The Future of Tax Privacy

The history of the tax privacy contains a number of surprises. First, the concept of tax privacy has been contested throughout much of the 19th and 20th Century. For a long period, tax returns were considered to be public documents. At times, they were even posted on court room doors or published in newspapers. Nonetheless, voices were also heard for tax privacy and the need for confidentiality of return information.

Second, the imposition of a general legal requirement of confidentiality for tax returns and a shift to a statutory regulation of access to tax returns occurred relatively recently in the history of tax law. The change occurred in the Tax Reform Act of 1976. From a historical perspective, the establishment of a concept of tax privacy occurred as part of the enactment of the most important generation of privacy laws in the 1970's.

If we move from the past of tax law to the present, tax law looks much like other privacy statutes. The Tax Reform Act of 1976 removed the authority of the President to make rules for release of tax information. Its Section 6103 established a general rule of confidentiality with Congress to set exceptions through this rule by statute. A flood of disclosure exceptions have been enacted since 1976 with requirements based on how difficult Congress thinks it should be for a given party to obtain the tax information for a specific purpose. Disclosure of tax information is now permitted for the purposes such as civil litigation, criminal litigation, child support obligations, and terrorism prevention.

Regarding predictions about the future, it is likely that tax privacy as regulated under the Tax Code will be both less and more important in the future. It will be less important because of broad governmental and public access to financial and other information of the kind that taxpayers file. At the same time, one aspect of tax privacy will be more important than before. Threats of data breaches and data leaks make tax return security more significant. For one thing, the IRS increasingly collects tax return information through e-filing. Increasingly, tax returns may also be prepared by U.S. firms that outsource work internationally and send tax information around the globe electronically. Tax preparation software is subject to hacks and virus attacks.

Both of these predictions suggest a final point. If we return to the policy arguments for and against tax privacy, there has been a shared assumption of a special status, an exceptional status for tax information. Yet, today, the same information found in tax returns is accessible through other legal statutes. Moreover, tax information in the electronic age is subject to the same vagaries of data security as other data. One can therefore predict that the privacy of tax information will not only be both more and less important in the future. It will also increasingly be subject to the same kind of forces, legal and otherwise, as other personal information.