



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 27, 2019

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Wyden:

I write in further response to your May 14 letter inquiring about the Department of the Treasury's response to the request by the Chairman of the House Ways and Means Committee for the confidential tax returns (and other return information) of President Trump and related business entities. As you know, the Department of Justice's Office of Legal Counsel (OLC) advised Treasury that it would be unlawful to fulfill Chairman Neal's request. In reliance on that advice, Secretary Mnuchin and Commissioner Rettig declined the request on May 6.

Your May 14 letter posed a number of questions about past uses of section 6103(f) requests by the Senate Finance Committee and the House Ways and Means Committee since 2000. The best source of this information would likely be the committees' own archives. It is our understanding that it was not until 2005 that the IRS began tracking the committees' requests in a manner that can be relied upon for completeness, so the IRS does not have a record of the information that you seek. As a result, we were unable in our prior letter to provide the information you had requested. We understand that you are nonetheless interested in this information.

With respect to your first question, we have enclosed a chart showing requests for individual tax returns and return information since 2005, based on the records available to the IRS. *See* Attachment A. In addition, the following information may be useful in response to your questions:

- As far as the IRS has been able to determine, Chairman Neal's request for the President's tax returns is the only request from a tax-writing committee for the tax returns of a single individual taxpayer since 2005. It is also the only request where a requestor has indicated a desire to expose an individual's confidential tax returns to the public.
- Beyond Chairman Neal's request, the IRS is aware of two additional requests since 2005 for returns of multiple individual taxpayers or for return information of individual taxpayers. In both of these instances, taxpayer information was requested to investigate allegations of taxpayer mistreatment.
- In 2011, then-Ways and Means Committee Chairman Camp requested information about the IRS's gift tax examinations of multiple taxpayers, where media reports had suggested

that the examinations were politically motivated. *See* Attachment B. In 2013, a committee chairman requested return information — but not an individual return — regarding whether a Member of Congress had been audited, after committee staff had discovered an email from an IRS employee complaining about the Member of Congress and suggesting an audit.¹ Although section 6103(a) prevents us from sharing the information and documents, if any, provided in response to these two requests, the IRS informs us that it did respond to the requests.

- Although your request does not focus on disclosures to the Joint Committee on Taxation (JCT), for context, we note that the vast majority of disclosures to congressional committees under section 6103(f) consist of statistical studies, compilations, and other data products provided to JCT for statistical purposes. These data products are typically used to inform tax policy and perform economic modeling of budget impacts, and they are requested in bulk for each new Congress. The requests for this information do not identify specific taxpayers. *See* Attachment C (example of 2019 request).

Second, you inquired about the role of the Secretary in reviewing or responding to section 6103(f) requests. In an April 10 letter to Chairman Neal, Secretary Mnuchin explained that, given the “unprecedented nature of this request,” he would “supervise the Department’s review . . . to ensure that taxpayer protections and applicable laws are scrupulously observed, consistent with [his] statutory responsibilities.” The Secretary noted that Chairman Neal himself had acknowledged the unprecedented nature of the request and that Chairman Grassley — who shares coordinate section 6103(f) authority with Chairman Neal — described the request as lacking a “legitimate legislative purpose” and as “Nixonian to the core.” The Secretary explained that Chairman Neal’s request presented serious constitutional issues—the resolution of which “could affect protections for all Americans against politically-motivated disclosures of personal tax information, regardless of which party is in power.”

We are not aware of whether a previous Treasury Secretary has directly responded to a section 6103(f) request before, but we are also not aware of any previous section 6103(f) request that elicited similar objections from the chairman of a tax-writing committee or presented such serious constitutional questions. During the previous administration, however, it is our understanding that the Treasury Department reviewed the IRS’s responses to significant Congressional oversight requests, and previous Treasury Secretaries have exercised their authority to supervise the IRS’s administration of the tax code in connection with Congressional oversight interests. *See* Attachment D (letter from Treasury explaining that Secretary Lew had asked the IRS Commissioner to implement various recommendations and had ordered the Commissioner to report on progress).

Third, you inquired about the role of OLC in providing advice regarding prior requests under section 6103(f). Although we are not aware of any past section 6103(f) request that has raised the kind of serious constitutional questions as the recent request, we are aware of at least one other occasion on which OLC has provided advice concerning Congressional access to tax information under section 6103(f). On that occasion, OLC advised that subcommittees of the tax-writing committees could inspect returns and return information in certain circumstances, but

¹ The IRS has been unable to locate a copy of this request.

that a committee chairman could not delegate authority to make section 6103(f) requests to a subcommittee. See Attachment E (reproducing opinion from *Congressional Access to Tax Returns—26 U.S.C. § 6130(f)*, 1 Op. O.L.C. 85 (1977)).

Fourth, you inquired whether Treasury or the IRS has considered the views of affected taxpayers with respect to a section 6103(f) request since 2000. We are not aware of any instance from 2000 to the present in which the views of the affected taxpayer were a factor in the decision with respect to such a request, including with regard to Chairman Neal's request. We note, however, that section 6103(f)(1) expressly requires consideration of the affected taxpayer's views with respect to disclosures to the tax-writing committees in any setting other than closed executive session.

Fifth, you inquired about the process for determining whether a section 6103(f) request serves a legitimate legislative purpose. Neither Treasury nor the IRS has a formal procedure in place for evaluating the legislative purpose of a section 6103(f) request. Under longstanding guidance applicable to the entire Executive Branch, however, "a threshold inquiry that should be made [by the Executive] upon receipt of any congressional request for information is whether the request is supported by any legitimate legislative purpose." *Response to Congressional Requests for Information Regarding Decisions Made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 74 (1986).

There is no need for close review of most requests under section 6103(f) because the purpose of the request is usually self-evident and legitimate. We are not aware of any previous section 6103(f) request for which there was a voluminous public record indicating that the committee's purpose was to release the requested confidential tax information to the public—a unique circumstance that prompted a careful legal review of Chairman Neal's request. With this rare exception, the tax-writing committees have traditionally requested information under section 6103(f) with due concern for the privacy interests of taxpayers and in pursuit of valid legislative purposes. We are aware of no previous section 6103(f) request that the IRS was unable to fulfill because it lacked a legitimate legislative purpose, and we do not expect the Department's decision with respect to Chairman Neal's request to have any effect on the tax-writing committees' longstanding, prompt access to tax information for legitimate purposes.

Sixth, you seek additional documents and meeting records concerning the Department's decision not to fulfill Chairman Neal's request. While we understand that you disagree with the Department's decision, the Department has been transparent about its reasons. The Secretary sent Chairman Neal three public letters explaining at length the basis for the Department's concern about the purpose of the request, the constitutional issues that warranted review by OLC, and the rationale for the Department's final decision based on OLC's legal advice. In addition, OLC provided a thorough opinion memorializing the reasons for its advice, and OLC has published its opinion, thus making its legal reasoning available to all Members of Congress and the public.² We believe this public record provides ample basis for understanding and evaluating the Department's response to Chairman Neal's request. If you have specific questions about the

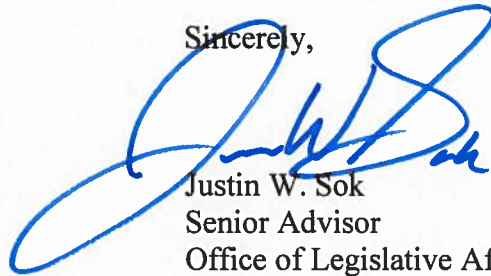
² *Congressional Committee's Request for the President's Tax Returns Under 26 U.S.C. § 6103(f)*, Slip Op. O.L.C., at 1 (2019), available at <https://www.justice.gov/olc/file/1173756/download>.

Department's decision, however, we would be pleased to engage further with your staff on those questions.

Finally, you seek "communications, memoranda, or other documents the Treasury Department (including the 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." The only such documents that Treasury and the IRS are aware of are two unsolicited, already-public letters that the President's personal lawyer sent to Treasury. *See* Attachment F.

We hope this additional response to your May 14 letter provides helpful information on the tax-writing committees' past use of section 6103(f) and the Department's response to Chairman Neal's request.

Sincerely,



Justin W. Sok
Senior Advisor
Office of Legislative Affairs

Enclosures

cc: The Honorable Charles E. Grassley, Chairman