ing of records which may be inspected by an administrative agency and may be used in prosecuting statutory violations committed by the record-keeper himself." [258] But the only limit that the Court suggested in *Shapiro* was that there must be "a sufficient relation between the activity sought to be regulated and the public concern so that the Government can constitutionally regulate or forbid the basic activity concerned, and can constitutionally require the keeping of particular records, subject to inspection by the Administrator." [259] That there are limits established by the Self-Incrimination Clause itself rather than by a subject matter jurisdiction test is evident in the Court's consideration of reporting and disclosure requirements implicating but not directly involving the required-records doctrine.

Reporting and Disclosure.—The line of cases begins with *United States v. Sullivan*,[260] in which a unanimous Court held that the Fifth Amendment did not privilege a bootlegger in not filing an income tax return because the filing would have disclosed the illegality in which he was engaged. "It would be an extreme if not an extravagant application of the Fifth Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime," Justice Holmes stated for the Court.[261] However, "[i]f the form of return provided called for answers that the defendant was privileged from making he could have raised the objection in the return . . . ." [262] Using its taxing power to reach gambling activities over which it might otherwise not have had jurisdiction,[263] Congress enacted a complicated statute imposing an annual occupational tax on gamblers and an excise tax on all their wages, and coupled the tax with an annual registration requirement under which each gambler must file with the IRS a declaration of his business with identification of his place of business and his employ-

[258] 335 U.S. at 32.

[259] 335 U.S. at 32.

[260] 274 U.S. 259, 263, 264 (1927). *Sullivan* was reaffirmed in Garner v. United States, 424 U.S. 648 (1976), holding that a taxpayer's privilege against self-incrimination was not violated when he failed to claim his privilege on his tax returns, and instead gave incriminating information leading to conviction. One must assert one's privilege to alert the government to the possibility that it is seeking to obtain incriminating material. It is not coercion forbidden by the clause that upon a claim of the privilege the government could seek an indictment for failure to file, since a valid claim of privilege cannot be the basis of a conviction. The taxpayer was not entitled to a judicial ruling on the validity of his claim and an opportunity to reconsider if the ruling went against him, regardless of whether a good-faith erroneous assertion of the privilege could subject him to prosecution, a question not resolved.

[261] 274 U.S. at 263–64.

[262] 274 U.S. at 263.

[263] The expansion of the commerce power would now obviate reliance on the taxing power.