

At the Senate Finance Committee hearings with respect to section 1313, the Treasury Department. It is a thing you can pass judgment upon very quickly. The provision resulted from the enactment of the Budget and Accounting Act of 1921 which established the General Accounting Office, stated:

"I have a new provision with relation to claims for refund of taxes in the Treasury Department. It is a thing you can pass judgment upon very quickly. The proposition is this: the new budget bill practically gives the right to a final determination on all claims against the Government. It puts it in the hands of the Comptroller General. He has the final say on all claims. The question is whether you want him to have the final say on these technical tax questions. In other words, you have a bureau up there which costs five, six, seven, or eight million dollars a year. It is technical in the highest extreme. I can not think of the Comptroller General performing that work satisfactorily without duplicating the machinery already provided." (Hearings before the Senate Finance Committee on the Revenue Act of 1921, H.R. 8245, 67th Cong., pp. 299-300 (1921))

To make clear that the provision was applicable to the General Accounting Office, the Revenue Act of 1924 added the words "or accounting" where they now appear between the words "administrative" and "officer". The bill would, by granting the Ombudsman authority to investigate and hold hearings on determinations made by the Commissioner, reverse long-standing Congressional policy that determinations of the Commissioner should not be subject to review by other administrative agencies of the Government.

The author, in his introductory remarks on the bill, indicated that the agencies to which the Ombudsman's jurisdiction would extend were selected because, "It is our opinion that the great bulk of citizens' complaints arise in connection with the above-mentioned agencies." The Department believes that, if any agency at the national level is to be made the subject of an innovative experiment of this nature, the agency selected be such as serves or deals with a relatively small number of person, administers a law that is not overly complex or frequently changed, and does not have so highly developed a review procedure as the Internal Revenue Service affords.

The proposed Ombudsman would be required to present annually to the President, the Congress, and the head of the Administrative Conference a written report on his activities for the preceding year. If historical precedent in other countries having an ombudsman is any guide, the report would consist of a detailed, case-by-case report on all matters handled by his office. It is said that Swedish officials anxiously search through the report each year to see if their names appear with a critical reference. (Bainbridge, "A Civilized Thing"—Interview with Mr. Bexelius, *New Yorker Magazine*, February 13, 1965) The Swedish Ombudsman, Mr. Bexelius, believes that his actions, especially his reports or the fear of his reports, "promotes uniformity" of interpretation of the law. (Statement of Hon. Alfred Bexelius, Hearing before the Senate Subcommittee on Administration and Procedure on S. Res. 190, 89th Cong. (1966)) However, there is another side of the "uniformity" imposed by Mr. Bexelius. Professor Gellhorn reports in his law review article case after case of judges and administrators who had accepted the Ombudsman's guidance or interpretation yet who had felt and still believed (and in one case all six judges of a court) that they had been right and the Ombudsman wrong. They had nevertheless accepted the Ombudsman's decision without contest because they did not want to get involved in a fight. The mental attitude apparently induced by the actions, or threat of actions, of the Ombudsman is destructive of the outlook required for imaginative and creative administration. Furthermore, personnel are, as it were, separated from their agency background when they are singled out for criticism by a national officer on a nationwide basis.

Under present procedures of the Internal Revenue Service, if a return is selected for audit and does not involve complex issues, the taxpayer will be asked to supply information through correspondence or to come to the district director's office with his records, for an interview (office audit). In the case of a more complicated return the examining officer will go to the place of business of the taxpayer (field audit) to examine his records.

First, the taxpayer can discuss the matter fully with the examining officer and try to reach an agreement at the threshold of the dispute. In the absence of an agreement, he can have a hearing with the examiner's supervisor. If agreement is still not reached, a further conference is available with the district