

# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

June 4, 2019

The Honorable Charles Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Commissioner Rettig:

Congress and the public recently learned of a confidential draft IRS memo that contradicts the Treasury Department's current stated position on disclosure requirements under tax code section 6103(f), which press reports indicate was prepared in anticipation of Congressional requests for the president's tax returns.<sup>1</sup> Specifically, the memo stated the authority of tax-writing committees under section 6103(f) "does not allow the Secretary to exercise discretion to disclosing the information provided statutory conditions are met." The memo further states, "The Secretary's obligation to disclose return and return information would not be affected by the failure of a tax writing committee ... to state a reason for the request." This clearly contradicts Secretary Mnuchin's view that the Treasury Secretary may second-guess a Congressional committee's clearly stated intentions and decide on a case-by-case basis whether to comply with Congressional oversight requests using Section 6103.

In addition, reporting by the Washington Post raises grave concerns about political influence over the IRS's role in fairly administering the tax laws and complying with Congressional oversight. A May 21, 2019 Washington Post article discussing Ways and Means Chairman Neal's request for certain tax information relating to President Trump described one Treasury Department official's concern about influence over the agency because President Trump had "predetermined the outcome—and because Mnuchin is a Trump ally who was the finance chair of his 2016 campaign." The article quoted the official stating, "The decision has been made ... Now it is up to us to try to justify it."<sup>2</sup>

On May 14, 2019 I sent you a letter regarding your April 9 testimony before a House Appropriations subcommittee in which you intimated that you had not discussed with IRS legal staff whether you as IRS Commissioner have discretion over whether to comply with a request for tax information under section 6103(f) by a tax-writing committee (you stated "I have not asked" in response to a question about your discussions with legal staff). The existence of this confidential IRS memo, which the IRS said in the article was prepared in the fall of 2018, may

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<sup>1</sup> Jeff Stein and Josh Dawsey, "Confidential draft IRS memo says tax returns must be given to Congress unless president invokes executive privilege," *Washington Post*, May 21, 2019

<sup>2</sup> *Id.*

have significant implications on your House Appropriations subcommittee testimony, as well as your response to my letter.

Accordingly, I ask you provide the Finance Committee answers to the following questions by June 11, 2019:

1. When did you first become aware of the development or existence of this draft memo? Were you aware of the existence of this memo prior to the April 9, 2019 House Appropriations subcommittee hearing in which you intimated that you had not discussed these issues with IRS legal staff?
2. When did the current IRS Chief Counsel Michael Desmond learn of the memo? When did former Acting Chief Counsel William M. Paul learn of the memo?
3. Please provide any other versions of this memo, including all those in draft form.
4. Please provide the names and titles of all individuals who produced, edited, or reviewed the memo.
5. Please provide the names and titles of all individuals to whom the memo was circulated.
6. Please provide the names and titles of all individuals who were aware of the existence of this memo as of the date of your testimony before the House Appropriations subcommittee on April 9, 2019.
7. Please provide copies of any communications or other documents related to the production, editing, or review of the memo.
8. Please provide copies of any communications or other documents related to the disposition of the memo, including who should have access to the memo, who should review the memo, with whom the memo should be shared or not shared, and whether the memo should be finalized.
9. Please provide copies of any communications or other documents shared between IRS and Treasury staff related to this memo or its disposition. In addition, please indicate when IRS staff first notified Treasury Department staff of the existence of this memo.

Sincerely,



Ron Wyden  
Ranking Member