

Mr. COHEN. I think it would be a fine idea. A good sanction there might be the same kind of civil sanction that is suggested in the Treasury report for failure to file, for the delinquent filing of a form 990. There it was recommended that a \$10 penalty be imposed for every day that the return is delinquent, up to some maximum amount. It would certainly bring it forcibly to people's attention that one does not neglect this sort of obligation.

Mr. CORMAN. If one attempted to set up a foundation and it turned out that it was not, that their expenditures were not properly exempt and that they owed taxes, is there any criminal consequence or is it all civil?

Mr. COHEN. Most of the sanctions are civil. I should mention that one of the consequences that has never been pointed out to the people who have been solicited by this recent group, one which is a very real consequence, is that the attorney general of almost all of the States has the authority, when someone abuses a charitable organization, to petition the court for the appointment of substitute trustees. That is, the State attorney general can petition a court for the abolition of the existing board of directors or trustees and for the institution of a public board.

We have had a case in Washington involving a hospital which attempted to distribute its assets to its founders. We are now pursuing a tax court case which has been tried. The attorney general of that State has petitioned the State court for the appointment of receivers, if you will, to recover the assets and to devote them to charitable purposes. This illustrates the consequences that the people who would get involved in manipulation of supposedly charitable organizations might suffer—whether they recognize it or not. The possibility exists that should they abuse the trust and should the State exercise the proper authority, then the assets of the organization may be gone forever.

Mr. CORMAN. I take it that all of these entities are a matter of public record at the State level when they are initiated?

Mr. COHEN. Almost all of these organizations are operating in corporate form.

Mr. CORMAN. Is it possible for a tax-exempt foundation to be set up without there being a public record of it?

Mr. COHEN. In some States, you can create a trust without a public record. We have discovered a couple of this type organization through other avenues. The first one that we discovered when an agent audited a doctor's return and saw that there was no income reported for the last quarter of the year. The agent began to ask questions and the whole thing unravelled. So that even though an organization may not show on State records, we may be able to find the organization through an audit of an individual's tax return.

Mr. CORMAN. There was considerable advertising concerning the potential tax deductibility of benefit which might inure to the principal, such as the use of a car, the expenses of the home, if the foundation owner lived in his home. Is it fair to assume that no item that inures to the founder would be exempt through a tax-exempt foundation that would not be exempt on an individual tax return?

Mr. COHEN. That is right. The rules here are the same rules that we apply across the board. If the individual receives his income by way