CHAPTER EIGHT

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The Power to Destroy

The power to tax involves the power to destroy.

—*McCulloch v. Maryland*, 17 U.S. 327 (1819)

Power is one thing, its wise exercise is another.

—Boris I. Bittker, *Federal Taxation of Incomes, Estates and Gifts* (1981)

The IRS is an agency of the executive branch. That makes it subject to the dictates of the president, the secretary of the treasury and other powerful bosses. Treasury Secretary Andrew Mellon was the first member of the executive branch to abuse the IRS, setting it against Senator James Couzens in 1925. President Franklin Roosevelt used it against Andrew Mellon in 1934. President John Kennedy used it to revoke the tax exempt status of "extremist organizations" (all of which were fundamentalist conservatives that had been criticizing the president) and, among others, audited Richard Nixon and Robert H. Finch, one of Nixon's campaign managers. President Richard Nixon used the IRS against his "enemies."

The Second Battle of the Millionaires

Senator James Couzens' attack on the powerful interests who controlled the Bureau of Internal Revenue and benefited from its cozy attitude toward business came at a price. Treasury Secretary Andrew Mellon's use of the bureau to attack a political enemy – James Couzens – remains among the most egregious abuses of revenue-service power.

As a senator appointed to fill the two-year unexpired term of Truman Newberry, the administration hoped that Couzens would lose the 1924 election, thus ending his investigation. With Couzens' re-election, the administration sought other means to end the investigation.

On March 7, 1925, at the height of Couzens' investigation into the Bureau of Internal Revenue, Commissioner David Blair went to the Senate and summoned the senator off the floor. There, in the presence of legislators, lobbyists, and reporters, Blair personally handed him a letter demanding that Couzens sign a waiver of the statute of limitations so the bureau could continue an investigation of his 1919 income taxes. Historian David Burnham called this incident an attempt "to bully the senator into abandoning his investigation of the agency and the corrupt deals it was cutting."

Included with the letter was a memorandum from William Boyce Thompson to Treasury Secretary Andrew Mellon detailing charges that Couzens had grossly understated the profit from his sale of Ford stock in 1919. Henry Ford had bought back shares from all non-family shareholders, paying Couzens $29.3 million.

Treasury Secretary Andrew Mellon was believed to be personally responsible for the retaliation against Couzens. The Thompson memo is the only written connection between Mellon and the campaign against Couzens.

William Boyce Thompson was a fundraiser and large contributor to the Republican campaign fund and had been chairman of the Republican Party Ways and Means Committee in 1920. Among the revelations of the Couzens Committee was that the bureau had allowed Thompson to claim questionable losses of $597,480 for 1918. Thompson, who headed the New York tax consulting firm of Thompson and Black, had enmity for Couzens.

Couzens refused to sign the waiver. So on March 13, just two days before the five-year statute of limitations expired, the Bureau of Internal Revenue made a jeopardy assessment for $11 million. If Internal Revenue believes that the assessment or collection of an income tax deficiency will be jeopardized by delay, the law allows the agency to make an immediate assessment and demand payment – when the statute of limitations is about to expire, for example.