

## TITLE II FIREARMS TRANSFERS AND "TAXPAYER PRIVACY"

by James H. Jeffries, III

You've finally given in to temptation and decided to buy that Thompson you've always wanted. You've paid the dealer. He's sent you a partially completed BATF Form 4, "Application for Tax Paid Transfer and Registration of Firearm." You live in a jurisdiction where the sheriff is not a petty tyrant or one of the Brady Bunch and he's signed the law enforcement certification on the back of the Form 4. You've sent the signed Form 4 along with your photograph and fingerprint cards back to the dealer. He's sent the package to BATF's National Firearms Act Branch in Washington for approval of the transfer. You wait in anticipation. And wait... And wait...

You call the dealer. He doesn't know what the problem is. Most of his transfers go right through. You write BATF. No response. You call the NFA Branch. They won't talk to you -- something about "taxpayer privacy." BATF is invoking an obscure provision of the Internal Revenue Code to avoid having to deal with anxious buyers.

Section 6103 of the Internal Revenue Code is a provision which protects the confidentiality of federal tax returns and return information. Back in the days of Watergate and election campaign dirty tricks the government occasionally misused income tax information to embarrass political opponents and for other illicit non-tax purposes. Congress reacted by creating stringent controls on the use and disclosure of taxpayer return information.

Since the NFA is ostensibly a tax statute BATF takes the position, probably correctly, that all NFA transfer and registration forms are "tax returns," the disclosure of which is forbidden by Section 6103, except to the "taxpayer." Since the NFA transfer tax is legally imposed by Section 5811 of the Internal Revenue Code on the transferor (the dealer), he is the "taxpayer" -- even though we all know who really pays the transfer tax.

No one would argue with the proposition that the government shouldn't play fast and loose with confidential tax information. You wouldn't want a list of your Forms 3 or 4 published in the local newspaper (unless you're just itching to try out your inventory on some live targets). But it's carrying the privacy argument to extremes to deny information to the other party to a transfer. Think about it for a second. What single iota of information is there on that completed Form 4 which you haven't already seen, or which should be protected from you. You signed the thing. The dealer probably sent you a copy when he submitted it to BATF. Hell, BATF is going to send you a copy when the transfer is approved. When does it cease being the dealer's tax return information and start being your's? Even if the transfer is disapproved for some reason, there's no confidentiality aspect between the buyer and seller or between the two of you and the government.

It would be a clearly permissible legal interpretation of Section 6103 for BATF to satisfy transferee inquiries. So why

don't they? Because it saves them a lot of work and aggravation. The transferor has his money and has done his part of the deal. He doesn't have nearly the incentive to bug BATF with calls and letters on your behalf. The buyer is in a different position. He's finally talked Momma into letting him get a new toy. He's paid his money. He's jumped through all the hoops of getting fingerprinted, photographed, and wheedling a certification from the sheriff. He wants his gun and he has plenty of incentive to bug BATF. Section 6103 is BATF's easy way of not having to answer the mail.

BATF's interpretation is also troublesome for sellers. It gives the dishonest dealer who has tried to transfer a problem gun an excuse to stall an impatient buyer while he has the use of the money. And for the honest dealers (the great majority), it hurts customer relations and imposes additional telephone and correspondence costs in trying to solve the problem.

Can you do anything about the problem? You bet. Taxpayers (dealers/transferors) can waive their privacy rights under Section 6103. Just include the following signed, dated statement with your next Form 4 (or Form 3 or Form 5):

"I, Douglas Dealer, transferor, hereby request and consent to the disclosure, to Buddy Buyer, transferee, all return information pertaining to the requested transfer of my Thompson submachinegun (Thompson/Center Arms Co. Model 1D, Serial Number 12345) by BATF Form 4 dated January 1, 1993. This request and consent is made pursuant to Section 6103(c) of the Internal Revenue Code of 1986, Title 26, United States Code."

Since no one has ever done this before, your purchaser will be met with a stunned silence when he inquires of the government. (The first rule of a bureaucrat: If I don't do anything, I can't do anything wrong.) When nudged, NFA Branch will say something about consulting with counsel. (Second rule of the bureaucrat: It isn't going to happen on my watch.) When nudged again, our erstwhile public servants will give some gobbledegook non-response. (Third rule: When in doubt, mumble.) Ultimately, after the problem has been admired by BATF's lawyers for a sufficient period, I predict that your buyer will be given the requested information -- or more likely his transfer. Non carborundum illegitimi.

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