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**Civics 101**

**Episode 24: The IRS**

[00:00:01] Who is the current speaker of the house? Don't even know.

[00:00:04] Will they rule in the presidents favor or will they send it to the Supreme Court.

[00:00:07] You can't refer to a senator directly by their name. Congressional redistricting. Separation of powers. Executive orders. The National Security Council.

[00:00:15] Civics, civics, civics, 101!

**Virginia Prescott:** [00:00:19] I'm Virginia Prescott and this is Civics 101, a podcast refresher course on some basics that you may have forgotten or slept through in school. And it is tax season. So today's lesson is about what is perhaps the most dreaded federal agency and the one that most strictly enforces our civic duty. The IRS. Guiding us through is Joe Thorndike. He's director of the Tax History Project at Tax Analysts and Joe, what a job you have.

**Joe Thorndike:** [00:00:44] Yeah it's not one that many people have. It's one of those little tiny niches.

**Virginia Prescott:** [00:00:48] Well I'm glad you're here for our purposes today. Give us a quick snapshot of the IRS today. Is it the largest bureaucracy? Which department oversees it? Some of the basics.

**Joe Thorndike:** [00:00:57] Well you know officially it's part of the Treasury Department. It is not the largest federal agency but one of the largest and more to the point it's probably the most important for most regular Americans. This is the the main point of contact between Americans and the federal government. I mean if you think about it, what other agency touches your life so directly? You know and threatens to put you in jail regularly. I mean it's, it's unusual, right?

**Virginia Prescott:** [00:01:21] Yes. It's not a loving relationship, in many ways. The IRS got its name, when... 1950's I think? Before that it was called the Bureau of Internal Revenue?

**Joe Thorndike:** [00:01:31] Right. It was renamed in the 50s partly to just, because they were in the middle of a big reorganization and wanted to communicate that but also to try to say, hey, we're about service. You know, we're not all about putting people in jail. We're also about taxpayer service and that is actually a big part of the agency's job because, you'll hear this sometimes, we have a voluntary tax system. That means that our compliance is done by us, not by the agency. So they've got to be. They've got to be helpful to us.

**Virginia Prescott:** [00:01:58] When was the Bureau of Internal Revenue created and why?

**Joe Thorndike:** [00:02:02] So the agency first appeared in 1862. And you know what's unusual about that is that the first income tax was actually imposed in 1861 and the tax came due at the end of June, back then, in 1862. But there was no agency to collect it yet. So I always say that's the most unusual thing about it is that the first income tax was never collected because there was no one to take the checks. But the next year they kind of got their act together. They passed a new income tax and they created an agency, the Bureau of Internal Revenue, to collect it. That was 1862.

**Virginia Prescott:** [00:02:35] Now I guess President Abraham Lincoln pushed the income tax, along with excise taxes, to pay for the war. Was it intended to stick around after the Civil War?

**Joe Thorndike:** [00:02:46] Well really, you know the driving force came from Congress. But yeah it was really intended as a war measure. We'd never had an income tax in the US although the British had had one for 60 years at that point but in the US we hadn't. And they saw this as an emergency tax. It was a way to balance more regressive taxes. So most of the taxes were on consumption. Excise taxes on things like you know alcohol, tobacco, and actually almost everything during the Civil War. But they wanted something that was more progressive and that was the income tax. That's why they created it as a balance.

**Virginia Prescott:** [00:03:21] Since the original Tea Party, as you mentioned, Britain had a tax and America was founded on rejection of taxes or taxation without representation officially. Was existence of an income tax and the IRS ever seriously challenged as an affront to the Constitution?

**Joe Thorndike:** [00:03:39] Well several times. So you know during wars, these things tend to get papered over pretty effectively. So not for instance during the Civil War very much. But then after the war was over they let it expire again. You know, emergency tax. Now the emergency is over let's let it go. There were people asking for one after that. Lib... progressives, we call them liberals today, but progressives and populists and people like that. But and eventually they got another one enacted and the Supreme Court struck it down as unconstitutional and the grounds for that decision were fairly technical and it was really only a stopping point on the way to actually having a permanent income tax. So yes, people have complained pretty regularly about this. But what really put the end of those arguments was the 16th Amendment, which established once and for all that Congress had the right to impose an income tax.

**Virginia Prescott:** [00:04:27] And when was that?

**Joe Thorndike:** [00:04:29] That was in 1913 and then later that year they actually got around to imposing an income tax so that the amendment says, yeah, you've got the power and then Congress a couple of months later said OK here's the tax. And that's why our first income tax was levied that year.

**Virginia Prescott:** [00:04:43] So, after the 16th Amendment giving Congress the power to lay and collect taxes, how did that change the Bureau of Internal Revenue?

**Joe Thorndike:** [00:04:52] Well the bureau got a lot of new stuff to do. They had a lot of new taxpayers all of a sudden. Now in the beginning the tax is really narrow, only applies to a relative handful of Americans and that's true, you know, up till the World War One. And then it gets broader and bigger and then, but it's still, it's a pretty minor tax. It's a rich man's burden basically, right. And that doesn't really change until World War II when the number of taxpayers increases like sevenfold in a few years. Millions of new people start paying the tax. They call, the saying is that it went from being a class tax to a mass tax. And that's when the Bureau of Internal Revenue became a fact of life for regular Americans for middle class Americans in particular.

**Virginia Prescott:** [00:05:32] One of the things I also found really surprising is that the IRS was the agency charged with enforcing Prohibition, which is really a seed bed for crime. So they're handling billions of dollars as an organization open to corruption. Certainly is there evidence or charges historically of corruption?

**Joe Thorndike:** [00:05:51] I mean the agency has had corruption scandal surrounding it at various points. I mean they're fond of pointing out actually that it took an accountant to catch Al Capone. That used to be a recruiting poster for the IRS. But to be sure there have been periodic scandals. There were scandals about you know the whiskey tax in the 1800's. There were, there was actually a major scandal in the 1950s when more than 100 I think IRS employees went, were prosecuted for corruption. But as you point out they handle a lot of money. They have a lot of power. You would expect there to be a fair amount of corruption. I think what's sort of remarkable is that there hasn't been more. Which isn't to say that there hasn't been any. Right? So it's a recurring theme and a lot of the time corruption gets blurred with sort of more generalized unhappiness about the agency and how power it is, how powerful it is and how it wields that power.

**Virginia Prescott:** [00:06:43] I'm interested in knowing more about how the power was wielded. I know that there were charges that FDR was using the IRS to, as a political weapon against his foe. Is that true?

**Joe Thorndike:** [00:06:56] A variety of presidents have sort of meddled in the operations of the IRS. You know there have been legal restrictions on that almost from the beginning, although they weren't necessarily so effective at first. And FDR has certainly been identified as one person who like to use tax information against his opponents.

**Virginia Prescott:** [00:07:15] Like, like how? As, you know, he just threatened audits?

**Joe Thorndike:** [00:07:18] He would, he would kind of send the IRS to look at somebody. I mean I remember when I was researching my book there was one moment where where FDR says to his treasury secretary, I'd like a list of the top 50 tax payers in 1942, I can't remember which year it was, but roughly around that. No names of course. And then they give them, they give them a memo which includes all the names. Roosevelt was famous for a lot of sort of anti-loophole, anti-tax avoidance crackdowns. And in 1937 I mean he had the Treasury write him this memo. Again there were two versions one that had the names and one that didn't. But they made sure that those names made their way into the public sphere and that these guys were called out for using, you know, special little loopholes to try to avoid their taxes.

**Virginia Prescott:** [00:08:04] I want to key to this thing you said about getting information. You know, no names, of course. But there have been other cases of, like, J. Edgar Hoover for example. His counterintelligence project... going for names, having access to IRS files. Is that legal or was that always done in an underhanded way?

**Joe Thorndike:** [00:08:24] No there was more fluidity in terms of sharing information back in the day. And I think the trend has been increasingly toward limiting the availability and the dissemination of taxpayer information. And since the Nixon years, there have been really very strict rules about how you can share tax information. Basically the agency is barred from releasing publicly, and even to other members of other parts of the federal government, any information about individual taxpayers without special authorization. So I mean one thing the IRS is actually very good at is protecting taxpayer information.

**Virginia Prescott:** [00:09:02] Is that why the IRS does not have authority, for example, to release Donald Trump's tax returns?

**Joe Thorndike:** [00:09:07] They can't release Donald Trump's tax returns. They can't even say whether Donald Trump has filed a tax return. They can't say anything at all. You can't acknowledge whether someone is a taxpayer or not.

**Virginia Prescott:** [00:09:17] The seriousness of the agency is not often undersold but this kind of access, their kind of dogged pursuit. I mean this is a force for good, for accountability, and uncovering abuse, and uncovering corruption. Can we get some props for the IRS?

**Joe Thorndike:** [00:09:32] Yeah, I mean I think it is good. Look, I mean, no one likes paying taxes, right? We all have to do it because somebody has to pay the bills. But that means that we want to make sure that everyone else is paying their fair share. And that's why I called my book that, right? I mean that's the, that's the central trope of taxpaying in America. Their fair share. Sometimes that's treated as like, oh, I just want those rich guys to pay their fair share. But it's really about all of us. We all have to carry this communal burden of, you know, this fiscal responsibility. I call it you know like fiscal citizenship is a way to think about it. And the IRS is the agency that makes that real. It makes sure that we are all doing what we're supposed to do and that none of us are shirking our responsibilities. We couldn't do it without them because you know Americans are really remarkably good about paying their taxes. We have very high compliance rates relative to other countries but that doesn't mean we would if no one was looking over our shoulder. It's a delicate balance between enforcement and voluntary compliance, supported by the agency with help, you know, and information. The agency has to do both. It has to make sure that we understand the rules and that we are trying to comply with them as best we can. They also have to do you know the other side of that is the stick, where they say and if you don't do it, we're going to come for you.

**Virginia Prescott:** [00:10:48] Well how about the evaders? We have a very strong libertarian tradition here in New Hampshire. A lot of pride in not having a state income or sales tax and even a history of armed standoffs. There was a couple of here called the Browns who held off federal marshals for nine months from their hilltop fortress in Plainfield. They're in prison now. Do all tax cheats go to prison?

**Joe Thorndike:** [00:11:11] Well, not all tax cheats go to prison. I would say that a lot of tax cheats get caught again. If there is a paper trail that the IRS has access to, that makes it much more likely they're going to catch someone. I don't know. I think you know the important distinction here is really between evasion and avoidance. Tax avoidance is what every red-blooded American likes to do and tax evasion is illegal. And you can go to jail for it. So I think the agency is actually quite good about enforcing the law against people who are breaking it. The agency has a much harder time enforcing the law against people who are bending it in ways that might reasonably be considered legal but might reasonably not be illegal. So that's the hard question, right? Tax is not always black and white. You owe this, you owe that. That's why we have audits, right? Because you can say, here's what I think I owe. The IRS comes in looks at the same situation and says, oh no no no, you can't claim that three martini lunch. That's no longer legit. And that's a negotiation on some level... that might be too kind a word. But that's the hardest job the agency has, I think... is figuring out how to enforce the law when the law is not crystal clear.

**Virginia Prescott:** [00:12:25] Joe, you got it return done yet?

**Joe Thorndike:** [00:12:27] Oh, are you kidding?! I have filed an extension every year. It's a busy time of year for me. I'm a tax guy!

**Virginia Prescott:** [00:12:32] Joe Thorndike. He's director of the Tax History Project for Tax Analysts and he is also author of the book Their Fair Share: Taxing the Rich in the Age of FDR, published by the Urban Institute Press. Thanks so much for joining us.

**Joe Thorndike:** [00:12:47] It was my pleasure.

**Virginia Prescott:** [00:12:51] All right, before class dismissed, our producer Maureen McMurray is here with a pop quiz that's not about civics, really.

**Maureen McMurray:** [00:12:58] Kind of.

**Virginia Prescott:** [00:12:59] A little.

**Maureen McMurray:** [00:12:59] It's presidential. OK, Virginia: which President is said to have liked ketchup on his cottage cheese and would enjoy a cup of coffee with a tape recorder by his side so he could record his thoughts, Among other things?

**Virginia Prescott:** [00:13:11] Well, I know Lyndon Johnson was a big fan of the tape recorder. So I'm I'm going with that.

**Maureen McMurray:** [00:13:17] Nixon!

**Virginia Prescott:** [00:13:17] Really?!

**Maureen McMurray:** [00:13:18] Yeah. He liked cottage cheese and ketchup.

**Virginia Prescott:** [00:13:21] That's so declasse.

**Maureen McMurray:** [00:13:22] It's a weird combo.

**Maureen McMurray:** [00:13:24] Who knew?