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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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December 20, 2017

The Hon. David Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Assistant Secretary Kautter,

Recently you began your duties as acting IRS commissioner after the expiration of John Koskinen's term. According to reports, you will continue to serve in your politically appointed position as assistant secretary for tax policy concurrently with your duties at the IRS. As you recall, when your nomination for the assistant secretary position came before the Finance Committee I had serious concerns about the senior role you held at E&Y during a period in which the company marketed tax shelters. I ultimately supported your nomination based in part upon on your commitment to maintain the highest level of ethical and professional standards going forward, as well as your commitment to answer questions presented to you by members of Congress after your appointment.

I believe it is inappropriate for the acting commissioner of the IRS to also serve as one of the highest political appointees in the Treasury Department. Over the last few years the IRS has been roiled by allegations that employees treated certain groups unfairly based on their political affiliation. In 2015, the attendance of the IRS Chief Counsel at a White House photo op caused Americans serious concern.¹ Furthermore, the IRS is currently conducting an audit of the President's tax returns, a situation so sensitive the former Commissioner reportedly installed a special safe to keep the returns safe. Yet, we now face a situation where the acting IRS commissioner is concurrently one of the President's principle tax advisors.

Furthermore, recent reports surrounding the Republican tax plan raise questions about potential political interference in your role at the Treasury Department. In pitching the tax proposal, Secretary Mnuchin has stated over 100 people in the Treasury tax group, which you head, are "working around the clock running scenarios" to evaluate the revenue impact of the tax proposal.² Secretary Mnuchin also noted in late September that "not only will this tax plan pay

¹ Lawrence M. Axelrod, "The Problem With Wearing Two Hats," Tax Notes (Nov. 6, 2017).

² CNBC Transcript: U.S. Treasury Secretary Steve Mnuchin Sits Down with CNBC's Becky Quick on "Squawk Box" Today (Feb. 23, 2017) (online at <https://www.cnbc.com/2017/02/23/first-on-cnbc-cnbc-transcript-us-treasury-secretary-steve-mnuchin-sits-down-with-cnbc-becky-quick-on-squawk-box-today.html>)

for itself, but it will pay down debt.”³ However, the barebones analysis that was eventually produced by Treasury did not support either of those assertions. This comes on the heels of the Treasury Department removing a 2012 Office of Tax Analysis economic papers that contradicted Secretary Mnuchin’s assertions that workers would benefit the most from corporate income tax cuts.⁴ I am concerned about the possibility that political influence was used to suppress the work of the Office of Tax Policy.

Americans must have confidence that the IRS conducts its duties with the utmost integrity, showing neither preference nor disfavor to any taxpayer. To that end, please provide the following information about how you plan to perform your duties as acting commissioner.

1. Please describe how you plan to navigate the inherent conflict of serving as the nation’s chief unbiased tax administrator as well as the president’s chief tax advisor. In particular, how will you ensure that any pending or future IRS audits and enforcement actions are free of political interference?
2. Have you created any written policies regarding how you will avoid political conflicts of interest? If so, please provide them.
3. Is there any White House guidance outlining the proper rules and procedures for communications between the White House (including all components of the Executive Office of the President) and the IRS, in addition to the rules contained in IRC Section 6103? If so, please provide a copy of this guidance.
4. Is it your determination that the guidance set forth in Treasury Order 107-05 is still valid? Does the guidance apply to you in your role as assistant secretary for tax policy? Does the guidance apply to you in your role as acting IRS commissioner? How will you manage any inconsistencies?
5. Is there any IRS guidance outlining the proper rules and procedures for communications between the agency and the White House, in addition to the rules contained in IRC Section 6103? If so, please provide a copy of this guidance.
6. How do you divide your time between your two positions?
7. Where are you physically located when conducting each of these two responsibilities? If you divide your time between more than one location, please provide estimates for the amount of time spent in each location each week.
8. Where and how do you access the IRS computer and e-mail systems?
9. Since you were selected to serve as acting IRS commissioner, have you had any meetings with President Trump, or prepared any written memos, reports, or other materials to be delivered to President Trump? If so, what was the subject of these discussions or materials?

³ Kate Davidson, "Treasury Secretary Steven Mnuchin: GOP Tax Plan Would More Than Offset Its Cost," Wall Street Journal (Sept. 28, 2017) (online at <https://www.wsj.com/articles/treasury-secretary-steven-mnuchin-gop-taxplan-would-more-than-offset-its-cost-1506626980>).

⁴ Richard Rubin, "Treasury Removes Paper at Odds With Mnuchin’s Take on Corporate Tax-Cut’s Winners," Wall Street Journal (Sept. 28, 2017) (online at <https://www.wsj.com/articles/treasury-removes-paper-at-odds-with-mnuchins-take-on-corporate-tax-cuts-winners-1506638463>).

10. Since you were selected to serve as acting IRS commissioner, have you had any meetings with any senior White House officials or senior advisors? If so, please list the dates of these meetings and describe the subject matter.
11. Will you commit to informing me of any future communications with the White House or senior advisors?
12. In your role as assistant secretary for tax policy, please describe any analysis your office conducted concerning the economic and deficit impact of the current tax reform proposals. What percentage of your time at Treasury was spent coordinating this analysis?
13. In your role as assistant secretary for tax policy, were you involved in the decision to remove from the Treasury the Department's website the May 2012 Office of Tax Analysis Technical Paper 5 which showed that owners of capital are the primary beneficiaries of corporate tax cuts? If not, please identify those who were responsible.
14. In your role as assistant secretary for tax policy, have you been party to any decisions meant to disfavor one political constituency over another?
15. In your role as assistant secretary for tax policy, have you been party to any decisions meant to disfavor one state over another based on the political constituency of that state?

Please provide this information to my office no later than January 12, 2018. Thank you for your attention to this matter.

Sincerely,



Ron Wyden
Ranking Minority Member