tables 35 and 36.

21 49. The IRS has, on a number of occasions but most notably in a letter dated
22 December 10, 2004, informed me that statistical reports on examinations are generated by
23

1 a number of its systems, in addition to the AIMS system. The agency's Internal Revenue
2 Manual refers to additional data systems that appear to generate relevant statistical reports
3 as well. In addition, according to the December 10, 2004, letter, the IRS uses a software
4 package called A-CIS to generate various preformatted reports on examination activities
5 from the AIMS database. A true and correct copy of the December 10, 2004, letter is
6 attached hereto as Exhibit 11. In addition, as that letter makes clear, the IRS has
7 specifically informed me that AIMS Table 37 does *not* comprehensively cover these areas.
8 However, the IRS has not identified specific designations of the statistical reports from its
9 other systems that provide examination results. Thus, in addition to regular monthly
10 requests for Tables 35, 36, 37, and 38, I have, since July of 2004, made regular monthly
11 requests for reports containing examination data that do not specify particular reports, but
12 identify the type of data sought. In the beginning these requests focused on audits of
13 individual and corporate returns. More recently, I have sought such information for all
14 examination return classes. True and correct copies of three representative examples of
15 those generic monthly requests for examination data is attached hereto as Exhibits 12, 13
16 and 14.

17 50. The IRS has neither denied my generic monthly requests for examination
18 data nor provided information in response to them. Instead, it has purported to "close"
19 them in letters stating that its response to my requests for Table 37 constitutes its response
20 to my generic requests for examination data as well—despite the IRS's own
21 acknowledgment that Table 37 does not contain all the data the agency generates on
22 examination results. True and correct copies of examples of IRS letters purporting to close
23 out my requests for examination data are attached hereto as Exhibits 15 and 16. Moreover,

1 in its letter to me of November 30, 2006 (Exhibit 9), the IRS contended that its response to
2 my requests for Tables 35, 36, 37 and 38 (as well as for "IRPCA" reports and "CAR"
3 reports) encompassed all information responsive to the generic requests. The IRS's
4 assertion that it is responding to these requests by responding to my requests for Tables 35,
5 36, 37 and 38 is particularly ironic given that the IRS has never in fact responded to the
6 requests for Tables 35, 36, and 38, and there was a nearly one-year hiatus even in its
7 production of Table 37 as ordered by this Court.

8 51. In order to assist the IRS by defining my requests more specifically and
9 limiting them to the types of data most useful to me, as well as to identify reports that fall
10 within the scope of the Consent Order, I have repeatedly requested that the IRS provide me
11 with samples of reports from the systems it has identified as containing the examination
12 data I have requested. For example, in response to the IRS's letter of December 10, 2004
13 (Exhibit 11), I sent the IRS a letter on December 15, 2004, that, among other things,
14 specifically requested that the IRS provide me with samples of the preformatted reports
15 generated using the IRS's A-CIS software package, which the agency's December 10 letter
16 had identified as particularly likely to contain the information I seek. A true and correct
17 copy of my December 15, 2004, letter is attached hereto as Exhibit 17. (The A-CIS
18 software package is the source of the monthly reports the IRS has been providing me since
19 earlier this year. Those reports, according to the IRS, have been "customized" to provide
20 certain data elements I requested. My strong preference, however, is to obtain reports
21 actually generated and used by the agency in the course of its operations, both because I
22 have no entitlement to receive specially created reports under this Court's Consent Order
23 or under FOIA, and also because I am interested in obtaining access to statistical data in

1 the same form in which it is obtained and used by the IRS itself, so that TRAC's
2 compilations and analyses of the data can be directly compared with the figures the IRS
3 periodically releases to the public about its activities.)

4 52. The IRS has never responded to my request for samples of the preformatted
5 A-CIS reports.

6 **THE IRS'S PROPOSAL TO MODIFY THE CONSENT DECREE**

7
8 53. In October 2007, the IRS's DOJ attorney Gerald Role contacted my
9 counsel, Mr. Nelson, and told him that the IRS wanted to propose a revision in the Consent
10 Order. Mr. Role inquired whether we would consider such a revision. Mr. Nelson
11 responded that we would review any proposal the IRS wished to make but would be
12 unlikely to agree to a proposal that would significantly limit my ability to obtain IRS
13 records. Mr. Nelson suggested that Mr. Role fax him a proposal in writing, and Mr. Role
14 indicated that he would do so. Mr. Nelson did not, however, receive a fax from Mr. Role
15 at that time.

16 54. In December 2007, while I was on a four-week visit to China, Mr. Role
17 contacted Mr. Nelson and inquired whether we had any response to the IRS's proposal.
18 Mr. Nelson informed Mr. Role that we had never received a proposal and had assumed that
19 the IRS had had second thoughts about making one. Mr. Role stated that he had faxed the
20 proposal in October. Because the fax had evidently gone astray, Mr. Role resent it. A true
21 and correct copy of Mr. Role's fax setting forth the IRS's proposal to amend the Consent
22 Order is attached hereto as Exhibit 18.

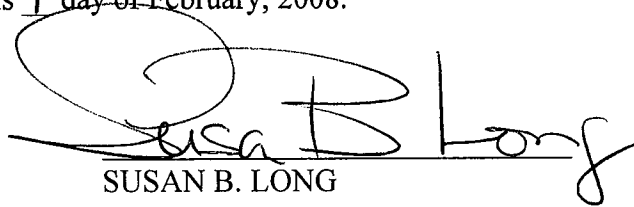
23 55. The IRS's proposed amended order states that unspecified changes in the

1 law since the Court's original Consent Order justify revision of the Consent Order. The
2 IRS's proposal has three major features: (1) it would authorize the IRS to redact cells of
3 one or two from statistical data made available to me; (2) it would substitute a requirement
4 that the IRS provide the A-CIS report and the other limited data that it has been providing
5 on a monthly basis not only for the requirement that it produce Table 37 under this Court's
6 2006 Orders, but also for the Consent Order's much broader requirements that records
7 containing statistical data be provided upon proper request; and (3) it would foreclose Ms.
8 Long from making FOIA requests for Tables 35, 36, 37 and 38, as well as other audit-
9 related data.

10 56. Upon my return from China I reviewed the IRS's proposal. Because I
11 believe it would require me to give up significant rights that I possess not only under this
12 court's orders but also under FOIA in return for the ability to receive a tiny fraction of the
13 data that is available to me under the orders and under FOIA, I declined to accept the IRS's
14 proposal that I agree to a modification of the order. On January 16, 2008, Mr. Nelson e-
15 mailed Mr. Role a letter (incorrectly dated January 15, 2008) explaining the reasons for my
16 decision. A true and correct copy of the letter is attached hereto as Exhibit 19. The letter
17 concluded by informing Mr. Role that I intended to seek further relief from this Court to
18 ensure compliance by the IRS with the existing orders.

1 I declare under penalty of perjury of the laws of the United States of America that
2 the foregoing is true and correct.

3 Executed at Syracuse, New York, this ^{4th} day of February, 2008.

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SUSAN B. LONG

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 11, 2008, I caused the foregoing document to be
3 electronically filed the with the Clerk of the Court using the CM/ECF system which will
4 send notification of such filing to the following:

5 Robert Patrick Brouillard - Robert.Brouillard@usdoj.gov

6 Gerald A. Role – gerald.a.role@usdoj.gov

7 DATED at Seattle, Washington this 11th day of February 2008.

8 Davis Wright Tremaine LLP
9 Attorneys for Plaintiff Susan B. Long

10 By /s/Eric M. Stahl

11 Eric M. Stahl, WSBA # 27619
12 1201 Third Avenue, Suite 2200
13 Seattle, WA 98101-3045
14 Telephone: (206) 622-3150
15 Fax: (206) 757-7700
16 E-mail: ericstahl@dwt.com

EXHIBIT 1

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000
FAX: (202) 588-7795

SCOTT L. NELSON
(202) 588-7724
SNELSON@CITIZEN.ORG

April 26, 2006

By Telecopier

Gerald A. Role
United States Department of Justice
Tax Division
Special Litigation
Post Office Box 227
Washington, DC 20044-0227

Re: *Long v. IRS* (Seattle and DC)

Dear Gerald:

Thank you for your prompt delivery last Monday of the three CDs containing copies of files of data from AIMS Table 37. Ms. Long is delighted to have received the data, but, having had the opportunity to review it, she does have some questions about the IRS's compliance with the Court's order. I would very much appreciate it if you could take these questions up with your client and, if you can obtain answers, provide them to me.

First, in every case, the pages from AIMS Table 37 provided to Ms. Long were national summaries. She found no pages that gave audit statistics broken down by IRS division or by IRS area office. The Internal Revenue Manual's discussion of Table 37, as well as the documentation Ms. Long previously received on the contents of Table 37, indicates that Table 37 contains more than national summaries and that additional breakdowns are part of this complete Table. In addition, as evidenced by the examples that I sent you in January, the IRS reports covered by the original court order included statistics from individual IRS offices. Because Ms. Long requested all of Table 37 and the court ordered production without any limitation, the IRS's provision of copies containing only the national summaries from Table 37 does not appear to constitute complete compliance and at the very least suggests a need for further explanation.

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April 26, 2006
Page 2

Second, and perhaps relatedly, many of the tables on the CDs the IRS provided contain a “DCPN” or page number in the upper right hand corner of each page. For example, the report for September 30, 2005 (cycle 200509) has a DCPN of 6592 on the first page and increments by one for each of the next 35 pages, so that the last page has a DCPN of 6626. This suggests that Table 37 for that month had a total of at least 6,626 pages but that Ms. Long was not provided with pages 1 – 6591. The report for September 30, 2005, is not exceptional in this respect. While there is some variation in the starting DCPN page number from one month’s report to the next, Ms. Long found that all follow the same general pattern: The tables provided do not start at “1” of the DCPN numbering sequence. Thus, it appears that a substantial number of Table 37 pages were not included on the CDs. Again, the apparent omission of many pages from the IRS’s production suggests incomplete compliance with the Court’s order and the need for an explanation.

Third, before Ms. Long and the IRS reached the impasse that ultimately led her to file the motion in Seattle, the IRS had furnished her with an Excel spreadsheet covering the first six months of FY 2004. This file — which the IRS indicated in a letter dated December 10, 2004, was taken from Table 37¹ — provided statistics on a number of categories that she does not find in the copies of Table 37 the IRS has now provided for the same time period. For example, the Excel report contained audit statistics broken down for each of the following activity codes:

Large Corporations Total
219 \$10,000,000 under \$50,000,000
221 \$50,000,000 under \$100,000,000
223 \$100,000,000 under \$250,000,000
225 \$250,000,000 or more

However, in the pages from Table 37 that the IRS has now provided, all of these categories are grouped into a single collapsed set of statistics covering activity codes 219-225. Similarly, data on audits of Forms 1120 F for activity codes 259, 263, and 265 were separated out in the Excel spreadsheet but are grouped together in the Table 37 copies the IRS has now provided. Further, the FY 2004 six-month data that Ms. Long previously received contained breakdowns for industries, for IRS divisions, and, within divisions, for areas. The Table 37 tabulations on the three CDs contained none of this additional detail. Ms. Long would appreciate an explanation of why these additional breakdowns and details were not included in the copies of Table 37 furnished by the IRS in response to the court’s order.

Fourth, the Internal Revenue Manual indicates that to permit year-end AIMS results “to be as accurate as possible,” three versions of the fiscal year-end report are generated, which are labeled “September ***1st FY Preliminary***,” “October ***2nd FY Preliminary***,” and

¹ The December 10, 2004, letter said in part: “The SBSE staff explained that to create the report we are providing to you as Enclosure 2 they had taken the March 04 data from portions of AIMS Table 37.”

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“November ***FINAL FISCAL YEAR***.” Ms. Long’s requests for complete copies of Table 37 included all three versions. On the CDs, however, only the final version was included. Again, complete compliance would appear to require the IRS to furnish copies of the other two versions as well.

Finally, Ms. Long notes that the format in which the electronic copies of Table 37 were provided was a word processing format used by Microsoft Word software (with either a “doc” or “rtf” extension) — an unusual format for large quantities of data. Ms. Long would like to know if this is the format in which the Detroit Data Center originally prepared the files, or whether a later conversion to Word has taken place. In the latter case, she would appreciate being advised what the original format was, and whether the IRS has the data in other variant formats besides Word.

In addition to these questions about the production in response to the Seattle court order, you and I still need to discuss where we are going with the DC action, where the principal remaining question relates to the extent of and justification for redactions from Part II of the Internal Revenue Manual. When we spoke before my recent surgery, I raised the question whether a table of contents was available so that Ms. Long could determine the nature of certain sections or sub-sections that appear to have been redacted in their entirety, including the title of the section. You had indicated you would look into that question.

We have a few other, more specific questions about the IRM production:

- First, certain sections of Part II of the IRM (for example, 2.24.1 and 2.3.26.68) appear to have been denominated “handbooks” by the IRS. Those sections were not included in the IRM production, though it would seem that they should have been.
- Second, redactions in sections 2.7 and 2.13.5, which appear to include entire subsections (including their titles) seem excessive and the reasons do not appear to correspond to actual FOIA exemptions. (Having a table of contents might give us a better sense of how significant this issue is.)
- Third, some of the reasons for redaction, including “law enforcement indicators” and “detailed IT system operations instructions” are difficult to correlate with FOIA exemptions and appear in some cases to have been used to justify excessive redactions. It would be helpful to have a clearer indication of what these terms mean and what types of information they have been used to withhold.
- Fourth, Ms. Long has some concerns about the characters used to indicate redactions in the files. Specifically, she would like to know if the number sign (#) is always

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Page 4

used to denote any line that contains a redaction. In addition, it appears that "X" is used as a redaction character, but "X" may also be a valid character in some sections of the IRM. Ms. Long would like to know how to determine when "X" is a redaction character and when it is not, and also whether it is the only redaction character used.

I would hope that with some back-and-forth on these matters, we might come to a resolution that would avoid further litigation. Because you would have to address at least some of these subjects in order to prepare a Vaughn index anyway, I would hope that these would be things we could discuss, preferably sooner rather than later, and possibly come to agreement on. Perhaps it would even be possible to come to a broader resolution of issues between Ms. Long and the IRS.

Sincerely yours,

Scott L. Nelson

EXHIBIT 2



U.S. Department of Justice

Tax Division

Facsimile No. (202) 514-8456
Telephone No. (202) 514-3361

Please reply to: Appellate Section
P.O. Box 502
Washington, D.C. 20044

TTMilton:cnp
5-82-12238
CMN 2006101512

August 1, 2006

Scott L. Nelson, Esquire
Public Citizen Litigation Group
1600 20th St. N.W.
Washington, D.C. 20009

Re: Susan B. Long v. United States Internal Revenue
Service (9th Cir. - No. 06-35491)

Dear Mr. Nelson:

This responds to your April 26, 2006, letter to Gerald Role. I am addressing your questions concerning the IRS's delivery of three CDs containing Table 37 data for FY 2002 through the first half of FY 2006. Attorneys in the Office of Chief Counsel have explored the questions you raised and have discovered that there is more data to be made available with respect to Table 37.

There was originally a misunderstanding about the scope of Table 37, but we have now learned that Table 37 includes SBSE Area and LMSB Industry tables as well as the summary tables that were contained on the three CDs. Those subreports, which are extremely lengthy, have been put on a CD in the form of zipped files and will be delivered to you shortly. As to your client's concern that the data provided to you in April was not broken down as specifically as data that she had seen in other AIMS reports, you will see that the subreports that we are now supplying are broken down in more detail than was the summary data provided earlier.

To the extent that your client has requested the production of the September and October "Preliminary" year-end AIMS results in addition to the "FINAL FISCAL YEAR" reports that we have provided, we are withholding the preliminary reports pursuant to FOIA Exemption 5, which permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C.

- 2 -

§ 552(b)(5). Such “memorandums or letters” include information that is protected by the deliberative process privilege, which applies to the preliminary and non-final AIMS reports.

Finally, your client asks if Table 37 is available in a different format than the RTF Word format in which the tables were already produced. The answer is that no other format is available.

As you know, there have been problems occasioned by the fact that Chief Counsel personnel have not been able to use their offices for over a month, but we believe that we will be able to get the additional Table 37 data to you within a week. I look forward to talking with you at the mediation conference set for August 3 at 2:00 p.m. EDT.

Sincerely yours,

TERESA T. MILTON
Attorney
Appellate Section

cc: Michele Earl Hubbard, Esquire
Davis Wright Tremaine, LLP
1501 Fourth Ave.
Suite 2600
Seattle, WA 98101-1688

EXHIBIT 3

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000
FAX: (202) 588-7795

SCOTT L. NELSON
(202) 588-7724
SNELSON@CITIZEN.ORG

December 22, 2006

Via E-Mail

Teresa T. Milton
U.S. Department of Justice
Tax Division, Appellate Section
P.O. Box 502
Washington, DC 20044

Gerald A. Role
United States Department of Justice
Tax Division
Judiciary Center Building
555 4th Street, N.W.
Washington, DC 20001

Re: *Long v. IRS*, W.D. Wash No. C 74-724; 9th Cir. Nos. 06-35491, 06-35621

Dear Teresa and Gerald:

Now that the Justice Department has determined not to proceed with the appeals in this case, I am writing both of you concerning whether the discussions of resolving this matter that we had undertaken under the auspices of the Ninth Circuit's mediation program will continue in some manner. Although I understand that Teresa will be bowing out of direct involvement in the case now that it is no longer an appellate matter, I would hope at least that she can play a transitional role if discussions are to continue, since our negotiations with the IRS since mid-summer have largely been conducted through her. In any event, I have no doubt that one or both of you will make sure that the substance of this letter is provided to the relevant decisionmakers in the IRS.

As both of you are aware, the Department's decision to dismiss the appeals leaves in place orders requiring the IRS to provide Ms. Long, upon request, with complete and *unredacted* copies of IRS Table 37, unless the IRS returns to court to seek and obtain the district court's permission to engage in redaction. The judge further directed that the parties meet and confer

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Teresa T. Milton
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December 22, 2006
Page 2

with respect to redaction before the IRS proceeds in court on the issue, and we had folded that meet-and-confer obligation into the broader discussions we were engaged in as part of the Ninth Circuit mediation process. From our perspective, at least, the point of those discussions was to determine if it was possible to agree on the production by the IRS to Ms. Long, pursuant to FOIA, of meaningful and useable data on a regular basis, while accommodating concerns expressed by the IRS about the alleged burden imposed on it by the court-ordered production of Table 37. To that end, we had indicated a potential openness to alternatives to Table 37 if they met Ms. Long's needs.

The question now is whether to continue these discussions, and under what conditions. We have some hesitation in proceeding further because it is not clear to us whether the negotiations will be productive. Although we felt that the IRS's provision of sample reports in September was a positive step, since then it seems that the discussions have lost momentum. In order to try to keep communications moving forward, I provided detailed feedback on Ms. Long's reaction to the sample reports and other issues in an e-mailed letter in early November, in the expectation that some response would follow before our next session with the mediator in December. Owing to the government's decision not to proceed with the appeal, however, that session was cancelled, and we are still awaiting a response to my letter.

Meanwhile, Ms. Long has noticed other indications that the IRS may be digging in its heels to some extent, as reflected in letters that both of you have been copied on that purport to close out various of her requests for data. In addition, production of updated Table 37 information seems to have stalled.

Despite our doubts, we still feel that it is worth continuing discussions of the issues between Ms. Long and the IRS, including the question whether some substitute for production of Table 37 can be arrived at that would meet the needs of both sides. However, our willingness to proceed is contingent on receiving some assurance that while the discussions of a long-term solution proceed, Ms. Long will in fact receive useful data on a regular basis, even if it is not necessarily the complete information she would ultimately prefer.

Based on those considerations, we propose the following: The parties will continue the process of discussing a mutually agreeable and workable resolution of Ms. Long's requests for information (including a continuation of the meet-and-confer process with respect to redaction of Table 37), provided that the IRS notifies us by January 15, 2007, that it will agree to provide certain updated data to Ms. Long by January 31, 2007, and on a regular monthly basis thereafter as the discussions continue.

From our point of view, the data may be provided in either of two forms: (A) the sample reports that were provided in September; or (B) the pre-formatted A-CIS report including fields 1 through 9 that is described on page 3 of Symeria Rascoe's December 10, 2004, letter to Ms.

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Teresa T. Milton
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Page 3

Long. (I know your clients are familiar with the letter in question, because we discussed it during our face-to-face meeting at Main Justice late last summer.)

The information we ask to be produced (in whichever of the two formats IRS prefers) should provide, on a monthly basis, updated US totals, SBSE totals (plus SBSE 01-16), and LMSB totals (plus LMSB 01-06) since March 2006, the last date for which Ms. Long has been provided unredacted information. As for W&I campus, SBSE campus, and W&I noncampus, information should be provided on a monthly basis since the beginning of FY 02, because Ms. Long has not previously been provided that information. The reports should also include each individual and corporate examination class, including examination classes 540-543, which have been added since the date of the sample reports provided in September. Finally, given that the sample reports provided in September were not redacted, and that the breakdowns in these reports are not at such a level of detail that identification of individual taxpayers is remotely possible, these reports should be provided without redaction.

We believe that what we are requesting should not be onerous for the IRS, because it would involve generating a relatively confined number of pages of reports using formats already developed or in place. Moreover, after months of talking while the Department made up its mind whether to proceed with the appeals, Ms. Long's willingness to continue discussions is highly dependent on her perception that the discussions may yield some tangible benefit, which so far has been elusive. From the perspective of the IRS, continuing the discussions at this point would hold out the possibility of a long-term solution that it would consider more desirable than regular production of Table 37, and would avoid the need to face the immediate choice of either beginning unredacted production or going to court to seek permission to redact.

Please let me know IRS's response to this proposal, and feel free to contact me with any questions you may have. If we are unable to agree to continue our discussions, we will of course expect the IRS to comply fully with the court's orders requiring release of unredacted Table 37 unless and until the IRS seeks and obtains permission from the court for redaction.

Sincerely yours,

/s/

Scott L. Nelson

cc: Susan B. Long

EXHIBIT 4



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

January 23, 2007

Susan B. Long
Transactional Records Access Clearinghouse
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Dear Ms. Long:

This is in final response to your Freedom of Information Act (FOIA) request dated October 9, 2006 and received by our Headquarters FOIA Group that same date. You requested a copy the Table 37 report for September 2006, run at the end of September containing fiscal year 2006 year-end data. This report is normally referred to as the "1st FY 2006 Preliminary" report.

As part of the on-going negotiations with the Department of Justice and the Internal Revenue Service Chief Counsel, we understand that your request for the same report for prior year-end periods was denied, as the reports were considered to be a part of the IRS' deliberative process in producing the final Table 37 for all FY 2006 year-end data. Therefore, the report requested is not being made available to you pursuant to FOIA exemption (b)(5). FOIA exemption (b)(5) protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party...in litigation with the agency." The government privilege doctrine exempts materials that reflect the agency's deliberative process. One of the underlying purposes of the privilege is to protect against public confusion that might result from disclosure of information that was not ultimately the grounds for the agency's decision. The preliminary reports are run to allow examination offices an opportunity to spot where changes need to be made to correct or update year-end figures. Because the final year-end Table 37 reports are used to create the tables in the Annual Data Book, the release of preliminary reports would only tend to confuse the public.

For your information, the Headquarters FOIA Group received another FOIA request from you, dated, December 6, 2006, in which you requested a copy of the report run at the end of November 2006 containing final fiscal 2006 year-end data and designated as the "Final Fiscal Year" report. This FOIA request will be processed and responsive documents provided to you at a later date.

Enclosed is Notice 393 which explains your appeal rights. Should you have questions, you may contact me at (405) 297-4049 or via e-mail at Mahlon.E.Blagg@irs.gov. You may also contact Jane Sievers, Team Lead, Headquarters FOIA Group at (303) 446-1114 or via e-mail at Jane.Sievers@irs.gov. Please reference our FOIA control number 50-2007-00029 if inquiring further.

Mahlon E. Blagg

Mahlon E. Blagg
Manager, Headquarters Disclosure

Enclosure

**Information on an IRS Determination to Withhold Records Exempt From
The Freedom of Information Act – 5 U.S.C. 552**

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 35 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain:

Your name and address,
Description of the requested records,
Date of the request (and a copy, if possible),
Identity of the office and contact on the response letter, and
Date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

IRS Appeals
Attention: FOIA Appeals
5045 E. Butler Ave.
M/Stop 55201
Fresno, California 93727-5136

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A). The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

- (b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order.
- (b)(2) • related solely to the internal personnel rules and practices of an agency;
- (b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

- (b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) • geological and geophysical information and data, including maps, concerning wells.

EXHIBIT 5

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000
FAX: (202) 588-7795

Scott L. Nelson
(202) 588-7724
SNELSON@CITIZEN.ORG

January 25, 2007

Via E-Mail

Gerald A. Role
United States Department of Justice
Tax Division
Judiciary Center Building
555 4th Street, N.W.
Washington, DC 20001

Re: *Long v. IRS*, W.D. Wash No. C 74-724

Dear Jerry:

Over a month has passed since I sent you my letter of December 22, 2007, and four weeks since your e-mail to me in response stating that you would let me know when you received the IRS's response to the approach proposed in my letter. Since then I have heard nothing further.

As you know, my letter proposed that we continue discussions aimed at a resolution of various issues relating to the IRS's compliance with Judge Pechman's orders and the regular production of useable data to Ms. Long. The proposal was conditioned on receiving an assurance from the IRS by January 15, 2007, that the Service would be willing to produce certain information to Ms. Long on a regular basis as the discussions proceeded (information that it had previously said could be provided to Ms. Long without difficulty). My letter also expressed concern that the government's production of any updated Table 37 information had stalled, and that there were other indications that the IRS may be digging in its heels, as reflected in letters that you have been copied on that purport to "close out" various of Ms. Long's requests for data.

January 15 passed without an affirmative (or even a negative) response from the IRS to the proposal in my December 22 letter. I can therefore only conclude that the IRS is not willing to accept the proposal and prefers a cessation of negotiations.

PUBLIC CITIZEN LITIGATION GROUP

Gerald A. Role
January 25, 2007
Page 2

Although I believe it is unfortunate that the IRS is not interested in further efforts to resolve the issues between it and Ms. Long through negotiation, additional attempts on our part to continue such discussions while the IRS withholds information it has been ordered by a court to produce appear fruitless. In particular, despite repeated communications with Teresa Milton during the time she was representing the IRS in its abortive appeal, we have been unable to obtain copies of all parts of Table 37 even for those months (through May 2006) for which the IRS has purported to provide Table 37; we have received no data more recent than May 2006; and the Service has withheld reports for certain months covered by Judge Pechman's order based on a groundless Exemption 5 claim that it never presented to Judge Pechman. These failures to comply with the obligation to produce Table 37 as ordered by the court, of course, are above and beyond the IRS's unauthorized redaction of cells of 1 and 2 from Table 37.

Given our extensive discussions over many months, and our failure to reach agreement on any issue, it is clear that the parties have fulfilled Judge Pechman's order that they meet and confer with respect to the issue of redaction of Table 37 (and a great many other issues besides), and that we have been unable to reach agreement. We must again insist that the IRS meet its obligations under the court's orders, and we intend to seek additional relief from the court if necessary to see that it does.

Sincerely yours,

/s/

Scott L. Nelson

cc: Susan B. Long

EXHIBIT 6

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000
FAX: (202) 588-7795

SCOTT L. NELSON
(202) 588-7724
SNELSON@CITIZEN.ORG

March 27, 2007

Via E-Mail

Gerald A. Role
United States Department of Justice
Tax Division
Judiciary Center Building
555 4th Street, N.W.
Washington, DC 20001

Re: *Long v. IRS*, W.D. Wash No. C 74-724

Dear Jerry:

It has now been over six weeks since I sent you my letter of February 12, 2007, a copy of which is attached. In that letter I suggested a number of discrete topics that could be addressed as part of a resumption of discussions over whether the issues between our clients concerning the production of Table 37 and compliance with the orders in the Seattle litigation could be resolved. I requested that we attempt to schedule a conference to discuss those topics sometime in the month of February. In addition, I stressed that the regular production of A-CIS data was one of the conditions on Ms. Long's willingness to participate in further discussions (a condition to which we had understood the IRS had agreed in your letter of January 23, 2007), and I pointed out that updated data for January 2007 should have already been available by the date of my letter. I also posed a few questions seeking clarification of the nature of the data that the agency had provided in January. My letter concluded as follows:

Please let me know, as soon as you are able, whether we can proceed with discussions along the lines indicated above. Again, we are particularly interested in (1) learning when the IRS intends to provide monthly updates to the A-CIS tables; (2) scheduling an initial meeting/conference call to occur before the end of this month; and (3) receiving, in advance of the call, information about the nature of A-CIS reports that may be available concerning the four areas described on page 2 of this letter.

You have not responded to my letter. Nor has the IRS produced updated A-CIS data to Ms. Long, even though A-CIS reports for January and February 2007 could easily have been generated and provided by now if the IRS were in fact genuinely committed to making data available to Ms. Long as discussions proceeded.

Moreover, the fact of the matter is that there have been no genuine discussions with the IRS since our meeting in September 2006, despite repeated efforts on our part to initiate a real

PUBLIC CITIZEN LITIGATION GROUP

Gerald A. Role
March 27, 2007
Page 2

dialog with the agency. Indeed, the only time in many months when our efforts to engage with the agency elicited any response from the IRS was when it provided the A-CIS data in January, and it now appears that that was merely a one-time event that came about only because we had stated that we would end discussions (thus placing the burden on the agency to seek approval from the court in Seattle for its redactions and other noncompliance with the court's orders) if we did not receive data by the end of January.

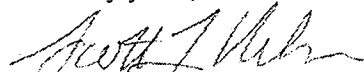
Meanwhile, despite its apparent unwillingness to engage in genuine discussions with Ms. Long, the agency has continued to use the supposed existence of those talks as an excuse for (1) its ongoing failure to comply fully with the court's orders regarding production of Table 37 and its unauthorized redactions of data from what it has produced, and (2) its denial or "closure" of other FOIA requests by Ms. Long for data that the agency claims is the subject of negotiations with Ms. Long.

My client is no longer willing to pretend that discussions are ongoing when in fact the IRS is neither negotiating nor even responding to her requests that negotiations resume. Nor does she feel that it would be productive for her to issue another threat to end discussions in the hope that that might motivate the agency to release another month or two of data or otherwise respond in some fashion to the proposals we put forward six weeks ago. Experience has shown that even when the agency responds in that manner, the long-term result is merely to drag out the process and postpone real resolution of the issues.

Therefore, Ms. Long sees little alternative but to return to the position stated in my letter of January 25, 2007 (also attached), which crossed in transmission with yours of January 23 and which I withdrew in the hope (unfortunately not realized) that your letter held out the prospect that the agency was genuinely willing to engage in discussions with Ms. Long and to provide her with regular deliveries of meaningful data while those discussions proceeded.

In other words, it is our position that the parties have more than satisfied Judge Pechman's requirement that they meet and confer with respect to the issue of redaction of Table 37. They have been unable to reach agreement on that issue, as they have also been unable to reach agreement on any alternative to full compliance by the IRS with the orders in the Seattle litigation. It is now up to the IRS to comply with the court's orders or to seek relief from the court if it wishes to redact Table 37 or otherwise avoid the court's order that Table 37 be produced in its entirety. Of course, Ms. Long reserves the right to seek additional relief from the court to see that the IRS satisfies its obligations under the court's orders.

Sincerely yours,


Scott L. Nelson

cc: Susan B. Long

EXHIBIT 7

| | RETURN INVENTORY | RETURNS WITHOUT EXCLUSION | BEYOND CYCLE 7-2006 | CLASS- IFFICA- TION | SELECTED NOT ASSIGNED | NO TIME APPLIED | STARTED TIME APPLIED | REVIEW 30-DAY 90-DAY | SUS- PENSE | AWAIT ING SURVEYS CLOSING* | *OTH INFO *TRAINING RTNS |
|--|------------------|---------------------------|---------------------|---------------------|-----------------------|-----------------|----------------------|----------------------|------------|----------------------------|--------------------------|
| TOTAL INDIVIDUAL... | | | 16 | | | | | | | 513 | |
| 530 A < \$25..... | | 262 | 1 | 1,076 | 101 | 153 | 477 | 44 | 6 | 40 | 4 |
| 531 NON-A < \$25... | | 131 | - | 275 | 135 | 99 | 235 | 22 | 9 | 16 | 398 |
| 532 \$25 < \$50.... | 1,356 | 284 | 1 | 271 | 258 | 166 | 540 | 65 | 23 | 33 | 438 |
| 533 \$50 < \$100... | 1,706 | 424 | 2 | 188 | 518 | 216 | 646 | 57 | 33 | 48 | 804 |
| 534 \$100 < \$200... | | 1,618 | 6 | 252 | 637 | 838 | 2,661 | 155 | 102 | 119 | 718 |
| 540 \$200 < \$1 MIL | 1,891 | 8 | - | 306 | 724 | 424 | 395 | 7 | 5 | 30 | 301 |
| 541 \$1 M & OVER... | | - | - | 1,476 | 741 | 288 | 171 | 5 | 3 | 13 | 127 |
| 535 C < \$25..... | 779 | 66 | - | 142 | 343 | 69 | 170 | 22 | 5 | 28 | 693 |
| 536 C \$25 < \$100. | | 235 | 1 | 494 | 1,346 | 267 | 485 | 68 | 8 | 37 | 1,695 |
| 537 C \$100 < \$200 | | 1,249 | 5 | 1,453 | 1,885 | 1,631 | 2,699 | 254 | 42 | 149 | 1,342 |
| 542 C \$200 & OVER | | 13 | - | 18 | 345 | 165 | 36 | - | - | - | 30 |
| 538 F < \$100..... | | - | - | 5 | 7 | - | - | - | - | - | - |
| 539 F \$100 & OVER | | 17 | - | 59 | 68 | 23 | 38 | - | - | - | - |
| 543 SCHEDULE F... | | - | - | - | 4 | - | - | - | - | - | 12 |
| TOTAL CORPORATE.... | | 389 | 8 | 1,485 | 707 | 1,344 | | | | | 757 |
| 203 NO BAL SHEET. | 835 | 26 | 1 | 501 | 118 | 72 | 138 | - | - | 6 | 129 |
| 209 UNDER 250,000 | 1,597 | 140 | 3 | 433 | 388 | 241 | 491 | 10 | 7 | 27 | 371 |
| 213 \$250 < \$1 M.. | 1,077 | 88 | 2 | 235 | 368 | 154 | 299 | 3 | 3 | 15 | 193 |
| 215 \$1 M < \$5 M.. | | 76 | 2 | 221 | 264 | 153 | 286 | | | 15 | 64 |
| 217 \$5 M < \$10M.. | | 39 | 1 | 95 | 112 | 71 | 114 | | | 14 | - |
| 219-225 > \$10M... | | 20 | - | - | 16 | 16 | | | 8 | | - |
| TOTAL OTHER CLASSES | | | 25 | | 49 | | | | | | |
| FORM 1120F..... | | - | - | 158 | - | - | - | - | - | - | - |
| FIDUCIARY..... | | 185 | 22 | 146 | 43 | 95 | 129 | 13 | | | |
| ESTATE..... | | - | - | - | - | - | - | - | - | - | - |
| GIFT..... | | - | - | - | - | - | - | - | - | - | - |
| EMPLOYMENT..... | | 23 | 3 | 94 | 6 | 9 | 41 | | 91 | 19 | |
| FORM 1042..... | | - | - | - | - | - | - | - | - | - | - |
| EXCISE / WPT..... | | - | - | - | - | - | - | - | - | - | - |
| MISC TAXABLE..... | | - | - | - | - | - | - | - | - | - | - |
| TOTAL CIC..... | 27 | - | - | - | - | - | 3 | - | 24 | - | - |
| CORP..... | - | - | - | - | - | - | - | - | - | - | - |
| EMPLOYMENT..... | 24 | - | - | - | - | - | - | - | 24 | - | - |
| EXCISE / WPT..... | - | - | - | - | - | - | - | - | - | - | - |
| ALL OTHER..... | 3 | - | - | - | - | - | 3 | - | - | - | - |
| CIC SUPPORT WORK. | - | - | - | - | - | - | - | - | - | - | - |
| TRAINING RETURNS... | 7,322 | 590 | 8 | 409 | 1,442 | 3,010 | 2,038 | 167 | 12 | 5 | 239 |
| -----NONTAXABLE INFORMATION-----NONTAXABLE INFORMATION-----NONTAXABLE INFORMATION----- | | | | | | | | | | | |
| TOTAL PARTNERSHIP.. | | 240 | 7 | 1,692 | 819 | 371 | 550 | | | 95 | 1,371 |
| 480 PRIOR TO 1988 | 53 | - | - | 44 | 9 | - | - | - | - | - | - |
| 481 RECEIPT <\$100 | 1,996 | 194 | 5 | 929 | 437 | 191 | 314 | 55 | 19 | 51 | 684 |
| 482 RECEIPT >\$100 | 1,023 | 42 | 1 | 349 | 250 | 150 | 230 | 9 | 3 | 32 | 375 |
| 483 11 OR > PIRS. | | 4 | - | 370 | 123 | 30 | 6 | | | 12 | 312 |
| TOTAL 1120S..... | | | 15 | 888 | | 511 | | | 84 | | 841 |
| 287 PRIOR TO 1991 | | | - | - | - | - | | | - | - | - |
| 288 UNDER \$200... | | 261 | 7 | 478 | 285 | 201 | 694 | 25 | 45 | 90 | 533 |
| 289 \$200 < 10M... | 1,780 | 243 | 7 | 406 | 287 | 295 | 672 | 23 | 39 | 58 | 308 |
| 290 \$10M & OVER... | | 23 | 1 | 4 | | 15 | 15 | | | | |
| MISC NONTAXABLE.... | - | - | - | - | - | - | - | - | - | - | - |

EXHIBIT 8



Transactional Records Agency Learninghouse
Syracuse University

November 8, 2004

Headquarters, Freedom of Information Office
SE:S:MS:C&L:GLD:D:F
1111 Constitution Ave., NW
Washington, DC 20224

Dear FOIA Officer:

RE: AIMS Tables 37 and SC38 providing concise analytical figures used by managers to monitor the results of IRS examination programs

Under the provisions of the Freedom of Information Act, we request the following two report series:

Table 37, Examination Program Monitoring [Report Symbol NO-4000-454]. IRM 4.4.27.5.4 (02-08-1999) describes the contents of this report as follows: "provides data from Examination Time Reports which is used to monitor resources (staff year). It reflects staff year application by class of tax, activity codes and by direct examination and non-direct examination activities. The table provides data from AIMS, which is used to monitor examinations, inventory, surveyed returns and accepted returns from classification."

Table SC38, Service Center Examination Program Monitoring [Report Symbol NO-4000-456]. IRM 4.4.27.5.5 (02-08-1999) describes the content of this report as follows: "provides data from Examination Time Reports which is used to monitor resources (staff year) at the service centers. It reflects staff year application by non-direct examination activities. The table provides data from AIMS which is used to monitor returns as completed examinations. The table also provides data to monitor examinations, inventory, surveyed returns and accepted returns from classification".

As we understand from IRM 4.4.27.4 (02-08-1999) and IRM Exhibit 4.4.27-2 (02-08-1999), these reports are produced monthly and quarterly during each fiscal year at the Detroit Data Center. They are distributed to the Headquarters Office and Area Offices, and in the case of SC reports, to the applicable Service Center. In addition, at year-end to permit AIMS results "to be as accurate as possible" three versions of the fiscal year-end report are generated which are labeled as: "September ***1st FY Preliminary***", "October ***2nd FY Preliminary***" and "November ***FINAL FISCAL YEAR***".

This FOIA request asks for all existing copies of these monthly and quarterly reports, including year-end versions, produced from FY 2002 to the final fiscal year report for FY 2004. Where complete copies exist at the Detroit Data Center or at the Headquarters Office, it is not necessary to produce Area Office or Service Center copies which are simply duplicates of portions of these.


To the extent that any of these reports exist in electronic form, we ask that the copies of these be provided electronically.

We attest that we qualify for classification as "a representative of the news media" under the provisions of the Freedom of Information Act, and as representatives of "an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." We request that this classification be assigned us.

We further call your attention to the strict time limits set under 5 U.S.C. 552 and ask for your prompt action and response on this request. We also draw your attention to the standing court injunction one of us (Long) has prohibiting withholding of this information, a copy of which we have previously furnished you under cover of our previous letter of July 2, 2004. Your prompt release of this information is therefore required.

Should you have any questions about our request, or if we can be of any assistance to facilitate the processing of this request, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long
Co-Director, TRAC and Associate Professor
Management Information and Decision Sciences
Martin J. Whitman School of Management



David Burnham
Co-Director, TRAC and Associate Research Professor
S.I. Newhouse School of Public Communications

cc: Frank Keith, Chief, Communications and Liaison

EXHIBIT 9



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

November 30, 2006

Ms. Susan B. Long
Transactional Records Access Clearinghouse
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Dear Ms. Long:

This is in response to your letter of November 17, 2006, wherein you question the Internal Revenue Service's (IRS) decision to close certain of your Freedom of Information Act (FOIA) requests for audit statistics dating back to July 2, 2004, as reflected in our letters dated October 17, and November 8, 2006. You requested that the IRS reinstate the FOIA requests for audit statistics because the agency has not responded fully to them. We decline to do so.

The information responsive to your FOIA requests for IRPCA reports, CAR reports, AIMS Tables 35, 36, 37 and 38 are the same records responsive to your generic requests for audit statistics. Therefore, as an administrative housekeeping matter, we closed what we considered to be duplicate FOIA requests for audit statistics because they seek records already the subject of other FOIA requests you have submitted. To explain further our decision to close the requests as duplicative, we will address the pertinent part of each of your FOIA requests for audit statistics, as follows:

For this time period, we are requesting IRS examination figures for individual and corporate tax returns broken down by IRS organizational unit and area office, and within them by examination classes, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed, number of no change audits, number of no change auditor hours.

You may recall that when we received your first FOIA requests for monthly audit statistics, we informed you there was no report that was either extant or readily reproducible that would provide you with exactly what you wanted, broken down into the specific income ranges, categories and fields that you requested. When we suggested that you request a special statistical study pursuant to I.R.C. § 6108(b), you decided against that approach. You responded that you were seeking the routine monthly reports that are made available to managers. We identified the AIMS Table 37 report as an existing report responsive to your request. However, we informed you that Table 37 does not have the amount of additional taxes assessed and only contains the amount of additional taxes recommended. In our December 10, 2004, letter to you, we also described the A-CIS, IRPCA and CAR reports as possible sources of the information missing from AIMS Table 37. You had previously submitted FOIA requests

for the IRPCA (# 2004-02343) and CAR reports (#s 2005-00437 & 00730); these FOIA requests have not been closed and we continue to process them. We hope to have responses pertaining to these requests to you by the end of this calendar year.

You noted the availability of ERIS, the Enforcement Revenue Information System, as an additional source of information on audit statistics. ERIS is a database used by the Office of Research, Analysis and Statistics, not by IRS enforcement managers. The Office of Research utilizes ERIS to perform custom statistical studies and tabulations – the type that fall within I.R.C. § 6108(b). You had previously indicated that you did not want a special statistical study designed to capture audit statistics, but that you wanted copies of the routine monthly reports run for IRS management, even if they contained more information than you needed. Because SBSE, LMSB and W&I managers rely on their own reports, *i.e.*, AIMS Tables 37 and 38, we concluded that ERIS would not meet your request for routine monthly reports provided to the managers. If you have reconsidered and desire a special statistical study utilizing the ERIS system, please submit a request to the Director, Research, Analysis and Statistics, pursuant to the procedures set forth in Revenue Procedure 2006-36, IRB 2006-38 (9/18/06), at the following link: <http://www.irs.gov/pub/irs-irbs/irb06-38.pdf>

You stated that Table 37 is not completely responsive to your FOIA request for audit statistics because it does not break down the individual and corporate returns by each income class within the return type, but rather, compresses certain income ranges. The Table 37 program, as it is currently written, compresses the income classes into the groups that appear in the reports.

You also expressed concern that Table 37 does not break information down by each area office for each of the operating divisions, although you acknowledge having received area reports for SBSE. First, Table 37 does not have area reports for LMSB because LMSB is not broken down into areas. The LMSB Operating Division is divided into industries and then by units known as Director of Field Operations (DFO) within each industry. The following chart shows the DFO subreports for the various industries that occur in Table 37.

| Industry name | Industry number | DFO number |
|---------------------------------------|-----------------|------------|
| Financial Services | 301 | 080 |
| " | 301 | 275 |
| " | 301 | 877 |
| " | 301 | 999 |
| Natural Resources | 302 | 090 |
| " | 302 | 440 |
| " | 302 | 877 |
| " | 302 | 999 |
| Communications, Technology & Media | 303 | 080 |
| " | 303 | 560 |
| " | 303 | 877 |

| | | |
|--------------------------------------|-----|-----|
| " | 303 | 999 |
| Food, Retailers & Pharmaceuticals | 304 | 275 |
| " | 304 | 590 |
| " | 304 | 877 |
| " | 304 | 999 |
| Heavy Manufacturing & Transportation | 305 | 080 |
| " | 305 | 250 |
| " | 305 | 877 |
| " | 305 | 999 |

Second, AIMS Table 37 does not have area reports for W&I because W&I is not broken down by areas. Rather, W&I is divided into campuses (formerly referred to as service centers) and by programs. While there are some inventory figures for W&I in Table 37, the main compilation of figures for the W&I programs appear in AIMS Table 38. We are continuing to process your outstanding FOIA requests for Table 38.

In recent months, we provided you with CD-ROMs containing 56 months of monthly Table 37 reports for FY 2002 through May 2006, encompassing almost 200,000 pages of audit statistics. Although the Table 37 reports may not capture all of the data you wish to receive in the way you wish to receive it, they are responsive to the FOIA requests we closed. These records provide you with information concerning examinations conducted by revenue agents for LMSB for each of the five Industries, as well as DFOs within the Industries. These reports also provide you with statistics for audits conducted by revenue agents, tax examiners, and tax compliance officers for SBSE, including specialty taxes such as excise, estate and gift, employment and Bank Secrecy Act examinations. Within these reports, the data has been broken into categories by income class (individual, corporate, partnership, etc.) and income range, providing the number of returns, hours per return, dollars per hour, dollars per return, total recommended dollars, the number of no change returns, number of no change hours per return and percentage of no change. In addition, the reports provide a breakdown of the case inventory of the revenue agents, tax examiners and tax compliance officers by grade of the case and the recommended dollars associated with these cases. The reports also provide data identifying the number of returns transferred to Appeals and the figures for the number of unagreed cases, number of agreed cases and additional taxes assessed and amounts of overassessment.

We acknowledge that we have not completed the processing of your monthly requests for the June through October Table 37 reports; they require substantial resource time to complete because these are being provided in paper form, due to the limitations we have in processing them electronically. We are currently completing the request for June and July Table 37 data and anticipate releasing June's data in early December and July's table data in early January 2007.

We are fully cognizant of the original 1976 consent order and more recent April 2006 judicial order that you cite in your monthly FOIA requests for audit statistics. As you know, the 1976 consent order enumerated specific reports and directed the IRS to provide these reports to you for as long as the IRS produced these reports or similar reports upon receipt of a proper request from you with payment of applicable fees. We previously explained that we were unable to locate any of the reports enumerated in the 1976 consent order because they are no longer produced by the agency. In returning to the court to seek enforcement of the 1976 order, you identified AIMS Table 37 as the report you wanted. Accordingly, the April 2006 court order directed the IRS to provide to you, upon request, AIMS Table 37. We have provided you with Table 37 reports through May 2006, and we continue to process the remaining requests.

In order to identify any other extant reports that are similar to the enforcement-related statistical reports enumerated in the 1976 consent order, we requested copies of reports we had previously provided from your counsel. We received copies of some, but not all, of the other reports identified in the 1976 consent order. While we no longer produce any of them, we have asked various functions within the IRS to provide us with extant reports that are similar to those reports, *i.e.*, reports that capture current data equivalent to the 30 and 40-year-old reports that we received from your attorney. In addition, over the past several months, we, through our attorneys at the Department of Justice, have been working with your attorney to negotiate a modification to the court order that would identify the currently available reports that capture the enforcement-related statistics envisioned by the 1976 consent order to which you seek access.

To that end, we have already provided you with a sample A-CIS report - for consideration as a substitute for the voluminous AIMS table reports - which you indicated could be helpful if certain modifications could be made. More recently, by letter dated November 20, 2006, the Justice attorney forwarded several CD-ROMS for you to your attorney. Those CD-ROMS contain reports for FY 2006 from the Collection, Criminal Investigation and Appeals functions. Because we have not seen copies of all the reports discussed in the 1976 consent order, in an effort to be as complete as possible, we also asked our functions to identify extant or readily reproducible reports that match the type of information you requested from Mr. Frank Keith in 2002 and 2003. For example, the Collection information on the CD-ROM consists of copies of existing FY 2006 reports for the following:

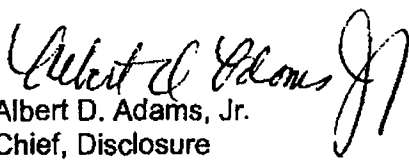
- (a) first notices (both IMF and BMF)
- (b) TDA
- (c) TDI
- (d) installment agreements
- (e) OIC
- (f) liens, levies and seizures
- (g) collection yield at the national level

You asked how you can assist us. We would appreciate if you review the reports we provided to your attorney and let us know whether these routine reports provide you

with information that you need. Please remember that our routine reports are programmed to capture certain data in a way that is beneficial to our managers and executives to assist them in their decision-making.

If you have any questions, please contact me at (410) 962-8198, or you may e-mail me at albert.d.adams@irs.gov.

Sincerely,


Albert D. Adams, Jr.
Chief, Disclosure

cc:
Scott Nelson
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009

Teresa Milton
U.S. Department of Justice
Tax Division, Appellate Section

Gerald Role,
U.S. Department of Justice
Tax Division
Civil Trial Section, Eastern Region

EXHIBIT 10



Transactional Records Access to a Newhouse
Syracuse University

November 9, 2004

Headquarters, Freedom of Information Office
SE:S:MS:C&L:GLD:D:F
1111 Constitution Ave.,NW
Washington, DC 20224

Dear FOIA Officer:

RE: AIMS Tables SC35 and 36 providing concise analytical figures used by
managers to monitor the results of IRS examination programs

Under the provisions of the Freedom of Information Act, we request the following two report
series:

**Table SC35, Examination Program for Service Centers -
Accomplishments/Inventory [Report Symbol 4000-457].** IRM 4.4.27.6.4 (02-08-
1999) describes the contents of this report as follows: "provides management with
concise analytical information for use in managing the Examination function at the
service centers. The table provides data from AIMS which is used to monitor returns as
completed examinations. The table also provides data to monitor examinations,
inventory, surveyed returns and accepted returns from classification."

Table 36, Examination Program Monitoring [Report Symbol 4000-453]. IRM
4.4.27.6.5 (02-08-1999) describes the contents of this report as follows: "provides all
levels of management concise analytical information for use in managing the
Examination function. The table provides data from AIMS which is used to monitor
examinations, inventory, surveyed returns and accepted returns from classification."

As we understand from IRM 4.4.27.4 (02-08-1999) and IRM Exhibit 4.4.27-4 (02-08-1999),
these reports are produced monthly at IRS Service Centers. In addition to being produced monthly, Table
36 is also produced on a weekly basis. They are distributed to the applicable Area Offices, and in the
case of SC reports, the applicable Service Center. In addition, at year-end to permit AIMS results "to be
as accurate as possible" three versions of the fiscal year-end report are generated which are labeled as:
"September ***1st FY Preliminary***" "October ***2nd FY Preliminary***" and "November
FINAL FISCAL YEAR."

This FOIA request asks for all existing copies of these monthly reports, including year-end
versions, produced from FY 2002 to the final fiscal year report for FY 2004. It is not necessary to
provide us with the weekly editions. To the extent that any of these reports exist in electronic form, we
ask that the copies of these be provided electronically.

We attest that we qualify for classification as "a representative of the news media" under the provisions of the Freedom of Information Act, and as representatives of "an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." We request that this classification be assigned us.

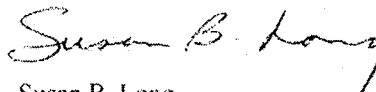
We also request a full waiver of fees. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the federal government. Specifically, these records are being sought to assist us in preparing our regularly published reports, made available through our web site (<http://trac.syr.edu>), on the activities of the Internal Revenue Service and the operation of our tax system. Our last two reports, published in April and November 2004, received wide public and media attention. Our findings engendered comments from both IRS Commissioner Everson and Secretary of the Treasurer Snow. We are currently working on a further update to this report and it is for this purpose that these records are being sought.

We previously provided extensive information to support this classification and fee waiver in our previous letters of July 2, 2004, July 9, 2004 and July 21, 2004. Because of their relevance to this request, we ask that the information provided in those letters be incorporated as further support for this request.

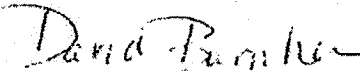
We further call your attention to the strict time limits set for furnished requested records set under 5 U.S.C. 552 and ask for your prompt action and response on this request. We also draw your attention to the standing court injunction one of us (Long) has prohibiting withholding of this information, a copy of which we have previously furnished you under cover of our previous letter of July 2, 2004. Your prompt release of this information is therefore required.

Should you have any questions about our request, or if we can be of any assistance to facilitate the processing of this request, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long
Co-Director, TRAC and Associate Professor
Management Information and Decision Sciences
Martin J. Whitman School of Management



David Burnham
Co-Director, TRAC and Associate Research Professor
S.I. Newhouse School of Public Communications

cc: Frank Keith, Chief, Communications and Liaison

EXHIBIT 11



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

Susan B. Long
David Burnham
TRAC
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Person to contact: Ms. Rascoe
Telephone number: (202) 622-3662
Refer reply to: SE:S:C&L:GLD:D:F/2004-
02639, 03079, 03428, 2005-00136, 00434
Date: December 10, 2004

Dear Ms. Long and Mr. Burnham:

This is in response to your letter dated October 15, 2004, wherein you indicated that your previous Freedom of Information Act (FOIA) requests dated July 2, August 2, and September 1, 2004,¹ for audit statistics were seeking the actual monthly reports IRS managers receive that track audit statistics, rather than any special statistical studies, such as the 6 month data we previously provided you and that would continue to be available to you under the auspices of I.R.C. § 6108(b).

In light of your clarification, we asked Small Business and Self-Employed (SBSE), Large and Mid-sized Business (LMSB) and Wage and Investment (W&I) to provide us with the AIMS, CAR (Collection Activity Report), and Information Returns Processing Case Activity (IRPCA) reports for March 2004. It was our intention to offer these reports to you as a comparison with the 6 month data you had received at the end of October, and if they met with your approval, we had intended to offer these reports on a regular basis. We had hoped that these extant reports would include all of the data you requested, *i.e.*, the examination statistics as follows: by IRS organizational unit and area office, and within them by examination classes, providing the following fields: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed, number of no change audits, number of no change audit hours. Accordingly, based on preliminary information our office had received, we believed that these three reports would provide the data in the form you are seeking. However, we learned that they do not.

When we received the IRPCA reports from W&I, consisting of about 40 pages total, we found that the IRPCA reports are not broken down into classes of income. Moreover, the fields that are captured are not the fields you are seeking, rather they include adjustments to income such as Earned Income Credit, interest and Penalties. We are providing you with the report showing the March 2004 national totals to demonstrate the format of the report. (Enclosure 1.)

¹ We would infer the same for your FOIA requests dated October 18, and November 9, 2004.

When we received the AIMS report from SBSE, we realized that it was virtually identical to the Excel spreadsheet we provided to you for the first 6 month FY 2004 data. In other words, it was not a routine monthly report, but one specifically created to respond to our request for a copy of a report setting out the fields you wanted. We are including a copy with cells less than ten (10) redacted to avoid taxpayer identification. (Enclosure 2.)

The SBSE staff explained that to create the report we are providing to you as Enclosure 2 they had taken the March 04 data from portions of AIMS Table 37, added columns and separately entered it into an Excel spreadsheet so that it was more manageable. Table 37, which is the subject of one of your FOIA requests, is a cumulative AIMS report providing examination data on the National level. It provides data pertaining to completed examinations (agreed or unagreed), plus inventory and survey information. Table 37 breaks out separately cases worked by agents who are in training. The cases are live cases, but specifically designated as a type suitable for training purposes. Table 37 also breaks out separately CIC cases (the old CEP cases). The SBSE staff had included these in the totals in the Excel spreadsheet. Table 37 does not include total additional taxes assessed because the figures would not capture changes made by Appeals officers; rather, Table 37 only captures the recommendations made by examination. Moreover, Table 37, which is cumulative, ranges in length from 35 to 50 pages. We are providing three sample pages from the March 2004 Table 37. (Enclosure 3.) These sample pages will show that Table 37 has many of the fields you are seeking, but not all of the fields.

With respect to your request for additional taxes assessed, we had believed that the CAR report would be the best source of information for these values. We learned that there are in fact 9 different CAR reports based upon particular types of collection activity such as Taxpayer Delinquency Investigations (TDI), Taxpayer Delinquency Accounts (TDA), assessments, balance due notices, etc. The assessment CAR report does not permit users to break down the data into income class ranges. Rather, the CAR assessment report is broken down into tax class (e.g., 1040, 1120, FICA, FUTA) and type of notice, (e.g., first, second, etc.) These tax classes do not correspond with the income classes and ranges that you have heretofore received in the annual and six month data. The CAR reports use the Taxpayer Information File (TIF) as their data source; a database separate from AIMS. The timing of the assessments does not coincide with the timing of Examination's recommended additions to tax because, among other things, the Appeals officer may make adjustments. We are including an 11 page sample of the assessment CAR report from cycle 43 in October 2004. (Enclosure 4.) The entire report is about 2000 pages long.

We also learned that the IRS would not be able to use Research's ERIS database to provide a report showing the total additional taxes assessed because ERIS's data source also is the TIF file. In addition, managers do not routinely receive copies of any ERIS report. Moreover, Research and SBSE staff

would have to coordinate the AIMS data with the assessment data taken from the CAR database to provide you with meaningful figures. You have already indicated that you do not want the IRS to perform special statistical compilations.

Because the IRS does not provide to managers monthly reports with the breakdown of fields and income classes as you delineated in your FOIA requests, we would like to propose an alternative.

The AIMS database is the source of information upon which the Commissioner and other IRS executives rely when making press releases concerning examination statistics. SBSE utilizes a software package known as A-CIS to make queries of the AIMS database. A number of these queries are pre-formatted reports. One such pre-formatted report contains many of the fields you are seeking. This report utilizes the information in Table 37 and contains the following fields, broken down by income classes:

1. Returns
2. Total (auditor) time
3. Average (auditor) hours
4. Total dollars (additional tax recommended)
5. Average dollar/return
6. Dollars/hour
7. No change %
8. Cycle time (of audit)
9. Days since filing

You have not requested fields 3, 5-6, 8 and 9. Moreover, you have asked for the number of no change audits, rather than the percentage, and the number of no change auditor hours. The SBSE staff has informed us that they can program a new query to create a report which will include all the fields you are seeking, broken down at the territory level, except it cannot provide the amount of total additional taxes assessed. The AIMS database only captures the additional taxes recommended by examination personnel. If the case is closed as unagreed and the taxpayer pursues his case to Appeals, the Appeals officer may make a different recommendation than examination. Therefore, the A-CIS report cannot provide the total additional taxes assessed; only the total additional taxes recommended. We are providing you with a sample page of the current A-CIS examination case inventory report. (Enclosure 5.)

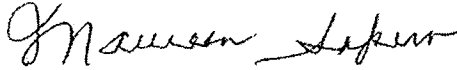
Given that the assessment CAR report is too extensive to provide, and it is not maintained on the same timing as AIMS making any match of total additional taxes recommended and total additional taxes assessed extremely difficult, would you be amenable to receiving the A-CIS report, which will provide you with all the fields you have requested except for the total additional taxes assessed? If this report would be acceptable to you, we believe that SBSE would have the

programming complete in late January, 2005. Afterward, SBSE should be able to provide the A-CIS report for the first quarter 2005 audit statistics.

We apologize for the delay and appreciate your patience. Please understand that we have been attempting to find a solution to your requests for audit statistics without performing special statistical compilations.

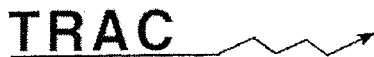
If you have any questions, feel free to call me at (202) 622-3662.

Sincerely,


for Symeria R. Rascoe
Tax Law Specialist
Office of Disclosure FOIA
Badge No. 50-05919

Enclosures: (5)

EXHIBIT 12



Transactional Records Access Clearinghouse
Syracuse University

July 2, 2004

Headquarters, Freedom of Information Office
SE:S:MS:C&L:GLD:D:F
1111 Constitution Ave.,NW
Washington, DC 20224

Dear FOIA Officer:

RE: FOIA request for statistical data covering IRS audits for FY2004 (through
June 30, 2004)

We are attaching a copy of a court order in Long v. United States Internal Revenue Service, Civil 74-724S (USDC, WD Washington). U.S. District Judge Walter T. McGovern signed this order on July 23rd, 1976 and it remains in effect. We draw your attention to the following provisions in paragraphs 2 and 3 of that order:

"2. The defendant shall retain the following records covering the period 1960 to the date on which the initial request was submitted and upon proper request by plaintiff shall make such records promptly available for the plaintiffs' inspection at the National Office of the Internal Revenue Service and at such other offices at which the requested records are located: Document 5301, Document 5302, Quarterly Statistical Reports (NO-A:FM-122, NO-PR:S-47, NO-D:MI-7, NO-D:R-7, and Publication No. 174), Report NO-CP:A-68, and Reports NO-CP:A-231 through 260 inclusive."

"3. The defendant will, upon proper request by plaintiffs, *make all statistical data regardless of the format or particular categorization which are hereafter compiled* and are similar to that contained in Document 5301, Document 5302, Quarterly Statistical Reports, Report No-CP:A-68, or in any of Reports NO-CP:A-231 through -260 *promptly available* to the plaintiffs for their inspection at the National Office of the Internal Revenue Service and at such other offices at which the requested records are located." [emphasis supplied]

Paragraph 4 of that order requires that any requested copies of these records also be provided.

A second order with similar wording had been earlier entered by the U.S. District

WWW: <http://trac.syr.edu> E-mail: trac@syr.edu
Syracuse: 488 Newhouse II, Syracuse, NY 13244-2100 Tel: (315)443-3563
Washington, D.C.: Suite 200, 1718 Connecticut Avenue, N.W. 20009 Tel: (202)518-8020

Court in Long v. United States Internal Revenue Service, Civil 74-529S (USDC, WD Washington) covering Document 5342 and related statistical data. It also remains in effect.

Under the provisions of the Freedom of Information Act, and pursuant to these court orders, we request copies of IRS records containing statistical data covering any audits carried out by the IRS during the period starting with the first quarter of fiscal year 2004 beginning on October 1, 2003 through the third quarter ending June 30, 2004. For this time period, we are requesting IRS examination figures for individual and corporate tax returns broken down by IRS *organizational unit and area office*, and within them by *examination classes*, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed, number of no change audits, number of no change auditor hours.

With the exception of figures for additional taxes assessed, similar statistical data to that requested covering FY 2003 was furnished us at the end of March. That statistical data was furnished to us in electronic form. To the extent records in electronic form exist covering the more recent period that is the subject of this request, we would appreciate that the copies of these also be provided electronically.

We request that we be classified as "a representative of the news media" under the provisions of the Freedom of Information Act, and as representatives of "an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." TRAC is a research data center at Syracuse University, and under the direction of its co-directors, Long and Burnham, carries out an active program of scholarly research. TRAC actively seeks to promote public understanding of the operation of the federal government through the gathering and dissemination of information. At TRAC, we actively gather information of interest to the public, transform this information utilizing our editorial and research expertise into various works -- including computerized knowledge bases, electronic and print reports -- and make these works available to the public.

We also request a full waiver of fees. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the federal government. Specifically, these records are being sought to assist us in preparing our regularly published reports, made available through our web site (<http://trac.syr.edu>), on the activities of the Internal Revenue Service and the operation of our tax system. Our last report, published in April, received wide public and media attention. Our findings engendered comments from both IRS Commissioner Everson and Secretary of the Treasurer Snow. We are currently working on an update to this report and it is for this purpose that these records are being sought.

We further call your attention to provisions of this court order which requires that these requested records be made "promptly available." Should you have any questions

about our request, or if we can be of any assistance to facilitate the processing of this request, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long
Co-Director, TRAC and
Associate Professor of Management
Information and Decision Sciences
Martin J. Whitman School of Management



David Burnham
Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public

Communications

Encl: Long v Internal Revenue Service, Civil No 74-724S (USDC, WD Wash) court order

cc: Frank Keith, Chief, Communications and Liaison

JUL 9 1976

UNITED STATES DEPT. OF JUSTICE
OFFICE OF THE CLERK
DISTRICT COURT
WASHINGTON

LOGGED
JUL 21 1976
OFFICE OF THE CLERK
DISTRICT COURT
WASHINGTON

EDGAR SCOTT FELD, Clerk
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

SUSAN B. LONG and)
PHILIP H. LONG,)
)
Plaintiffs)
)
v.)
)
UNITED STATES INTERNAL)
REVENUE SERVICE,)
)
Defendant)

CIVIL NO. C 74-724S

CONSENT ORDER

Complaint was filed in the above-mentioned proceeding seeking declaratory judgment and injunctive relief under 5 U.S.C. §552, the Freedom of Information Act. After discussion between plaintiffs and counsel for defendant, the parties have agreed to an order respecting all aspects of the relief sought by plaintiffs. Accordingly, it is hereby ordered, adjudged, declared and decreed that:

1. The following statistical tables covering the period 1960 to the date on which the initial request was submitted are not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552: Document 5301, Document 5302, Quarterly Statistical Reports (NO-A:FM-122, NO-PR:S-47, NO-D:MI-7, NO-D:R-7, and Publication No. 174), Report NO-CP:A-68, and Reports NO-CP:A-231 through 260 inclusive.

Page 1 - CONSENT ORDER

STAN PITKIN
United States Attorney
CHARLES PINNELL
Assistant United States Attorney
P. O. Box 1227
Seattle, Washington 98111

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1 2. The defendant shall retain the following records covering
2 the period 1960 to the date on which the initial request was
3 submitted and upon proper request by plaintiff shall make such
4 records promptly available for the plaintiffs' inspection at the
5 National Office of the Internal Revenue Service and at such other
6 offices at which the requested records are located: Document 5301,
7 Document 5302, Quarterly Statistical Reports (NO-A:FM-122,
8 NO-PR:S-47, NO-D:MI-7, NO-D:R-7, and Publication No. 174), Report
9 NO-CP:A-68, and Reports NO-CP:A-231 through 260 inclusive.

10 3. The defendant will, upon proper request by plaintiffs,
11 make all statistical data regardless of the format or particular
12 categorization which are hereafter compiled and are similar to
13 that contained in Document 5301, Document 5302, Quarterly Statisti-
14 cal Reports, Report NO-CP:A-68, or in any of Reports NO-CP:A-231
15 through -260 promptly available to the plaintiffs for their in-
16 spection at the National Office of the Internal Revenue Service and
17 at such other offices at which the requested records are located.
18 However, it is neither the intent nor purpose of this order that
19 the defendant be required to compile in future years the statisti-
20 cal data which presently appear in the aforementioned reports.

21 4. The defendant shall, upon proper request by plaintiffs,
22 promptly furnish copies of the records referred to in paragraph 2
23 and in paragraph 3, to the extent such records are compiled in the
24 future, at a cost not to exceed that which is set forth in the
25 applicable Department of the Treasury Regulations governing uniform
26 fee schedules, and shall further permit plaintiffs to photocopy
27 such records using commercial or their own photocopying equipment
28 without cost.

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5. The defendant shall reimburse the plaintiffs for the

the

applicable costs are enumerated in Section 1920 of Title 28,

United States Code.

Dated this ^{23rd} ~~21st~~ day of July, 1976.

Walter T. Shelton
UNITED STATES DISTRICT JUDGE

Approved as to form and substance

8/15/76
DATE

Susan H. Long
SUSAN H. LONG

10/15/1975
DATE

Philip H. Long
PHILIP H. LONG
Plaintiffs, Pro Se

DATE

Robert L. Gordon
ROBERT L. GORDON
Trial Attorney
Tax Division
Department of Justice
Counsel for the Defendant

STAN PITKIN
United States Attorney

By:

Charles Pinnell
CHARLES PINNELL
Assistant United States Attorney

EXHIBIT 13

TRAC

Transactional Records Access Clearinghouse
Syracuse University

August 4, 2006

Internal Revenue Service
SE:S:CLD:GLD:C
MS 7000 MIL
211 W. Wisconsin Avenue
Milwaukee, WI 53203-2221
ATTN: James E. Daniels

RE: FOIA request for statistical data covering IRS audits for FY2006 (through July 2006)

Dear Mr. Daniels:

Under the provisions of the Freedom of Information Act, and pursuant to the court orders in Long v. United States Internal Revenue Service, Civil 74-529S (USDC, WD Washington) and Long v. United States Internal Revenue Service, Civil 74-724S (USDC, WD Washington) previously furnished you under cover of our July 2, 2004 letter, we request copies of IRS records containing statistical data covering any audits carried out by the IRS during the FY 2006 period through the end of July 2006.

For this time period, we are requesting IRS examination figures for individual and corporate tax returns broken down by IRS *organizational unit and area office*, and within them by *examination classes*, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed, number of no change audits, number of no change auditor hours.

We wish to further direct your attention to the April 3, 2006 ruling by Judge Marsha J. Pechman in Long v IRS, C74-724P, USDC WD Washington. We note that, as of now, much of the information we are requesting in this letter was not among the information released to us on April 17, 2006 in AIMS Table 37 even for earlier time periods.

Furthermore, government pleadings recently filed in that case stated that "IRS senior executives" were concerned that the release of the information we are requesting here "would adversely affect tax administration." We need reassurances that the IRS intends to meet its obligations under FOIA for this request. Please promptly advise us when we should expect receipt of the requested data for this request.

We also incorporate by reference our letters of October 15, 2004 concerning your September 23, 2004 letter and our December 15, 2004 response to your December 10 letter regarding our earlier requests for FY 2004 audit statistics. The nature and scope of this request is the same as in these earlier requests.

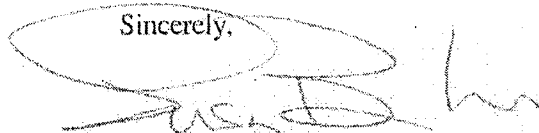
We attest that we qualify for classification as "a representative of the news media" under the provisions of the Freedom of Information Act, and as representatives of "an educational or noncommercial scientific institution, whose purpose includes scholarly, scientific research." We request that this classification be assigned us.

We also request a full waiver of fees. Disclosure of this information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the federal government. Specifically, these records are being sought to assist us in preparing our regularly published reports, made available through our web site (<http://trac.syr.edu>), on the activities of the Internal Revenue Service and the operation of our tax system. Our last reports received wide public and media attention. Past findings have engendered comments from both IRS Commissioner Everson and Secretary of the Treasurer Snow. We are currently working on further updates to these reports and it is for this purpose that these records are being sought. We wish to be able to publish updates to our reports on a monthly basis with the latest examination statistics, and to develop a consistent month-by-month time series database to accompany these releases so that the public is assured of having current information.

We previously provided extensive information to support this classification and fee waiver in our previous letters of July 2, 2004, July 9, 2004 and July 21, 2004. Because of their relevance to this request, we ask that the information provided in those letters be incorporated as further support for this request.

We further call your attention to provisions of this court order which requires that these requested records be made "promptly available." Should you have any questions about our request, or if we can be of any assistance to facilitate the processing of this request, please do not hesitate to contact us. Please feel free to call us at (315) 443-3563.

Sincerely,



Susan B. Long Co-Director, TRAC and
Associate Professor
Management Information and Decision Sciences
Martin J. Whitman School of Management



David Burnham Co-Director, TRAC and
Associate Research Professor
S.I. Newhouse School of Public Communications

cc: Frank Keith, Chief, Communications and Liaison

EXHIBIT 14



Transactional Records Access Clearinghouse
Syracuse University

October 9, 2007

Mahlon Blagg, Manager
Headquarters Disclosure
Internal Revenue Service
55 North Robinson
Mail Stop 7000 OKC
Oklahoma City, OK 73102-9226

RE: FOIA request for statistical data covering IRS audits for FY2007 (through September 2007)

Dear Mr. Blagg:

Under the provisions of the Freedom of Information Act, and pursuant to the court orders in Long v. United States Internal Revenue Service, Civil 74-529S (USDC, WD Washington) and Long v. United States Internal Revenue Service, Civil 74-724S (USDC, WD Washington) previously furnished you under cover of our July 2, 2004 letter, we request copies of IRS records containing statistical data covering any audits carried out by the IRS during the FY 2007 period through the end of September 2007.

For this time period, we are requesting IRS examination figures for all return classes, broken down by IRS *organizational unit and area office*, and within them by *return type* and *examination classes*, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed, number of no change audits, number of no change auditor hours.

We wish to further direct your attention to the April 3, 2006 ruling by Judge Marsha J. Pechman in Long v IRS, C74-724P, USDC WD Washington. We note that, as of now, much of the information we are requesting in this letter was not among the information released to us on April 17, 2006 in AIMS Table 37 even for earlier time periods.

Furthermore, government pleadings recently filed in that case stated that "IRS senior executives" were concerned that the release of the information we are requesting here "would adversely affect tax administration." We need reassurances that the IRS intends to meet its obligations under FOIA for this request. Please promptly advise us when we should expect receipt of the requested data for this request.

We also incorporate by reference our letters of October 15, 2004 concerning your September 23, 2004 letter and our December 15, 2004 response to your December 10 letter

Web: <http://trac.syr.edu> E-mail: trac@syr.edu
Syracuse: 488 Newhouse II, Syracuse, NY 13244-2100 Tel: (315)443-3563
Washington, D.C.: Suite 900, 666 11th Street, N.W. 20001 Tel: (202)518-9000

EXHIBIT 15



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 17, 2006

Ms. Susan B. Long
Transactional Records Access Clearinghouse
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Recid 10-24-06

Re: Freedom of Information Act (FOIA) Requests for Statistical Data Covering IRS Audits –
June 2004-May 2006

Dear Ms. Long:

This letter is in reference to the 24 Freedom of Information Act (FOIA) requests you submitted between July 2004 and June 2006, seeking the audits statistics for June 2004 through May 2006 (as enumerated in Attachment 1). In these requests you sought:

IRS examination figures for individual and corporate tax returns broken down by IRS *organizational unit and area office*, and within them by *examination classes*, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed number of no change audits, and number of no change auditor hours.

In late August 2006, the Department of Justice provided to your attorney unredacted monthly Table 37 reports for all Small Business and Self-Employed (SBSE) Areas and Specialty taxes and all Large and Mid-sized Business Division (LMSB) Industries for the period FY 2002 through March 2006, as well as 50 redacted Table 37 reports pertaining to LMSB taxpayers for April and May 2006. By letter dated September 28, 2006, we provided you with the remainder of the redacted SBSE and LMSB Table 37 reports for April and May 2006, and, in accordance with your attorney's request, CD-ROMs containing duplicate copies of the unredacted monthly Table 37 reports for the years FY2002 through March 2006. Table 37 is the responsive record to the examination data you sought in the referenced 24 FOIA requests. Accordingly, we are closing our files for these FOIA requests.

If you have questions, you may contact me at (410) 962-8198 or via e-mail at Albert.D.Adams@irs.gov. You may also contact Jane Sievers, Team Lead, Headquarters Disclosure FOIA Group at (303) 446-1114 or by e-mail at Jane.Sievers@irs.gov. On any subsequent contacts, we would appreciate your referencing our FOIA control numbers as indicated in this response.

Sincerely,

Mahlon E. Blagg

For Albert D. Adams, Jr.
Chief, Disclosure

Enclosures: As Stated

ATTACHMENT 1

| FOIA # - beginning with most recent | Date on Request | Time Period Covered by the FOIA |
|--|----------------------------|--|
| 50-2006-01171 | 6/5/2006 | FY 2006 - through May 2006 |
| 50-2006-01023 | 5/5/2006 | FY 2006 - through April 2006 |
| 50-2006-00885 | 4/7/2006 | FY 2006 - through March 2006 |
| 50-2006-00805 | 3/7/2006 | FY 2006 - through February 2006 |
| 50-2006-00705 | 2/9/2006 | FY 2006 - through January 2006 |
| 50-2006-00703 | 1/6/2006 | FY 2006 - through December 2005 |
| 50-2006-00689 | 12/1/2005 | FY 2006 - through November 2005 |
| 50-2006-00195 | 11/4/2005 | FY 2006 - through October 2005 |
| 50-2006-00017 | 10/6/2005 | FY 2005 - through September 2005 |
| 50-2005-00354 | 9/15/2005 | FY 2005 - through August 2005 |
| 20-2005-02392 | 8/1/2005 | FY 2005 - through July 2005 |
| 20-2005-02225 | 7/6/2005 | FY 2005 - through June 2005 |
| 20-2005-02124 | 6/8/2005 | FY 2005 - through May 2005 |
| 20-2005-01886 | 5/9/2005 | FY 2005 - through April 2005 |
| 20-2005-01672 | 4/7/2005 | FY 2005 - through March 2005 |
| 20-2005-01377 | 3/31/2005 | FY 2005 - through February 2005 |
| 20-2005-01069 | 2/2/2005 | FY 2005 - through January 2005 |
| 20-2005-00838 | 1/11/2005 | FY 2005 - through December 2004 |
| 20-2005-00633 | 12/8/2004 | FY 2005 - through November 2004 |
| 20-2005-00434 | 11/9/2004 | FY 2005 - through October 2004 |
| 20-2005-00136 | 10/18/2004 | FY 2005 - through September 2004 |
| 20-2004-03428 | 9/1/2004 | FY 2004 - through August 2004 |
| 20-2004-03079 | 8/2/2004 | FY 2004 - through July 2004 |
| 20-2004-02639 | 7/2/2004 | FY 2004 - through June 2004 |

EXHIBIT 16



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 8, 2007

Rec'd 3/14/2007

Ms. Susan B. Long
Transactional Records Access Clearinghouse
Syracuse University
488 Newhouse II
Syracuse, NY 13244-2100

Dear Ms. Long:

This letter is in reference to your Freedom of Information Act (FOIA) requests submitted on February 7, 2007, and March 7, 2007, seeking statistical data covering IRS audits through January 2007 and February 2007, respectively. In these requests you sought:

IRS examination figures for individual and corporate tax returns broken down by IRS *organizational unit and area office*, and within them by *examination classes*, providing: number of audits, number of auditor hours, additional taxes recommended, additional taxes assessed number of no change audits, and number of no change auditor hours.

As we informed you previously by letter dated October 17, 2006, AIMS Table 37 is the responsive record to the examination data you are seeking in the above-referenced FOIA requests. Because you have already submitted a FOIA request for Table 37 for January 2007 and February 2007 data, we will close our file for these duplicate FOIA requests for January and February 2007 audit statistics.

If you have questions, you may contact me at (405) 297-4049 or via e-mail at Mahlon.E.Blagg@irs.gov. You may also contact Jane Sievers, Team Lead, Headquarters Disclosure FOIA Group at (303) 446-1114 or by e-mail at Jane.Sievers@irs.gov. On any subsequent contacts, we would appreciate your referencing our FOIA control numbers 50-2007-00271 and 50-2007-00308.

Sincerely,

/s/ Albert D. Adams, Jr.
Albert D. Adams, Jr.
Chief, Disclosure

EXHIBIT 17



Transactional Records Access Clearinghouse
Syracuse University

December 15, 2004

Ms. Symeria R. Rascoe
Tax Law Specialist, Office of Disclosure FOIA
Headquarters, Freedom of Information Office
SE:S:MS:C&L:GLD:D:F
1111 Constitution Ave., NW
Washington, DC 20224

Dear Ms. Rascoe:

RE: Your letter of December 10, 2004 with respect to our request for audit statistics
{SE:S:C&L:GLD:D:F/2004 02639 (thru June 2004), 03079 (thru July 2004),
03428 (thru August 2004), 2005-00138 (thru September 2004), 00434 (thru
October 2004); plus recent request of December 8, 2004 for statistics thru
November 2004}}

Thank you for your letter of December 10 regarding our pending FOIA requests, above
referenced. In your letter you offered to provide us several agency reports on a regular basis. You also
offered to adapt one report if we so desired, and invited us to call you if we had any questions.

This letter confirms our telephone call last Friday to Maureen Sapero in your office letting you
know that we would like to receive the following reports offered in your December 10 letter:

- * AIMS Table 37 (in its entirety),¹
- * IRPCA reports (in their entirety), and the
- * entire CAR report series²

¹We already have pending FOIA requests specifically for AIMS Table 37, in addition to
pending FOIA requests for three other numbered AIMS Tables – Table SC35, 36, and SC38.
These FOIA requests were submitted after we received your initial FOIA response of September
23, 2004 telling us the agency didn't have any reports with figures on the number of audits,
auditor hours, or tax dollars recommended, and informing us that FOIA was therefore not
applicable to our requests for audit statistics.

² We do not find any difficulty in handling a report of 2000 pages or even longer – the
length you indicate of the entire CAR report series. We are accustomed to receiving reports as a
routine matter with millions of records. Further, your letter makes reference to the existence of
only "9 CAR reports," while IRM 5.2.2.2 (10-27-2003) lists 13. However subdivided, we are
asking for a copy of the complete series.

WWW: <http://trac.syr.edu> E-mail: trac@syu.edu
Syracuse: 488 Newhouse II, Syracuse, NY 13244-2100 Tel: (315) 443-3563
Washington, D.C. Suite 200, 1718 Connecticut Avenue, N.W. 20009 Tel: (202) 618-9000

As we indicated in Friday's telephone call, we would appreciate if you could advise us this week of when we should receive these reports. If it would speed their arrival we ask that the most recent report in each series be provided first, working backward in time for the specific periods requested. We also request that reports be furnished as soon as they are copied, rather than waiting until copies of all have been made. Please advise us of your plans.

We note that as these are computer generated reports, we assume that there should be no difficulty in providing them in electronic form. To avoid any possible misunderstanding, we ask that you arrange at the earliest date possible for a telephone discussion with IRS personnel knowledgeable of the process by which these reports are physically generated and stored so we can work out specifics of the format and media for these copies you will be providing.

We were surprised to see the extensive redactions in several of the documents that were enclosed. The letter states that the agency redacted cells with nonzero numbers less than 10. The agency also redacted *all* entries in the summary lines for "Total Individual," "Total Corporate," "Total Partnership," "Total 1120S," and "Total Other Classes." See attached sample page from Table 37 we received. We fail to see how the total number of corporate returns which appealed auditor findings, or the fact that revenue agents found less than 10 taxpayer returns needed "no change" lead to indirect identification of those taxpayers.

Over many years, continuing through the period that Commissioner Rossotti headed the agency, the IRS provided similar information to us without redaction. In any event, the question was settled by the U.S. federal district court in *Long vs U.S. Internal Revenue Service*, previously cited, which found statistical data of this nature is not exempt from disclosure and ordered that the agency must provide this information to us now without making any redactions. We trust that we will be receiving future copies without any.

In light of the continuing delays we have encountered, we also ask to be assured that the agency has and is preserving all records we have previously requested so that none have or will be destroyed before you have a chance to make copies of them for us. As part of this assurance we would appreciate being advised of the specific steps you have taken to ensure that no destruction of relevant records, including no destruction of electronic versions, takes place which are encompassed under these FOIA requests.

As we indicated in Friday's telephone call, we also have several questions raised by other parts of your December 10 letter. To better assist you, we thought it might be helpful to provide these details in writing:

Other AIMS reports. Your letter states that you asked SBSE, LMSB and W&I to provide you with the AIMS, CAR, and IRPCA reports for March 2004. With respect to AIMS, the agency's on-line public version of the Internal Revenue Manual at 4.4.27.1 lists quite a number of regularly produced AIMS reports. The manual also refers to a more complete listing of AIMS reports which isn't available on-line [Exhibit 4.4.27-1]. We submitted a FOIA request last June 3 (#2004-02334) requesting a complete listing of AIMS reports plus sample copies of each report. As yet this information has not been furnished to us. Your letter only discusses Table 37 in this series. From the

manual descriptions, a number of other reports appear directly relevant. Please advise us why none of the other AIMS reports were included in your letter. Do other AIMS reports contain statistics we have requested?

Scope of AIMS. Your letter seems to suggest that AIMS "only captures the recommendations made by examination" and "would not capture changes made by Appeals officers." However, the Internal Revenue Manual at 8.20.2.2.1 in a section entitled *Audit Information Management System (AIMS)* states: "AIMS maintains a record of a return from the time it enters the Examination stream and follows it through the Appeals process and — if docketed, until finalized by a Tax Court Decision." The Manual also contains extensive instructions for the update of the AIMS database by Appeals/Counsel. We find it difficult to understand why an agency would go to all of the work of updating a database to track such examination information yet never generate any reports using this information. We would appreciate sample copies of any reports produced which track audit outcomes through the Appeals process, and if docketed, the Tax Court process. Information on final outcomes — that is, assessments -- is included in our FOIA requests.

ERIS reports. Your recent letter suggests that ERIS is based upon a different data source than AIMS. However, the Internal Revenue Manual at 8.20.2.2.2 in a section entitled *Enforcement Revenue Information System (ERIS)* states: "ERIS was designed to more accurately measure the results of IRS enforcement activities and to perform cost and revenue forecasting. ERIS is an "umbrella" system which will extract information from two sources — AIMS and master file. ERIS will compare monies assessed and collected by the various enforcement processes."

Your previous letter of September 23, 2004 also indicated that "ERIS permits the IRS to generate regular reports on enforcement activity." However, your December 10 letter states that "managers do not routinely receive copies of any ERIS report." We are left confused as to what reports are prepared and who at IRS then receives these ERIS reports. We would appreciate being provided with a complete listing of ERIS reports, sample copies of each, and a list of individuals and offices that receive any ERIS report so we can better judge whether ERIS reports would be useful to us.³

Pre-formatted A-CIS reports. Thank you for advising us on the availability of A-CIS reports used by the SBSE and offering to undertake special programming to adapt these. From the single page you enclosed we were unable to tell if these reports contain additional information or categories not already found in AIMS Table 37. Your letter did not indicate how voluminous these reports were. Therefore, before deciding, we would appreciate seeing (for a sample time period) complete copies of each A-CIS pre-formatted report that is prepared so we can better determine if any of these would be useful to us.

Transactional versus summarized examination databases. In addition, we would like a

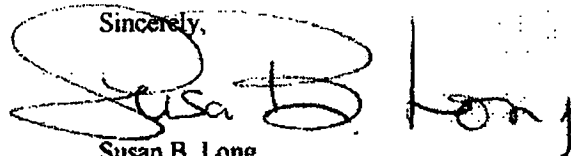
³ We already have a pending FOIA request specifically for this ERIS information. This FOIA request was submitted after we received your initial FOIA response of September 23, 2004 telling us the agency didn't have any reports with figures on audit assessments, and informing us that FOIA was therefore not applicable to our requests for such statistics.

clarification of how the A-CIS report generation process works, as well as any other system IRS maintains that allow IRS staff to query databases containing information on audits. Many organizations wishing to facilitate the use of on-line querying tools create detailed pre-aggregated or summarized files to query against to save processing time. You speak about one of these A-CIS reports "utilizes the information in Table 37". The information in Table 37, of course, has already been summarized. Does the IRS keep any pre-aggregated information on audits in any databases it maintains? If so, such databases would be encompassed within our requests and we would appreciate receiving details on them so that we could better advise whether database copies would be useful to us.

Separate Operating Division Management Reports. Your September 23, 2004 letter makes reference to separate "Operating Division's management reports." Your December 10 letter mentions the A-CIS system used by SBSE, but does not discuss any reports prepared just for managers in other operating divisions, such as in LMSB or in W&I. Are you planning that your next letter will cover these? We would find this information very helpful, and would appreciate receiving copies for a sample period of each of these additional statistical reports to the extent that they contain any categories of information that we requested. We trust that if there are any additional SBSE operating division management reports you have not mentioned, that this information will also be included in your response.

Please don't hesitate to get in touch with us if you have any questions, or we can be of any assistance in processing these requests. The best number to reach us at is (315) 443-3563.

Sincerely,



Susan B. Long
Co-Director, TRAC and Associate Professor
Management Information and Decision Sciences
Martin J. Whitman School of Management



David Burnham
Co-Director, TRAC and Associate Research Professor
S.I. Newhouse School of Public Communications

Attachment:

Sample of redacted page from Table 37 accompanying your Dec 10, 2004 letter

cc: Frank Keith, Chief, Communications and Liaison

11/18/2004 18:43
REVENUE AGENT

2022832257
AND ACCOMPLISHMENTS

... MONITORING
OCTOBER 2003-MARCH 26, 2004
DURATION DATE 03/30/2004

PAGE 05/05
TRM 4.4.27.
PAGE 22 OF 35
DCRM 5043

| KEY | NO | CHANGE | TRANSFERRED TO APPEALS | | | | APPEALS | | | | TOTAL | | | | | | | | | |
|---------------------------|--------|--------|------------------------|------|---------|---------|---------|--------|---------|---------|-------|--------|---------|--------|-------|--------|--------|--------|----|-------|
| | | | WKS | NO | DOLLARS | DOLLARS | PER | PER | DOLLARS | DOLLARS | PER | PER | PER | | | | | | | |
| CIR | ACT | PER | CHRG | PER | PER | PER | PER | PER | PER | PER | PER | PER | PER | | | | | | | |
| APPLIED | UNL | PTNS | RTN | DC02 | RETURN | RTN | BOOR | RETURN | RETURNS | RTP | HOOR | RETURN | RETURNS | RTN | BOOR | RETURN | | | | |
| TOTAL INDIVIDUAL... | | | | | | | | | | | | | | | | | | | | |
| 536 A < 125... | | | 17.4 | | 72.3 | 388 | 4,058 | 34 | 17.6 | 147 | 2,584 | | | | | | | | | |
| 531 NON-F < 825... | 4.87 | | 48 | 14.7 | 13 | | 27.0 | 82 | 2,497 | 204 | 18.3 | 190 | 3,483 | 361 | 18.1 | 165 | 2,395 | | | |
| 532 525 < 650... | 17.38 | | 104 | 21.1 | | | 81 | 27.8 | 273 | 4,818 | 1,130 | 18.1 | 152 | 2,744 | 1,315 | 18.9 | 140 | 2,685 | | |
| 533 350 < 6100... | 20.76 | 18 | 168 | 29.3 | | | 174 | 35.8 | 249 | 6,928 | 1,907 | 22.8 | 194 | 3,511 | 2,258 | 23.4 | 195 | 3,647 | | |
| 534 6100 < OVER... | 25.98 | 18 | 262 | 31.0 | 15 | | 162 | 41.0 | 867 | 35,354 | 1,254 | 32.1 | 226 | 7,248 | 1,778 | 32.8 | 266 | 8,759 | | |
| 535 C < 825... | 9.45 | | 117 | 14.8 | 26 | | | | | | | | 118 | 21.4 | 77 | 1,647 | 543 | 28.2 | 75 | 1,805 |
| 536 C 325 < 6100... | 17.28 | 19 | 170 | 19.9 | 16 | | 43 | 66.3 | 248 | 16,832 | 863 | 34.5 | 128 | 4,465 | 1,078 | 35.1 | 125 | 4,482 | | |
| 537 C 6100 < OVER | 29.83 | 27 | 178 | 44.7 | 12 | | 143 | 71.4 | 882 | 35,973 | 1,165 | 36.2 | 166 | 9,253 | 1,478 | 36.3 | 181 | 18,974 | | |
| 538 F < 9180... | | | | | | | | | | | | | | | | | | | | |
| 539 F 6100 < OVER | | | | | | | | | | | | | 16,738 | 12 | 64.3 | 113 | 8,589 | | | |
| TOTAL CORPORATE... | | | | | | | | | | | | | | | | | | | | |
| 203 NO BAL SHEET... | .44 | 3 | 13 | 14.2 | 43 | | | | | | | | 19 | 46.1 | 106 | 4,790 | 32 | 43.3 | 63 | 2,844 |
| 209 UNDER 250,000 | 7.81 | 59 | 145 | 61.4 | 29 | | 31 | 59.4 | 243 | 14,438 | 328 | 58.7 | 81 | 3,265 | 501 | 58.6 | 73 | 4,374 | | |
| 213 2250 < 81 M... | 4.97 | 34 | 73 | 81.8 | 34 | | 23 | 57.7 | 581 | 28,913 | 108 | 66.7 | 123 | 6,471 | 294 | 85.8 | 118 | 7,745 | | |
| 215 81 M < 45 M... | | | | | | | | | | | | | 21 | 46.0 | 941 | 43,276 | | | | |
| 217 45 M < 6100... | | | | | | | | | | | | | | | | | | | | |
| 218-225 > 4100... | | | | | | | | | | | | | | | | | | | | |
| TOTAL OTHER CLASSES | | | | | | | | | | | | | | | | | | | | |
| FORM 1120F... | | | | | | | | | | | | | | | | | | | | |
| FIDUCIARY... | | | | | | | | | | | | | | | | | | | | |
| ESTATE... | | | | | | | | | | | | | | | | | | | | |
| NET... | | | | | | | | | | | | | | | | | | | | |
| EMPLOYMENT... | | 81 | 18 | | | | 34 | 2,616 | 6,230 | 271 | 7.9 | 486 | 3,685 | 322 | 7.2 | 821 | 3,748 | | | |
| FORM 1042... | | | | | | | | | | | | | | | | | | | | |
| EXCISE / WFT... | | | | | | | | | | | | | | | | | | | | |
| MISC TAXABLE... | | | | | | | | | | | | | | | | | | | | |
| TOTAL CIC... | | | | | | | | | | | | | | | | | | | | |
| CORP... | | | | | | | | | | | | | | | | | | | | |
| EMPLOYMENT... | | | | | | | | | | | | | | | | | | | | |
| EXCISE / WFT... | | | | | | | | | | | | | | | | | | | | |
| ALL OTHER... | | | | | | | | | | | | | | | | | | | | |
| CIC SUPPORT WORK... | | | | | | | | | | | | | | | | | | | | |
| TRAINING RETURNS | 160.74 | | 1,312 | 32.4 | 13 | | 721 | 45.3 | 503 | 27,878 | 7,879 | 31.7 | 166 | 5,196 | 9,522 | 32.6 | 179 | 8,786 | | |
| -NON TAXABLE INFORMATION- | | | | | | | | | | | | | | | | | | | | |
| TOTAL PARTNERSHIP... | | | | | | | | | | | | | | | | | | | | |
| 480 PRIOR TO 1988 | | | | | | | | | | | | | | | | | | | | |
| 481 RECEIPT < \$100 | 7.88 | | 355 | 81.6 | 82 | | 28 | 17.1 | 9,086 | 155,363 | 700 | 40.5 | 1,287 | 52,143 | 975 | 40.3 | 584 | 23,341 | | |
| 482 RECEIPT > \$100 | | | 38 | 51.2 | 47 | | | | | | | | | 48,680 | | | | | | |
| 483 1: GR > PERS. | | | | | | | | | | | | | | | | | | | | |
| TOTAL 1170A... | | | | | | | | | | | | | | | | | | | | |
| 287 PRIOR TO 1991 | | | | | | | | | | | | | | | | | | | | |
| 288 UNDER \$200... | 14.83 | | 384 | 41.1 | 47 | | 15 | 36.9 | 1,622 | 54,865 | 417 | 46.1 | 1,888 | 85,634 | 816 | 45.9 | 877 | 44,922 | | |
| 289 \$200 < 10M... | | | | | | | | | | | | | | 17 | 29.3 | 1,857 | 54,819 | | | |
| 290 \$10M < OVER... | | | | | | | | | | | | | | | | | | | | |
| MISC NON TAXABLE... | | | | | | | | | | | | | | | | | | | | |

EXHIBIT 18



U.S. Department of Justice

Tax Division

Special Litigation

GARole

Post Office Box 227

Telephone: (202) 307-0461

Washington, DC 20044-0227

Telecopier: (202) 514-6866

FAX TRANSMITTAL SHEET

December 5, 2007

To: Scott L. Nelson, Esq.
Public Citizen Litigation Group

Telephone number: (202) 588-7724

Telecopier number: (541) 488-9178

From: Gerald A. Role
Trial Attorney, Tax Division
U.S. Department of Justice
Telephone: (202) 307-0461

Re: Long v. IRS

Scott: Here is the proposed order.

Jerry

Number of pages (including cover sheet): 8

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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

SUSAN B. LONG and PHILIP H. LONG

Plaintiffs

v

UNITED STATES INTERNAL REVENUE SERVICE

Defendant

Civil No. C 74-724S

Consent Order

On January 6, 2006, Plaintiff, Susan Long, moved to enforce a consent order entered into by Plaintiff and Defendant, the United States Internal Revenue Service, in the above captioned case, which had been endorsed by this Court on July 23, 1976. That order required Defendant to provide copies of enumerated statistical reports to Plaintiff upon proper request for as long as Defendant created similar reports. Through the January 6, 2006, motion, Plaintiff sought copies of AIM (Audit Information Management System) Table 37 reports for FY 2002 forward because they were "similar reports." On April 3, 2006, this Court granted Plaintiff's motion and directed Defendant to provide to Plaintiff copies of Table 37 reports for FY 2002 to the date of the order within fourteen (14) days, and future Table 37 reports upon Plaintiff's proper request. Because there have been changes in the law since this court endorsed the original consent order that affects Defendant's legal authority and capability to provide certain information to Plaintiff, and because Defendant no longer creates any of

the enumerated reports, after discussion between counsels for Plaintiff and Defendant, the parties have agreed to this order which modifies the original consent order respecting all aspects of the parties' duties. This order also modifies the parties' duties as affected by the April 3, 2006, order directing Defendant to provide Plaintiff with copies of AIMS Table 37. Accordingly, both the July 23, 1976 consent order and April 3, 2006 court order enforcing it with respect to AIMS Table 37 are modified as follows:

1. Defendant agrees to provide the following reports to Plaintiff at a frequency no more often than monthly:
 - a. A-CIS Report - In lieu of Table 37, the A-CIS report compiled by Small Business/Self-Employed from the AIMS database, based on activity codes, providing examination figures for the SBE Areas, Wage & Investment Companies, Large and Mid-sized Business Industries and US Summary Levels in the following categories: (1) Number of returns audited; (2) Total Returns audited dollars; (3) Examiner hours; (4) Number of no-change returns; (5) Number of no-change hours;
 - b. Appeals Consolidated Area Monthly Report - This report provides figures for receipts; disposals; inventory; nondocketed cycle time; average hours per case; and resolutions per Full Time Employee (FTE). For the alternative dispute resolution program the report provides receipts; closures; inventory; cycle time; and the percent of closed agreed cases.
 - c. Director of Collection Report (DCR) - This report provides figures for plan versus actual for the balance due and delinquent return business

results such as closures, inventory, cycle time, case aging, staffing, productivity, quality and enforcement activity.

d. Compliance Customer Service Activity (CSAR)/ACS Support – This report provides figures for liens and levies issued both manually and by computer generated letters for various ACS inventory classifications.

e. Joint Operations Center Snapshot Reports – This report provides the numbers for total assistor calls answered, level of service, total automated calls completed, tax law customer accuracy rate, accounts customer accuracy rate, Telephone Routing Interactive System, Information Messages, Primary and Secondary Abandons, Average Speed of Answer data.

f. EO Status of Inventory by Project Code (AIMS Table 50.2 – US Summary) – This report provides inventory status of examinations by project code for classes of exempt organizations.

g. EP Status of Inventory by Project Code (AIMS Table 52 – US Summary) – This report provides inventory status of examinations by project code for classes of exempt plans.

h. Criminal Investigation Summary by Program Area (INV002) – This report contains information regarding inventory, completions, indictments, convictions, sentence and direct investigative time statistics for Subject Criminal Investigations by CI programs and areas of emphasis.

i. LMSB Balanced Measurement Scorecard – This report provides the balanced measurement results for the fiscal year, identifying both

employee and customer satisfaction results and quality measurement scores.

2. It is neither the intent nor the purpose of this order that Defendant be required to compile in future years the enforcement data described in the preceding paragraphs if there no longer is a business purpose to maintain such data. In the event Defendant discontinues a report listed above as the result of a business decision (e.g., reorganization of operating divisions or functions, or cessation of a program), Defendant will provide written notice to Plaintiff within X days of the discontinuation. To the extent Defendant substitutes another report that captures the same data as the records referred to in paragraph 1, Defendant will notify Plaintiff within X days of substitution and furnish such reports on the same bases as set forth in paragraph 1.

3. Plaintiff will confirm in writing on an annual basis, beginning [date?] her continued interest in receiving the reports described in paragraph 1, or their substitute, if any, as described in paragraph 2. If Plaintiff wants to alter or substitute one or more designated reports she is to receive under this order, Plaintiff will notify Defendant in writing with as precise a description of the information report as possible. Such written notice for a change or substitution will occur once a year, 60 days before the annual notification of continued interest. If the report or reports can be altered or substituted with little or no additional burden on Defendant, Defendant will alter or substitute such report or reports. If the requested altered/substituted report or reports would significantly increase the burden on Defendant, then Defendant will consider the request and

make a determination of whether to alter or substitute such report or reports if compliance with the request is technically feasible, will not interfere with the ordinary business of the agency, or will not impair tax administration.

For purposes of this Agreement, "significantly increase the burden" means, with respect to electronic format, efforts requiring additional programming or modification of existing software programs to produce reports that are not otherwise readily reproducible. For purposes of this Agreement, the term "readily reproducible" means the same as it does under the Freedom of Information Act; that is, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request.

4. Plaintiff and Defendant agree that there will be a designated contact person in the Service who will receive Plaintiff's request and provide the listed reports, as agreed. Defendant will furnish Plaintiff with the name and contact information for that designee within 30 days of the entry of the consent order. Any written notice referenced in this Agreement can be satisfied by electronic mail or facsimile transmission.

5. Defendant is not obligated to interpret or furnish explanations about any of the reports. Defendant is not obligated to alter, substitute or supplement any of the reports, except as provided in paragraph 3. If Plaintiff desires to receive a special report, i.e., a report that is already used by IRS managers to administer the business units or not "readily reproducible," Plaintiff will request

such special report pursuant to I.R.C § 6108(b), following the procedures set forth in Revenue Procedure 2006-36, I.R.B 2006-38.

6. The intent of this Agreement is to provide Plaintiff with useful and meaningful compliance data, while eliminating Plaintiff's need to submit serial FOIA requests, thereby lessening the burden on Defendant to respond to such requests.

7. Defendant will redact data calls of one or more taxpayers and the associated dollar values from any of the enumerated reports where appropriate in order to avoid the disclosure of such taxpayers' return information.

8. Plaintiff agrees to withdraw all outstanding FOIA requests for AIMS Table 35, 36, 37 and 38 reports and monthly audit statistics. As long as Defendant produces the reports described in paragraph 1 (or their substitutes), Plaintiff agrees to refrain from filing FOIA requests for AIMS Table 35, 36, 37, and 38 reports and monthly audit statistics. Plaintiff also agrees to refrain from requesting any of the reports described in paragraphs 1 and 2 at other intervals.

9. The parties agree that the above enumerated reports will constitute the universe of enforcement reports available to Plaintiff as "similar reports" under the original consent decree.

10. As described in paragraph 3, neither party will attempt to modify the terms of this agreement, including the enforcement thereof, without first consulting with the other party and negotiating a modification. If the parties cannot agree to a modification of these terms within 120 days of receipt of notice from the initiating party, the parties will submit to federal (nonbinding) mediation.

[insert parties names, titles, etc.]

A T

EXHIBIT 19

PUBLIC CITIZEN LITIGATION GROUP

1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000
FAX: (202) 588-7795

SCOTT L. NELSON
(202) 588-7724
SNELSON@CITIZEN.ORG

January 15, 2008

Via E-Mail

Gerald A. Role
United States Department of Justice
Tax Division
Judiciary Center Building
555 4th Street, N.W.
Washington, DC 20001

Re: *Long v. IRS*, W.D. Wash No. C 74-724

Dear Jerry:

Susan Long has returned from her visit to China, and she has now had a chance to review and discuss with me your proposal to amend the Consent Order in the *Long v. IRS* litigation in the Western District of Washington. I am sorry that I did not receive the proposal when you first attempted to send it to me and that I only received it after Ms. Long had departed on her extended overseas travels, as we would have been able to respond much more quickly had she been in the country.

I have confirmed with Ms. Long the understanding that you expressed to me on the telephone shortly after you sent the proposal—namely, that the information that you propose to amend the Consent Order to cover is limited to certain information that the IRS is already providing to Ms. Long without reference to specific FOIA requests. Although Ms. Long appreciates the IRS's willingness to provide that information, she is not willing to discuss substituting that very limited set of information for the IRS's obligation to produce records under the Consent Order and under FOIA.

In our view, the IRS's proposal to amend the Consent Order reflects a complete misconception of the purpose and effect of the Consent Order, which were to *confirm* Ms. Long's rights to receive non-exempt records of the IRS under FOIA, not to limit those rights. The Order achieved those ends by identifying a set of types of IRS statistical records that were not exempt and ordering the IRS to provide them to her on request rather than to contest their availability under FOIA, as it had done before she brought her lawsuit against it. The Order in no way required Ms. Long to forgo any of her rights under FOIA in order to obtain records to which she was entitled, and, indeed, there would be no basis on which a court could enter such an order.

What you are proposing is very different: It would have the effect, not of confirming Ms. Long's rights to non-exempt statistical records under FOIA, but of

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foreclosing her from exercising those rights in return for the IRS's provision of an extremely small subset of the information that is subject to FOIA. Indeed, the IRS's proposal would require Ms. Long to forgo altogether her right to receive Table 37, which the Court has expressly ordered the IRS to produce, as well as other statistical data that she has requested but that the IRS has not provided even though it falls within the scope of the existing Consent Order and is not exempt from disclosure under FOIA. We are aware of no basis on which a court could impose such an amendment to the Order on Ms. Long against her wishes, and she is entirely unwilling to consent to it.

Your proposed amended order states that it is based on changes in the law that have occurred since the original Consent Order was entered. There have, however, been no changes in the law that justify the changes you propose. Nowhere in FOIA is there any basis for requiring a requester to forgo access to non-exempt records A through Y merely in order to obtain non-exempt record Z.

The only change in the law that the IRS has ever pointed to since the entry of the consent decree in July 1976 is the enactment later in 1976 of 26 U.S.C. § 6103, which provides for the confidentiality of return information. As an initial matter, it is hard to understand how legislation passed less than four months after the Consent Order should suddenly require an amendment to the Order more than 30 years later.

Moreover, we have repeatedly explained that the Haskell Amendment to that legislation limited the definition of "return information" to exclude information in statistical compilations such as those at issue here that would not identify particular taxpayers, and the IRS has not shown even a remote likelihood that the release of the statistical reports covered by the Consent Order would reveal the identity of any taxpayer. Thus, the change in the law that the IRS relies upon does not justify redaction of the statistical reports covered by the Order, and Ms. Long remains unwilling to agree that the IRS may redact them. Indeed, the court has already found that the IRS failed to carry its burden on this point and directed that it provide unredacted data unless it was able to persuade the court to modify the Consent Order. (Of course, even without having sought, much less obtained, an amendment to the Consent Order, the IRS has been redacting the reports it has produced to Ms. Long, and we again remind the IRS that its actions are in direct violation of the Court's April and August 2006 orders.)

In any event, even if 26 U.S.C. § 6103 justified *redaction* of the reports covered by the Consent Order in its existing form, it would in no way justify withholding those records altogether, and still less could it justify requiring Ms. Long to forgo requesting and receiving those records and others like them and to accept instead a much smaller set of materials representing only a tiny fragment of the IRS statistical records that are subject to FOIA. Thus, if the IRS's arguments based on § 6103 were meritorious (which, we again emphasize, they are not), they could *at most* justify amending the Order to

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permit redaction, not turning it into an instrument for involuntarily cutting off Ms. Long's FOIA rights rather than enforcing them.

For these reasons, Ms. Long does not consent to the IRS's proposed modification of the Consent Order. Indeed, those modifications would entail such a radical transformation of the Consent Order, and such a significant impairment both of Ms. Long's rights under the Order and her underlying rights under FOIA, that the proposal does not appear to her to provide any basis for discussions. Nor will Ms. Long accept the agency's continued failure to abide by the Consent Order and Judge Pechman's 2006 orders. We intend to seek further relief from Judge Pechman soon.

Sincerely yours,

/s/

Scott L. Nelson

cc: Susan B. Long