IRS Chief Blocks Audit of

10/19/75

© 1975, The Washington Post Co.

By Bob Woodward
Washington Post Staff Writer

Internal Revenue Service Commissioner Donald C. Alexander and some senior IRS officials have for more than two years successfully blocked tax audits and investigations of Sen. Joseph M. Montoya (D-N.Mex.) who heads a subcommittee that oversees the IRS.

According to four highly reliable sources, audits and investigations of Montoya's tax returns had been strongly recommended by other IRS officials and were called for in the case of a taxpayer like Montoya by normal IRS procedures.

No audit has been conducted of Montoya during the past 25 years, even though he became a millionaire during that time, was habitually delinquent in paying taxes, and had been twice recommended for prosecution because he failed to file returns in 1945 and 1946 when he was a state senator.

A senior IRS source familiar with the matter said: "A man with this sort of record with two recommendations for prosecution, astronomical increases in wealth would normally be looked at, especially such a key figure in controlling IRS policy and appropriations."

In two interviews Alexander declined to discuss the subject. "In general," he said, "I have never stopped a case for political reasons. Never. All taxpayers are treated alike whether they be president, vice president, senator or congressman."

Alexander was one of the toughest officials in pushing for an investigation of former President Nixon's tax returns, according to IRS sources. Alexander, an Ohio Republican, was appointed IRS commissioner by President Nixon in May, 1973, at the height of the Watergate scandal.

There is no evidence that Montoya has illegally evaded taxes or that he was aware of or sought special treatment from the IRS.

Montoya, who was a member of the Senate Watergate committee, heads the Senate appropriations subcommittee that oversees the IRS. He is well-known on Capitol Hill for his active interest in IRS matters.

On at least five occasions Alexander has cited Montoya's power over the IRS as a reason for delaying and curtailing an audit or criminal fraud investigation of the senator, according to the sources.

"It will create enormous problems for the service," two sources quoted Alexander as saying. For several months in 1973, Alexander insisted that no audit be started until Montoya's tax returns were singled out through computer review.

"I've got to have something I can show Montoya to prove it was selected naturally," Alexander told senior IRS officials while IRS district and regional officials were trying to begin an audit, the sources said.

At least 18 IRS officials, auditors and investigators have knowledge of the

Montoya's Taxes

favored treatment given Montoya and his son, Joseph Jr., who failed to file federal tax returns on time in 1972 and 1973, according to the sources.

There have been at least 25 meetings, briefings, discussions and phone calls from July, 1973, to the present connected with the effort to obstruct and delay investigations of Montoya, according to information in IRS files, memoranda written by various officials, notes of some phone calls and the recollections of seven present or former IRS officials.

These actions include:

—At least a dozen orders to restrict a preliminary inquiry.

—Strong suggestions amounting to orders that the New Mexico district director be fired for pushing the Montoya investigation.

—Orders to block the distribution of Montoya's tax returns to those who were supposed to review them.

—A directive that no routine report be filed, no case number be assigned or paperwork be generated on the case.

—Cancellation of physical surveillance planned by IRS investigators in late 1973 of a meeting Montoya had with an IRS confidential informant—a man Montoya had a business appointment with, but did not know worked for IRS.

A senior official with first-hand knowledge of the case said: "Montoya had a lousy history and we would have gone ahead, no question of it, if he hadn't been head of our appropriations . . .We would have gone ahead on any other senator, but Alexander was inordinately sensitive to Montoya and was horrified at the thought of auditing or investigating him."

Montoya said early this month that he was totally unaware of any effort to give him favorable treatment and said he has nothing to hide on his tax returns.

"If there's one senator whose skirts are clean, it's me," Montoya said. "I've made my money the hard way." He said he has made his money in real estate in-

See IRS, A23, Col. 1

vestments, but declined to discuss whether his investments were substantial.

Montoya praised Alexander, saying that he has more respect for the individual taxpayers' rights than past commissioners. Montoya said that, in discussions with the IRS commissioner, "I've told Alexander, 'Audit me.'"

According to the sources, the orders to stall and block the Montoya investigation were issued by Alexander, former IRS deputy commissioner Raymond R. Harless and the former assistant commissioner for compliance, John F. Hanlon.

Hanlon has declined to discuss the matter and Harless could not be reached for comment.

The main officials pushing for audits and investigations were former New Mexico district director William Orr and former Southwest regional commissioner Albert W. Brisbin.

In late 1973, special IRS agents in the Arizona district had a confidential informant who claimed he was going to have a meeting with Montoya and Montoya's son at a New Mexico airport.

The New Mexico district was asked and agreed to provide agents to conduct physical surveillance of the meeting to see if it took place.

At the last minute orders were sent from Washington to cancel the surveillance. The reason given was that Alexander does not approve of physical surveillance as an investigative procedure.

The sources provided the following detailed chronology of efforts to block the probe:

In January, 1973, New Mexico district director Orr contacted Brisbin, the Southwest regional commissioner, by telephone.

Orr, who had taken over the New Mexico district six months earlier, said that he had reviewed the district files and discovered Montoya's failure to file in 1945 and 1946. Prosecution had been recommended by the IRS and approved by the Justice Department, but the U.S. attorney in New Mexico had declined to prosecute, according to the records.

In addition, Orr reported that a 1950 district investigation of Montoya, who was then the state's lieutenant governor, had led to another recommendation for prosecution for tax evasion. That case was not brought either.

DONALD C. ALEXANDER
. . .active interest in case

Brisbin had been unaware of these facts and reported immediately to Washington where the deputy chief of the intelligence division, Richard A. Nossen, was directed to assemble material for a briefing.

Nossen was able to confirm that the tax returns had not been filed in 1945 and 1946 but that the tax was later paid in the 1950s under threat of prosecution.

Senior officials were briefed—Alexander was not yet commissioner—and Brisbin, whose regional office is in Dallas, was told to give the New Mexico district permission to begin a review.

In New Mexico, all past returns were requisitioned from the federal records center. Evan Wride, who was chief of intelligence in the New Mexico district, was unable to get the returns from the bureaucracy for six months.

However, after a Wall Street Journal story on June 28, 1973, reporting that Montoya's campaign committee failed to report $100,000 received through Washington-based dummy committees, Wride got the Montoya tax returns for 1966 to 1971.

The chief of the audit division in New Mexico, Lloyd Harvey, was given the returns. He did an examination, referred to in accounting as "source and application of funds" to see where Montoya earned his money and where he spent it.

From the review Harvey concluded that some of Montoya's returns should have been audited. It also appeared that Montoya was spending more money or had access to more money than he had reported. Montoya's taxable income was roughly between $20,000 and $100,000 for each of the years.

He had investments in real estate alone valued at more than $1 million.

Harvey then recommended a joint investigation by the audit and intelligence divisions. Two men were assigned. District director Orr reported this to Brisbin in Dallas. In turn Brisbin reported the preliminary findings to Alexander in Washington by mid-July, 1973.

"Well, you've made my day," Alexander said of the initial information, indicating that he might be happy Montoya might be in trouble with the IRS.

A source close to Alexander said the commissioner "had just taken over several months before and it was in the middle of the Watergate hearings . . . and Montoya, a Democrat, was criticizing Nixon. Alexander is a Republican."

By Monday, July 23, 1973, Brisbin was in Washington for a meeting of the seven regional commissioners. The Montoya matter was discussed many times that day and the next with Alexander, deputy commissioner Harless and assistant commissioner Hanlon. Alexander was soon convinced that a Montoya audit could hurt the IRS since Montoya might try to cut the budget in an upcoming appropriations vote.

Brisbin suggested delaying any inquiry until after the vote.

"It would be helpful," Alexander said

and then directed that any preliminary inquiry be delayed until early September. It was agreed not to give the matter a case number or let any paperwork flow between Washington, Dallas and New Mexico so Montoya would not learn of any initial inquiry.

"For God sakes," Alexander directed, "don't make any waves."

Brisbin gave his promise and then contacted Orr in New Mexico. Orr passed the order to halt work to the two men assigned the case.

Montoya had not filed his 1972 tax return by late July because he had been granted a legal extension until September, 1973. Orr told his men that he wanted to wait until they had the 1972 return in order to do a more thorough job.

At the time, Harvey, the chief of audit, was out of town, and the matter was being supervised by Wride, the chief of intelligence. Intelligence agents handle criminal fraud investigations.

Brisbin, who was still in Washington the next day, July 24, 1973, learned that intelligence was handling the matter and mentioned this to Harless, Hanlon and Singleton B. Wolfe, who was chief of the national IRS audit division. They said this technically amounted to a referral for a criminal fraud investigation.

One source described the situation: "Total hell broke loose and orders came flying to put the clamps on hard from the Washington boys."

Brisbin called Orr in New Mexico and angrily directed that no further work was to be done.

James M. Deprato, executive assistant to the regional commissioner for intelligence, called Orr on July 26 and said the restrictions included no contact with anyone outside the IRS and no search of any public records.

On July 30, Robert D. Elledge, the assistant regional commissioner for intelligence, called Orr to ensure that no sensitive case report was made.

The sensitive case report had been required to keep Washington informed of any audit or investigative work done by the IRS involving well-known or politically prominent persons. Alexander has since eliminated that procedure.

On Aug. 22, Alexander and Brisbin both traveled to Denver for the swearing-in ceremony of a new district director there. Alexander told Brisbin in a private discussion that he was not going to let anything be done on the Montoya matter until Montoya's case was selected routinely or automatically in a computer survey.

It had to come from normal channels, Alexander said, and he could never justify anything else to Montoya.

At the time the IRS was shifting to computer selection of tax returns for audits and invesitgations, but it has never been the exclusive method for picking out returns for audit or fraud investigation. Today only about 75 per cent of the audited returns are computer selected.

The next day, Aug. 23, Brisbin got word from both Hanlon and Harless that Alexander wanted consideration given to transferring Orr from the New Mexico district.

Alexander specifically suggested that Orr be transferred as executive assistant to a regional commissioner somewhere "without any responsibility."

Brisbin was very disturbed at this suggestion and asked Harless why it was being made. Harless made it clear that Alexander felt he couldn't control Orr on the Montoya investigation and objected to Orr's lack of political sensitivity.

Brisbin then summoned Orr to Dallas on Aug. 24, 1973. Orr presented a passionate defense of his actions and cited numerous additional unsubstantiated allegations received in the district office regarding Montoya's financial transactions.

Brisbin said he agreed an audit should be made. "It is unconscionable that we haven't audited Montoya over these years," Brisbin said, adding that he was almost powerless to move with the interference from Washington.

On Oct. 15, 1973, Elledge in the Dallas regional office, called Orr and said that the Austin Service Center had received a copy of Montoya's 1972 return but a copy would not be made available to the New Mexico office. Elledge said that Orr's instructions were "to wait and do nothing."

Two months later in December, Brisbin retired as regional commissioner.

In January, 1974, Walter Coppinger took over as Southwest regional commissioner, and he was briefed on the Montoya matter. Coppinger concluded that the case was being improperly controlled out of Washington and on March 27, 1974, called Edward J. Fitzgerald Jr., who had succeeded Harless as deputy commissioner in December. Coppinger complained about Washington's interference and Fitzgerald told him to go ahead.

After a year of unsuccessful attempts to get even a basic audit going, Orr was still fearful of losing his job. Meanwhile, his agents in New Mexico were beginning to develop some potential cases involving some of Montoya's business associates and relatives.

Orr told his agents to concentrate on those cases. "A frontal assault hasn't worked," he told them.

In April, 1974, the New Mexico district discovered that Montoya's son, Joseph Jr., had not filed a 1972 tax return, due a year earlier.

Again Washington became involved in the case and Rex D. Campbell, one of Coppinger's assistants in the regional office, told Orr that everything done in the inquiry on Montoya's son had to be cleared with Washington.

Alexander himself requested a full transcript and review of the matter in Washington.

"Your orders are to do nothing," Campbell told Orr on May 6.

Coppinger decided not to let this case become stalled, as Sen. Montoya's had. Meanwhile, the New Mexico district received information that Montoya's son had also failed to file his 1973 return, which was due April 15, 1974.

On May 24, 1974, a revenue agent was allowed to contact Montoya's son. Additional contacts were made June 6, June 12 and July 12. After that pressure from the IRS, Montoya's son filed a 1972 return. Because it involved only several thousand dollars, no further action was taken.

In March, 1975, Coppinger offered Orr a transfer to Denver at the same pay. Orr accepted and is now the assistant district director for the IRS in Colorado.

Once, sources say, when IRS officials were discussing people for possible promotion and had put several names on a blackboard, including Orr's, Alexander came in to the room and crossed Orr's name off, saying, "We had to reverse him once."