

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 14, 2019

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Dear Secretary Mnuchin:

I am writing about your May 6, 2019, letter to Ways and Means Committee Chairman Neal, which has the effect of directing IRS Commissioner Rettig to refuse to comply with Chairman Neal's request for tax return information regarding President Trump in connection with the Committee's investigation into the implementation of the mandatory audit policy for presidential tax returns. I am concerned that you are taking unprecedented steps that seriously undermine the ability of the Congressional tax-writing committees to obtain tax return information necessary to the performance of their legislative duties.

The Chairmen of the House Ways and Means Committee and the Senate Finance Committee have the authority to obtain tax return information from the IRS. This authority is codified in Tax Code section 6103(f), which provides that, if one of the chairmen makes a written request for tax return information, the Treasury Secretary "shall furnish such committee with any return or return information specified in such request." This language is mandatory, not discretionary. Further, this is not an obscure or seldom-utilized provision, and, contrary to the implication of your letter to Chairman Neal of April 23, 2019, its importance has not been limited to the provision of statistical data. The tax committees have invoked section 6103(f) many times to investigate specific matters within their legislative jurisdiction. For example, according to publicly available information, over the past fifteen years the Chairmen of the Finance Committee have sought information from the IRS pursuant to section 6103(f) more than a dozen times, including with respect to executives in the Enron Corporation (2004)<sup>1</sup>; with respect to large oil and gas companies (2006)<sup>2</sup>; with respect to the "ACORN" tax-exempt organization (2006)<sup>3</sup>; and with respect to the treatment of various "Tea Party" groups seeking

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<sup>1</sup> Letter from Sen. Max Baucus and Sen. Charles E. Grassley, to Mark W. Everson, Commissioner of Internal Revenue (Jan. 9, 2004) *available at* <https://www.finance.senate.gov/release/grassley-baucus-pursue-information-on-enron-executives-tax-dealings>.

<sup>2</sup> Letter from Sen. Charles E. Grassley and Sen. Max Baucus, to Mark W. Everson, Commissioner of Internal Revenue (Apr. 26, 2006) *available at* <https://www.finance.senate.gov/ranking-members-news/senators-call-for-tax-information-on-oil-and-gas-companies>.

<sup>3</sup> Memorandum from S. Fin. Comm. Tax Staff on Review of ACORN Tax-exempt Status to Sen. Charles E. Grassley (Sep. 22, 2009) *available at* <https://www.finance.senate.gov/imo/media/doc/prg092409d.pdf>.

tax-exempt status (2013-15).<sup>4</sup> The requests were made by Republican and Democratic Chairmen and to Republican and Democratic administrations. I am not aware of any case in which an IRS Commissioner failed to provide the requested information promptly and completely, including cases that were politically controversial, such as the ACORN and Tea Party investigations. Further, I am not aware of any case in which the IRS or Treasury Department questioned the Chairman's authority to obtain the requested tax return information.

In contrast, with respect to Chairman Neal's recent request, you have taken steps that appear unprecedented. First, contrary to the longstanding delegation of the administration and enforcement of the tax laws to the IRS Commissioner, including the responsibility to respond to requests under section 6103,<sup>5</sup> you have stepped in to personally "supervise" the response to the committee's request. Second, you have asserted that you will allow the IRS Commissioner to comply with the request only if you determine that the request serves a "legitimate legislative purpose," and you have dismissed Chairman Neal's stated legislative purpose as a "pretext." To my knowledge, since at least 1955, when the authority to respond to section 6103 requests was delegated to the IRS Commissioner, no Treasury Secretary has taken control of the response or questioned the legitimacy of the Chairman's purpose. Accordingly, I am concerned that you are failing to apply the law consistently with the statutory text and with longstanding practice.

I also am concerned that your response to Chairman Neal's request undermines the committees' ability to obtain tax return information in the course of future investigations related to tax matters within their jurisdiction. By calling compliance with Chairman Neal's request unlawful, you imply that Treasury has the burden of determining the legislative purpose behind every congressional request under section 6103(f). Further, it opens the Treasury Department to a challenge by taxpayers seeking to second-guess the legitimacy of the request and arguing that civil or criminal penalties should be imposed on Treasury officials for illegally disclosing protected information. Congressional invocations of section 6103, like other governmental actions, should be taken on their face as bona fide and regular.

Given these concerns, please provide the following information no later than May 28.

1. How many requests for tax return information have been made by the two tax-writing committees under section 6103(f) since 2000? How many of these requests have been complied with?
2. In how many cases described in (1) above has the Treasury Secretary, as opposed to the IRS Commissioner, responded to the request? Has the Treasury Secretary ever previously stepped in to "supervise" or otherwise influence the IRS Commissioner's response?
3. In how many cases described in (1) above has the Justice Department's Office of Legal Counsel been consulted about whether to comply with the request?

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<sup>4</sup> Letter from Sen. Max Baucus and Sen. Orrin G. Hatch, to Steven Miller, Commissioner of Internal Revenue (May 20, 2013) available at

[https://www.finance.senate.gov/imo/media/doc/05202013%20IRS\\_Tax\\_Exempt\\_May\\_20\\_2013.pdf](https://www.finance.senate.gov/imo/media/doc/05202013%20IRS_Tax_Exempt_May_20_2013.pdf)

<sup>5</sup> Treas. Dep't Order No. 150-37, Mar. 17, 1955; I.R.C. §7803(a)(2); I.R.S. Deleg. Order 11-2 (Rev. 3), Mar. 7, 2017.

4. In how many cases described in (1) above has the IRS or Treasury considered the views of the taxpayer(s) in question, or their counsel or representatives, regarding whether to comply with the request?
5. In how many cases described in (1) above has the IRS or Treasury Department determined that the request did not serve a “legitimate legislative purpose?” Were there any cases in which the request did not describe a legislative purpose? If so, how were those cases handled? Please describe the procedures and analysis the IRS or Treasury Department has used to make a determination of legitimate legislative purpose and communicate it to Congress.
6. Please provide copies of any Treasury Department (including IRS) communications, memoranda, or other documents, including any in draft form that were not finalized, produced in connection with the receipt and disposition of Chairman Neal’s April 3, 2019, request. Please also include any such materials produced prior to and in anticipation of such a request, such as memoranda generally discussing whether the IRS is legally required to provide tax return information in response to a request under section 6103(f).
7. Please provide copies of any communications, memoranda, or other documents the Treasury Department (including IRS) transmitted to or received from the White House, the Office of White House Counsel, or the President’s personal legal counsel in connection with Chairman Neal’s April 3, 2019, request. Please also include any documents produced prior to and in anticipation of such a request.
8. Please provide the dates, participant names, topics, and related notes, summaries, or other documentation of any discussions or meetings by Treasury Department officials (including IRS) related to the receipt and disposition of Chairman Neal’s April 3, 2019, request. Please also include any such instances that occurred prior to and in anticipation of such a request.

Thank you for your attention to this matter. If you have any questions, please contact me or have a member of your staff contact Tiffany Smith of the Finance Committee staff.

Sincerely,



Ron Wyden  
Ranking Member