

**NOMINATION OF CHARLES P. RETTIG**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

**ONE HUNDRED FIFTEENTH CONGRESS**

SECOND SESSION

ON THE

NOMINATION OF

CHARLES P. RETTIG, TO BE COMMISSIONER,  
INTERNAL REVENUE SERVICE

—————  
JUNE 28, 2018  
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**NOMINATION OF CHARLES P. RETTIG,  
TO BE COMMISSIONER,  
INTERNAL REVENUE SERVICE**

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**THURSDAY, JUNE 28, 2018**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 9:30 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Crapo, Thune, Isakson, Portman, Toomey, Heller, Scott, Cassidy, Wyden, Cantwell, Nelson, Menendez, Carper, Cardin, Brown, Casey, and Whitehouse.

Also present: Republican staff: Chris Allen, Senior Advisor for Benefits and Exempt Organizations; Chris Armstrong, Chief Oversight Counsel; Becky Cole, Policy Director; Ryan Martin, Senior Human Services Advisor; Nicholas Wyatt, Tax and Nominations Professional Staff Member; and Jeffrey Wrase, Deputy Staff Director and Chief Economist. Democratic staff: Chris Arneson, Tax Policy Analyst; Michael Evans, General Counsel; Ian Nicholson, Investigator; Joshua Sheinkman, Staff Director; and Tiffany Smith, Chief Tax Counsel.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.  
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The committee will come to order.

I would like to welcome everyone to today's hearing on the pending nomination of Mr. Charles Rettig, who has been nominated to serve as IRS Commissioner, a very important position in this country.

Right now, the IRS is at a critical juncture. The American people are already seeing a myriad of benefits thanks to tax reform, as unemployment continues to drop and wages rise. And the IRS will be responsible for implementing these new policies smoothly and efficiently so that the new law's full benefits can be more quickly realized.

After years of turmoil and controversy, I am hopeful that the IRS has finally started turning the corner. However, with a large governmental organization like the IRS, there is always room for improvement. Take for example, the problems of aging technology services. Some of the IRS's information technology dates back to the Kennedy administration. Unsurprisingly, that dated technology could inhibit the IRS's ability to interact coherently with 21st-

century technology that currently powers our country and much of the rest of the world. If confirmed, I expect Mr. Rettig to work with Congress to modernize the IRS's infrastructure and technology to bring the agency into our 21st century.

Another major issue is that the IRS has an aging workforce. Right now, the majority of the IRS's workforce is over the age of 50 and nearing retirement. If that majority of the workforce were to retire at or around the same time, the IRS would face a shortage of knowledge and experience. If confirmed, I hope that Mr. Rettig will start working with Congress immediately to plan for the agency's future.

As the IRS continues to implement tax reform, it must work with the Treasury Department to issue regulations and other guidance to ensure that taxpayers have certainty and predictability concerning this new law. It must also work with Congress to ensure that the new law is implemented and administrated as Congress has intended.

The challenges I have enumerated are greater than any one Commissioner. But the Commissioner will set the tone of the workforce and will be charged with working alongside Congress to thoroughly and fairly implement and enforce our new tax laws.

An effective IRS Commissioner must also remember that our tax system relies, in great part, on voluntary compliance. And the system works best when American taxpayers trust the agency and are able to easily contact the IRS to receive timely and complete answers to their questions.

In short, if confirmed, Mr. Rettig has his work cut out for him, but I am optimistic that he is up to this job and, if confirmed, will lead the agency with integrity. I feel quite confident about that.

That said, should the IRS slip up, or fail to live up to the high standards Congress has set, this committee will hold the IRS accountable, as it always has. At the same time, when the IRS acts properly, responds thoughtfully, and works with us, the IRS will find no better friend than this committee, regardless of Democrat or Republican. After all, we recognize just how important it is that our taxes are collected fairly, efficiently, and in compliance with what Congress intended when we wrote our tax laws.

I want to thank Mr. Rettig for being here and for his willingness to serve. Mr. Rettig has decades of experience representing taxpayers before the IRS. He knows the agency inside and out, due to his years of work on advisory councils and stakeholder groups. And he brings the necessary passion and dedication that this role will definitely require.

I am confident that, if confirmed, Mr. Rettig will be a trustworthy, responsive, and earnest partner with Congress and this committee as we pursue our shared mission to improve the agency.

I do want to thank our Acting Commissioner Kautter, who has done a great job at the IRS. However, that is not what we confirmed Mr. Kautter to do. Now, more than ever, we need Mr. Kautter back doing his full-time job at the Treasury Department.

Before we begin today, I want to clear something up. There have been inaccurate press reports based on leaked committee documents that the nominee did not disclose property he owns in a

Trump International property in Hawaii. Now this is absurd and it is false, and we should put this matter to rest right now.

First, he disclosed these properties, which were purchased in 2006, on the committee questionnaire. That is a fact. He has been honest and forthright with this committee at every stage of the vetting process. The dispute here pertains to the additional details of noting the name on the side of the building.

Second, any suggestion that there is a conflict of interest here is the stuff of conspiracy theories. Maybe one wants to argue that Mr. Rettig purchased these properties in 2006, during Season 5 of "The Apprentice," on the off chance that Mr. Trump would become President and nominate him to be IRS Commissioner.

I notice that you feel the same way that I do, that that is silly, and I hope we can put that matter to rest and move on to the substance of this morning's confirmation hearing.

And finally, I do want to note that we have noticed an executive business meeting for this time as well. If, at any point during the hearing, a suitable quorum is present, I intend to pause the hearing and move immediately to votes on the nominations of Mr. Jeffrey Kessler, Ms. Lynn Johnson, Ms. Elizabeth Ann Copeland, and Mr. Patrick Urda. Thereafter, we will resume our hearing.

With that, I am pleased to turn to my partner, Senator Wyden, for his opening remarks.

[The prepared statement of Chairman Hatch appears in the appendix.]

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Chairman and colleagues, the next IRS Commissioner is going to be in charge of administering a tax system that is broken in two.

There is one set of rules in America for the cop on the beat, or the worker on the factory line. Strict rules, no special loopholes—taxes come straight out of your paycheck.

Then there is another set of rules in America for the high-flyers. Under that system, with the right advice from costly advisers, you can effectively pay what you want, when you want.

Mr. Rettig, nominated by the President to lead the IRS, seems to have made a career on giving advice to a lot of those high-flyers. And the biggest policy challenge he is going to walk into, if confirmed as Commissioner, is implementing the extremely complicated Trump tax law, which does a whole lot more for the high-flyers and the well-connected than it does for everybody else.

Given that fact, in my view, it is up to Mr. Rettig to demonstrate that if he is confirmed, he is going to work on behalf of all Americans, particularly hard-working, middle-class families and the owners of the garages, the corner stores, and the restaurants that make up our communities. "The guy on the street," as Mr. Rettig talked about in our meeting earlier this week.

Now on another matter, if you have studied the Nixon presidency, you know there is a dark history of the White House abusing the IRS for political purposes. It is going to be particularly important for Mr. Rettig to demonstrate his independence, given that

Mr. Rettig did not fully disclose to the Finance Committee staff the condos he owns and rents out in a Trump-branded and -managed property.

On a matter the chairman, my good friend, touched on about leaks on this kind of discussion, I would only say that last night there was a memo to all Finance Committee members coming from the chairman and myself making it clear that we wanted all members to understand what was at issue with these condos—and they are being rented out in Trump-branded and -managed property.

Now, having said that, disclosing that information may not have been required by law. My view is it would have been a smart exercise of judgment. Certainly if you want to eliminate any questions about appearances, you can sell the properties off.

But setting aside even that financial relationship, committing to independence is critically important. This administration often seems to make tax decisions for political reasons rather than policy reasons, and that is a recipe for the kind of swampy corruption that makes people lose faith in institutions like the IRS.

For example, it appears a policy regarding tax-favored “Opportunity Zones” was changed at the behest of one well-connected Republican donor in Nevada. It is a sign the administration has put itself in the business of picking economic favorites as a result of the tax law. This was a donor who wanted an accommodation, and he got it. When the State of Vermont sought a similar change, it was denied.

There are also reports the Trump administration is going to introduce a new, untested tax form that will make the experience of filing returns even more of a headache for many Americans, particularly senior citizens.

When the debate closed and the new tax law passed, it turned out most Americans would not be able to file on a postcard, contrary to what Republican sponsors had promised. The administration decided to go ahead and cram the same amount of tax math onto a smaller form anyway. That means many taxpayers are going to have to rifle through complicated new sets of instructions, attach multiple schedules, and, in my view, it certainly is likely to generate more errors. The new forms are going to—for many taxpayers—be a set-up to failure.

One last point, Mr. Chairman. Recently, the Vice President said that the Johnson Amendment, which bars 501(c)(3) tax-exempt organizations from campaigning for or against political candidates—and I am quoting the Vice President of the United States here—“will no longer be enforced under this administration.”

Now, I recognize this is a priority of the far right. But people ought to understand it is a recipe for even more dark money going into our political system.

And I feel very strongly that the next IRS Commissioner has got to be in charge of enforcing the laws on the books despite the Vice President’s pledge which, in effect, says that will not be the case.

So running the IRS is a difficult job that involves managing tens of thousands of employees. Mr. Rettig has decades of experience. It will also be a concern, as he and I talked about, that he does not have extensive management experience. He is going to be asked about that, as he knows, today.



I appreciate Mr. Rettig's willingness to serve. I thank him for joining the committee.

Mr. Chairman, as always, I look forward to working with you.

The CHAIRMAN. Well, thank you, Senator. I appreciate working with you very much.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. I would like to extend a warm welcome to Mr. Charles Rettig and thank him again for joining us this morning.

Soon we will hear from Mr. Rettig, who is currently working at the firm Hochman, Salkin, Rettig, Toscher, and Perez, P.C., where he has represented clients before the Internal Revenue Service, the Tax Division of the Department of Justice, and numerous State and Federal taxing authorities.

Mr. Rettig has served on the Advisory Board of the California Franchise Tax Board, the Advisory Council of the California State Board of Equalization, and the Internal Revenue Service Advisory Council. Mr. Rettig is currently the vice chair for administration of the Section of Taxation of the American Bar Association, and previously served as the chair for the Section of Taxation of the California Bar.

Throughout his career, Mr. Rettig has specialized in Federal and State civil tax and criminal tax controversy matters, and tax litigation including tax-related examinations and investigations for individuals, business enterprises, partnerships, limited liability companies, and corporations.

Mr. Rettig received his bachelor's degree in economics from the University of California at Los Angeles and his J.D. from Pepperdine University. He then went on to earn an LL.M. in taxation from New York University.

So I—and I am sure everybody here looks forward to hearing from Mr. Rettig and how he plans to integrate his past experiences with his new role at the agency, if confirmed.

Without further ado, Mr. Rettig, please begin with your opening remarks.

**STATEMENT OF CHARLES P. RETTIG, NOMINATED TO BE COMMISSIONER, INTERNAL REVENUE SERVICE, WASHINGTON, DC**

Mr. RETTIG. Chairman Hatch and Ranking Member Wyden, it is an honor to appear before the Senate Finance Committee as the President's nominee to serve as the next Commissioner of the Internal Revenue Service.

Before I proceed, I would like to recognize my family who are here with me today: my wife Tam, my sister-in-law Dr. Jan, my sister-in-law Twi with her husband Michael, my stepsons Dayton and Trenton, my daughter Dr. Christina, and my son Dr. Charlie. I cannot explain the degree and extent that their love and support for me today and throughout my professional and personal career mean to me. Personally, I would not be here—in my mind—without the ongoing support of my family.

I need to also recognize three of my law partners who are here today, two of whom flew out from Los Angeles last evening, arrived this morning, and are headed back this afternoon. Steve, Dennis,

and Ed are here; my mentor in the practice of law, Avram; a very, very close family friend Garner; and another very, very close family friend Meko.

It is the support of my friendships that has allowed me to be here today and to do the things that I have accomplished in my life.

My son Charlie, who is sitting behind me, currently serves as a Captain in the United States Army and returned Monday evening from 12-month deployment overseas. When I was nominated, Charlie proudly pointed out, "Dad, I'm so proud you'll be following me into government service."

Nothing would make me more proud than to follow my son into government service. I did not previously have the opportunity, and I look forward to, if confirmed, having that opportunity going forward.

I also learned something from my son. This tax season I was pressing him while he was serving overseas to get the information to the accountant in order to prepare his returns. And the response I got was, "Dad, I have 180 days from when I return from the combat zone in the Sinai Peninsula to submit my income tax returns." It is nice to get your tax advice from your Army Captain son.

I would also like to acknowledge my father, who had a one-truck air conditioning business and taught my brother and I the value of hard work, getting up early, working late, and not complaining.

I was the first in my family to finish college, and through undergraduate school, law school, and graduate school my family often joked that I would never stop studying—and they were right.

For more than 35 years, I have worked with all levels of the IRS to achieve resolutions on behalf of taxpayers and bring them back into compliance with our system of voluntary self-assessment. I have served as Chair of the IRS Advisory Council and in a similar role in my home State of California. I am currently vice-chair, administration for the 12,000-member Taxation Section of the American Bar Association. I also serve as president of the American College of Tax Counsel.

Through decades of experience working across the table from the IRS, I have seen the difficulties faced by taxpayers of all kinds—from large taxpayers to small businesses to low-income taxpayers who need help.

When the IRS started "Problem Solving Days" years ago to allow taxpayers to come in without an appointment, I organized dozens of tax professionals in Los Angeles to assist unrepresented taxpayers who appeared at the IRS seeking a resolution of a tax issue. I have also devoted a significant amount of time assisting taxpayers who cannot afford professional help on a pro bono basis.

Throughout my career, I have also been privileged to work with many professional and hardworking IRS employees and, if confirmed, would be honored to work beside them and earn their respect. Despite the challenges it faces, the IRS is fortunate to have an experienced workforce committed to its mission.

In my career, I have seen the impact of those challenges firsthand. Long waits on the phone and inadequate IT systems are significant issues of frustration for both the Internal Revenue Service workforce as well as taxpayers. If confirmed, I would hope to work

with this committee to take on these and other challenges that impact on taxpayers across the board. We cannot fall into a trap of viewing the challenges the IRS faces as facts of life, but we must work together to solve them.

If I am privileged to serve as Commissioner, my overriding goal will be to strengthen and rebuild the trust between the IRS, the American people, and their representatives in Congress. That trust is critical to all that the IRS does, particularly as it works with the Department of Treasury to implement once-in-a-generation tax reform legislation enacted by Congress last year. The successful implementation of that landmark reform bill will be among my highest priorities.

In closing, I wish to acknowledge IRS Revenue Procedure 1964-22 by Commissioner Mortimer Caplin who, at age 101, remains a legend in our field. It is the duty of the Service to carry out that policy by correctly applying laws enacted by Congress to determine the reasonable meaning of various code provisions in light of congressional purpose in enacting them, and to perform this work in a fair and impartial manner with neither a government nor a taxpayer point of view.

I am grateful for the opportunity to testify and look forward to your questions.

The CHAIRMAN. Well, thank you so much. We are grateful that you are willing to take on this assignment. It is not an easy one, and it is one with plenty of controversy.

[The prepared statement of Mr. Rettig appears in the appendix.]

The CHAIRMAN. I do have some obligatory questions I am going to have to ask.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. RETTIG. No.

The CHAIRMAN. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. RETTIG. No.

The CHAIRMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Mr. RETTIG. Yes.

The CHAIRMAN. Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. RETTIG. Yes.

The CHAIRMAN. That is great.

Mr. Rettig, the IRS stands at a crossroads, both in terms of challenges and responsibilities. In terms of challenges, if confirmed you will run an agency that has enormous responsibility. It touches every single American and every business.

Nearly every function of the government depends on the revenue the IRS collects. At the same time, it has an aging information technology infrastructure, and an aging workforce. Real and seri-

ous changes are needed, and this committee is working to help with that.

Now, the IRS has a lead role in implementing and a primary role in administering the largest tax overhaul in a generation, which delivers tax relief and simplification for taxpayers across the country.

Now, Mr. Rettig, this is a challenge not a lot of people would willingly accept. So why are you dumb enough to accept it? [Laughter.]

And why do you want this role, and are you up to this particular challenge? And I know you are not dumb, so please forgive me with my out-of-control sense of humor.

Mr. RETTIG. Mr. Chairman, I have a deep respect for the Internal Revenue Service, for this country, for this flag, for the people who work for the Internal Revenue Service, and respect the fact that the Internal Revenue Service is a critical component of the success of this country. And I am committed to giving my best efforts to make the Internal Revenue Service the best agency that it can be.

The CHAIRMAN. Well, I think that is why you have been nominated. From what I see, you are very capable of doing that.

Under President Obama, this committee led Congress's main bipartisan investigation into the question of political bias at the IRS and issued the only bipartisan report on the matter.

Congress has long been concerned with questions of political bias at the IRS, which have been a serious issue across the agency's history, most notably in the Kennedy, Nixon, and Obama administrations.

If confirmed, do you pledge to lead the IRS without regard to partisan political bias or inappropriate influence?

Mr. RETTIG. Absolutely.

The CHAIRMAN. The Internal Revenue Service has never been a particularly popular agency—as you know—and its reputation has certainly been challenged in recent years. How do you intend to restore America's faith and trust in the IRS? Do you consider it important to build a better relationship between the IRS and the taxpayers?

Mr. RETTIG. I think that the relationship and the viewpoint of the American taxpayers as to the Internal Revenue Service is critical to the success not only of the Internal Revenue Service, but also of this country. I think a large portion of the reason that I am significantly interested in becoming Commissioner is to rebuild the trust in that agency to confirm to the American taxpayers that the Internal Revenue Service is impartial, nonbiased, and color-blind for all purposes.

The CHAIRMAN. Great.

The use at the IRS of ancient computer equipment is something that we have commonly noted. Despite everyone being aware of the necessity of updating equipment at the IRS, substantial progress here remains elusive. What are your plans to update the technology needs at the IRS, and how are you going to accomplish that?

Mr. RETTIG. The modernization of the IRS IT system and bringing the IRS IT system into the 21st century is one of my top goals. I think that it serves two purposes. It serves not only the protection of taxpayer data, which I believe that universally we all agree

is a principal concern, but also modernizing the IT system serves to enhance services that the taxpayers in this country deserve.

The CHAIRMAN. Okay.

How will you use your longtime experience as a tax attorney, especially one who has been on the other side of the courtroom from the IRS, to help better perform your duties as IRS Commissioner?

Mr. RETTIG. I have been on the consumer side of the IRS and a stakeholder in working with the IRS at virtually every level, from field level agents and revenue officers up through to the corner offices of the Internal Revenue Service. So I think I have a pretty good understanding of the operations of the IRS and the various roles that different levels of the IRS play in trying to efficiently move tax administration in this country with an eye toward the benefits of taxpayers.

The CHAIRMAN. Okay.

I think my time is basically up. So we will turn to the ranking member.

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Rettig, let me start with this comment made by the Vice President. Vice President Pence said in May that the Johnson Amendment—which prohibits the 501(c)(3) tax-exempt organizations like churches from campaigning for or against political candidates—will “no longer be enforced under this administration.”

I would like to give you the opportunity, as we begin this hearing, to respond to the Vice President of the United States. Who is going to be in charge—if you are confirmed as Commissioner, who is going to be in charge of the IRS? Will it be the Vice President of the United States, or will it be you?

Mr. RETTIG. If I am confirmed, I will be in charge of the Internal Revenue Service and will make sure that the Internal Revenue Service moves forward and follows the law in an impartial, non-biased manner.

Senator WYDEN. Do you find the Vice President’s statement troubling? Is that not sending a message, an inherently political message, when what we want—whether it is Democrats or Republicans—is the law enforced? Is that not a troubling message?

Mr. RETTIG. As a nominee, I can really only speak to my viewpoint of what would happen if I was to operate the Internal Revenue Service as Commissioner, if confirmed. And I confirm to you, and I pledge to this committee, impartial, nonbiased operation from the Internal Revenue Service from top to bottom.

Senator WYDEN. I understood your answer, but I think every American, Democrats, Republicans, whatever your political philosophy, ought to be very troubled that the Vice President thinks he can make a statement like that. That this administration is, in effect, above the law; that the law is not what matters. What matters is political muscle.

Let me move on to the question of the President’s tax returns and particularly this matter of being under audit. The President has stated for over 10 years now that he cannot release his individual tax returns because he has been under these continuous audits.

In your 35 years of representing certainly many high-income taxpayers with complicated business arrangements, have you ever rep-

resented anybody who was under continuous audit for 10 years or more?

Mr. RETTIG. We have had taxpayers, both individuals and entities, that have had multiple-year audits.

Senator WYDEN. The question is 10 years.

Mr. RETTIG. That is where I was going, Senator. I personally cannot recall a 10-year examination. But I am not particularly—I have no information about the audit with respect to the President.

Senator WYDEN. So how would one even get in a place of having 10 years' worth of audits? I find it incredulous that somebody could be under a continuous audit unless they had made enormous mistakes on their tax returns over and over again. My assumption is professionals in the field—like yourself—would never let that happen.

So I find it very hard to buy the President's excuse that he has been making all of these months for not releasing his returns. But how would one even get in a position like this?

Mr. RETTIG. From my experience, I would say that the more complex the return, the longer it takes to get an examination completed. But again, I have no familiarity with the President's returns themselves.

Senator WYDEN. I am going to leave the record open on that point. I would like to have you amplify on that, because I just find this an incredulous excuse. And you have told me essentially that this does not happen very often. It happens sometimes.

Mr. RETTIG. In my practice.

Senator WYDEN. Yes. Right. It happens sometimes. My view is, you only get there by making enormous mistakes, and professionals would not make that possible.

Now, I am going to read you something that goes to this question of fairness for working-class people. Tell me if it sounds familiar.

"Wealthy taxpayers often engage teams of sophisticated tax, business, and estate planning lawyers, accountants, and other professionals to oversee their business activities and to legitimately minimize their potential tax liabilities." Does that sound familiar?

Mr. RETTIG. It does.

Senator WYDEN. Now, you identified earlier this week the pass-through deduction as one area where guidance is badly needed from the IRS. And that is a provision that is so confusing that tax consultants are already feasting on planning opportunities for their wealthiest clients.

Given the right opportunities for tax planning and tax evasion, frankly, created under the new Republican tax law, how are you going to combat the kinds of aggressive tax planners you were trying to describe your feelings about in that quote I gave you?

Mr. RETTIG. That quote relates to the fact that taxpayers have teams, wealthy taxpayers have teams of representatives handling their returns. Typically, a taxpayer who desires to cheat is not going to go to a group of tax professionals to put some structure together to do something. That is not universal, but that is a typical—

Senator WYDEN. I am over my time, so I just need you to tell me briefly how you would combat those who are trying to wring every possible advantage out of this, in effect, to find holes in the law.

Mr. RETTIG. For me it would be critical for the IRS to provide clear, timely, succinct guidance as to what the positions are, and what the intent of Congress was with respect to each of the provisions in the tax—

Senator WYDEN. On the next round, we will talk about what that clear guidance ought to be.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Portman?

Senator PORTMAN. Thank you, Mr. Chairman. I appreciate you having the hearing today.

Mr. Rettig, you and I have had a chance to visit on a number of issues including, as the chairman has indicated, our appreciation that you are willing to step up and serve. I also want to, if I could, mention Army Captain Charlie Rettig again, who just came back, you said, from a 12-month deployment in a combat zone. I am going to embarrass him and ask him to stand up if he would, just for a second, because I would like to give him a round of applause. [Applause.]

He is right. You are following him in service. Although it is not combat, it is going to be a tough job.

The CHAIRMAN. I think it is combat.

Senator PORTMAN. Yes. [Laughter.]

So you and I talked a lot about IRS reform. One reason I am excited about having a Commissioner in place is, I think it is an opportunity for this committee, working with you and the Ways and Means Committee, to make some changes at the IRS again.

We did this 20 years ago with a big restructuring and reform act. It came after a commission was formed, actually, by this body. I co-chaired that with Senator Bob Kerrey, as you know.

And then along with Senator Ben Cardin, who is coming in a moment, we introduced legislation that Senator Hatch took a leadership role on, as did Senator Wyden in his role then on the committee. And what we did was, we said, okay, the IRS is not working. It is not functioning to help taxpayers.

At that time, only half of the calls were being answered when a taxpayer would call the IRS. And they spent about \$3 billion on an IT system that was not working, was not talking to other systems. It was a big waste.

So we undertook this series of reforms. Fifty-two different new taxpayer rights were added and so on—IRS Oversight Board. So, half of the calls were being returned back at that period.

We passed legislation. Within 10 years, instead of half the calls being returned, 83 percent of the calls were being answered. So that was a big improvement.

All the ratings you looked at, you know, which agency or department do you feel has done a good job for the taxpayer—the IRS was at the bottom when we started the reforms. By the time the 10 years were up and the reforms were getting in place, it was about half way up the ladder, which is not bad for the tax collection agency.

I will say, here we are 10 years later, and unfortunately we are kind of back to a situation where taxpayers are not being served. By 2015, just 3 years ago, only 37 percent of calls were being an-

swered. Today I understand it is back closer to 50 percent, but still way unacceptable.

First of all, do you agree with me on that?

Mr. RETTIG. I agree that America's taxpayers should have their telephones answered if they call the Internal Revenue Service. I think that is critical not only for whatever the reason is they are calling, I think it is critical for them to have the respect of the agency they are interacting with and get efficient and timely responses.

Senator PORTMAN. That is not the only measurement. Another measurement would be how many taxpayers can come in and actually get an answer from a person, and that has also declined.

Another issue I know that Senator Cardin and I are looking at is the appeals process. We believe it has been more truncated since 20 years ago with the reforms in place. We need to get back to a system where people feel they have an absolute right to appeal.

There are other issues as well, but one that you and I talked a lot about in our meeting was the IRS Oversight Board. This is something that Senator Kerrey felt very strongly about, as did I and others.

We put in place this IRS Oversight Board that would bring expertise, service-sector expertise, management expertise. And frankly, I think it started off pretty well, and then, because of lack of support by every administration, frankly, along the way, it kind of fell to the wayside.

And the idea was not to have to have a commission every 20 years, and not to have a process that we need to undergo again. This next couple of years, hopefully with a new Commissioner in place, hopefully with you, we can have this commission perform that role of oversight and ensure that we sit on track—there are literally no members of the commission right now. Not a single member has been appointed.

And again, this goes back administrations. The Obama administration was no more supportive, really, than the Clinton administration was, than the Bush administration, than the current administration.

So what do you think about the IRS Oversight Board? Was it a good idea or a bad idea? Do you think it should be resurrected? And do you think it has a role to play?

Mr. RETTIG. I am in favor of oversight by the IRS Oversight Board, by this committee, by others. I think that it assists in the transparency of the operations of the Internal Revenue Service as well as providing assistance.

As Commissioner, I would look forward to getting ideas from everybody. The more ideas, the better, and then we will work on the ideas collectively.

Senator PORTMAN. Well, I appreciate that answer. And I do think that, if you are confirmed, that this committee is going to be very interested in working with you on IRS reform. I hope that will be part of the discussion.

Last question, just briefly, on the idea of having an independent appeals process: do you support taxpayers having access to an independent appeals process?

Mr. RETTIG. Absolutely.



Senator PORTMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Congratulations, Mr. Rettig, on your nomination.

As you know, New Jersey joined 32 other States and DC by recently passing a law that authorizes towns and cities to create charitable funds that will provide tax credits to encourage donations. But in an advisory notice released in May, it seems to me that the IRS has arbitrarily singled out new programs like New Jersey's and warned that taxpayers could face penalties if they write off their donations.

This fundamentally flawed advisory contradicts decades of precedent and case law all the way up to the Supreme Court and discriminates against States, apparently, based on political affiliation.

So my question to you is, if you are confirmed as the IRS Commissioner, would you adhere to the principles of federalism and States rights and respect the authority of States to set their own tax policy?

Mr. RETTIG. If I am confirmed as Commissioner of the Internal Revenue Service, we will follow the law impartially in a nonbiased manner. And, as I believe I have indicated previously, nobody should presuppose my position on any particular issue across the board. The Internal Revenue Service will appropriately look into the facts, look at the relevant policies, procedures, prior guidance that has been issued, and I believe come to the accurate conclusion in issuing whatever guidance the Internal Revenue Service is to issue.

Senator MENENDEZ. While I appreciate that, if 32 other States and the District of Columbia already have the same exact principle and it is in effect, and it has been upheld by the IRS, would you see any reason to discriminate against another State if in fact they are doing the very same essence of what those 32 other States are doing?

Mr. RETTIG. It is not an issue that in my practice I have dealt with. But in the press that I have read with respect to the issue, it is my understanding that there is a possibility that the post-tax act situation could be not on all fours with the earlier position taken by the Internal Revenue Service in the 2010 Chief Counsel Notice.

Senator MENENDEZ. Well, as you know, I raised this with you when you came to visit me, and I do appreciate you visited me. And you told me you did not know much then, and I said to you that I—I gave you a very early warning that I would be asking you these questions at this hearing.

So this is a serious issue that can raise property tax burdens and sow confusion for hundreds of thousands of New Jerseyans, and then they are going to deserve a clear answer.

So again, would you undermine New Jersey's law and deny people deductions for these charitable contributions if they are in line with 32 other States and the District of Columbia that are doing this right now and that the IRS has upheld?

Mr. RETTIG. Senator, I think as we both know, the IRS and Treasury are both working on guidance. My incentive with regard

to the guidance would be that it be accurate, impartial, nonbiased and clear, and issued timely.

And it should not be lost on the committee that—although your comments relate to New Jersey, I happen to be from the State of California, which is working on a similar situation. And I would still look at it in a nonbiased, impartial manner.

Senator MENENDEZ. Well, let me give you some background. In 2011, the IRS Chief Counsel released an advisory memo clarifying that State credits do not—I repeat, do not—prohibit taxpayers from writing off the full value of their charitable donations. In other words, getting a tax break does not mean you earned more money, and thus, you should not be taxed more as a result.

The Supreme Court confirmed this interpretation, ruling that State tax credits given for charitable donations are not considered a thing of value and rather are “the government declining to impose a tax.”

I think we can all agree it is illogical, impractical, and fundamentally backwards to tax people on the value of a tax break they receive. In some States, tax lawyers and accountants have bragged about how they are using their program to circumvent the property tax cap. For example, in Alabama financial advisors explain that so-called “donations” are “treated as if you paid Alabama taxes. For Federal purposes your donation will be reported as a charitable contribution. Otherwise, the State tax payment would be reported as a soft deduction subject to the \$10,000 cap and provide no tax benefit to you.”

And these efforts to maximize deductions were common even before the Trump tax bill gutted the property tax deduction. Indeed, high-priced tax lawyers and accountants in Georgia have been for years urging their clients to shift their itemized deductions from State taxes to charitable donations in order to avoid the alternative minimum tax.

So are Alabama and Georgia’s programs in compliance with the law and IRS rules?

Mr. RETTIG. I think you are aware I am not specifically aware of the Alabama and Georgia programs themselves. And I think that when we met you raised an issue that perhaps the current situation, the difference between credits and deductions—and I am not sure that that is a difference—

Senator MENENDEZ. Mr. Chairman, you are tapping before my time is even up.

The CHAIRMAN. Your time is up.

Senator MENENDEZ. Well, it is up now, but not when you were tapping. Can I hear the balance of the answer at least?

The CHAIRMAN. Well, I was trying to give you some warning. You could have—

Senator WYDEN. Mr. Chairman, I think both of us went about a minute or so over. Could Senator Menendez just have that too?

The CHAIRMAN. Sure. I am not going to stop—

Senator MENENDEZ. I appreciate it, Mr. Chairman.

The CHAIRMAN. Do not accuse me of interfering with your—I tapped to let you know you are near the end so that we do not have carryovers that prolong this committee unnecessarily.

Go ahead.

Mr. RETTIG. Senator, I am aware of your concern with respect to this issue, and the concern of others with respect to this issue, and the concern of taxpayers across the country with respect to these issues, and I would look forward to a resolution that universally people could say is the right resolution.

Senator MENENDEZ. Well, I will just close on this. The one thing I do not want to see is the IRS weaponized against States like mine. It is either good for everybody, the 32 States that have been doing it and the District of Columbia, or it is good for nobody. So I hope that you will seriously look at this in that manner, because otherwise we will feel that we are being treated unjustly simply because we are the State that we are.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Carper?

Senator CARPER. I think Senator Cardin was actually here ahead of me. Let him go ahead. Senator Cardin was here before me. Please.

Senator CARDIN. You can go before me.

Senator CARPER. All right. All right.

Senator CARDIN. You are so courteous. Thank you.

Senator CARPER. I will never make that mistake again. [Laughter.]

I just want to say welcome today. And, Tam, to you and your family—I am a Vietnam veteran, and it is a special pleasure to have you here, and we welcome you to our country. I hope we will welcome more often others from other countries to our country. It is that spirit we could use around here these days.

Thanks for coming by yesterday. We talked a good bit about adequate funding for the IRS.

We just passed a tax bill last year that is going to increase the budget deficit by a couple of trillion dollars over the next 10 years. Our deficit is already at enormous levels, and it is going to climb higher. It is a matter of great concern to me, and I know it is to you and my colleagues.

One of the ways we can actually reduce the deficit and increase revenues without raising any rates at all would be to actually fund the IRS. And what you actually see is reductions in funding—I think over the last several years by almost 20 percent, number of employees down by double digits.

Your thoughts about this, please, and what would you do to try to turn that around?

Mr. RETTIG. Well, first I believe it is the responsibility of the IRS to expend any funds it receives in a very responsible, forthright, efficient manner. I think that that is critical to obtaining the trust of the American people.

If I am confirmed and in the position as Commissioner, one of my top priorities would be to analyze the budget of the Internal Revenue Service, workforce-related issues, training-related issues, all of which encompass the probability of the need for additional resources, funding resources, the possibility of additional workforce. I am a huge believer in training the workforce there so that they are the best on the planet. And I think that we need to universally get onboard with the training of the Internal Revenue Service so they can provide top quality service to America's taxpayers.

That is where I am coming from.

Senator CARPER. Good. Thank you.

Former Commissioner John Koskinen, who I thought was a hero—he was greatly criticized, especially by folks in the other body. But I thought for somebody like him to come out of retirement at the age of 70 to take on a thankless, tough job like this, then he deserves our kudos, not our brickbats.

But he repeatedly called on Congress to reauthorize his streamlined critical pay program, but to no avail. We talked about this yesterday.

Can you inform the committee on your views on streamlined critical pay authority, please? In addition, could you tell us in the absence of this authority what your plans are for ensuring that the IRS is able to attract top-flight tech talent, especially given that the ongoing cybersecurity and identity theft threats are growing ever more prevalent? Please.

Mr. RETTIG. I am a proponent of critical pay authority for the Internal Revenue Service, particularly with respect to the IT side of the operation. I think it is publically known that the Internal Revenue Service—the system gets attacked between two and three million times a day.

And I think it is critical to the success of this country and to the appearance and trust that the American taxpayers have in the Internal Revenue Service that we have a system that defends taxpayer data better than any other system on the planet.

And in the absence of critical care pay scales, I think it is a significant effort on my part and on the part of other senior leadership members in the Internal Revenue Service to encourage, not only the workforce that is there to remain and want to remain there and be proud of remaining there, but to encourage people on the outside about the benefits of government service—which is actually what I am doing today—to be proud to be serving.

Senator CARPER. Thank you.

One of the things we talked about yesterday was minimum standards for paid preparers. John Koskinen said we have a huge problem here. Gene Dodaro, Comptroller General for the GAO, has said we have a huge problem here. Senator Wyden has introduced legislation, with my support and others on the committee, to better ensure that people who are actually preparing tax returns know what they are doing and can reduce the number of errors that flow from that.

I would like to ask, if I could, your views on this, please.

Mr. RETTIG. I believe that people who prepare tax returns on behalf of others should be capable, competent, and understand the tax laws for the returns that they are preparing. And I think that the training that accompanies a typical regulation, or involvement, licensing, or whatnot of most preparers, is critical.

Senator CARPER. Good.

One of the things we talked about yesterday was the IT programs for the IRS which are—as we have heard earlier here—just old, tired. We talked about it yesterday as being as much as a \$400-million upgrade. Is that something that you would be inclined to support?

Mr. RETTIG. From the press—I am not on the inside, so I do not know the particulars of it. But from the press on the outside and from what we see on the outside, I think that the American taxpayers deserve the most up-to-date IT system on the planet.

Senator CARPER. Thank you.

Lastly, a question on your management experience. Some people are going to say, he looks pretty good on paper. Maybe he is a decent guy, wonderful family. I salute your son, Navy salutes—is your son a marine?

Mr. RETTIG. Army.

Senator CARPER. Navy salutes Army.

I just have a quick word on your management experience. Could you speak to the question of your management experience? It is a big job, a lot of people to manage.

Mr. RETTIG. Yes. Management experience to me is based on leadership and the skills of leadership and creating teams. And the leader facilitates the ability of the teams to perform to their top capabilities and open communication from top to bottom.

I perceive myself as a pretty good people person, interaction with others. I am open. I am open to criticism, and I am open to providing criticism as well.

Senator CARPER. All right. Thanks so much.

Senator ISAKSON [presiding]. Senator Cardin?

Senator CARDIN. Mr. Rettig, first of all, thank you very much for your willingness to serve. You have a very distinguished career in understanding the tax laws and advocating on behalf of others. So I thank you for your willingness to get involved in this area, which is not without controversy. And I thank your family.

I want to follow up on some of the comments that were made by Senator Portman and Senator Carper on tax administration. But I want to start with the budget that Senator Carper asked you about.

We have gone through a series of budget years where the IRS has really taken a hit on its budget. The only reason there was an increase in this year's budget was to implement a new tax law. It did not deal with the underlying capacity within the IRS itself.

And I appreciate the fact that you recognize that you have to live within the funds that are appropriated and you want to make sure that every dollar is properly expended—and I want you to do that. But I also want to know whether you will be an advocate on behalf of the men and women—the professional people—who are there serving their country and trying to make sure our tax laws are administered fairly, that they would have the resources they need and the support they need in order to be able to carry out their mission.

Are you going to be that type of an advocate within the Trump administration to make sure that you have adequate resources to carry out this mission?

Mr. RETTIG. Senator, people who have known me for the past 50 years, the last thing they would characterize me as is shy. The committee, the American taxpayers, should anticipate that I will be knocking on every door possible if I make the determination that I think we need something to accomplish the goals that we have set out.

Senator CARDIN. And you will be prepared to tell us directly those needs so that we as an independent branch of government can get that information?

Mr. RETTIG. Yes. This committee will hear from me directly.

Senator CARDIN. I want to underscore some of the points on legislation that is moving through here. You mentioned several times that you want to make sure that the personnel are adequately trained to deal with the complexities of our tax code, the needs of the taxpayer.

There is legislation that would establish a division for training within the IRS to protect those funds because, as you probably are aware, when there are tight budgets, those funds are some of the first to be cut.

Will you work with us so that we can protect the resources that go into training to make sure your people are adequately trained?

Mr. RETTIG. Absolutely.

Senator CARDIN. Thank you.

There is also a program, as you know, the VITA program, to deal with low-income taxpayers, for assistance in the IRS. Are you prepared to work with us in order to strengthen that program?

Mr. RETTIG. Absolutely.

Senator CARDIN. Thank you.

You already answered questions on tax preparers. I think we really need to make sure that consumers are protected when it comes to those who are out there using consumers as a part of business.

I appreciate that answer on private debt collection. We have been debating that for a long time. Every study has shown that private debt collection usually ends up costing us more money than we raise.

I think the House has come up with an effort to try to deal with the size of the taxpayer as one of the methods. Will you work with us so that we can try to resolve this issue as to private debt collection?

Mr. RETTIG. I will.

Senator CARDIN. Thank you.

The last issue I want to talk about—it is a different hat I wear. I am the ranking member on the Small Business and Entrepreneurship Committee. Senator Risch is the chairman of that committee.

We have received a great deal of interest from the small business community as to the administration of the tax laws before the change in the tax code. Now since the change, we have heard a lot more as to how small businesses will be able to deal with the changes that have been made. We have heard a lot of concern about the tax preference of business income for small businesses.

Would you, if confirmed, be prepared to come before the Small Business Committee at Senator Risch's and my request in order to work on ways that we can help small businesses deal with the complexities of our tax code that were there before the tax reform, but are now made more complicated by the passage of this law?

Mr. RETTIG. Absolutely.

I grew up in a small business. I believe small businesses are the backbone of this country.

Senator CARDIN. Thank you.

Mr. Chairman, I yield back the balance of my time.

Senator ISAKSON. Thank you, Senator Cardin. I will call on Senator Cassidy and Senator Whitehouse, in that order. Then I will end this first round, for those listening in who may be coming, and we will have a second round after I ask my questions.

Senator Cassidy?

Senator CASSIDY. Hi; thanks for coming in. I enjoyed our meeting in my office.

In February, I had an exchange with the Acting Commissioner on identity theft and protection of taxpayer data. My identity was stolen once, and it still has implications in terms of how we file and when we receive our dollars back.

So the trends look good—significant reductions in ID theft since 2015. There were 1.4 million fraudulent returns in 2015, about 600,000 this year. What thoughts do you have as to how we can move that 600,000—which cost us billions of dollars in fraudulent returns—down towards zero?

Mr. RETTIG. I am proud of the fact that the Internal Revenue Service has made a dent in identity theft, and I share your concern that 600,000 would still be too much, that any identity theft is still too much.

There are issues with respect to the timing of certain functions in the Internal Revenue Service that, if the IRS was allowed more time, they could prevent more ID theft in situations like that. So if confirmed, I would look forward to working with you in that regard.

Senator CASSIDY. I would point out that I am told that my stolen return did not note that I had three children, and formerly I had had three. And so you could have checked the obits to see if something had happened.

But it does seem as if integration with the Social Security fund or something could have revealed that sort of simple thing.

Mr. RETTIG. There is tremendous pressure on the Internal Revenue Service to issue refunds, and I believe that that is part of the issue to be dealt with. And I share the concern that any identity theft related to the Internal Revenue Service is—

Senator CASSIDY. Congress is considering some IRS administrative reforms that would improve this. Let me give you some ideas and see what you think of them.

Designating a single point of contact at the IRS where an ID theft victim could call, notifying taxpayers when ID theft is suspected, and updates on criminal prosecution. I would like to know that this is not just, oh my gosh, it is just happening, and we do not care. And then expansion of the ID Protection PIN program.

Any thoughts on those?

Mr. RETTIG. The single point of contact, I think, is critical, because it is confusing for people who have suffered ID theft. There are multiple gates, multiple doors to get into. So I think a single point of contact would be significant.

The criminal investigation issues, I think that it is a significant part of the criminal investigation function within the Internal Revenue Service as deterrents. So making people who might consider going down that road in terms of ID theft, making them aware of

the fact that they could be looking at a significant prison sentence, I think is critical.

Senator CASSIDY. But it is also because of, somebody I know stole my ID, then frankly, that is going to get out in my community.

Mr. RETTIG. Correct.

Senator CASSIDY. And so the kind of—and presumably, somebody I know stole my ID. It could have been somebody who logged on and got my info, but to the degree that—but anyway, just to kind of reverberate, what about the ID Protection PIN program?

Mr. RETTIG. The PIN program, I think, is critical, and there is even contemplation of maybe an issuance of different Social Security numbers and other things associated with that even beyond the PIN. Most of us do not want to have—we can remember a Social Security number. We may not remember a PIN code as we go into the future.

And even getting into government buildings, when you are asked for the last four of your social, sometimes most of us have to start at the beginning to get to the last four. So I think the possibility of issuing new Social Security numbers to people who have incurred that might also generate some respect by the victim for the fact that the government stands with them.

Senator CASSIDY. The Treasury—let me talk about the return review program. Again, to improve fraud detection, it has been implemented in recent years. It appears to be a significant improvement over the old system.

The Treasury IG for Tax Administration report from September 2017 noted the IRS may not meet its December 2018 target for retiring the legacy system. Again, I have had an unflagged fraudulent return. How could you prioritize full implementation of the new system?

Mr. RETTIG. Being on the outside, I am not personally familiar with the system. But it would be a high priority for me, if confirmed, to look into it and to work with you and the rest of the committee.

Senator CASSIDY. Okay.

The IRS has undertaken an information sharing pilot program to reduce fraud and ID theft. I understand 24 States participated in 2017. It seems reasonable to expand that.

Again, your views on that? You probably are familiar with this.

Mr. RETTIG. I am an advocate of information sharing with other similar State agencies. I think that that is critical to moving forward.

Senator CASSIDY. No parochialism there, if you will.

Lastly, I will say that I am pleased to see the IRS has improved customer service, but still I think one in five people calling never gets their phone call answered. What can we do to improve that?

Mr. RETTIG. I believe it is critical for the respect of the agency and to earn the trust of the American taxpayer that, when they call the IRS, somebody answers the phone.

Senator CASSIDY. It seems pretty basic, huh?

Any ideas on how to improve, or more manpower, woman power, or—

Mr. RETTIG. I am aware of other States that have the ability to—when you call in, you actually get a recording, and it says the hold



time is 17 minutes, if you would leave your number, we will call you back in 3 minutes. Private industry as well tends to do that routinely.

If that is possible on the scale of the Internal Revenue Service, that type of a system would be significant—not only in terms of getting the person off the phone so they are not on hold, but the respect for the agency to make them the 21st-century agency that operates the same as the private sector.

That is what the taxpayers are used to. They are used to calling a private-sector entity and getting a 3-minute hold, leave your number, and they will call you back. And I would like to see the IRS—working with the committee, I would like to see the IRS get to that level.

Senator CASSIDY. That would be great. Thank you very much.

Senator ISAKSON. Thank you, Senator Cassidy.

Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Mr. Rettig, thank you. Good to see you. Thank you for the visit to my office.

The IRS has a history from bygone days of having been used as a political weapon. We have a President who apparently is regularly demanding loyalty of folks who are appointed.

We witnessed the administration leaning on both independent regulators and on agencies of government like DOJ that are supposed to be independent to try to impose their will. That combination of factors raises the questions, (a) have you made any loyalty pledge, or (b) been asked to make any loyalty pledge?

Mr. RETTIG. No, I have not.

Senator WHITEHOUSE. No, you have not?

Mr. RETTIG. Excuse me. No on both counts.

Senator WHITEHOUSE. No on both counts.

And along the spectrum of yielding to political pressure when it is brought to bear on you, versus being staunchly independent as Commissioner, where do you expect you would fall along that spectrum?

Mr. RETTIG. I would hope that the members of this committee and the American taxpayers see me as staunchly independent or more so.

Senator WHITEHOUSE. One of the problems we talked about in my office is the problem of shell corporations. They are used for tax avoidance and evasion. They are also used for a considerable degree of criminal activity.

Much of that is a matter of State law, but there are signals that the IRS Commissioner could send, for instance, telling investigators looking into tax fraud that when they bump up against a shell corporation, they ought to really redouble their efforts and not just walk away because they cannot figure that out. And also to be a voice with respect to the shell corporation problem as Congress deliberates that problem.

Let me know what your thoughts are on dealing with shell corporations in those two ways.

Mr. RETTIG. If confirmed, I will be a vocal advocate for the strength of the enforcement mechanisms in the Internal Revenue Service, including the Criminal Investigation Division of the Inter-

nal Revenue Service. In my background, criminal investigation does not back down from a challenge; they appreciate the challenge, and they move forward.

Senator WHITEHOUSE. And would you be willing to make a report to us once you have been in for a while and gotten a look at this as to how bad the shell corporations problem is from your perspective in terms of law enforcement?

Mr. RETTIG. Absolutely.

Senator WHITEHOUSE. Okay. Great. Thank you.

There is a collections gap between what taxpayers owe and what the IRS collects. It is estimated to be about \$400 billion.

Would it be fair for us to evaluate your tenure as IRS Commissioner based on what you can do to reduce that number?

Mr. RETTIG. Senator, what I can tell you is, I am very familiar with the tax gap. I am aware the majority of the tax gap comes from the individual side: under reporting, non-filing, and underpayment.

I actually look at the tax gap as somewhat of a roadmap to tax avoidance, tax evasion in this country. It has been identified going back to 2001. I believe it was the first tax gap map that was created, dealing with tax year 2001.

I am very sensitive to that issue. And I am sensitive to the need to reduce that issue for a variety of reasons, including a little bit more respect. If we got 1 more percent of voluntarily compliance, we would move it from say 83 percent to 84 percent. That is another \$30 billion a year.

On the other side, if the Internal Revenue Service loses respect of the taxpayer and it reduces 1 percent, that is a \$30 billion a year loss.

I am extremely hopeful to put a significant dent in the tax gap.

Senator WHITEHOUSE. And my last question is that a lot of the work that the IRS does is based on truthful reporting by taxpayers. If it should come to your attention that a taxpayer is claiming one thing under oath in a filing to the IRS, and is claiming something that on its face appears very different to other regulators or in other reporting environments, what do you think should be done about that? Is that worth at least a preliminary look to see why the taxpayer is reporting something very different to the IRS than they are elsewhere?

Mr. RETTIG. The Commissioner is not responsible for audit selection of taxpayers or issues. That is really more the workforce.

But I think that the IRS itself has those mechanisms in place. And they do read the newspapers. They do pay attention to what is going on outside of the service.

Senator WHITEHOUSE. Should it be something the IRS looks into if there appears to be inconsistent reporting to determine whether the reporting to the IRS is truthful or not?

Mr. RETTIG. In my experience, the IRS has looked into that.

Senator WHITEHOUSE. And should it continue to do so?

Mr. RETTIG. I believe that it should.

Senator WHITEHOUSE. Okay.

Mr. RETTIG. It has been my experience that they do.

Senator WHITEHOUSE. My time is up.

I thank the chairman.

Senator ISAKSON. Thank you, Senator Whitehouse.

Mr. Rettig, would you tell me about the UCLA Extension Vets Count Scholarship Fund? Do you know anything about that?

Mr. RETTIG. I would proudly tell you about the Vets Count.

Senator ISAKSON. We will all proudly listen. Tell us about it.

Mr. RETTIG. I created the Vets Count Scholarship Fund through UCLA for the purpose of—UCLA Extension is the number two extension program in the world in terms of actual registrations.

Vets Count Scholarship Fund is intended to provide scholarships to active duty and veterans. It came from the situation of—you see reality TV, where you see soldiers in a sandbagged installation in Iraq or wherever they happen to be, and maybe playing video games or whatnot, and the intent of Vets Count is to remotely, through webcasts or otherwise, allow soldiers serving overseas in something like a sand bunker to actually earn extension credits in areas of finance, accounting, and such so that when they leave—if you have been a machine gunner on a Humvee for 3 years, and you have a GI bill, the ability to go to a college or a university in this country and sit in a geography class might be a challenge coming out of the environment that you have been in.

The idea of Vets Count is to provide active duty soldiers and veterans with the ability to assimilate into society with some financial literacy, some accounting—and maybe in time they would go to college—but immediately, to give them some respect when they come back into the job market.

Senator ISAKSON. As I understand, you are the cofounder of that program. Is that correct?

Mr. RETTIG. I am the founder of the program.

Senator ISAKSON. The reason I bring it up is, I am the chairman of the Veterans' Committee in the United States Senate. And it is always great for me to point out a United States citizen who is lending their expertise and their career to help support in some way veterans' employment, veterans' education.

And having co-written the eArmyU Act a few years ago when Senator Kerry and I started distance learning in the United States military for earning college credit, I understand how valuable what you are doing there is. And you are taking video games out of a soldier's hands in many cases and putting a calculus book in their hands, which is great for all of us.

I wanted to commend you publicly on your commitment to our military. And your son behind you, he will be a good student following your leadership, sir.

Mr. RETTIG. Thank you.

Senator ISAKSON. Second, are you familiar with Free File?

Mr. RETTIG. I am.

Senator ISAKSON. I have in the last 7 years had a Free File event every April in Atlanta at an underemployment and unemployment center promoting the available software that is made available by American software developers to file and pay and get your income taxes or get your EITC, one way or another.

I have tried to pursue making that permanent. It has only been authorized every 2 years for a couple of years.

Would you give me some idea if you would support permanency of the Free File program?

Mr. RETTIG. If confirmed, I would look into it in more detail. But I am a huge supporter of whatever makes it more easy for U.S. taxpayers to get into compliance.

Senator ISAKSON. Thank you for that answer.

And lastly for my questions, before I turn back to the ranking member for his second questions, my personal feeling—and this is me personally as a taxpayer—I have paid taxes since April 15, 1959, when I made \$40 a week as a surveyor's assistant and had \$8.90 withheld from my \$40 weekly check, which is my first experience paying taxes.

Some say that is when they became a Republican. I did not become a Republican then. I became one later. But nonetheless, that is not relevant one way or another.

What is relevant about it is, I have paid them for a long time, and I have had professional help to pay them a lot of that time, because I personally—it went beyond my ability to do it and feel like I was doing it right or accurately.

But I believe the most recent tax change, along with some that took place earlier in tax law, have actually simplified the process of filing and paying income taxes. Am I wrong or right on that?

Mr. RETTIG. Senator, I know from the outside and from the press reports that I believe we are on that course. I believe in terms of being able to come up with a calculus as to an actual right or wrong, we need to see how this filing season goes with the 6868.

Senator ISAKSON. I agree with that. And I am talking to you as a taxpayer here, not really as a Senator, because it just seems like, with the enhanced individual deduction, the doubling of the deduction, with some of the reductions in itemization that took place and some of the new laws we have done over the last couple of years, it has made the dream one day of having the one-page 1040 where you sign and send it in maybe within reach of us.

I hope as Commissioner of the IRS you will work towards completing that task to moving towards simplification of the system, because you just said in answering Senator Whitehouse's question with regard to the amount of income we have lost by people not paying, that most of the income we are not getting is due to the tax gap, people who are not filing and are not paying.

Mr. RETTIG. Right.

Senator ISAKSON. So it is an overt act on their part that we are not getting the money, not a mistake. And I would think simplicity would help us to reduce that amount of people who are not paying and increase the amount of people who are filing.

If you would help us do that, I think it would help you a lot in raising that percentage of collection from 83 to 84.

Mr. RETTIG. I agree.

Senator ISAKSON. Okay. Thank you.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

My friend, Senator Isakson, makes the commendable point about simplicity. And I hope you will take it seriously. I will just tell you, if confirmed, you have some heavy lifting to do because, after all the ballyhoo about how the administration was going to get taxes on a postcard, apparently for a lot of people you would have to com-

plete six schedules in order to be part of such a drill. So you are going to have some heavy lifting to do.

I will just tell you point-blank, I hope what you will do is focus on the small business guidance, on the pass-through provision which looks like it is literally from fantasy land in terms of trying to figure out what is expected of these small businesses in April. A lot of them told me they could not even begin to make an estimate of their taxes.

I hope you will do that first, rather than continue on other matters that might make for good publicity but do not really deal with the guts of what our economy needs. And particularly in my State and much of the country, most businesses are pass-throughs, and they are literally crying out for some clarity on what is going to be done.

Now for my next question, I would like to turn to the charity area, because we have had strong bipartisan support in this committee for charity. Senator Thune and I have prosecuted that case for a long time.

Secretary Mnuchin said that the bill is going to encourage more charitable donations. The nonpartisan experts at the Tax Policy Center say, in their view, that the number of taxpayers claiming the charitable deduction will be cut by more than a half, and overall charitable giving will decline by as much as \$20 billion annually. You have probably seen in the press that a lot of the charities are already speaking out publically about their concerns, their concerns about the vagueness of the provisions, drafting errors. They do not even in many instances know how to comply with the new rules.

Do you have any reason to doubt the findings of these nonpartisan experts who talk about the decline of charitable giving as I have described?

Mr. RETTIG. I have not reviewed those reports personally. So it would really be unfair of me to comment on what they are saying. But I believe in the concept of charitable giving and would support that.

Senator WYDEN. On the management front, what is the largest number of employees that you have managed?

Mr. RETTIG. Actual employees in our office, 35.

Senator WYDEN. Thirty-five. Okay.

So there are 70,000 people who are going to be working at the IRS. I thought your point with respect to Senator Carper that you have shown leadership and you have served on all of these boards—I would like you to furnish for the record, because time is short and my colleague and I, we have some business to do. I would like to hear more specifics about what kind of management approach you would actually take, because there is a big difference between managing 35 and managing 70,000. I would just like to have that for the record.

One last question with respect to these charitable groups and political activity. I thought your answer to my question about the Vice President was a good one, because I thought that statement he made was way over the line. I mean, not even close, because that is really trying to interfere with the impartial administration of tax law.

But I continue to be concerned about these issues, given the allegations that the Trump campaign operation coordinated or even diverted how Trump Foundation grants were distributed to provide maximum benefit to the Trump campaign.

In the meeting that you and I had, you emphasized the importance of the IRS using its resources to send a message to the public. You talked about some examples of that. What kind of a message would it send for the IRS not to pursue evidence of the law being violated by a high government official?

Now I am not talking to you about a specific case, but I would just like to hear your thoughts about the kind of message it would send for the IRS not to pursue evidence of a law violation by a high official.

Mr. RETTIG. In my experience, the IRS looks into a lot of matters, develops the facts of those matters, and sometimes we hear about them publically and sometimes we do not. So the public acknowledgement of what the IRS might be doing does not really surface until something gets through the system. But also in my experience, the IRS does read the newspapers, and they do create cases out of what they read in the newspapers.

Senator WYDEN. The IRS certainly will get a newspaper. But given what has happened recently, literally a month ago, with the Vice President of the United States basically saying that his views were more important than the Johnson Amendment, which prohibits politics from the pulpit, I think we ought to understand we are in a different kind of time.

So I look forward to continuing these discussions. I have asked for a number of matters for the record.

Chairman Hatch and Senator Isakson have agreed we have some other business to do after Senator Brown has a chance to ask questions.

I appreciate the second round, Mr. Chairman.

Senator ISAKSON. Yes, sir.

Senator Brown?

Senator BROWN. Thank you, Senator Isakson.

Senator Wyden, I appreciate that.

Welcome, Mr. Rettig. It was good talking with you. Thank you for joining us.

I would like to start with the issue of private debt collection. I echo the comments of Senator Cardin that it costs more than it raises, and there is obviously evidence for that. I fought against this program at every turn. It is unfair. It is too often confusing for taxpayers, as I know you are aware.

The Taxpayer Advocate has said that it is unfairly targeting low-income individuals. That too, I think all of us agree, is unacceptable.

If confirmed, would you commit to a full review of the private debt collector program, including a review of its collection methods?

Mr. RETTIG. I would. The Internal Revenue Service's responsibility is to follow the law. And as we all know, private debt collectors are part of the law.

The issue I think that surfaced is implementation of the private debt collector law and is it being implemented in an impartial manner. And I would absolutely look into that.

Senator BROWN. And that means you are suggesting you would work to ensure that extremely vulnerable taxpayers are not being targeted?

Mr. RETTIG. Agreed.

Senator BROWN. Okay.

The IRS is planning, as we have talked about, to shut down a branch in Covington, KY, just on the other side of the Ohio River from Cincinnati, affecting 800 of my constituents. Would you commit to finding similar employment for workers at a nearby IRS office?

Mr. RETTIG. I do not believe it is fair for me to commit, not having been in the Internal Revenue Service, with respect to that and the reasoning behind terminating employees. But I share your concern with 800 individuals not being employed if they shut down the office, and I commit to you I would look into that and work with your office.

Senator BROWN. Considering the amount of talk about the agency's need for resources and staff—which I certainly support, and I hope my colleagues on the other side of the aisle will too—I think it is unreasonable to eliminate these positions rather than work to reassign those workers. So I will work with you on that, and I appreciate that.

Lastly, I know you have discussed your experience with the VITA program with me and my staff. My understanding is you have done that from the time you were in school and since.

For tax compliance, especially with respect to the Earned Income Tax Credit, which is one of the most important parts of our tax law—it rewards work for moderate- and low-income workers. And every March or April, literally hundreds of thousands of Ohioans who make \$20,000 or \$30,000 or \$40,000 a year, because of this refundable tax credit, all things you know, will get a check of \$2,000 or \$3,000, and that income is very, very significant, obviously.

VITA sites have a 93-percent accuracy rate. They are really the gold standard.

Describe for us, because I think it is so important to have an IRS Commissioner who has actually practiced this, who cares about VITA—tell us about your experience working with VITA. And reassure all of us on this committee that you will work to make sure that VITA sites have the resources they need to meet demand for their services.

Mr. RETTIG. I am a huge proponent of VITA. It serves two purposes. It is obviously—on the taxpayer service side, it is providing essentially free services to the taxpayer.

The other side of that is, a significant number of tax professionals in this country started out understanding what tax administration was about in a VITA program—you know, preparing returns and interacting on behalf of taxpayers in that context, rather than taking tax or accounting courses in a college-type environment.

So for many professionals whom I know, their spark on the interest of being involved in tax administration began in a VITA program. And as you indicated, Senator, the accuracy relayed from VITA programs, the training of the people involved in the programs, is significant and point-on for the purpose of preparing ac-

curate returns, and it is critical to the success, if you will, of the tax administration in this country that returns get prepared as accurately as possible.

Senator BROWN. Thank you.

I so appreciate the work you have done with VITA, and so appreciate your comments. I hope we can count on you when there are members of this committee and there are politicians in this town who love to talk in a deceitful way, frankly, by playing with numbers, about fraud and the Earned Income Tax Credit, always exaggerated frauds. That is echoed sometimes by newspapers like *The Wall Street Journal* so often, because what they call fraud is really either underpayment or overpayment that the taxpayer had nothing to do with. They were simple mistakes.

Again, often it is underpayment of funds, not overpayment. So it is far from fraud, but I am hoping we can count on you as the IRS Commissioner to defend that and speak out and set the record straight when those accusations are made.

Mr. RETTIG. Absolutely.

Senator BROWN. Thank you.

Senator ISAKSON. Senator Toomey?

Senator TOOMEY. Thank you, Mr. Chairman.

Mr. Rettig, thank you very much for being here, for your willingness to serve in what is sometimes a thankless position. I enjoyed our chat some weeks ago.

A couple of points here: one, the tax reform measure that we passed almost exactly 6 months ago is contributing, I think, enormously to a very, very good economic environment. We are seeing some very encouraging data, record low unemployment, the unprecedented fact that there are more job openings than there are people looking for jobs in America today.

The CBO revised its GDP growth for the year. Their estimate changed from 2 percent before the tax reform to now where they are expecting 3.3 percent. Our goal to eliminate the lock-out effect on foreign earnings by changing to a more territorial basis—that is clearly working, as dividends from abroad are coming home on a scale of hundreds of billions of dollars.

So this is proving to be extremely beneficial. But as you know, there are still provisions that need rules for implementation. And I simply would want to ask that you would commit to working with this committee and members of Congress to ensure that as any ambiguities are addressed and rules are developed that you are taking into account the intent of those of us who wrote this legislation so that we get it right for our constituents.

Mr. RETTIG. Absolutely.

If confirmed, the Internal Revenue Service will follow the law and what Congress intended in putting it into law. And I look forward to the opportunity to assist the Internal Revenue Service in providing clear, concise, timely guidance so the taxpayers of this country can get it right the first time.

Senator TOOMEY. Great. Great. Thank you.

We also spoke briefly about the Foreign Account Tax Compliance Act, often known by the acronym FATCA. And this is the requirement that foreign financial institutions that hold assets for Amer-



ican citizens have to report about these accounts to the U.S. Government or withhold 30 percent as a tax on these.

The fact is, many foreign financial institutions find this so cumbersome they simply refuse to provide banking systems to American citizens abroad. This is a huge problem for Americans abroad. A record number of Americans have renounced their U.S. citizenship because they just cannot manage their finances if they choose to live abroad for some time.

It also makes it a huge competitive disadvantage for Americans who are seeking to work—and sometimes a stint overseas can be a very valuable experience for one's career. I do not think we should be putting Americans, and for that matter American multinationals, at a competitive disadvantage this way.

So can I get a commitment from you that you will work with us here in Congress to find ways to lessen this burden that FATCA is imposing on Americans?

Mr. RETTIG. If confirmed, I would commit not only with respect to FATCA, but with respect to every issue that we can come up with to lessen the burden on American taxpayers going forward.

Senator TOOMEY. And then finally, it struck me as surprising when I learned that the IRS has so few appointed positions and so many career positions. There are lots of terrific career staff. There is no question about that.

But my understanding is there is a Commissioner, a Chief Counsel, and a Chief of Staff who are the Commissioner's direct discretionary hires, but other than that—well, the Commissioner gets appointed, of course. But otherwise, everybody is career staff.

And I just wonder if it would not be better for the Commissioner to be able to assemble his or her own management team to a greater extent. Do you have an opinion on that?

Mr. RETTIG. I believe that the workforce and leadership currently in place—career IRS workers are absolutely world-class. But I also believe that having a private-sector experience and bringing that inside is critical so that there is a deep understanding of the impact of each step that the Internal Revenue Service takes on American taxpayers and interactions with this committee and others.

Senator TOOMEY. Great. Thank you very much.

Thanks, Mr. Chairman.

Senator ISAKSON. Thank you, Senator Toomey.

It was the committee's intention to report four nominees during today's hearing. But as we have yet to get a quorum, we will have to move the consideration of these four to the floor later today.

I understand the ranking member would like to make a brief statement about the four nominees. And I recognize Senator Wyden.

Senator WYDEN. Thank you very much, Mr. Chairman. I agree with the decision to vote on these nominees off the floor later.

We are going to be voting on four nominations, as Chairman Isakson has noted. Ms. Elizabeth Copeland, and Mr. Patrick Urda are up for positions on the Tax Court, obviously key positions with respect to fairness for taxpayers.

Mr. Chairman, I note that our friend Senator Scott has come. I believe he probably wants to ask questions of Mr. Rettig.

Why don't I hold off making my comments about the nominees? Then we could let Senator Scott go before we go to another matter.

Senator ISAKSON. Senator Scott, you are recognized.

Senator SCOTT. Well, thank you both very much.

Mr. Rettig, the Department of Treasury and the IRS formally certified nominations from the States, the District of Columbia, and all possessions of the United States to designate opportunity zones in their areas of jurisdiction. This is really good news.

Securing this provision in the tax bill was a huge legislative win for millions of Americans living and struggling in communities in need of a renaissance. Please thank Acting Commissioner Kautter and his team for their hard work in pushing out the guidance that helped local leaders select their opportunity zones.

This provision will help to create permanent and positive change that will benefit generations to come. I look forward to further guidance for the investors and entrepreneurs on establishing the investment vehicles and identifying qualified investments most likely to drive jobs and economic activities back into those areas.

Innovative tax incentive programs, such as my opportunity zones provision, have been created by Congress to achieve important public policy goals that risk being severely underutilized because of taxpayer fear of IRS retribution.

If confirmed, what will you do going forward to more closely align IRS guidance and enforcement with congressional intent?

Mr. RETTIG. Senator, if confirmed, I look forward to working with you and other members of the committee in making sure that guidance issued by the Internal Revenue Service is clear, concise, and timely.

And I would hope that we could get to a situation where American taxpayers do not fear retribution from the Internal Revenue Service but respect the Internal Revenue Service, and that it is clear that they know that the Internal Revenue Service respects the American taxpayer.

Senator SCOTT. Thank you very much. That is really good to hear, because I will tell you that, as you think about the opportunity zones legislation, we are talking about legislation that could provide private-sector capital to more than 52 million Americans living throughout this Nation still in distressed communities. So the positive impact of attracting maybe \$2 trillion of capital gains back into some of the most distressed communities in the country would be just impressive and necessary.

Having grown up in one of those distressed communities myself, I understand and appreciate the potential that is locked, trapped in the soil in those communities. And we have a way of excavating that human potential. I think it is incredibly important. Thank you very much for that.

One final question, Mr. Chairman.

The IRS currently wields a tremendous amount of power over the folks in South Carolina and across the country, far more than the founders intended. One example is found in civil asset forfeiture. This practice allows the IRS to confiscate a citizen's wealth upon the mere suspicion of wrongdoing.

During a 2-year investigation, the Ways and Means Oversight Subcommittee discovered the IRS had seized civil assets from small

business owners without providing substantial evidence to support their claim. That is why I introduced the RESPECT Act, which would require the IRS to show probable cause before seizing assets and facilitate taxpayer presentation of proof that would clear them of wrongdoing.

Will you commit to working with me to protect taxpayers and small businesses?

Mr. RETTIG. Absolutely.

Senator SCOTT. Thank you very much, sir.

This is basically an issue of liberty, and there is a bipartisan consensus that civil asset forfeiture is an abuse that needs to be stopped.

Thank you for your response. Thank you for your indulgence.

I yield the rest of my time.

Senator ISAKSON. Thank you, Senator Scott.

And I might add, since I am only acting chairman, I am going to abuse that privilege, if I can for one second, to commend Senator Scott on the asset forfeiture issue being brought forth. I am a co-sponsor of that legislation.

There is a Georgia taxpayer who I think is the face of that movement around the country to end the abuse of the civil asset forfeiture treatment. And I hope the IRS will do everything they can to cooperate with us and get into a positive resolution of that.

Thank you for bringing that up.

Senator SCOTT. Thank you, Mr. Chairman.

Senator ISAKSON. Senator Wyden, you are recognized for the remainder of your statement.

Senator WYDEN. Thank you, Mr. Chairman.

I am sure it is hard for folks to assess where we are. Unless any other members come in, Mr. Rettig, we will look forward to getting your written responses and continuing our discussions.

Chairman Isakson and Chairman Hatch and I have all agreed we will vote on the nominations that are before us off the floor of the Senate when we have a vote. So there are several nominees. Ms. Elizabeth Copeland and Mr. Patrick Urda are up for positions on the U.S. Tax Court. Obviously those positions deal with fairness for taxpayers that we have been talking about today.

Jeffrey Kessler is nominated to be an Assistant Secretary at the Commerce Department, and, if confirmed, he would play a key role in another area of bipartisan concern: tougher enforcement of trade laws. I plan on supporting each of those three nominees.

The fourth who is up for consideration is Ms. Lynn Johnson, nominated to serve as Assistant Secretary for Family Support at HHS. In that position, Ms. Johnson would be the head of the Administration for Children and Families.

There are several specific issues regarding that nomination that I will just touch on briefly. The first deals with the child welfare system.

Our committee has passed a number of landmark bipartisan child welfare laws. It is our job to perform vigorous oversight of those laws, and the Congress needs access to the information that shows how child welfare programs around the country actually work on the front lines.

Unfortunately, last year the Trump administration announced a plan that would make it significantly harder to get the information this committee and the public needs to conduct oversight of these programs effectively. So, this is not a criticism of that particular nominee, Ms. Johnson, but it certainly was a mistake by the Trump administration, a big mistake—in my view, a mistake in the wrong direction for kids in foster care.

I have been working with the Department on the issue for several months. We have had communication, but I still do not think there has been enough actual progress on that front.

That, then, brings me to the second issue with respect to Ms. Johnson. If she is confirmed, she would oversee the Office of Refugee Resettlement. This is the agency that has custody over the thousands of refugee children the Trump administration separated from their mothers and fathers.

Americans have rightfully been horrified by the stories of weeping mothers unsure of where their daughters and sons have been taken. And some of the audio tapes—gut-wrenching audio tapes—have been heard, with young children crying out in fear inside a detention facility. And Americans want answers as to how this is going to be fixed.

Now, Ms. Johnson, when she ran the Jefferson County child welfare program in Colorado, the State Senate greenlighted a law allowing foster kids to be placed in juvenile detention facilities. When the committee met several weeks ago for a hearing on her nomination, that was one issue among several that committee members had to consider.

Now, because of the new firestorm that the Trump administration has created, the issue of putting children in detention facilities is obviously very much on the minds of the American people. In my view, the committee has not had an opportunity to learn nearly enough about how Ms. Johnson would handle this part of her job, if she is confirmed.

And the fact is, we have been in the dark to a great extent on this matter for several weeks now. We had Secretary Azar, with respect to the children under his custody, not able to give us straight answers even with respect to how many of the parents have been told where their children actually are.

So Ms. Johnson certainly, if confirmed, is going to have a key role in addressing this issue of protecting these kids, making sure these children are safe, when we have seen significant evidence that they really are at considerable risk. So she has a big job ahead of her.

We will have the vote off the floor of the Senate. Certainly a number of my colleagues on both sides of the aisle are going to support her, but in view of the two issues that I have mentioned, I am not able to support her nomination today.

Thank you, Chairman Isakson. It looks to me like we are done.

Senator ISAKSON. We are almost done. I have a statement to read for the chairman.

Thank you all for attending today. And in particular, Mr. Rettig, thank you for your attendance and your commitment to public service. We commend you on your work in the past, in particular on veterans' affairs. We appreciate that very much.

We appreciate all of the good questions that were provided today by the members. Any other questions can be submitted for the record.

Please know that should you serve the agency and the American people well, Mr. Rettig, you will have no greater friend than this committee. However, we also have a responsibility to the American people, and the Finance Committee will continue to be the place where your actions will be overseen and reviewed. We hope you will count on us for help. We will be the greatest watchdog you and the agency have.

I ask that any member who wishes to submit questions for the record do so by the close of business on Tuesday, July 3rd.

With that said, this hearing is adjourned.

Thank you, Mr. Rettig, for your attendance.

[Whereupon, at 12:19 p.m., the hearing was concluded.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to consider the nomination of Charles Rettig to be the Internal Revenue Service (IRS) Commissioner.

Right now, the IRS is at a critical juncture. The American people are already seeing a myriad of benefits thanks to tax reform, as unemployment continues to drop and wages rise.

And the IRS will be responsible for implementing these new policies smoothly and efficiently so that the new law's full benefits can be more quickly realized.

After years of turmoil and controversy, I am hopeful that the IRS has finally started turning the corner. However, with a large governmental organization like the IRS, there is always room for improvement.

Take for example, the problems of aging technology services. Some of the IRS's information technology dates back to the Kennedy administration. Unsurprisingly, that dated technology could inhibit the IRS's ability to interact coherently with 21st-century technology that currently powers our country and much of the rest of the world.

If confirmed, I expect Mr. Rettig to work with Congress to modernize the IRS's infrastructure and technology to bring the agency into the 21st century.

Another major issue is that the IRS has an aging workforce. Right now, the majority of the IRS's workforce is over the age of fifty and nearing retirement. If that majority of the workforce were to retire at or around the same time, the IRS will face a shortage of knowledge and experience.

If confirmed, I hope that Mr. Rettig will start working with Congress immediately to plan for the agency's future. As the IRS continues to implement tax reform, it must work with the Treasury Department to issue regulations and other guidance to ensure that taxpayers have certainty and predictability concerning this new law.

It must also work with Congress to ensure that the new law is implemented and administrated as Congress intended.

The challenges I have enumerated are greater than any one Commissioner. But the Commissioner will set the tone of the workforce and will be charged with working alongside Congress to thoroughly and fairly implement and enforce our new tax laws.

An effective IRS Commissioner must also remember that our tax system relies, in great part, on voluntary compliance. And the system works best when American taxpayers trust the agency and are able to easily contact the IRS to receive timely and complete answers to their questions.

In short, if confirmed, Mr. Rettig has his work cut out for him, but I'm optimistic that he is up to the job and, if confirmed, will lead the agency with integrity.

That said, should the IRS slip up, or fail to live up to the high standards Congress has set, this committee will hold the IRS accountable, as it always has.

At the same time, when the IRS acts properly, responds thoughtfully, and works with us, the IRS will find no better friend than this committee. After all, we recognize just how important it is that our taxes are collected fairly, efficiently, and in compliance with what Congress intended when we wrote the tax laws.

I thank Mr. Rettig for being here and his willingness to serve. Mr. Rettig has decades of experience representing taxpayers before the IRS. He knows the agency inside and out, due to his years of work on advisory councils and stakeholder groups. And he brings the necessary passion and dedication that this role will require.

I am confident that, if confirmed, Mr. Rettig will be a trustworthy, responsive, and earnest partner with Congress and this committee as we pursue our shared mission to improve the agency.

I do want to thank Acting Commissioner Kautter, who has done a great job at the IRS. However, that's not what we confirmed Mr. Kautter to do. And now, more than ever, we need Mr. Kautter back doing his full-time job at the Treasury Department.

Before we begin today, I want to clear something up. There have been inaccurate press reports based on leaked committee documents that the nominee didn't disclose property he owns in a Trump International property in Hawaii.

This is absurd and false, and we should put this matter to rest right now.

First, he disclosed these properties, which were purchased in 2006, on the committee questionnaire. That is a fact. He has been honest and forthright with this committee at every stage of the vetting process. The dispute here pertains to the additional details of noting the name on the side of the building.

Second, any suggestion that there is a conflict of interest here is the stuff of conspiracy theories. Maybe one wants to argue that Mr. Rettig purchased these properties in 2006, during Season 5 of "The Apprentice," on the off chance that Mr. Trump would become President and nominate him to be IRS Commissioner.

But this is silly, and I hope we can put that matter to rest and move on to the substance of this morning's confirmation hearing.

And finally, I do want to note that we've noticed an executive business meeting for this time as well.

If, at any point during the hearing, a suitable quorum is present, I intend to pause the hearing and move immediately to votes on the nominations of Mr. Jeffrey Kessler, Ms. Lynn Johnson, Ms. Elizabeth Ann Copeland, and Mr. Patrick Urda.

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PREPARED STATEMENT OF CHARLES P. RETTIG, NOMINATED TO BE COMMISSIONER,  
INTERNAL REVENUE SERVICE

Chairman Hatch and Ranking Member Wyden, it is an honor to appear before the Senate Finance Committee as the President's nominee to serve as Commissioner of the Internal Revenue Service.

Before I go any further I would like to recognize my family who are with me today: my wife Tam, my sister-in-law Jan, my stepsons Dayton and Trenton, my daughter Christina, and my son Charlie. I cannot explain what their love and support mean to me.

Charlie serves as a Captain in the U.S. Army and returned just days ago from a 12-month deployment overseas. When I was nominated he proudly pointed out, "Dad, you'll be following me into public service." Nothing would make me prouder. He also taught me something about the tax code—that he has 180 days from when he left the Sinai Peninsula to file his tax return.

I would also like to acknowledge my father, who built an air-conditioning business that taught my brother and me the value of hard work. I was the first in my family to finish college, and through undergrad, law school, and graduate school they often joked that I would never stop studying—and they were right.

For more than 35 years, I have worked with all levels of the IRS to achieve resolutions on behalf of taxpayers and bring them back into compliance with our system of voluntary self-assessment. I have served as Chair of the IRS Advisory Council and in a similar role in my home State of California. I am currently vice-chair, administration for the 12,000 member Taxation Section of the American Bar Association. I also serve as president of the American College of Tax Counsel.



Through decades of experience working across the table from the IRS, I have seen the difficulties faced by taxpayers of all kinds—from large employers, to small businesses, to low-income taxpayers who need help. When the IRS started “Problem Solving Days” to allow taxpayers to come in without an appointment, I organized dozens of tax professionals in my area to assist unrepresented taxpayers who appeared at the IRS seeking a resolution of a tax issue. I’ve also devoted a significant amount of time assisting taxpayers who can’t afford professional help on a pro bono basis.

Throughout my career, I have also been privileged to work with many professional and hard-working IRS employees and, if confirmed, would be honored to work alongside them and earn their respect. Despite the challenges it faces, the IRS is fortunate to have an experienced workforce committed to its mission.

In my career, I have seen the impact of those challenges firsthand. Long waits on the phone and inadequate IT systems are significant sources of frustration. If confirmed, I will work with this committee to take on these and other challenges with the impact on taxpayers in mind. We cannot fall into the trap of viewing the challenges the IRS faces as facts of life but must work together to solve them.

If I am privileged to serve as Commissioner, my overriding goal will be to strengthen and rebuild trust between the IRS, the American people, and their representatives in Congress. That trust is critical to all that the IRS does—particularly as it works with the Department of the Treasury to implement once-in-a-generation tax reform legislation enacted by Congress last year. The successful implementation of that landmark reform law will be among my highest priorities as Commissioner.

In closing, I wish to acknowledge IRS Revenue Procedure 1964–22 issued by Commissioner Mortimer Caplin—a veteran of D-Day, who, at age 101, remains a legend at the IRS and throughout the tax practitioner community:

. . . it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view. . . .

I am grateful for the opportunity to testify and look forward to your questions.

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## SENATE FINANCE COMMITTEE

### STATEMENT OF INFORMATION REQUESTED OF NOMINEE

#### A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): Charles Paul Rettig, also known as Chuck Rettig.
2. Position to which nominated: Commissioner of the Internal Revenue Service.
3. Date of nomination: February 13, 2018.
4. Address (list current residence, office, and mailing addresses):
5. Date and place of birth: November 18, 1956; Burbank, California.
6. Marital status (include maiden name of wife or husband’s name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):
  - Graduate Law School: New York University, School of Law, 09/1981 to 05/1982 (LL.M. in Taxation, 1982).
  - Law School: Pepperdine University, School of Law, 09/1978 to 12/1980 (JD, 1980).

Undergraduate College: University of California, Los Angeles (UCLA), 09/1974 to 03/1978 (BA, Economics, 1978).

High School: El Camino Real High School, LAUSD, Woodland Hills, California (1972 to 1974).

9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):

Hochman, Salkin, Rettig, Toscher, and Perez, P.C. (and predecessor firm Hochman, Salkin, and DeRoy, P.C.), tax attorney; 9150 Wilshire Boulevard, #300, Beverly Hills, California 90212; July 6, 1982 to present.

10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above):

Internal Revenue Service Advisory Council (IRSAC) Chair; 2010–2011; Vice-Chair, 2009–2010; Member (Small Business/Self-Employed Division Subgroup), 2008–2010; an unpaid voluntary position.

California Franchise Tax Board, Advisory Board, 1998–present; an unpaid voluntary position.

California State Board of Equalization, Advisory Council, 2011–2014; an unpaid voluntary position.

11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):

President, Hochman, Salkin, Rettig, Toscher, and Perez, PC.

President/Director, PADI Foundation, a non-profit, public benefit corporation.

Trustee (unpaid) of several irrevocable trusts for a few private individual clients of our law firm—each such trust is solely for the benefit of family members of such client—I do not have nor have I ever had any beneficial or economic interest in any of such trusts. I have/will resign as Trustee of such trust if privileged to be confirmed for the position for which I am being nominated, and prior to serving in such position.

Co-Trustee (unpaid) of the Hochman, Salkin, Rettig, Toscher, and Perez, PC retirement plans. I have/will resign as Trustee of such trust if privileged to be confirmed for the position for which I am being nominated, and prior to serving in such position.

Trustee (unpaid) of 9150 Trust, created for the benefit of Hochman, Salkin, Rettig, Toscher, and Perez, PC. I have/will resign as Trustee of such trust if privileged to be confirmed for the position for which I am being nominated, and prior to serving in such position.

12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):

Internal Revenue Service Advisory Council (IRSAC), Chair (2010–2011).

Vice-Chair (2009–2010); Member—Small Business/Self-Employed Division Subgroup (2008–2010).

California Franchise Tax Board, Advisory Board, Member, 1998–present.

California State Board of Equalization, Advisory Council, Member, 2011–2014.

American Bar Association, Taxation Section.

- Vice Chair, Administration, 2014–present.
- Council Director, 2012–2014.
- Civil and Criminal Tax Penalties Committee.
  - Chair, 2009–2011.
  - Vice-Chair, 2007–2009.
  - Chair, Subcommittee on Civil Penalties, 2002–2008.
- Member, Standards of Tax Practice Committee.
  - Liaison, IRS National Taxpayer Advocate, 2003–2007 (est.).
- Member, Court Procedure and Practice Committee, Member.

- Member, Committee on Appointments to the U.S. Tax Court, 2006, 2008, 2011–2013.

State Bar of California.

- Chair, Taxation Section, 1999–2000.
- Chair-Elect, Taxation Section, 1998–1999.
- Vice-Chair and Member, Taxation Section Executive Committee, 1995–1997.
- Advisor, Taxation Section Executive Committee, 2004–2014.
- Immediate Past-Chair, Taxation Section Executive Committee, 2000–2001.
- Chair, Committee of Past-Chairs, 2001–2002.
- Chair, State and Local Tax Committee, 1998.
- Member, Tax Procedure and Litigation Committee

American College of Tax Counsel (ACTC), President (2018); Vice-President (2016–2018); Treasurer, (2015–2016); Member and Chair, Nominating Committee (2012–2015); Elected Regent (2009–present); Elected Fellow (2000–present).

New York University School of Law, Graduate Tax Program, National Board of Advisors, 1999–2010 (est.).

New York University School of Law, Weinfeld Associate.

New York University School of Law, Wallace-Lyon-Eustice Associate.

New York University Institute on Federal Taxation.

- Institute Co-Chair, 2009 and 2017.
- Chair, Tax Controversies Sessions, 2007–present.
- Member, Advisory Board, 2007–present.

UCLA Extension Annual Tax Controversy Institute.

- Institute Chair and Planning Committee Member, 1998–present.

USC Institute on Federal Taxation,

- Member, Executive Committee, 2003–present.
- Subcommittee Chair—Ethics, Compliance, and Enforcement, 2004—present.

ABA National Institute on Criminal Tax Fraud and Civil Tax Controversy, Institute Chair, 2011–2013; Institute Co-Chair 2014–present; ABA National Institute on Criminal Tax Fraud, Institute Co-Chair, 2010.

California CPA Education Foundation, Board of Trustees, Member, 2007–2011.

Beverly Hills Bar Association.

- Chair, Taxation Section, 2001–2003.
- Vice-Chair, Taxation Section, 2000–2001.
- Executive Committee Member, Taxation Section, 2003–2014.
- Chair, Tax Procedure Committee, 2000–2001.
- Chair, State and Local Tax Committee, 1997–1999.

Los Angeles County Bar Association

- Chair, Tax Procedure and Litigation Committee—1997.

Wolters Kluwer Law and Business (CCH) Legal Tax Advisory Board, Founder and Chair, 2012–2014.

Society of Trust and Estate Practitioners (STEP), 2009–present.

California Society of CPAs (CSCPA), Committee on Taxation, Los Angeles Chapter, 1998–present; CSCPA, Associate Member, 1998–present.

Hawaii Society of Certified Public Accountants (HSCPA)—Taxation Committee, Member.

California Society of Enrolled Agents, Professional Affiliate, 2006–2010 (est.).

American Tax Policy Institute, Life Member.

Co-Founder, UCLA Extension VETS COUNT Scholarship Fund—Vets Count provides scholarships for active and retired military personnel who are working

to realize their career goals in tax, accounting, wealth management, and other areas of the financial services industry, <https://giving.ucla.edu/vetscount>.

United States Tax Court Judicial Conference, Invited Participant, 1999, 2005, 2007, 2009, 2015, 2018.

Golden Gate University, Graduate School of Taxation, Advisory Board, Member, 2006–2015 (est.).

Chapman University School of Law, Graduate Tax Program, Advisory Board, Member, 2004–2008 (est.).

Association of Tax Counsel, Los Angeles, CA 1997–present.

U.S. Court of Federal Claims Bar Association.

Federal Bar Association (Taxation Section).

State Bar of California (Taxation Section).

State Bar of Arizona (Taxation Section).

State Bar of Hawaii (Taxation Committee).

Los Angeles County Bar Association (Taxation Section).

Beverly Hills Bar Association (Taxation Section).

San Fernando Valley Bar (Taxation Section).

California CPA Education Foundation, Faculty of Lecturers, 1997–2009.

Wounded Warrior Project, Advance Guard, 2011–present.

UDT–SEAL Association, Associate Member, 2010–2016.

National Rifle Association (Father’s Day gift subscription from active duty military family member).

PADI Foundation, a California Non-Profit Public Benefit Corporation, Co-Founder, President/Chair, 1991–present.

Crespi Carmelita High School, Board of Directors, 2006–2010.

Natural History Museum, Past-Member, Los Angeles, CA.

Greater Los Angeles Zoo Association, Member, Los Angeles, CA.

Honolulu Zoo Association, Member, Honolulu, HI.

Santa Barbara Zoo Association, Past-Member, Santa Barbara, CA.

The Academy of Magical Arts, Past-Associate Member, Los Angeles, CA.

Porsche Club of America, Los Angeles Chapter, CA.

Petersen Automotive Museum, Los Angeles, CA.

13. Political affiliations and activities:

a. List all public offices for which you have been a candidate.

N/A.

b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

N/A.

c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

I have exercised my best efforts to identify all such political contributions including a review of my personal files and searches of publicly available electronic data bases. Despite my searches, there may be other contributions I have been unable to identify, find, or recall. In this regard, to the best of my present knowledge:

Muliufi (“Mufi”) Hannemann for Congress—2012 (\$1,500).

Brad Sherman for Congress—2012 (\$500).

Mary Mack Bono Committee—2012 (\$500).

Romney for President, Inc.—2012 (\$500).

Obama Victory Fund—2012 (\$500).  
 Obama for America—2012 (\$500).  
 Friends of Max Baucus—2013 (\$2,600).  
 Robert E. Andrews for Congress—2013 (\$250).  
 Friends of Alan Arakawa—2013 (\$1,000 est.).  
 Brian Schatz for Senate—2013 (\$5,200).  
 Brian Schatz for Senate—2014 (\$5,200).  
 Brian Schatz for Senate—2016 (\$200).  
 Democratic Party of Hawaii—2014 (\$2,100).  
 Kamala D. Harris for Senate—2016 (\$500).  
 National Republican Congressional Committee—2017 (\$500).  
 Trump Make America Great Again Committee—2017 (\$500).  
 Donald J. Trump for President, Inc.—2017 (\$375).

14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievement):

Certified Specialist, Taxation Law, the State Bar of California, Board of Legal Specialization.

Certified Specialist, Estate Planning, Trust and Probate Law, the State Bar of California, Board of Legal Specialization.

“Tax Lawyer of the Year” (Litigation and Controversy, Los Angeles), *Best Lawyers*—2016, 2017, and 2018.

IRS District Director’s Award, Los Angeles District, 1998.

V. Judson Klein Award for Outstanding Achievement in Taxation, Taxation Section; State Bar of California, 2003.

Award for Extraordinary Efforts Enhancing Government and Private Tax Practitioner Partnerships in the Tax Community for Continuing Education and Professional Development, UCLA Extension, 2005.

2009 Tax Person of the Year (Top 10), *Tax Notes / Tax Analysts*.

Top 50 IRS Representation Practitioners for 2008, *CPA Magazine*, 2008.

Chambers USA, Eminent Practitioner, “Tax Fraud—Nationwide.”

President’s Award for Outstanding Contributions to GPA’s in Hawaii, Hawaii Society of CPAs, 2003–2004.

2015 Partner Appreciation Award, Steller Member, ABA Center for Professional Development.

Conference Speaker of the Year Award, California CPA Education Foundation, 2000.

Instructor of the Year Award, Graduate Tax Program, Golden Gate University, 2002.

Commencement Speaker, Graduate Tax Program, Golden Gate University, 2003.

Keynote Conference Speaker, Hawaii Society of CPAs 42nd Annual Conference, 2002.

Top 100 Super Lawyers (Los Angeles County), *Los Angeles Magazine/Southern California Super Lawyers Magazine*, 2005.

Top Tax Super Lawyers (Los Angeles County), *Los Angeles Magazine/Southern California Super Lawyers Magazine*, 2004–present.

*The Best Lawyers in America*, 2004–present.

*Strathmore’s Who’s Who*, Lifetime Member.

Martindale-Hubbell AV Preeminent Rating (highest possible rating).

Awarded keys to the cities of Elkhart, Nappanee, and Goshen, Indiana in recognition of facilitation of significant financial gift to the Elkhart County Community Foundation, July 2014.

15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):

I have exercised my best efforts to identify all published writings, including a review of my personal files and searches of publicly available electronic data bases. Despite my searches, there may be other materials I have been unable to identify, find, or recall. However, I can represent that I have not published materials that would be embarrassing to me or to the government if they were to be later disclosed publicly. In this regard, please see the attached list 1–163.

#### Articles

Title	Publication	Date
Message From the Institute Chair, Charles P. Rettig and Steven Tascher	<i>Journal of Tax Practice and Procedure</i>	Dec.–Jan. 2018
Practice—A Lesson in Accountability and IRS Enforcement	<i>Journal of Tax Practice and Procedure</i>	Oct.–Nov. 2017
Striking Hard: Overview of the Revised California Administrative Income Tax Procedure	<i>Journal of Tax Practice and Procedure</i>	June–July 2017
What to Expect From Newly Announced LB&I Compliance Campaigns	<i>Journal of Tax Practice and Procedure</i>	Feb.–Mar. 2017
Message From the Institute Chair, Charles P. Rettig	<i>Journal of Tax Practice and Procedure</i>	Dec. 2016–Jan. 2017
TIGTA Evaluation of the IRS Whistleblower Program	<i>Journal of Tax Practice and Procedure</i>	Oct.–Nov. 2016
Why the Ongoing Problem With FBAR Compliance?	<i>Journal of Tax Practice and Procedure</i>	Aug.–Sept. 2016
In a Tax Practice, Everything Is Fine, Until It's Not!	<i>Journal of Tax Practice and Procedure</i>	Jun.–July. 2016
The Panama Papers and Lessons Learned From Years of Offshore Leaks	<i>Journal of Tax Practice and Procedure</i>	Apr.–May 2016
IRS Audit Selection and Classification Processes	<i>Journal of Tax Practice and Procedure</i>	Feb.–Mar. 2016
Evaluating the IRS Wealth Squad	<i>Journal of Tax Practice and Procedure</i>	Dec. 2015–Jan. 2016
Basic Overview: The Kovel Accountant and Privileged Communications	<i>Journal of Tax Practice and Procedure</i>	Oct.–Nov. 2015

## Articles—Continued

Title	Publication	Date
Handling the Sensitive Issue IRS Audit	<i>Journal of Tax Practice and Procedure</i>	Aug.–Sept. 2015
NEW IRS Guidance Limits FBAR Penalties!	<i>Journal of Tax Practice and Procedure</i>	June–July 2015
Determining “Reasonable Cause” for Nonwillful FBAR Violations	<i>Journal of Tax Practice and Procedure</i>	Apr.–May 2015
Overview: Trust Fund Recovery Penalty	<i>Journal of Tax Practice and Procedure</i>	Feb.–Mar. 2015
Overview: IRS Examination Process	<i>Journal of Tax Practice and Procedure</i>	Dec. 2014–Jan. 2015
IRS Administrative Appeals Process Procedures	<i>The Practical Tax Lawyer</i>	Winter, 2014
Common Badges of Tax Fraud Uncovered	<i>Journal of Tax Practice and Procedure</i>	Oct. 2014
OVDP and Streamlined Procedures: Am I Non-Willful?	<i>Journal of Tax Practice and Procedure</i>	Aug.–Sept. 2014
Jury Determines 150-Percent FBAR Penalty and U.S. Seeks FBAR Related Forfeiture of \$12 Million!	<i>Journal of Tax Practice and Procedure</i>	June–July 2014
IRS Changes Streamlined OVDP Reducing FBAR Penalty Exposure!	<i>Journal of Tax Practice and Procedure</i>	June–July 2014
IRS LB&I Revised IDR Enforcement Process	<i>Journal of Tax Practice and Procedure</i>	Apr.–May 2014
2014 Tax Enforcement Priorities and Practice Tips From the Tax Trenches	<i>Valley Lawyer</i>	April 2014
Overview: Indirect Methods of Determining Taxable Income	<i>Journal of Tax Practice and Procedure</i>	Feb.–Mar. 2014
Revised IRS Appeals Procedures re: FBAR Penalties	<i>Journal of Tax Practice and Procedure</i>	Dec. 2013–Jan. 2014
Criminal Tax Restitution Orders and the Civil Liability	<i>Journal of Tax Practice and Procedure</i>	Oct.–Nov. 2013
A Temporary and Transitory Visit With California Residency	<i>Journal of Tax Practice and Procedure</i>	Aug.–Sept. 2013

## Articles—Continued

Title	Publication	Date
GAO to IRS: Pursue Quiet Disclosures and First Time FBAR Filers	<i>Journal of Tax Practice and Procedure</i>	June–July 2013
IRS Offshore Voluntary Disclosure Program: Opt-Outs, a Revised FBAR and Rescissions of Pre-Clearance Letters by Criminal Investigations	<i>Journal of Tax Practice and Procedure</i>	Apr.–May 2013
Whistleblower Awards and the Bank Secrecy Act: Mutually Exclusive?	<i>Journal of Tax Practice and Procedure</i>	Feb.–Mar. 2013
Message From the Institute Chair, Charles P. Rettig	<i>Journal of Tax Practice and Procedure</i>	Dec. 2012–Jan. 2013
Form 8300: Reporting Domestic Currency Transactions	<i>Journal of Tax Practice and Procedure</i>	Dec. 2012–Jan. 2013
Webinar Featuring Steve Tascher—The Perils of Civil and Criminal Tax Penalties: What You Need to Know	HSRTP	Jan. 11, 2018
Steve Tascher Receives Lifetime Achievement Award for Outstanding Contributions in the Field of Tax Law	HSRTP	Nov. 3, 2017
Judge L. Paige Marvel Has Been Elected as Chief Judge of the United States Tax Court	United States Tax Court Press Release	Feb. 29, 2016
IRS Streamlined FBAR Reporting Procedures Non-Resident Certification Form 14653	HSRTP	Feb. 4, 2016
Agostino and Associates Newsletter—Evaluating Collection Alternatives	Agostino and Associates	Jan. 21, 2016
National Institutes on Criminal Tax Fraud and Tax Controversy, Dec. 9–11	ABA	Dec. 1, 2015
Withheld Taxes and the Trust Fund Recovery Penalty	HSRTP	Nov. 18, 2015
Civil Tax Penalty Defenses: Reasonable Cause and Reliance	HSRTP	Oct. 12, 2015
First Time Abatement of Civil Tax Penalties	HSRTP	Sept. 29, 2015
Sensitive Issue Tax Examinations—the “Eggshell Audit”	HSRTP	Sept. 5, 2015
New FBAR Reference Guide	HSRTP	Aug. 7, 2015
New Filing Due Dates for FBARs, Partnership and C Corporation Returns!	HSRTP	Aug. 1, 2015
Determining “Reasonable Cause” for Nonwillful FBAR Violations	HSRTP	July 29, 2015
IRS Advises re Delinquent International Information Return Submission Procedures	HSRTP	July 18–27, 2015
Practical Advice for an IRS Examination	HSRTP	July 15, 2015



## Articles—Continued

<b>Title</b>	<b>Publication</b>	<b>Date</b>
NEW IRS Guidance Limits FBAR Penalties!	HSRTP	June 12, 2015
Reminder FBAR Electronic Filing Due by June 30, 2015	HSRTP	June 30, 2015
IRS Audit Techniques Guides	HSRTP	May 15, 2015
Clinton Foundation to File Amended Returns, Should You?	HSRTP	May 1, 2015
Tax Return Should Not Represent an Offer to Negotiate Deductions With the Government	HSRTP	Feb. 27, 2015
President Obama Announces Intent to Nominate Cono R. Namorato, for Assistant Attorney General for the Tax Division, Department of Justice	HSRTP from the White House—Press Release	Feb. 25, 2015
Answering Your Civil and Criminal Offshore Disclosure Question	ABAWebinar	Feb. 20, 2015
ICU Reveals Swiss HSBC Data	HSRTP	Feb. 9, 2015
Fraudulent Failure to File Tax Returns—75% of the Tax Due!	HSRTP	Jan. 23, 2015
How Long Should I Keep Tax Records?	HSRTP	Dec. 7, 2014
Random Thoughts re IRS Examination Representation	HSRTP	Nov. 24, 2014
Voluntary Disclosures by Non-Filers	HSRTP	Nov. 18, 2014
Warning Signs of an IRS Criminal Tax Prosecution Referral	HSRTP	Nov. 3, 2014
IRS: Common Badges of Tax Fraud	HSRTP	Oct. 2, 2014
IRS Interview of Taxpayers and Return Preparers	HSRTP	Sept. 22, 2014
Bankruptcy (Tax) Law Must Apply Equally to the Rich and Poor Alike	HSRTP	Sept 15, 2014
Voluntary Disclosure—Benefits of Timely Filing Amended and Delinquent Tax Returns	HSRTP	Sept 12, 2014
IRS Non-Filers Beware: Who's That Knocking at Your Door?	HSRTP	Sept. 8, 2014
Agostino and Associates Newsletter—De Novo Review of Assessable International Penalties	Agostino and Associates	Sept. 2, 2014
Recommendations for IRS Tax Return Preparers	HSRTP	Aug. 26, 2014
Hidden Resources—IRS Audit Techniques Guides	HSRTP	Aug. 12, 2014
Am I “Non-Willful” Under the IRS OVDP Streamlined Procedures?	HSRTP	Aug. 8, 2014
IRS Methods of Indirectly Determining Taxable Income	HSRTP	Aug. 5, 2014
FIRST TIME ABATE of IRS Penalties	HSRTP	July 31, 2014

## Articles—Continued

Title	Publication	Date
OVDP and Streamlined Procedures: Expect the Unexpected!	HSRTP	July 2, 2014
Critical Links—2014 OVDP and Streamlined Filing Compliance Procedures	HSRTP	June 26, 2014
IRS OVDP Opt Out Vs. Transition to the New Streamlined Procedures?	HSRTP	June 24, 2014
IRS Changes Streamlined OVDP Reducing FBAR Penalty Exposure!	HSRTP	June 22, 2014
IRS Makes Major Changes to Offshore Voluntary Disclosure Program!	HSRTP	June 19, 2014
Reminder: 2013 FBAR Filing Due by June 30, 2014	HSRTP	June 16, 2014
Zwerner: Jury Determines 150% FBAR Penalty Applies—Excessive Fines Clause to the Rescue?	HSRTP	May 29, 2014
Protecting Privileges During an IRS Examination	HSRTP	May 17, 2014
U.S. Seeks FBAR Related Forfeiture of \$12 Million	HSRTP	Apr. 15, 2014
Just Released: Hot Audit Issues for the California FTB!	HSRTP	Apr. 12, 2014
Virtual Currency Constitutes Taxable Property for U.S. Federal Tax Purposes	HSRTP	Apr. 4, 2014
IRS FBAR OVDP Opt-Out Interview Questions Revealed!	HSRTP	Mar. 25, 2014
IRS Internal IDR Training Materials Revealed!	HSRTP	Mar. 21, 2014
New IRS LB&I Revised IDR Enforcement Process	HSRTP	Mar. 17, 2014
“Ballpark Guesstimate” Insufficient to Support “Real Estate Professional” Status—Accuracy-Related Penalty Applied	HSRTP	Mar. 12, 2014
Simplified Option for Home Office Deduction Now Available!	HSRTP	Mar. 10, 2014
IRS-Criminal Investigation 2014 Investigative Priorities	HSRTP	Mar. 6, 2014
IRS Identifies the “Dirty Dozen” Tax Scams for 2014	HSRTP	Mar. 5, 2014
Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts	HSRTP	Feb. 25, 2014
Criminal Tax Prosecutions Surge Under President Obama	HSRTP	Feb. 5, 2014
Civil Detention for Failure to Pay Taxes	HSRTP	Feb. 4, 2014
Badges of Fraud—IRS Goes Undercover in a “Gentleman’s Club”	HSRTP	Feb. 3, 2014
Tax Enforcement Priorities for 2014 and Beyond!	HSRTP	Jan. 17, 2014
“Fedex Express Saver” is NOT Valid for Filing of a Timely Tax Court Petition (or Tax Returns)	HSRTP	Nov. 26, 2013

## Articles—Continued

Title	Publication	Date
New FBAR Form 114 and Revised IRS Appeals Procedures re FBAR Penalties	HSRTP	Nov. 10, 2013
IRS Warns of Telephone Scam Targeting Taxpayers, Including Recent Immigrants	HSRTP	Nov. 1, 2014
Tax Practice Tool: IRS Audit Techniques Guides	HSRTP	Oct. 12, 2013
October 15th Deadline Remains in Effect for Taxpayers Who Requested a Six-Month Extension to File Tax Return	HSRTP	Oct. 8, 2013
A Temporary and Transitory Visit With California Residency	HSRTP	Oct. 6, 2013
Zwerner Answers DOJ Efforts to Collect Multiple 50 Percent Civil FBAR Penalties	HSRTP	Sept. 26, 2013
New IRS Commissioner Nominated by President Obama	HSRTP	Aug. 3, 2013
Reminder: 2012 FBAR Filing Due by June 30th	HSRTP	Jun. 20, 2013
DoJ Files Action to Collect Multiple 50% Civil FBAR Penalties in <i>U.S.A. vs. Zwerner</i>	HSRTP	Jun. 15, 2013
Rescissions of IRS OVDP Pre-Clearance Letters	HSRTP	Jun. 12, 2013
IRS FBAR Voluntary Disclosure Program, Opt-Out Considerations and Taxpayers Interviews	HSRTP	Jun. 12, 2013
Form 8300: Reporting Domestic Currency Transactions	HSRTP	Jun. 12, 2013
New Filing Compliance Procedures for Non-Residence U.S. Taxpayers	HSRTP	Sept. 18, 2012
IRS Provides Updated Guidance re FBAR Voluntary Disclosure Program	HSRTP	Jun. 27, 2012
The IRS Whistleblower Program: Making Money the Old Fashioned Way!	HSRTP	May 23, 2012
Practice Tips From the Tax Trenches	HSRTP	Mar. 10, 2012
FBAR Offshore Voluntary Disclosure Initiative (OVDI)	HSRTP	Jan. 11, 2012
Non-Filers Beware: Who's That Knocking on Your Door?	HSRTP	Jan. 11, 2012
Examining the FBAR/Offshore Account Information Document Request (IDR)	HSRTP	Jan. 11, 2012
IRS Voluntary Disclosure Practice	HSRTP	Jan. 11, 2012
Overview of FBAR Reporting Requirements	HSRTP	Jan. 11, 2012
Qualified Amended Returns Can Eliminate Accuracy Related Tax Penalty	HSRTP	Jan. 11, 2012
FOIA Request: A Look Into the IRS Examination File	HSRTP	Jan. 11, 2012

## Articles—Continued

Title	Publication	Date
IRS Global High-Wealth Industry Group: Evaluation of an IRS Wealth Squad IDR	HSRTP	Jan. 11, 2012
Basic Audit Techniques: Taxpayer Interviews	HSRTP	Jan. 11, 2012
IRS Audit Techniques Guides	HSRTP	Jan. 11, 2012
IRS Voluntary Worker Classification Settlement Program	HSRTP	Jan. 11, 2012
New 2012 IRS FBAR Voluntary Disclosure Initiative	HSRTP	Jan. 11, 2012
Making a Voluntary Disclosure Under the 2011 OVDI	HSRTP	Jun. 18, 2011
Tax Penalty Relief—Reliance on Tax Adviser	HSRTP	Jun. 18, 2011
Current IRS Enforcement Priorities	HSRTP	Sept. 10, 2010
Introduction/Legal Disclaimer	HSRTP	Sept. 9, 2010
U.S. Launches Criminal Inquiry Into 200 U.S. Citizens Named in the Panama Papers	<i>Forbes</i>	Apr. 23, 2016
The Panama Papers and Lessons Learned From Years of Offshore Leaks	<i>Forbes</i>	Apr. 6, 2016
Where's My Tax Refund?	<i>Forbes</i>	Apr. 3, 2016
No Ordinary Audit: Donald Trump Is Facing the IRS "Wealth Squad"	<i>Forbes</i>	Feb. 28, 2016
IRS FBAR Streamlined Procedures Revisited: Am I Non-Willful?	<i>Forbes</i>	Aug. 2, 2015
Reminder: FBAR Electronic Filing Due By June 30, 2015	<i>Forbes</i>	Jun. 23, 2015
New IRS Guidance Limits FBAR Penalties	<i>Forbes</i>	Jun. 9, 2015
Clinton Foundation to File Amended Returns; Should You?	<i>Forbes</i>	Apr. 25, 2015
Am I Non-Willful Under the OVDP Streamlined Procedures?	<i>Forbes</i>	Aug. 8, 2014
IRS OVDP vs. Streamlined: What to Do	<i>Forbes</i>	Jul 7, 2014
Important Links to Latest IRS OVDP Procdures	<i>Forbes</i>	Jun. 23, 2014
FBAR Penalty Applies to Offshore Poker Accounts	<i>Forbes</i>	Jun. 19, 2014
Zwerner: Jury Determines 150% FSAR Penalty Applies—What Next?	<i>Forbes</i>	May 19, 2014
U.S. Seeks FBAR Related Forfeiture of \$12 Million	<i>Forbes</i>	Apr. 16, 2014
"FedEx Express Saver" is NOT Valid for Filing of a Timely Tax Court Petition (or Tax Return)	<i>Forbes</i>	Apr. 11, 2014
"Ballpark Guesstimate" Insufficient to Support "Real Estate Pro" Status—Penalties Applied	<i>Forbes</i>	Mar. 12, 2014
Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts	<i>Forbes</i>	Feb, 25, 2014

## Articles—Continued

<b>Title</b>	<b>Publication</b>	<b>Date</b>
FBAR: Revised IRS Penalty Appeals Procedures	<i>Forbes</i>	Nov. 25, 2013
Temporary and Transitory Visit With (California) Residents	<i>Forbes</i>	Nov. 4, 2013
IRS Shutdown? October 15th Deadline Remains in Effect	<i>Forbes</i>	Oct. 8, 2013
Zwerner Answers DoJ Efforts to Collect Multiple 50 Percent Civil FBAR Penalties	<i>Forbes</i>	Sept. 26, 2013
President Obama Nominates John Koskinen as Next IRS Commissioner	<i>Forbes</i>	Aug. 7, 2013
Do You Outsource Payroll? Pay Attention to These IRS Tips	<i>Forbes</i>	Jul. 17, 2013
IRS FBAR Voluntary Disclosure Program and Opt Out Considerations	<i>Forbes</i>	Jul. 4, 2013
Reminder: FBAR Filing Due by June 30th	<i>Forbes</i>	Jun. 25, 2013
DoJ Files Action to Collect Multiple 50 Percent Civil FBAR Penalties in <i>U.S.A. vs. Zwerner</i>	<i>Forbes</i>	Jun. 17 2013
IRS FBAR Voluntary Disclosure Program: Taxpayer Interview	<i>Forbes</i>	Jun. 12, 2013
Non Filers Beware: Who's That Knocking at Your Door?	<i>Forbes</i>	Nov. 15, 2012
New Streamlined Filing Compliance Procedures for Non-Resident U.S. Taxpayers	<i>Forbes</i>	Sept. 18, 2012
IRS Provides Updated Guidance re FBAR Voluntary Disclosure Program	<i>Forbes</i>	Jun. 27, 2012
Six-Year Statute of Limitations Does Not Apply to Deficiency From Overstated Basis	<i>Forbes</i>	Apr. 27, 2012
Get an Extension of Time to File 2011 Returns Beyond the April 17th Deadline	<i>Forbes</i>	Apr. 14, 2012
Déjà Vu—Yet Another IRS FBAR Voluntary Disclosure Initiative	<i>Forbes</i>	Jan. 10, 2012 and Feb. 9, 2012

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

I have exercised my best efforts to identify all speeches I have delivered within the past 5 years on topics relevant to the position for which I have been nominated. Despite my searches, there may be other speeches I have been unable to identify, find, or presently recall. However, I can represent that I have not published materials that would be embarrassing to me or to the government if they were to be later disclosed publicly. In this regard, please see the attached list 1–66 of presentation outlines (presentations were not scripted but the attached written materials were generally provided in association with the presentation).

## PowerPoint Presentations

Title	Venue	Date
Hot Topics in IRS Enforcement—35+ Years in the Tax Trenches	Cal-CPA—Fed., State, Local, and Int'l Tax—Universal City, CA	Nov. 16, 2017
IRS Audit Issues and Hot Topics—35+ Years in the Tax Trenches	CP America Int'l, Inc.—Tucson, AZ	Nov. 14, 2017
Tax Controversies—Tips From the Tax Trenches—Everything Is Fine . . . Until it Isn't	76th NYU Institute on Federal Taxation—San Francisco, CA	Nov. 12, 2017
Hot Topics in IRS Enforcement—35+ Years in the Tax Trenches	Pacific Tax Institute—Seattle, WA	Nov. 1, 2017
Tax Controversies—Tips From the Tax Trenches—Everthing Is Fine . . . Until it Isn't	76th NYU Institute on Federal Taxation—New York, NY	Oct. 22, 2017
From the Trenches—150+ Years of Tax Disputes	Calif. Society of CPAs—Hollywood/Beverly Hills Discussion Group—Los Angeles, CA	Aug. 25, 2017
Hot Topics in IRS Enforcement—Tips From the Tax Trenches	17th Annual Oregon Tax Institute—Portland, OR	Jun. 1, 2017
Hot Topics in IRS Enforcement—Tips From the Tax Trenches	Calif. Society of CPAs—Hollywood/Beverly Hills Discussion Group— Los Angeles, CA	May 5, 2017
Offshore Tax Enforcement: Today's Smaller, More Transparent World—Government and Taxpayer Perspectives—Session #7	AICPA—2016 National Tax Conference	Nov. 14, 2016
Insight and Warnings on Today's Tax Enforcement Priorities—Session #11	AICPA 2016 National Tax Conference	Nov. 14, 2016
Tax Controversies—Tips From the Tax Trenches	75th NYU Institute on Federal Taxation—San Diego, CA	Nov. 13, 2016
Conflicts of Interest and Disclosures in the Performance of Tax Services	Pacific Tax Institute—Seattle, WA	Nov. 3, 2016
California Non-Residency Determinations—A Temporary and Transitory Visit With California Residency	Pacific Tax Institute—Seattle, WA	Nov. 3, 2016
Tax Controversies—Tips From the Tax Trenches	75th NYU Institute on Federal Taxation—New York, NY	Oct. 23, 2016
Offshore Tax Enforcement Update—Tips From the Tax Trenches		Sept. 1, 2016
Current Developments in IRS Enforcement—Tips From the Tax Trenches	Calif. Society of CPAs—Hollywood/Beverly Hills Discussion Group	Jun. 12, 2016
Economic Substance, Judicial Doctrines, and Ethics	Practising Law Institute—San Francisco, CA	Jun. 9, 2016

## PowerPoint Presentations—Continued

Title	Venue	Date
IRS Audit Issues and Hot Topics—Tips From the Tax Trenches	7th Annual Southwest Tax Conference—The All Around Tax Conference: Not Just a Tax Update—Las Vegas, NV	Dec. 3, 2015
Tax Controversies—Tips From the Tax Trenches—Everthing Is Fine . . . Until it Isn't	74th NYU Institute on Federal Taxation—San Francisco, CA	Nov. 15, 2015
A Temporary and Transitory Visit With California Residency	Pacific Tax Institute—Seattle, WA	Nov. 5, 2015
Hot Topics in IRS Enforcement—Tips From the Tax Trenches	Pacific Tax Institute—Seattle, WA	Nov. 5, 2015
Tax Preparer Obligations and Penalties—IRS Audit Issues and Hot Topics—Tips From the Tax Trenches	Clark Nuber—Seattle, WA	Nov. 4, 2015
Ethics and OPR—Conflicts, Omissions, and Ethics—Session #20	2015 AICPA National Tax Conference	Nov. 3, 2015
Tax Controversies—Tips From the Tax Trenches—Everthing Is Fine . . . Until it Isn't	74th NYU Institute on Federal Taxation—New York, NY	Oct. 23, 2015
Practitioners Standards, Penalties, and IRS Enforcement Initiatives—When Problems Are Likely to Occur in a Tax or Estate Planning Practice—Session #22	2015 AICPA	Oct. 2015
FBAR Overview—Sanctions—Criminal Penalties		Aug. 30, 2015
Tax Post-Filing Representation 101—IRS Audits, Administrative Appeals, and Settlements—Everything Is Fine . . . Until it Isn't	AICPA	Aug. 12, 2015
FBAR Overview—Sanctions—Criminal Penalties		Jun. 30, 2015
What's Next in International Tax Enforcement—Tips From the Trenches	7th Annual NYU Tax Controversy Forum—New York, NY	Jun. 5, 2015
Tax Preparer Obligations and Penalties—Conflicts, Omissions, Controversy, and Ethics—Session #25	2015 AICPA Tax Strategies for the High-Income Individual	May 19, 2015
"M"—Marital Dissolutions—Is the IRS Watching Your Clients?—Tips From the Tax Trenches	47th Annual Family Law Symposium—Universal City, CA	May 2, 2015
Enforcement and Criminal Tax Symposium	39th FBA Annual Tax Law Conference	Mar. 6, 2015
Enforcement Update From the Trenches		Feb. 8, 2015
Offshore Tax Enforcement and Compliance—Tips From the Tax Trenches!	62nd Annual Taxation Conference—UT School of Law—Austin, TX	Dec. 4, 2014

## PowerPoint Presentations—Continued

Title	Venue	Date
IRS Audit Issues and Hot Topics—Tips From the Tax Trenches!	6th Annual Southwest Tax Conference—Las Vegas, NV	Dec. 2, 2014
Tax Controversies—Tips From the Tax Trenches	73rd NYU Institute on Federal Taxation—San Diego, CA	Nov. 16, 2014
When Problems Are Likely to Occur in a Tax or Estate Planning Practice—Tips From the Tax Trenches—Session #32	2014 AICPA—Tax Strategies for the High-Income Individual Conference	Nov. 14, 2014
IRS Audit Issues and Hot Topics—Tips From the Tax Trenches!	2014 Tax Conference—CPAmerica International—San Juan, Puerto Rico	Nov. 10, 2014
Hot Topics in IRS Tax Enforcement	25th Annual Philadelphia Tax Institute—Philadelphia, PA	Nov. 6, 2014
Tax Post-Filing Representation 101—IRS Audits, Administrative Appeals, and Settlements—Session #303	2014 AICPA National Tax Conference	Nov. 5, 2014
Practical Tax Advice—Protecting Your Clients and Yourself—Tips From the Tax Trenches—Session #31	2014 AICPA National Tax Conference	Nov. 4, 2014
Ethics and OPR: Covering Conflicts, Omissions, Controversy, and Ethics—Session #20	2014 AICPA National Tax Conference	Nov. 4, 2014
Strategic Options for Taxpayers re International Tax Enforcement—Session B1	Pacific Tax Institute—Seattle, WA	Oct. 30, 2014
Current Developments in IRS Enforcement—Tips From the Tax Trenches!	Pacific Tax Institute—Seattle, WA	Oct. 30, 2014
Tax Controversies—Tips From the Tax Trenches	73rd NYU Institute on Federal Taxation—New York, NY	Oct. 19, 2014
Current Developments at the IRS Affecting Nonprofits	11th Annual Nonprofit Organizations Seminar—Chaminade Univ. of Honolulu, HI	Sept. 19, 2014
Audits: Types of Audit, Audit Techniques and Procedures, and Limitations	ALI-CLE—Handling a Tax Controversy: Audits, Appeals, Litigation, and Collections	Aug. 30, 2014
Taxpayer Representation Tips From the Tax Trenches	2014 NYU/SCPS 6th Annual Tax Controversy Forum—New York, NY	Jun. 19, 2014
Information Sharing and Enforcement	Federal Bar Association—Washington, DC	Feb. 28, 2014
Representing Clients in IRS Examinations	ALI CLE—Hot Topics for Accountants and Tax Lawyers	Dec. 16, 2014



## PowerPoint Presentations—Continued

Title	Venue	Date
IRS Audit Issues and Hot Topics of Interest to Estate Planners—Current Enforcement IRS Priorities and Strategies	Estate Planning Council of Seattle	Dec. 4, 2013
Hot Topics in IRS Tax Enforcement—Current Developments in the Tax Trenches	5th Annual Southwest Tax Conference—Nevada Society of CPAs—Las Vegas, NV	Dec. 2, 2013
Tax Controversies—Tips From the Tax Trenches	72nd NYU Institute on Federal Taxation—San Francisco, CA	Nov. 17, 2013
Hot Topics in IRS Tax Enforcement: Tips From the Tax Trenches!	Pacific Tax Institute—Seattle, WA	Nov. 15, 2013
Hot Topics in IRS Tax Enforcement	24th Annual Philadelphia Tax Institute—Philadelphia, PA	Nov. 7, 2013
Current IRS Enforcement Priorities—Workshop Session #2	2013 AICPA National Tax Conference—Tax Controversy Workshop—Washington, DC	Nov. 6, 2013
Coming Out of the Cold: Voluntary Disclosures—Tips From the Tax Trenches—Session #14	2013 AICPA National Tax Conference	Nov. 4, 2013
Broad Issues Raised by High Net Worth IRS Audits—Everything Is Fine . . . Until it Isn't	48th Annual Southern Federal Tax Institute	Oct. 23, 2013
Tax Controversies—Tips From the Tax Trenches	72nd NYU Institute on Federal Taxation—New York, NY	Oct. 20, 2013
IRS Enforcement Update and Wealth Squad Examinations	Tulane Tax Institute—New Orleans, LA	Oct. 16, 2013
Nuts and Bolts of IRS Audits—Tips From the Tax Trenches—Session #10	2013 AICPA National Tax conference	Oct. 13, 2013
IRS Audit Issues and Hot Topics of Interest to Estate Planners	Woodland Hills Tax and Estate Planning Council—Woodland Hills, CA	Sept. 11, 2013
Preparing and Arguing Your Case in IRS Appeals	AICPA—Tax Planning, Compliance, and Controversy—Conference for Businesses and Individuals	May 17, 2013
Roundtable Discussion—Kathryn Keneally, Asst. Atty. Gen. of the Tax Div., USDOJ	2013 Tax Institute—USC Gould School of Law	Jan. 2013
FBAR Penalty Update and Streamlined Offshore Disclosures: To File or Not to File?—Offshore Tax Enforcement Update	???	???, 2017

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

The activities of the IRS touch virtually every American, and it is an honor to have been nominated to be the next Commissioner of the IRS. I have more than 35 years of experience as a tax lawyer representing taxpayers before all administrative levels of the IRS (examinations, appeals, litigation, collection, etc.) as well as in tax matters before the Tax Division of the U.S. Department of Justice, various State taxing authorities, the United States Tax Court, and the United States District Court. As a strong supporter for the integrity of our system of tax administration, I have been appointed by various Federal and State taxing authorities to their advisory boards and have been invited to lecture to IRS and other governmental tax authorities on issues including the accountability of both government and private tax practitioners to the public as well as to our system of taxation.

I began serving on the IRS Advisory Council (IRSAC) in 2008 and ultimately became Chair of IRSAC in 2011. The IRSAC serves as an advisory body to the IRS Commissioner providing an organized public forum bringing IRS executives and officials together with representatives of the public to discuss relevant tax administration issues. In this regard, IRSAC suggests best practices and operational improvements for taxpayer services at the IRS as well as current or proposed IRS policies, programs, and procedures.

For almost 20 years, I have served in an advisory capacity as a member of the Advisory Board for the California Franchise Tax Board and, for approximately 4 years, I also served as a member of the Advisory Council of the California State Board of Equalization. I am currently Vice-Chair, Administration for the 12,000+ member Taxation Section of the American Bar Association, and I am currently President of the American College of Tax Counsel. I previously chaired the 4,000+ member Taxation Section of the California Bar. Additionally, I have served as chair of numerous national, State, and local professional tax-related conferences and am also a frequent lecturer at such conferences before enrolled agents, certified public accountants, accountants, tax lawyers, tax practitioners from industry, and others.

If confirmed, I will do my utmost to successfully carry out the responsibilities entrusted to me as Commissioner of Internal Revenue and help IRS become more efficient, more responsive, and more respected in meeting and hopefully surpassing the expectations of America's taxpayers.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes, but I will continue to participate in the Cash Balance Plan and in the Profit Sharing Plan (a defined contribution plan) of Hochman, Salkin, Rettig, Toscher, and Perez, P.C. The plan sponsor will not make further contributions, after my separation from Hochman, Salkin, Rettig, Toscher, and Perez, P.C.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No.

3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No.

4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.

Yes.

#### **C. POTENTIAL CONFLICTS OF INTEREST**

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

N/A.

2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

During the last 10 years, I have been a tax lawyer with Hochman, Salkin, Rettig, Toscher, and Perez, P.C. and have served as tax counsel for numerous individuals and entities involved in various tax-related disputes with the Internal Revenue Service. In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Treasury's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Treasury's designated ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

N/A.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Treasury's designated ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Treasury's designated ethics official and that has been provided to this committee. I am not aware of any other potential conflicts of interest.

5. Two copies of written opinions should be provided directly to the committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

Provided to committee.

#### **D. LEGAL AND OTHER MATTERS**

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.

No.

5. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

N/A.

### E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes.

2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes, if such information is not otherwise legally precluded from disclosure.

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#### QUESTIONS SUBMITTED FOR THE RECORD TO CHARLES P. RETTIG

##### QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

*Question.* One of the key accomplishments of the IRS, State revenue departments and private industry of the past few years is the creation of the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (IDTTRF-ISAC). This ISAC allows the participants in the tax preparation and banking areas to collect and analyze information regarding identity theft fraud schemes and patterns. The results today have been impressive. Do you intend to support this initiative and its funding?

*Answer.* I agree the Information Sharing and Analysis Center (ISAC), along with the overall Security Summit initiative, has been a success in combating tax-related identity theft and helping taxpayers. If confirmed, I will continue to support the ISAC efforts and the continued partnership of the Security Summit initiative among the IRS, the States and the Nation's private-sector tax community.

*Question.* In 2014, under the prior administration, the IRS provided guidance determining that convertible virtual currency should be treated as property for U.S. income tax purposes. The IRS received a number of comments from industry and even its own Inspector General criticizing the fact that many questions remained, making it difficult for taxpayers to appropriately comply with the guidance. The Inspector General noted in its report that, "Although the IRS requested comments to Notice 2014-21 from the public, no actions were taken to address the comments received" despite "TIGTA [having] reviewed all the comments and [finding] several examples of information requested by the public that would be helpful in understanding how to comply with the tax reporting requirements when using or receiving virtual currencies." It seems to be widely recognized that various aspects of the taxation of virtual currencies do not fit neatly into existing taxation principles. Will you work with Congress and industry to help develop more appropriate guidelines for industry in this area?

*Answer.* Virtual currency presents challenges not only for the U.S. tax administration but for tax administration globally. I will work with the Chief Counsel and other divisions of the IRS to respond to this challenge. I think it's also important to work closely with Congress and the private sector on this issue.

*Question.* Mr. Rettig, do you believe the IRS should take additional steps to ensure the confidentiality of taxpayer information? What do you think might be cybersecurity steps the IRS could take to protect taxpayer information—both from external hackers, as well as from employees inside the IRS who might inappropriately access certain taxpayer information?

*Answer.* I believe that a critical component of providing outstanding taxpayer service involves ensuring that the information taxpayers provide to the IRS will be kept secure. If confirmed, I will assess what additional steps may be needed to advance cybersecurity. I look forward to working with the committee to protect taxpayers.

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#### QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* Mr. Rettig, as you are aware, I have been a staunch proponent of the IRS whistleblower program, and I am pleased to see you have written favorably about the program on several occasions. For instance, in 2013 you wrote that the IRS whistleblower rules should require payment of awards from all proceeds collected by the government, regardless of the particular title or underlying law viola-

tion. I have long agreed and just this year was successful in passing a clarification to the definition of collected proceeds under the program. My amendment will help ensure whistleblowers are not shortchanged and are incentivized to bring valuable information to the IRS that results in criminal fines and other non-title 26 penalties. However, I have some concerns that the IRS is dragging its feet in implementing this policy. What would you do as IRS Commissioner to make sure that the implementation of the collected proceeds rule is not delayed and is consistently applied to whistleblowers?

Answer. I agree that the whistleblower program is a valuable tool in supporting IRS tax administration efforts. If confirmed, I will work with you and the members of this committee to identify ways to make the whistleblower program more efficient and effective.

*Question.* As you may be aware, I have been a strong proponent of the IRS private debt collection program. In 2015, Congress updated and made mandatory the IRS private debt collection program. This program is designed to chip away at the tax gap by requiring the IRS to contract with private debt collectors to collect inactive tax debts owed to the government. These are tax debts not being worked by the IRS and absent the program would likely never be collected. According to the non-partisan Joint Committee on Taxation, the program could collect \$2.4 billion over 10 years. However, I have had concerns with the slow low rollout of the program and am concerned some within the IRS and Treasury may be working to undermine the program. Can you assure me that as Commissioner you will implement and administer the private debt collection program in accordance with, and to the full extent of, the law?

Answer. As you note, this program is law. If confirmed, I will ensure that the IRS fully implements the law.

*Question.* The IRS has long struggled to address the high improper payment rates of refundable credits, such as the Earned Income Tax Credit (EITC). According to the Treasury Inspector General of Tax Administration (TIGTA), more than \$16 billion in improper EITC payments were made in fiscal year 2017. One of the requirements of the EITC is that a taxpayer must have a work authorized Social Security number to be eligible for the EITC. Yet, according to TIGTA the IRS has yet to develop a process to prevent individuals with “non-work” Social Security numbers from receiving the EITC. As a result, more than \$100 million in erroneous EITC payments may be made annually to those ineligible to work in the United States. As IRS Commissioner, what steps would you take to address these types of improper payments?

Answer. If confirmed, I will review the procedures that the IRS has in place to prevent improper payments—including those related to the Earned Income Tax Credit—and will work to strengthen those procedures where necessary. I look forward to working with the committee on this issue.

*Question.* In February, the Treasury Inspector General for Tax Administration (TIGTA) reported that nearly 2,000 IRS employees with disciplinary actions received employee awards or bonuses. As part of their review, TIGTA noted that IRS screening was insufficient in identifying employees with tax compliance issues that were not otherwise disciplined. This included employees who had tax liens or were in failure to pay status. Given the IRS’s role in ensuring the integrity of our tax system this is particularly troubling. As Commissioner what actions would you take to ensure employees with conduct issues, particularly those not in compliance with our tax laws, are not rewarded with bonuses?

Answer. If confirmed, I will work to ensure that bonuses only go to employees that deserve them.

*Question.* I have long been concerned about IRS employees spending more time on union activities than employees in other government agencies. Time spent on union activities takes away from education and enforcement activities. As an example, a 2013 Freedom of Information request revealed that about 200 IRS employees were working full-time on labor union activities. This past May, President Trump issued an executive order that seeks to limit the amount of time Federal employees spend on union activities. However, it is ultimately up to agencies as part of contract negotiations with employee unions to implement the order. Are you aware of any efforts by the IRS to update its contract with the Treasury Employees Union in light of this executive order? If not, would you expect to do so should you be confirmed as Commissioner?

Answer. I am not familiar with the current status of contract negotiations between the IRS and the National Treasury Employees Union. If I am confirmed, I will review these negotiations. I believe IRS employees' first priority should be assisting taxpayers with their filing and compliance obligations or working to support those taxpayer-focused efforts.

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QUESTIONS SUBMITTED BY HON. MICHAEL B. ENZI

*Question.* In 2009, the IRS began developing the Customer Account Data Engine (CADE 2) to replace the Individual Master File for managing taxpayer accounts. Since then, the agency has spent more than \$1 billion on the project, but has only completed one phase, has significantly scaled back other phases, and has delayed CADE 2's estimated completion date. In light of the challenges posed by this project, please describe what steps the IRS will take to ensure the CADE 2 project is managed effectively so it is completed on time and on budget.

Answer. During my confirmation hearing, I stated that modernizing the IRS information technology will be one of my priorities. If confirmed, I will examine existing IT modernization efforts to ensure that they are both efficient and effective.

*Question.* On April 17, 2018, the IRS's information technology (IT) system crashed and halted the processing of millions of returns, causing significant problems for taxpayers filing their returns. The IRS faces significant IT challenges. The Government Accountability Office (GAO) identified the Individual Master File, the data source for managing individual taxpayer accounts, as one of the oldest IT systems used by the Federal Government and noted that it is written in assembly language code—a low-level computer code that was initially used in the 1950s. Assembly language code is difficult to write and maintain, and many of the programmers trained in using this language are retiring. There are concerns of increased risks of a catastrophic IT systems failure as the system continues to age and as programmers with the required skills are no longer available. Given these challenges, what steps would the IRS take to manage and mitigate these risks?

Answer. If confirmed, I will work to ensure that risk management—including having appropriately trained personnel—is a central part of the IRS effort to modernize its IT system.

*Question.* Tax-exempt organizations are attempting to comply with two new provisions enacted as part of the Tax Cuts and Jobs Act. Both of these deal with unrelated business income tax (UBIT).

- IRC section 512(a)(6)—Directs nonprofits “with more than one unrelated trade or business” to compute their unrelated business income (and related losses) earned “separately with respect to each such trade or business.” However, there isn't any definition about what constitutes a “separate” trade or business, creating uncertainty about how to document, compute, report and pay the tax.
- IRC section 512(a)(7)—Imposes a new tax on expenses nonprofits incur for their employees' transportation and parking.

Does Treasury and the IRS plan to issue guidance about applying these two subsections, so that tax-exempt filers will have clarity how to comply with these changes?

Answer. It is important that all taxpayers and nonprofits have the information and guidance they need to file their returns in the coming filing season. If confirmed, I will work to ensure that clear guidance is issued in a timely manner.

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QUESTIONS SUBMITTED BY HON. JOHN THUNE

*Question.* The IRS has been pursuing an initiative to improve taxpayer service with a particular emphasis on electronic services. I believe the expansion of e-services can lead to better taxpayer service if it is implemented strategically and with a careful focus on protecting taxpayer data. One concern I have in this area, however, is how it will affect taxpayers in rural parts of the country, like much of my State of South Dakota. In these areas where Internet access often is more limited, taxpayers are less likely to have access and the experience with online accounts and other electronic tools to make the IRS e-services successful. If you are confirmed, may I have your assurance that you will keep these rural taxpayers in mind as the

IRS builds its e-services and ensure that they still have easy access to IRS services through more traditional means like telephone and walk-in assistance options?

*Answer.* The IRS needs to provide various service options, including electronic services, which meet taxpayer needs while protecting taxpayer data. I also recognize that there will always be taxpayers who do not have access to digital services, or simply prefer not to conduct their transactions with the IRS online. If confirmed, I work to ensure that taxpayers continue to have access to the IRS through traditional means. I can assure you that I will keep the needs of rural taxpayers in mind.

*Question.* The IRS has gone through a number of controversies in recent years, in particular the controversy in the last administration surrounding approval of section 501(c)(4) organizations. Do you see your nomination as an opportunity to put that part of the agency's past behind us and refocus the agency on its mission of collecting the Nation's revenues and providing taxpayers with top-quality service? If so, how would you go about making that happen, if you are confirmed?

*Answer.* As I have discussed with the committee, if I am privileged to serve as Commissioner, my overriding goal will be to strengthen and rebuild trust between the IRS, the American people, and their representatives in Congress. Demonstrating that the IRS will treat all taxpayers and organizations fairly and equally is central to achieving this goal.

*Question.* We had an unfortunate systems failure on tax day this year that prevented many individuals from completing their tax-return filings and required the Acting Commissioner to extend the due date by a day. We understand that a key part of the IRS's recent 5-year plan is to modernize its information-technology systems, some parts of which date back to the Kennedy administration. May I have your commitment that you will make the comprehensive overhaul of the IRS return-processing and other IT systems a priority for your tenure as Commissioner, if you are confirmed?

*Answer.* As I have discussed with the committee, if I am confirmed, modernizing the IRS's IT systems will be a priority, and I look forward to thoroughly reviewing the 5-year plan. I look forward to working with Congress on this effort.

*Question.* It has now been almost 20 years since the IRS restructured its operations into organizational units based on particular groups of taxpayers with similar needs, as directed in the Internal Revenue Service Restructuring and Reform Act of 1998. A lot has happened in those 20 years for individual taxpayers, small businesses and the self-employed, as well as large domestic and international businesses in this country. From your perspective as a tax practitioner, is it still optimal to have the IRS's structure focused around taxpayers with similar needs, rather than geographic areas, which was the case prior to the 1998 Act? Are there changes—big or small—that we should consider to improve taxpayer service and support the IRS ability to collect Federal revenues?

*Answer.* I have seen firsthand the impact that changes in the structure of the IRS has on taxpayers. If confirmed, I will examine whether changes in the structure of the IRS would help improve taxpayer service and increase compliance. I look forward to working with the committee on this issue.

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#### QUESTIONS SUBMITTED BY HON. ROB PORTMAN

##### IMPROVING RETIREMENT PLAN COMPLIANCE

*Question.* During my time in Congress, I've been supportive of expanding the ability to save for retirement by encouraging small businesses to adopt employer-sponsored retirement plans for their employees. In many circumstances, compliance with tax laws serves as a barrier to entry or an opportunity for clerical errors, especially for small businesses sponsoring plans. These small businesses should feel confident in their ability to correct these mistakes in a timely way at a reasonable cost, through simple and clear procedures.

The IRS can greatly improve these procedures by expanding the self-correction program within the Employee Plan Compliance Resolution System (EPCRS), which will enable businesses with retirement plans to more easily correct common mistakes. Congress directed the IRS to do this 12 years ago but much more needs to be done to fully implement our directive.

Please describe the ways in which an expansion of the IRS's retirement plan self-correction program could help ease the burden on small business sponsoring retirement plans due to increased fees. Do you think that an expansion of this program could improve retirement plan compliance? What policy concerns would you have with a potential expansion of the retirement plan self-correction program, if any?

Answer. I agree with you that this is an important issue. We need to do everything we can help to help businesses that want to provide retirement plans for their employees. If confirmed as Commissioner, I will examine the steps that the IRS has taken to implement retirement plan self-correction program to date as well as potential additional steps that could help the program operate more effectively. I look forward to working with the committee on this issue.

The IRS could streamline the Voluntary Compliance Program (VCP) within EPCRS to improve these procedures. Streamlining VCP processing is beneficial for small businesses that are waiting on an answer from the IRS that their retirement plan is in full compliance. Streamlined processing should also lead to decreased costs for the IRS to operate the program.

*Question.* Please provide an update if and when the Voluntary Compliance Program will be streamlined. If as a result of the streamlining the time to process submissions is decreased, will the IRS commit to immediately revising the user fees to reflect the lower costs rather than over charging plan sponsors until the next biennial review?

Answer. If I am confirmed, I will examine the possibility of streamlining the Voluntary Compliance Program (VCP) within EPCRS and review the user fees. I look forward to working with the committee on this issue.

#### NOTICE 2017-10 AND EFFECT ON HISTORIC PRESERVATION EASEMENTS

*Question.* Congress has traditionally supported the conservation of open space and preservation of historic structures, dating back to the Tax Reform Act of 1976. Since then, these programs have evolved as taxpayers, the IRS, and Congress have identified issues and implemented solutions to more effectively achieve their intended policy goals as well as curtail real and perceived abuses. Most recently, the IRS published IRS Notice 2017-10, which identifies certain syndicated conservation easements transactions as listed transactions. To my knowledge, this guidance was published without the opportunity for public comment or congressional input.

I understand that the potential for abuse within the conservation easement program is a serious and constant concern for the IRS. I share this concern with the IRS, but I am also troubled as to why the public was not given an opportunity to comment on this process.

I understand this took place before your time, but would you be willing to share the rationale as to why IRS did not allow for a public comment period before issuing Notice 2017-10?

Given that syndication is a common part of financing commercial real estate projects and, moreover, that most historic preservation easements concerning commercial real estate must comply with more stringent regulations, restrictions, and reporting requirements through the historic tax credit program, would you be supportive of reexamining the impact of IRS Notice 2017-10 on historic preservation easement transactions?

Furthermore, if it can be determined that the guard rails imposed on historic preservation easement transactions are sufficient to prevent abuse on their own, would you be open to removing historic preservation easement transactions from IRS Notice 2017-10?

Answer. If confirmed, I will discuss with IRS Chief Counsel and the Treasury Department the rationale and basis for the transactions described in Notice 2017-10. I look forward to working with the committee on this issue.

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#### QUESTIONS SUBMITTED BY HON. TIM SCOTT

#### NOTICE 2017-10 AND EFFECT ON HISTORIC PRESERVATION EASEMENTS

*Question.* Both parties within Congress have consistently supported the preservation of open space and historic structures since the 1970s. The programs have evolved and changed as taxpayers, the IRS and other government departments iden-



tified shortcomings in the regulatory scheme and worked together to respond to perceived abuses. In 2016, the IRS acted unilaterally and published IRS Notice 2017-10. Notice 2017-10 makes certain preservation easements listed transactions when they are part of a syndication. I understand that there are abuses within the preservation easement program and something should be done. However, how is it possible that Notice 2017-10, guidance that significantly undermines congressional intent, be issued without any public comment? Would you be willing to allow modification of Notice 2017-10 based on public comments?

Answer. If confirmed, I will discuss with IRS Chief Counsel and the Treasury Department the rationale and basis for the transactions described in Notice 2017-10. I look forward to working with the committee on this issue.

*Question.* Real estate projects have traditionally raised capital through syndications. Given that syndication is a common part of financing commercial real estate and most historic preservation easements concern commercial real estate coupled with the fact that historic preservation easements have greater regulations, restrictions and reporting requirements imposed on them through the Internal Revenue Code, Treasury, and the National Park Service, would you be supportive of removing historic preservation easement transactions from IRS Notice 2017-10?

Answer. As noted above, if confirmed, I will examine the rationale and basis for the transactions described in Notice 2017-10. I look forward to working with the committee on this issue.

#### TAXPAYERS AND THE IRS

*Question.* Currently, there is an active bill in the House to modernize and improve the IRS. Do you support the concepts of an Independent Appeals Process and Sensible Enforcement? If so, should this bill become law, would you support the application of this law to all audits and IRS appeals currently in process?

Answer. As I stated during my confirmation hearing, I support an independent appeals process. If confirmed, I look forward to ensuring that the IRS works with the committee to provide technical feedback on pending legislation.

*Question.* Dealing with the IRS can be very expensive and frustrating. Many taxpayers, both large and small, feel they have little choice but to pay the tax, interest, and penalties because of the cost to challenge the findings of an audit. These taxpayers also believe that some IRS professionals use this as leverage as there is no cost or consequence to the IRS professionals who do so. What process exists, currently, for a taxpayer who believes it is being treated unfairly by an IRS professional or professionals?

Answer. The IRS has an independent appeals process for taxpayers to settle tax disagreements without having to go to court. Taxpayers also can seek the services of the Office of the National Taxpayer Advocate, whose job is to ensure that every taxpayer is treated fairly and has a process for taxpayers to report those issues. In addition, the Treasury Inspector General for Tax Administration reviews and intervenes in cases of taxpayer mistreatment. If confirmed, I will work to ensure the IRS treats all taxpayers impartially and informs taxpayers of the options available to them if they believe that they have been mistreated.

*Question.* In some cases, tax incentive programs created by Congress to achieve important public policy goals are severely underutilized because of taxpayer fear of IRS retribution. What will you do to more closely align IRS guidance and enforcement with congressional intent?

Answer. It is the job of the IRS to efficiently implement that laws passed by Congress in an impartial and nonbiased manner. If confirmed, I look forward to working with the committee to ensure IRS guidance and enforcement are aligned with congressional intent.

*Question.* What are your thoughts on the mission of the IRS? Is it to effectively act as a department of revenue and collect as much tax as possible? Or is it to enforce the laws Congress has passed so that each taxpayer pays their fair share without any personal or institutional IRS bias?

Answer. It is the responsibility of the IRS to efficiently implement laws passed by Congress in an impartial manner.

## IRS GUIDANCE

*Question.* Congress enacted section 179D(d)(4) to encourage the private sector to design more energy-efficient government buildings. The statute is very clear. However, some government entities are abusing their role in administering the incentive by inappropriately seeking payment in exchange for the allocation of the deduction. It is important that the IRS issue strong guidance that confirms the intent of Congress and directs government entities they cannot seek or accept payment in exchange for providing a designer an allocation under section 179D(d)(4). I ask for your views on this matter now, and your willingness to have the IRS provide guidance promptly upon your confirmation.”

*Answer.* If confirmed, I examine this issue and will work to ensure the IRS provides clear, concise, and timely guidance, as appropriate.

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 QUESTIONS SUBMITTED BY HON. RON WYDEN

## PREVENTING TAX AVOIDANCE

*Question.* Mr. Rettig, during your 35-year career as a tax controversy lawyer, you have defended many wealthy individuals. Your firm even describes specific services for “high net worth individuals and their closely held entities,” noting that “if you may be subjected to a Wealth Squad examination, we can help.” The “Wealth Squad” refers to the global High Wealth Industry group of the IRS Large Business and International division. In a 2007 article in the *Journal of Tax Practice and Procedure*, you expressed concern over IRS procedures related to listed transactions—transactions the IRS has highlighted as potentially abusive and specifically designed for tax avoidance.<sup>1</sup>

During meetings with members of the Finance Committee, and during your nomination hearing, you noted a desire to rebuild trust and faith in the IRS for the “everyday guy” and “the guy on the street.”

The new Republican law did little to simplify existing law and added new opportunities for tax planning and tax avoidance. The new passthrough deduction is just one example of new areas of complexity created by the new tax law. Without guidance from the IRS, small business owners will struggle to accurately determine what they owe, and bad actors will be able to abuse the system and avoid paying their fair share.

Given your professional history, how can regular taxpayers—those without high-priced accountants and tax attorneys—have faith that you are acting in their interests, and not in the interests of your former, wealthy clients?

*Answer.* Through decades of experience working with the IRS, I have seen the difficulties faced by taxpayers of all kinds— from large taxpayers, to small businesses, to low income taxpayers. I’ve also devoted a significant amount of time to assisting taxpayers who can’t afford professional help on a pro bono basis.

*Question.* In your meetings with members and staff prior to your nomination hearing, you noted that high-profile tax enforcement actions can raise awareness and potentially increase tax compliance. However, in your 2007 article, you bemoan IRS officials who have “trumpeted the success of collecting tax liabilities and penalties in connection with so-called abusive tax shelters.” How are members of the committee supposed to reconcile your more recent statements, made in connection with your nomination, with your past professional writings and actions?

*Answer.* I believe that every taxpayer, high-profile or not, has the right to be treated impartially by the IRS. If confirmed, I will work to ensure that this is the case.

*Question.* Given the ripe opportunities for tax planning created under the new Republican tax law, as Commissioner, how would you combat aggressive tax planners? How would you continue to monitor tax-avoidance strategies over the next few years as the law is implemented?

*Answer.* The IRS has a responsibility to enforce all tax laws in an impartial and unbiased manner. If confirmed, I will review the IRS’s approach to enforcement to ensure it reflects this responsibility.

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<sup>1</sup> Kathryn Keneally, Charles P. Rettig, “IRS Enforcement: The Pendulum Has Swung Too Far,” *Journal of Tax Practice and Procedure* at 19–22, April–May 2007.

*Question.* What kind of message would it send if the IRS failed to go after a high-level government official if there were credible allegations that the official had failed to comply with the tax laws? Wouldn't that do serious damage to our voluntary tax compliance system, especially if there were evidence the violations were knowing or willful?

*Answer.* The IRS has a responsibility to enforce all tax laws in a fair and unbiased manner. If confirmed, I will work to ensure that the IRS treats all taxpayers equally under the law.

*Question.* If career IRS officials come to you recommending enforcement action against an administration official, how would you handle the situation?

*Answer.* It is my understanding that the Commissioner does not get involved in individual taxpayer matters—including enforcement actions. If confirmed, I will work to ensure that the IRS treats all taxpayers equally under the law.

*Question.* What would you do if administration officials at the Treasury Department or elsewhere in the administration urged you not to pursue an enforcement case?

*Answer.* It is unlawful for the President, Vice President, or any employee of the Executive Office of the President or Vice President to request directly or indirectly any officer or employee to conduct or terminate an audit or other investigation of any particular taxpayer. If confirmed, I will work to ensure that the law is upheld and appropriate steps are taken if it is violated.

#### TAXPAYER ASSISTANCE

*Question.* Many provisions of the new tax law are complicated and confusing, especially for small business owners. I have been pressing Acting Commissioner David Kautter to provide guidance for these taxpayers, but, to date, little guidance has been issued.

In the hearing, you mentioned the need for clear, timely guidance. How will you make sure taxpayers, in particular those who cannot afford to hire the top tax consultants, receive clear guidance in a timely manner?

*Answer.* If confirmed, I will work to ensure guidance is clear and consistent, and available to all taxpayers in a timely manner.

*Question.* Do you think it is important for IRS to conduct greater outreach to traditionally underserved groups like low-income families and immigrant communities? If so, can you tell us how you would improve IRS outreach efforts?

*Answer.* If confirmed, I look forward to reviewing the IRS's current outreach channels and exploring new ways to deliver information and strengthen outreach, including in underserved communities.

#### CONSERVATION EASEMENT SYNDICATION

*Question.* Mr. Rettig, on March 29, 2017, I wrote to IRS Commissioner John Koskinen about the growth in abusive tax shelters involving the syndication of conservation easements. I asked the IRS to provide a report on the nature and scope of this problem. On July 13, 2017, the IRS provided a partial response that revealed participants in these syndication deals claimed deductions that were nine times the amount of their original investment. Subsequent preliminary responses indicate IRS may have lost billions of dollars to this tax shelter in hundreds of tax shelter transactions.

The Treasury Department issued Notice 2017-10, identifying these syndication transactions as abusive tax shelters and requiring participants to disclose their involvement to the IRS. The notice was also intended to deter future deals; however, media reports suggest these deals are still taking place.<sup>2</sup>

Historically, when the Treasury Department and IRS issue a Notice "listing" a certain transaction as an abusive tax shelter, the promotion and use of such schemes stops. Are you concerned by the apparent continued use of these tax avoidance techniques? Please describe what actions you would take as Commissioner, if confirmed, against the promoters of these abusive shelters identified in Notice 2017-10.

<sup>2</sup>Peter Elkind, "The Billion-Dollar Loophole," *ProPublica*, December 20, 2017.

Answer. If confirmed, I will work with IRS officials to ensure an appropriate enforcement strategy is in place to uphold the law as Congress intended.

*Question.* Enforcement actions against illegal syndicated conservation easement tax shelter transactions have proven challenging and time-consuming for the IRS. For example, earlier this year the Tax Court issued a ruling disallowing tax write-offs from a sham conservation easement transaction that occurred more than a decade ago.<sup>3</sup> While Notice 2017–10 may have extended the statute of limitations period for certain transitions, the time in which IRS can take enforcement actions on those tax shelter transactions grows shorter by the day. If confirmed, will you commit to developing and carrying out a strategy to ensure that promoters of syndicated conservation easement tax shelter transactions are held accountable before the close of the statute of limitations?

Answer. As noted above, if confirmed, I will work with IRS officials to ensure an appropriate enforcement strategy is in place to uphold the law as Congress intended.

*Question.* Do you believe the IRS currently has the tools needed to put an end to this abuse? If confirmed, will you recommend regulatory or statutory changes to address these abuses if Notice 2017–10 and other tools are shown to be insufficient to curb the use of these tax shelters?

Answer. If confirmed, I will assess the situation and work with Congress to ensure the IRS has adequate tools to complete its mission and uphold the law.

*Question.* If confirmed as Commissioner, how high of a priority will you place on stemming this abuse?

Answer. If confirmed, I will discuss with IRS Chief Counsel and the Treasury Department the rationale and basis for the transactions described in Notice 2017–10. I look forward to working with the committee on this issue.

*Question.* Do you believe the transactions described in Notice 2017–10 are abusive on their face?

Answer. I do not currently have access to the information that served as the basis for the decision by the Treasury Department and IRS to list these transactions.

*Question.* If confirmed, what actions will you take to ensure IRS challenges the tax benefits of each and every transaction covered by Notice 2017–10?

Answer. If confirmed, I will work to ensure an appropriate enforcement strategy is in place.

*Question.* If confirmed, will you support Notice 2017–10?

Answer. As I have noted, if confirmed, I will discuss with IRS Chief Counsel and the Treasury Department the rationale and basis for the transactions described in Notice 2017–10. I look forward to working with the committee on this issue.

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QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

IRS ADMINISTRATION

*Question.* Mr. Rettig, in contrast to the small law firm where you have worked for over 35 years, the Internal Revenue Service is a multi-billion-dollar agency with a workforce of nearly 77,000. You have built your practice on representing taxpayers and companies who have disputes with the IRS and have served on many boards and advisory committees advising the IRS and the California Franchise Board. Yet, you do not have the managerial background and expertise running a large organization like the IRS. Mark Mazur, former Assistant Secretary of Tax Policy, has noted that the IRS is more like a large company that processes information, collects bills, and maintains accounts.<sup>4</sup>

The IRS is about to undertake the largest regulatory project in a generation to put in place the regulations for the recently passed \$1.5-trillion tax bill.

<sup>3</sup>T.C. Memo. 2018–45.

<sup>4</sup>James Rufus Koren, “The Beverly Hills attorney set to lead the IRS likes magic tricks—he’ll need a few to run the agency.” *The Los Angeles Times*, February 13, 2018, <http://www.latimes.com/business/la-fi-charles-rettig-irs-20180213-story.html>.

What assurances can you give this committee that you will be able to handle this enormous management task?

Answer. In my career, I have worked with IRS employees at every level of the Service. If confirmed, I will work to earn their respect and lead the IRS in taking on the range of challenges it faces, including implementing the tax reform law.

#### TIMELINESS

*Question.* I am concerned about the ability of the IRS to provide taxpayers with timely guidance. For example, the solar industry had to wait 2½ years for guidance from the 2015 tax bill.

What assurances can you give to individuals and small businesses that they will have the guidance needed to file their taxes?

Answer. If confirmed, I will ensure that the IRS works with Treasury and others involved—including Congress—to issue guidance in a timely manner.

*Question.* What backup plan do you have if the IRS is not able to meet its goal?

Answer. If confirmed, I will assess progress made in issuing guidance to date and work to ensure taxpayers have the clarity they need to file.

#### OFFSHORE TAX SHELTERS

*Question.* Much has been written about your private-sector experience with the work you have done on behalf of your clients related to offshore bank accounts.

How can you put your past experience to work for the American tax payers to crack down on hidden offshore bank accounts and tax avoidance?

Answer. In my professional career, I have not been involved in creating tax avoidance schemes. If confirmed, I would familiarize myself with the ongoing work the IRS is undertaking in this area and ensure the IRS implements the law in an impartial manner.

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#### QUESTIONS SUBMITTED BY HON. BILL NELSON

*Question.* I understand that the number of tax-related identity theft cases has declined in recent years, but criminals now have more information on us than ever before—with all the data breaches and privacy lapses that's occurred in recent years. What do you plan to do to stay on top of this crime and protect Americans from identity theft abuse or other scams, as criminals become increasingly sophisticated?

Answer. If I am confirmed, the IRS will remain vigilant in this area and work to expand its efforts. The IRS has made great progress in the battle against identity theft. If confirmed as Commissioner, I will work to ensure that the IRS remains a leader in this fight.

*Question.* Last year, I introduced the Identity Theft and Tax Fraud Prevention Act (S. 606), which grants the Treasury Department authority to oversee paid tax preparers, among other reforms to protect taxpayers from tax-related identity theft. Unfortunately, the paid tax preparer provision is considered controversial by some Members of Congress. The provision, Section 115 of the bill, provides the following:

SEC. 115. MINIMUM STANDARDS FOR PROFESSIONAL TAX PREPARERS.

(a) IN GENERAL.—Subsection (a) of section 330 of title 31, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) establish minimum standards regulating—

“(A) the practice of representatives of persons before the Department of the Treasury; and

“(B) the practice of tax return preparers; and”, and

(2) in paragraph (2)—

(A) by inserting “or tax return preparer” after “representative” each place it appears, and

(B) by inserting “or in preparing their tax returns, claims for refund, or documents in connection with tax returns or claims for refund” after “cases” in subparagraph (D).

(b) **AUTHORITY TO SANCTION REGULATED TAX RETURN PREPARERS.**—Subsection (b) of section 330 of title 31, United States Code, is amended—

(1) by striking “before the Department”,

(2) by inserting “or tax return preparer” after “representative” each place it appears, and

(3) in paragraph (4), by striking “misleads or threatens” and all that follows and inserting “misleads or threatens—

“(A) any person being represented or any prospective person being represented; or

“(B) any person or prospective person whose tax return, claim for refund, or document in connection with a tax return or claim for refund, is being or may be prepared.”.

(c) **TAX RETURN PREPARER DEFINED.**—Section 330 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(e) **TAX RETURN PREPARER.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘tax return preparer’ has the meaning given such term under section 7701(a)(36) of the Internal Revenue Code of 1986.

“(2) **TAX RETURN.**—The term ‘tax return’ has the meaning given to the term ‘return’ under section 6696(e)(1) of the Internal Revenue Code of 1986.

“(3) **CLAIM FOR REFUND.**—The term ‘claim for refund’ has the meaning given such term under section 6696(e)(2) of such Code.”.

Do you believe this provision is a reasonable solution to the problem of fraudulent or incompetent paid tax preparers? If not, please explain why not and suggest changes to the text to address any concerns you may have about the provision.

Answer. People who prepare tax returns on behalf of others should be capable, competent, and knowledgeable of the tax laws covering the tax returns they are completing. I understand the administration has included a legislative proposal with the FY 2019 Budget Request to give the IRS the statutory authority to require minimum standards for paid tax return preparers. If I am confirmed, I will ensure the IRS provides appropriate technical feedback on such legislative proposals.

*Question.* How will you work to ensure Public Law 115–97 will not be used by corporations to deceptively shift profits abroad?

Answer. If confirmed as Commissioner, I will ensure the IRS works to implement clear guidance and will work to ensure that the IRS has an effective enforcement strategy.

*Question.* How do you plan to combat tax avoidance schemes, particularly estate planning techniques that abuse ambiguous parts of the tax code?

Answer. If confirmed as Commissioner, my job will be to uphold the law. Through the years, there have been many maneuvers and schemes to improperly evade taxes. An important job of the IRS is to watch for these schemes and take appropriate action to protect our Nation’s tax system.

*Question.* Do you hold any sympathies with individuals who hide income in offshore bank accounts to avoid taxes? If so, please explain.

Answer. If I am confirmed, my role will be to ensure that IRS upholds the law. Taxpayers have an obligation to follow the law, regardless of whether they have income onshore or offshore.

*Question.* Do you believe your ownership of two rental units in the Waikiki Trump International Hotel and Tower could compromise your ability to fairly administer the tax laws free of any influence from the President? If not, do you pledge to notify both the chair and ranking member of the Senate Finance Committee if the President asks you to do anything that would undermine the integrity or functioning of the IRS?

Answer. No. As I said during the hearing, if confirmed, I pledge ensure that the IRS operates in an impartial, unbiased manner from top to bottom.

## QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

## FREE FILE

*Question.* Mr. Rettig, the IRS since 2002 has been in a public-private partnership with the tax industry which provides free tax returns and electronic filing for the lowest 70 percent of the U.S. taxpayer population. Do you support continuing this program?

*Answer.* I support the Free File program, which has helped millions of taxpayers file their tax returns for free since the program's creation. I support continuing the program.

## IDENTITY THEFT REFUND FRAUD INFORMATION SHARING AND ANALYSIS CENTER

*Question.* Mr. Rettig, one of the key accomplishments of the past few years is the creation of the Identity Theft Refund Fraud Information Sharing and Analysis Center (IDTTRF-ISAC). This allows IRS, State Departments of Revenue and companies in the tax and banking area to collect and analyze information under MITRE regarding identity theft fraud. Do you intend to support this initiative and its funding?

*Answer.* The IRS has made great progress in the battle against tax-related identity theft during the last several years following the work of the Security Summit and the subsequent creation of the Information Sharing and Analysis Center (ISAC). This collaborative effort among the IRS, States, and the Nation's private-sector tax community is working. If confirmed as Commissioner, I will work to ensure the continued success of the Summit partnership and the ISAC and provide appropriate resources.

## QUESTION SUBMITTED BY HON. BENJAMIN L. CARDIN

*Question.* As we discussed during your hearing, I am very interested in pursuing tax administration improvements across various issues. One of the most important is retirement.

Compliance with the tax laws when businesses sponsor a retirement plan can be challenging due to the complex rules that govern the operation of these plans. Especially for small businesses, this can lead to many opportunities for foot faults. Businesses need to have the ability to correct these mistakes in a timely way at a reasonable cost, through simple and clear procedures.

The IRS can help with this issue by expanding the self-correction program within the Employee Plan Compliance Resolution System (EPCRS), which will enable businesses with retirement plans to more easily correct common mistakes. Congress directed the IRS to do this 12 years ago in the Pension Protection Act of 2006, which directed Treasury to update and improve EPCRS, giving special attention to, among other things, the concerns of small employers. Much more needs to be done to fully implement that directive.

Will you commit to promptly expand IRS's retirement plan self-correction program in order to improve retirement plan compliance and protect participating employees?

*Answer.* I agree that this is an important issue. We need to do everything we can to enable businesses that want to provide retirement plans for their employees. If confirmed as Commissioner, I will examine the steps that the IRS has taken to implement retirement plan self-correction program to date as well as additional steps that could help the program operate more effectively. I look forward to working with the committee on this issue.

## QUESTIONS SUBMITTED BY HON. SHERROD BROWN

*Question.* Regarding conservation easements, given your extensive background with the tax code, can you describe how you see conservation easements and historic tax credits intersecting? In 2016, the IRS published Notice 2017-10, which attempted to curtail certain practices regarding conservation easements. Do you have any thoughts on the review process already required of historic tax credits, and do you think that is a sufficient process for reviewing projects that also utilize credits like conservation easements?

Answer. If confirmed, I will discuss with IRS Chief Counsel and the Treasury Department the rationale and basis for the transactions described in Notice 2017-10. I look forward to working with the committee on this issue.

*Question.* In recent years, we've seen trend of for-profit colleges converting to non-profits that still lead to financial gain by their former owners. How would the IRS enhance scrutiny of these tax structures under your leadership? How would you suggest the IRS improve upon coordination with the Department of Education when evaluating these conversions?

Answer. If confirmed, I will review and assess this situation and ensure appropriate coordination takes place.

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QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

*Question.* By keeping the IRS free from political influence, we can strengthen its stability and credibility.

Do you agree that the IRS's work to administer and enforce the tax code should be free from political interference (even if a company or individual affiliated with President Trump, his close associates, or family members is involved)?

Would you commit to notifying me and the bipartisan membership of the Finance Committee in writing if inappropriate political interference occurs, from the White House, Main Treasury, or otherwise?

Answer. As I have discussed with the committee, if I am privileged to serve as Commissioner, my overriding goal will be to strengthen and rebuild trust between the IRS, the American people, and their representatives in Congress. Treating all taxpayers and organizations fairly and equally is central to achieving this goal. In addition, it is unlawful for the President, Vice President, or any employee of the Executive Office of the President or Vice President to take certain actions with respect to the operation of the IRS. If confirmed, I will work to ensure that the law is upheld and appropriate steps are taken if it is violated.

*Question.* The administration requested \$11.1 billion in discretionary appropriations for the IRS for 2019, down from the 2018 budget and down even further from its funding level in FY2010. In December 2017, the President signed into law tax legislation that contains substantial revisions to the Internal Revenue Code that the IRS is responsible for administering.

Do you believe the current funding levels are adequate to meet the implementation challenges of the tax law and to appropriately address taxpayer needs?

Answer. If confirmed, one of my top priorities would be to ensure the IRS has the resources it needs and uses those resources as effectively as possible.

*Question.* A September 2017 Inspector General audit noted that 64 percent of the IRS's IT hardware infrastructure is beyond its useful life. The IRS estimates that the current replacement cost for this IT equipment is approximately \$430 million. However, the administration only requested \$110 million for IT modernization efforts in its budget, about one-fourth of that estimate.

From your perspective as a practitioner who deals with the IRS, how does this IT underfunding affect efforts to increase efficiency and security of the agency?

Will improving IT infrastructure be a priority for you?

Answer. Modernizing the IRS's IT systems and bringing the IRS's IT systems into the 21st century is one of my top goals. Modernization serves three purposes: it protects taxpayer data, it enhances services provided to taxpayers, and it preserves the IRS's ability to collect the taxes that fund the government.

*Question.* Do you have a sense of how you will fill your role as IRS Commissioner and what your priorities are for the agency?

Answer. As I have discussed with the committee, if I am privileged to serve as Commissioner, my overriding goal will be to strengthen and rebuild trust between the IRS, the American people, and their representatives in Congress.

*Question.* Setting aside current politics, what would an ideal system of tax administration and tax enforcement in the United States look like to you and do you have a sense of how much you think it would cost?



**Answer.** Our system of tax administration and enforcement is based on voluntary self-assessment. Such a system will work most effectively if taxpayers have the information they need to file accurate returns and believe the IRS will enforce the tax code effectively and without bias. Implementing such a system will require more than resources, it will mean building trust in the IRS.

**Question.** IRS estimates that individuals attempted at least \$14.5 billion in identity theft tax refund fraud in tax year 2015. Starting with its March 2015 Security Summit, IRS has partnered with State tax administrators and tax preparation companies, among others, on initiatives aimed at better preventing and detecting identity theft (IDT) refund fraud.

How do you plan to continue preventing identity theft and tax refund fraud?

**Answer.** The IRS has made some incredible progress in the battle against tax-related identity theft through the Security Summit effort. This unprecedented partnership among the IRS, the States and the Nation's tax community is working. I understand the number of tax-related identity theft victims has fallen dramatically. I plan to continue this important work of the Security Summit. To complement this, I will continue to strengthen IRS's efforts in order to make it harder for identity thieves to successfully masquerade as taxpayers and file fraudulent refund claims on behalf of taxpayers.

How do you think about the balance of responsibilities between taxpayer services and enforcement, and how does the role of the criminal investigations division play into this?

**Answer.** To be effective the IRS needs to balance between taxpayer services and tax enforcement. The IRS must do everything it can to help people meet their tax responsibilities. At the same time, some people will not comply. That is why the IRS needs an effective tax enforcement program that respects taxpayer rights.

**Question.** In 2015, we worked to change the previous "placed-in-service" standard for qualification for section 48 investment tax credits to a "beginning of construction" standard for projects completed by the end of 2023. Application of the beginning of construction standard is new to solar investment and requires Treasury to issue guidance to clarify the rules. Yet, nearly 3 years later, no guidance has been issued.

The failure to release the pending guidance is causing considerable uncertainty for new solar projects—particularly utility-scale solar projects, which must navigate significant and time-consuming financing, and permitting issues and take three to 5 years to complete.

If you're confirmed, I'd like to strongly urge you to immediately prioritize the issuance of this guidance for solar energy projects.

Can you please commit, if confirmed, to getting this done as soon as possible, so businesses and investors have the certainty they need to take advantage of this important incentive?

**Answer.** It is my understanding the guidance you mentioned involving solar energy projects and the beginning of construction date issue is reflected in IRS Notice 2018-59, which the IRS issued on June 19, 2018.

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#### QUESTIONS SUBMITTED BY HON. MARK R. WARNER

**Question.** Mr. Rettig, should you be confirmed as IRS Commissioner, you will have about 70,000 Federal employees working for you. Given the complexity of the tax code and the importance of helping taxpayers, recruiting and retaining skilled employees is of utmost importance. Yet, this administration is going to great lengths to worsen the quality of Federal jobs, including at the IRS.

The administration's proposals include cuts in retirement benefits and across-the-board pay freezes. In addition, a recent set of executive orders issued by the President attempts to dramatically undermine the rights and protections of Federal workers.

How do you see cutting benefits and worsening bargaining rights affecting recruitment and retention of talented workers at the IRS?

**Answer.** Throughout my career, I've seen first-hand the work of IRS employees in many different roles. The majority are committed to serving taxpayers. If con-

firmed, I will work with Congress and the Service's existing workforce to help build the best possible workplace so we can attract and retain the best people to serve the Nation's taxpayers.

*Question.* Mr. Rettig, We know from tax data that Americans are consistently reporting more self-employed or independent income than they did 20 years ago. And whether they rely on this work for all or just some of their income, one of the biggest complaints I hear from independent and contract workers is that tracking expenses and filing their taxes is just too complicated. But we do not know how many people are using that work as extra income, how many are actually relying on this work as their primary source of income, and whether their tax challenges are the same. There are still big questions we do not have the answers to, and better information is going to be key to bringing our workforce policies in line with the employment realities of the 21st century.

I recently introduced legislation, S. 3097, which would direct the Department of Treasury to study how income has shifted between wages and non-employer business income over the past few years. This research will also look at the withholding, reporting, and filing system related to workers earning non-employer business income.

It is clear we need to know more about how workers are earning non-business income and what their income profile looks like. What do you believe that we could do to make their tax compliance easier and better?

*Answer.* As you note, this issue is very important, given the continuing changes in the workforce. The IRS needs to focus on improving taxpayer service, including providing self-employed individuals with the information and assistance they need to accurately file their taxes. If confirmed, I look forward to working with the committee on this issue.

#### QUESTIONS SUBMITTED BY HON. SHELDON WHITEHOUSE

*Question.* The IRS plays a critical role in policing the political activities of non-profit organizations organized under 501(c)(4) of the tax code. This role was made increasingly complex by the *Citizens United* decision, which weaponized tax-exempt 501(c)(4) organizations into the preferred vehicle to funnel secret dark money into our elections. These social welfare groups are under IRS's jurisdiction. The IRS should never be used as a political tool, but it also does have an obligation to see that groups are not abusing the tax code and engaging in improper political activity.

What assurances can you give us that you will stand up to political pressure from Republicans and enforce the IRS's rules fairly, consistently, and vigorously?

*Answer.* If confirmed, I will work to ensure that the IRS operates in an impartial, nonbiased manner from top to bottom.

*Question.* At the hearing, you said that it was "your experience" that the IRS looks into inconsistent filings by taxpayers. The Pulitzer Prize winning organization ProPublica investigated the tax and election filings of 104 501(c)(4) organizations to see whether they were reporting consistent amounts of political spending. It found that 32 groups reported political spending to the Federal Election Commission or State election commissions, but told the IRS they spent no money to influence elections. Both statements cannot be true. Yet, to my knowledge, neither the IRS nor the FEC have investigated.

As Commissioner, do you think it is worthy of investigation if organizations are openly and notoriously reporting inconsistent information to the IRS and other regulators?

*Answer.* If confirmed, I will work to ensure that the IRS implements the law in an impartial, nonbiased manner. In my experience, the IRS does take into account publicly available evidence of potential wrongdoing and takes action where appropriate. If confirmed, I will work to ensure that it continues to do so.

*Question.* Should the IRS review other filings and statements a person has made to the IRS or other agencies to verify that the information regarding material matters is consistent?

*Answer.* I understand the IRS has a variety of tools available to look into issues and determine the accuracy of information. I'm also aware that the IRS works with other law-enforcement agencies when appropriate. If confirmed, I will be a vocal advocate for the enforcement mechanisms of the IRS.

*Question.* Section 125 of division E of the Consolidated Appropriations Act, 2018 prevents the IRS from issuing new guidance on the types of political activities 501(c)(4) organizations can and cannot engage in.

Do you support think the IRS should be able to issue new regulations to provide greater certainty and clarity to 501(c)(4) organizations?

Answer. If confirmed, I will examine relevant regulations to ensure they provide as much certainty and clarity as possible under the law.

*Question.* Does this rider make the IRS's job more difficult?

Answer. As I am not currently at the IRS, I do not have all the information needed to assess the impact of this provision.

*Question.* In 2016, Congress amended the Internal Revenue Code to require self-declared 501(c)(4) organizations to notify the IRS of their existence. However, the IRS does not make these notifications public. As a result, there is a disparity between registered 501(c)(4)s, which have filed publicly available Form 1024s that provide information on their existence and activities, and "declared" 501(c)(4)s, for which there may be no public information about their activities or even their existence.

Is there a public interest in making sure that all 501(c)(4) organizations provide public information about their existence and activities?

Answer. If I am confirmed, I will work to ensure that the IRS implements the law as Congress intended.

*Question.* Will you commit to working with Congress to address this disparity?

Answer. If I am confirmed, I will work to ensure that the IRS provides appropriate technical feedback on potential legislation.

*Question.* 26 U.S.C. § 7206(1) makes it a felony punishable by up to 3 years of imprisonment and \$100,000 in fines for a person who: "[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter."

Why is it important to ensure that taxpayers are providing accurate information?

Answer. It is important that taxpayers providing accurate information because our tax system is based on the principle of voluntary self-assessment. However, the IRS has many tools available—both civil and criminal—to take action against people who knowingly provide inaccurate information or otherwise abuse the system.

My Republican colleagues have promised that Americans will be able to file their taxes on a postcard. Last week a draft of the postcard was reported in the press. The new postcard still requires taxpayers to fill out up to six separate schedules.

In light of this, what does the postcard accomplish?

Answer. I have not been involved in this effort as I am not currently at the IRS. If confirmed as Commissioner, I will work to ensure that all methods of filing minimize the burden on taxpayers.

*Question.* More than 90 percent of taxpayers file their taxes electronically, which also makes it easier for the IRS to process. Is it a good idea to encourage taxpayers to go back to filing paper returns?

Answer. It is important that the IRS provide taxpayers with both electronic and traditional means of filing.

*Question.* Given that the IRS already has payroll information from employers, wouldn't it be easier for taxpayers if the agency sent them a completed tax form for their review and signature?

Answer. The IRS does not have all the information needed to prepare an accurate and complete tax return; only the taxpayer does. If confirmed, I look forward to working with the committee to reduce the burden that filing puts on taxpayers as much as possible.

*Question.* According to the IRS, the net tax gap, the difference between what people and companies owe in taxes and what the IRS ultimately collects exceeds \$400 billion per year. This should be the low-hanging fruit of deficit reduction; this is money owed under the law. The budget request notes that an additional \$15 billion for enforcement over 10 years will generate \$44 billion in collections, "yielding a net

savings of \$29 billion.” In other words, every dollar spent on enforcement brings in three.

Do you agree that additional enforcement dollars would produce a positive return and help reduce the deficit?

Answer. If confirmed, I will work to ensure the IRS maintains effective enforcement that respects taxpayer rights. However, enforcement alone will not close the “tax gap.” In our system of voluntary self-assessment, taxpayer must trust that the IRS will effectively enforce the tax code without bias.

*Question.* Are you aware that the President’s FY19 request for the IRS enforcement budget was nearly \$1 billion lower than Congress appropriated for it in 2011?

Answer. Yes.

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PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

The next IRS commissioner will be in charge of administering a tax system that’s broken in two.

There’s one set of rules for the cop on the beat or the worker on the factory line. Strict rules, no special loopholes, taxes come straight out of your paycheck.

Then there’s another set of rules for the high-flyers. Under that system, with the right advice from costly advisers, you can effectively pay what you want, when you want.

Mr. Chuck Rettig, nominated by the President to lead the IRS, made a career on dispensing that advice. And the biggest policy challenge he’d walk into as Commissioner is implementing the extremely complicated Trump tax law, which did a whole lot more for the high-flyers and well-connected than everybody else.

Given that fact, it’s up to Mr. Rettig to demonstrate that if he’s confirmed, he’d work on behalf of all Americans, particularly hard-working, middle-class families and the owners of the garages, corner stores and restaurants that make up our communities. “The guy on the street,” as he said in our meeting earlier this week.

One of the most immediate challenges he’ll inherit if he’s confirmed is sorting out a big headache the Trump tax law has caused for small businesses. Months after it was enacted, small businesses nationwide are still struggling to figure out how the new pass-through deduction will affect their tax bills. This law was hyped as a way to simplify the code and make life easier for millions of Americans. The pass-through deduction is an example of where the exact opposite has happened.

Mr. Rettig also needs to demonstrate that he will maintain independence from the Trump White House. That’s important with any nominee, but it’s especially relevant in Mr. Rettig’s case, since he owns and rents out condos in a Trump-branded and -managed property. I’ll have questions about that today.

But even setting aside that financial relationship, committing to independence matters. This administration often seems to be making tax decisions for political reasons rather than policy reasons, and that’s a recipe for the kind of swampy corruption that makes people lose faith in institutions like the IRS.

For example, it appears a policy regarding tax-favored “Opportunity Zones” was changed at the behest of one well-connected Republican donor in Nevada. It’s a sign the administration has put itself in the business of picking economic favorites as a result of the tax law. This donor wanted a special accommodation, and he got it. When the State of Vermont sought a similar change, it was denied.

There are also reports the Trump administration is going to introduce a new, untested tax form that will make the experience of filing returns even more of a headache for lots of Americans, particularly seniors. When the debate closed and the new tax law passed, it turned out that most Americans would not be able to file on a postcard, contrary to what Republicans had promised. But the administration decided to go ahead and cram the same amount of tax math onto a smaller form anyway. That means many taxpayers are going to have to rifle through complicated new stacks of instructions, attach multiple schedules and it will lead to more errors. The new forms are setting up taxpayers to fail.

And finally, the Vice President said in May that the Johnson amendment, which bars 501(c)(3) tax-exempt organizations from campaigning for or against political candidates, quote, “will no longer be enforced under this administration.”

That’s a longstanding right-wing priority and a recipe for even more dark money to infect our political system. The next IRS Commissioner will be in charge of enforcing that law on the books despite the Vice President’s pledge to look the other way.

I’ll close on this. Running the IRS is a difficult job that involves managing tens of thousands of employees. Mr. Rettig has decades of experience in tax matters, but his lack of management experience is a concern. I’m sure he will be asked that today as well.

I appreciate Mr. Rettig’s willingness to serve, and I thank him for joining the committee here today. I look forward to Q&A.

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## COMMUNICATION

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### STATEMENT OF JEFFREY M. BLUM

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#### **Introduction**

I have been representing the owners of Country Folk Art Shows, Inc. (“CFAS”), a fully lawful family business, since the summer of 1994. CFAS has been victimized by one of the first and largest improper civil asset forfeitures conducted by IRS agents. Approximately four million dollars has been unlawfully taken and despite repeated court rulings and a review conducted by the Deputy Attorney General (initiated by Attorney General Ashcroft, and conducted by Deputy Attorney General Corney and Associate Deputy Attorney General Catherine O’Neil), all directing the IRS to return the money as tax refunds, the IRS has done nothing but stonewall since first being directed to address refund claims in 2002. The extensive, well-documented tax refund claims have repeatedly been “lost,” and inaction has been justified by saying that mere theft of assets by agents does not justify a tax refund until the Commissioner writes a letter crediting the money as tax payments. For more than a decade the Commissioner has been strategically unreachable; every written communication to him has been rerouted to IRS Criminal Investigations, which has responded, if at all, by saying, in the words of former Chief Nancy Jardini, that it has no jurisdiction over refund claims.

Our clients’ lawfully derived income, which consists of five years of gate receipts from Country Folk Art Shows, was initially tendered voluntarily to the IRS to pay off about 80% of a bona fide tax liability in what was termed a “consent judgment” of civil forfeiture. The IRS had a written policy at the time directing that any lawfully derived assets forfeited based on “structuring” allegations could only be used to pay off tax liability, or forfeiture would not be authorized. Because the U.S. Attorney and everyone else acknowledged the legality of exhibiting country folk art, the owners received oral assurances from the IRS that this policy would apply. Three months after voluntarily tendering the assets the CFAS owners were subjected to a bait and switch. The assets were distributed as grants to various government agencies and the same taxes, interest and penalties were assessed a second time. The Sixth Circuit Court of Appeals denied other avenues of redress, but held that the owners should be entitled to refunds once they filed properly amended refund claims. Since that time multiple lawsuits have been filed and the IRS has engaged in a variety of machinations to hide the missing assets while refusing to provide any lawful response to the refund claims.

Most recently counsel for the House Government Oversight Subcommittee of the Ways and Means Committee has helped to enlist the Taxpayer Advocate Service to get the refund claims addressed in a lawful manner. The Taxpayer Advocate for the District of Columbia worked diligently to understand the refund claims and document how they had repeatedly gone missing. However, he was then suddenly overruled by National Taxpayer Advocate, Nina Olsen, who announced her personal ruling that any use of the word “forfeiture” in connection with money acquired by the IRS, makes the money a gift or off-the-books payment to the IRS regardless of the circumstances by which it was obtained. If Ms. Olsen’s dictum is a correct statement of IRS policy, then this is an agency that has engaged in criminal fraud and required several of its employees, including ones at high levels, to act as accessories after the fact in furtherance of the fraud. Point I, *infra*, explains how a central part of the fraud has involved creating an imaginary law against “structuring generally,” that has been misrepresented to be the actual law against structuring a single

transaction over \$10,000 in currency. 31 U.S.C. §5324(a)(3). The actual and imaginary laws bear superficial similarity, but the imaginary one is much broader in ostensibly authorizing forfeiture of all cash income of lawful businesses lawfully put in domestic banks as separate deposits under \$10,000. In the case of Country Folk Art Shows and many other legitimate businesses, bank officials have advised how deposits could lawfully be made, depositors have attempted to follow the law, and IRS agents have confiscated the money for their own use because of what former Attorney General Eric Holder has approvingly called “structuring generally.” The expansion of this practice has occurred after the Deputy Attorney General of a prior Republican Administration conducted a detailed review with my assistance and warned against the illegality of what was occurring.

Having recently watched the video recording of the Committee’s June 28 hearing, I am heartened by several things. American taxpayers should be grateful for the work of Senators Scott and Isakson in sponsoring the Respect Act and to Senator Scott for eliciting a promise of compliance from Commissioner-designate Rettig. Specifically, Senator Scott stated:

The IRS currently wields a tremendous amount of power over the folks in South Carolina and across the country, far more than the founders intended. One example is found in civil asset forfeiture. This practice allows the IRS to confiscate a citizen’s wealth upon the mere suspicion of wrongdoing. During a two-year investigation the Ways and Means Oversight Subcommittee discovered the IRS had seized civil assets from small business owners without providing substantial evidence to support their claim. That is why I introduced the RESPECT Act to require the IRS to show probable cause before seizing assets and facilitate taxpayer presentation of proof that would clear them of wrongdoing. Will you commit to working with me to protect taxpayers and small businesses?

Mr. Rettig replied, “Absolutely.” (V. R. 2:01:30 to 2:02:20). I was also given hope by Mr. Rettig’s recognition that the public’s trust in the IRS to act lawfully “is critical to the success not only of the IRS but of this country,” and his professed commitment “to rebuild the trust in that agency [and] to confirm to the American taxpayers that the Internal Revenue Service is impartial, nonbiased and color blind for all purposes.” (V. R. 53:40 to 54:10). Also heartening was Chairman Batch’s warning that “if the IRS shall slip up or fail to live up to the high standards that Congress has set, this Committee will hold the IRS accountable.” (V. R. 33:10). Such oversight may be essential because Mr. Rettig’s seemingly heartfelt promise to adhere to the law closely resembled words previously spoken by former Commissioner Koskinen before the House Oversight Subcommittee. However, Mr. Koskinen’s lavish promises were quickly followed by an admission that others in the IRS prevented him from knowing or considering the details of any specific case. This resulted in a lengthy period where the Commissioner acted as a kind of shill offering the utmost devotion to lawfulness in the abstract where running interference for a plethora of unlawful practices.

#### I. ABUSES OF CIVIL FORFEITURE STEMMING FROM THE IMAGINARY LAW AGAINST “STRUCTURING GENERALLY”

The pseudo-law against “structuring” was conjured to mimic but have much broader application than the actual law against *structuring a single transaction in currency*, 31 U.S.C. §5324(a)(3). Congress enacted the real law in the 1980s to aid in the enforcement of laws against money laundering by closing off a familiar loophole. Money launderers had been known to hire bank runners known as “smurfs” to help them evade the CTR filing requirement for cash transactions that exceeded ten thousand dollars at a single financial institution in a single day. The paradigm case was of a launderer who would hire two or more smurfs to bring cash amounts between five and ten thousand dollars to different tellers and thereby get more than \$10,000 into the destination bank without having a CTR filed.

The Secretary of the Treasury, who created the rules that defined the law (Part 103 of the Code of Federal Regulations), understood there were many legitimate cash businesses which regularly deposited cash receipts of more than a couple thousand dollars. To distinguish money launderers and smurfs, who typically worked with a single corrupt institution, from these other legitimate businesses, the Secretary imposed an important limitation on §5324(a)(3). In order for the law to be violated there had to be a **single transaction of more than \$10,000 cash** that was being broken up—or **structured**—into smaller transactions to evade the requirement. This structured single transaction was clearly distinguished in the law



from a series of separate cash transactions under \$10,000 that could have been aggregated by making fewer cash deposits. For the last thirty years the CFR has clearly defined a **single transaction** as the **sum total of all cash transactions with a single banking institution** (including all its branches) **made within a 24-hour period**. While the regulations were clear from the outset, any possible doubt about their meaning was erased in 1994 when the United States Supreme Court further clarified that the currency structuring law only prohibits “*break[ing] up a single [currency] transaction* above the [\$10,000] reporting threshold into two or more separate transactions for the purpose of evading a financial institution’s [CTR] reporting requirement.” *Ratzlaf v. United States*, 535 U.S. 135, 136 (1994) (emphasis supplied).

With the actual law defined in this way, smaller banks and branches that found the CTR filing requirement onerous were left free to advise owners of cash businesses simply to keep their daily deposits under \$10,000 and use other banks in addition to theirs if necessary. As a result, the CFAS owners, who typically received thousands of gate receipts in small denominations, made numerous cash deposits in a number of banks in amounts under \$10,000. The IRS waited five years and then forfeited all the cash deposits, totaling about four million dollars, which were distributed internally by AFMLS and IRS Criminal Investigations. The Service and a cooperating U.S. Attorney first obtained consent to the forfeiture by promising to follow IRS written policy directing that the money could only be used as tax payments, then three months later decided to defy the directive of the Assistant Commissioner for Criminal Investigations and assess the same tax liability a second time. The clients paid under protest and retained me in 1994 to get the money back. After the Sixth Circuit Court of Appeals determined in 2001 that tax refunds were the appropriate vehicle and the Deputy Attorney General requested in 2005 that the IRS act on long pending refund claims, the IRS, visibly acting under the leadership of Division Counsel Edward G. (“Ted”) Cronin, not only defied the request, but proceeded to launch numerous shakedown operations—all fraudulent and unlawful, based on the same imaginary law against “structuring generally.” According to a *New York Times* investigation, more than \$242 million was seized by the IRS for “suspected structuring violations” between 2005 and 2012 in more than 2,500 cases. The Country Folk Art Shows forfeiture was one of the first and largest of these unlawful seizures; it was also the one that led to a warning from the top of the Justice Department, the disregard of which now leaves the IRS with the headache of an additional 2,500 cases.

Since the *Times*’s full front page article came out on October 25, 2014 the House Ways and Means Government Oversight Subcommittee has implemented what I am told is extensive oversight. Surprisingly, there continues to be defiance from IRS leadership, most recently from the National Taxpayer Advocate, Nina Olsen. With all plausible legal arguments for keeping the money having been either defeated or abandoned in court, it is puzzling why this continues. In 2015 I explained to TIGTA agents why I thought the practice was criminal, saying that to

understand how the sudden switch from the actual law against structuring a single transaction in currency to the imaginary law against “structuring generally” can convert IRS Criminal Investigations officers into perpetrators of crime it helps to consider an on-point analogy to the actual offenses of bank robbery, attempted bank robbery and conspiracy to commit bank robbery. Once such an offense occurs persons who drive the getaway car will also be guilty of the offense. So it would make sense to clarify that driving a vehicle away from a bank with cash taken from the bank inside it can indeed make one liable for bank robbery or conspiracy to commit bank robbery. But if one focuses simply on the act of driving a vehicle with cash removed from a bank and begins to conjure an imaginary law against *using a motor vehicle to assist in removing cash from a bank* while ignoring the other essential elements of the crime of bank robbery, then one is likely to instigate the following rash of criminal acts by law enforcement agents:

The agents lie in wait outside banks. When they observe customers leaving ATM machines the agents follow their cars, stop them after a few blocks and then forfeit to AFMLS and themselves all cash in the driver’s or passenger’s possession along with the vehicle, while threatening to prosecute everyone in the car for using a motor vehicle to assist in removing cash from a bank. Given the essentially fraudulent nature of such prosecutions it makes sense to threaten drivers and passengers with lengthy prison sentences but allow them to avoid the time in prison if they surrender to AFMLS and the agents all the cash taken as well as their vehicles.

*Report on the IRS Unlawful Asset Conversion Program Based on an Imaginary Law Against "Structuring" Generally and IRS Counsel's Continuing Attempts to Mask Fraud by Seeking to Impose Double Taxation on the Owners of Country Folk Art Shows ("TIGTA Report") at 6.*

Businesses making frequent four-figure cash deposits are like most people getting cash from an ATM machine and driving away in a car. Under certain narrow, legally defined circumstances that have been shaped to combat genuine wrongdoing the actions can be part of a crime, but when AFMLS and IRS Criminal Investigations agents start seizing money for themselves by pretending that any transporting of money from a bank by car is a crime, innocent people are victimized and the government agencies become the criminal.

## II. REASONS FOR EXTENDING COMMITTEE OVERSIGHT TO THE PARTICULAR TAX REFUND CLAIMS OF COUNTRY FOLK ARTS SHOWS OWNERS

Because there have been so many court proceedings, agency reviews and evasive maneuvers conducted over a nearly twenty-year time span, the history of the Country Folk Art Shows refund claims provides a useful diagnostic tool for identifying sections of the IRS where the agency's commitment to upholding the law has been weak or nonexistent. Although a full exposition of wrongdoing by every involved part of the agency is beyond the purview of this statement (even though complete documentation has been retained), we should note that some offices in need of further scrutiny include not only IRS Criminal Investigations, but also the Office of the Commissioner, Office of Chief Counsel and the National Taxpayer Advocate personally. Once conflict of interest issues have been resolved, I look forward to providing my services on a volunteer basis to anyone, hopefully including Mr. Rettig as Commissioner, who takes seriously the job of cleaning up this agency. For now a brief summary of the circumstances giving rise to the refund claims will have to suffice.

CFAS, like most successful cash businesses, had to deal with receiving a large volume of small bills. These were regularly deposited in several physically adjacent banks in Grand Blanc, Michigan, pursuant to legally correct advice provided by bank personnel. Most, but not all, of the deposits were under \$10,000. Initially the IRS and Justice Department believed—or pretended to believe—that all four million dollars worth of bank deposits were “involved in structuring” and could be forfeited. However, because no illegal contraband was involved, IRS written policy required that the assets be credited as tax payments. The government's subsequent attempt to retain the taxpayers' assets over and above collecting full payment of their tax liability was contrary to IRS written policy at the time, as well as, obviously, the Internal Revenue Code's prohibition on collecting two times for the same tax liability. See the IRS Litigation Guideline Memorandum dated September 3, 1991 which incorporated a Policy Memorandum of the Assistant Commissioner (Criminal Investigations) dated October 26, 1988 that specifically addressed forfeitures under 31 U.S.C. § 5324 and stated that “forfeiture is appropriate only where there is a reasonable belief that the property is derived from criminal activity unrelated to tax violations,” and “if the property is not criminally derived, and tax has been paid on it, forfeiture is not authorized and the property should be returned.” *Tax Notes Today*, January 12, 1996 at 10. Because the owners acknowledged and wanted to pay off their tax liability with the greatest degree of cooperation, they consented to the forfeiture on September 25, 1992.

The effect of the IRS bait and switch three months after the consent judgment was to say that domestic banks operate as a kind of hidden trap door where depositors think they are depositing the money for safekeeping, but they are actually making unwitting donations to IRS agents and the Department of Justice Assets Forfeiture and Money Laundering Section (“AFMLS”). It took nearly ten years of litigation to get the owners fully exonerated of all currency structuring charges and for the government to concede that the owners' deposits had not violated the actual currency structuring law. This happened in stages, an important one being the Deputy Attorney General's review that concluded with a July 25, 2005 letter of Associate Deputy Attorney General Catherine O'Neil to IRS Criminal Investigations (“CI”) Chief Nancy Jardini implicitly acknowledging that there had been no basis for the forfeiture other than tax liability. O'Neil's letter to Jardini concluded, “this office has been mindful of the fact that the factual basis for the forfeiture appears to be closely linked with the facts underlying the \$5.3 million tax liability of the taxpayers. Counsel for the taxpayers has advised us that he filed a refund claim with the Internal Revenue Service pertaining to that tax assessment on or about April 2, 2002. As you and I have discussed, I am writing to suggest that your office undertake its own review of the facts of the pending refund claim and render a decision.”

Pursuant to this request Division Counsel for CI completed its own review by the end of 2005 and apparently reached similar conclusions. However, the IRS then commenced what appear in retrospect to have been evasive maneuvers. Division Counsel Edward F. Cronin moved to suppress the Criminal Investigations review by claiming attorney-client privilege and Jardini wrote, “we have concluded that the Internal Revenue Service-Criminal Investigations (CI) does not have jurisdiction with regard these [tax refund] claims.” Although technically correct in this, Jardini did not take the next step and pass the refund claims along to the Small Business and Self-Employed Division, which did have jurisdiction over them. Instead the tax refund claims kept being lost and all correspondence was routed by Cronin.

After Ashcroft, Corney and O’Neil had all left office in 2005, the task of following up on the Justice Department’s review was entrusted to the chief counsel for AFMLS, Lester Joseph. No longer able to ballyhoo the imaginary law, he shifted to claiming that DOJ had no capacity to dissuade the IRS from pursuing its unlawful course of action. This necessitated further litigation which clarified the one essential legal point for the requested refunds to be granted: *Were there four million dollars worth of violations of the actual currency structuring law?* On August 6, 2008 in response to a motion to supplement the record on appeal a panel of three Sixth Circuit judges ruled that Plaintiffs

now move to supplement the record on appeal by requiring the government to file with the court a list of structured transactions. **No such list was filed in the district court, and that court did not consider a list of structured transactions in ruling on the appellants’ motion to vacate.** The government opposes the motion to supplement the record. . . . As noted by the court in denying appellants’ motion for a limited remand, a list of structured transactions will not assist the court in its consideration of the issue on appeal.

(Emphasis supplied). If the factual basis of the forfeiture had been structured transactions rather than payment of tax liability, then a list of structured transactions would have been absolutely essential for “consideration of the issue on appeal” due to an absolute rule that consent judgments of forfeiture having no factual basis are void and must be set aside. See *Libretti v. United States*, 516 U.S. 29, 42–44, 55–56 (1995) (unanimously affirming absolute need for factual basis set forth by statute and declaring judgments of forfeiture without statutory basis to be void).

In other words, the illegality of using “structuring” generally, as opposed to actual violations of 31 U.S.C. § 5324(a)(3) which require *structuring a single transaction in currency*, was now finally acknowledged. In 2008 the Sixth Circuit continued to let the consent judgment of forfeiture stand because it had a factual basis rooted in the IRS’s authority to collect taxes owed at the time. But because the factual basis was now acknowledged to be collection of taxes owed, there was no longer any conceivable justification for allowing the double-taxation to stand. Hence the Commissioner’s mandatory duty to recognize the forfeited assets as tax payments.

The issue of whether tax refunds were the appropriate vehicle for granting the CFAS owners redress had been resolved by the Sixth Circuit Court of Appeals in an earlier lawsuit. In *Blakely v. United States*, 276 F.3d 853 (2002) the Sixth Circuit decided that since any money owed to the taxpayers could come back to them as tax refunds, other avenues of redress were not necessary. It declined to set aside the Consent Judgment of Forfeiture, noting a general reluctance to set aside consent judgments that were not blatantly illegal. It held that the Department of Justice procedures for refunding money through petitions for remission were voluntary with the Assets Forfeiture and Money Laundering Section (“AFMLS”), and it considered the Federal Tort Claims Act inapplicable to the taking of assets by means of a consent judgment. The Sixth Circuit panel also ruled that taxpayers could not yet sue for tax refunds because they had not yet exhausted their administrative remedies with the IRS. The taxpayers’ 54-page refund demand letter, which I drafted and filed with the IRS on August 17, 1994, was deemed insufficient to constitute an exhaustion of remedies because it failed to meet certain technical requirements of a refund claim.

However, the panel noted that the letter, which had been filed within two years of the forfeiture, would likely toll any statute of limitations under *United States v. Kales*, 314 U.S. 186, 194 (1941) because it satisfied the requirements of an informal claim. Even though the taxpayers had not yet satisfied the requirements for filing a tax refund suit as of 1999 when they first attempted to sue for a refund, the fact that the August 17, 1994 letter had satisfied the requirements of an informal claim under *United States v. Kales* (informal claim must have “a written component,” com-

municate that a refund is being sought and “furnish sufficient information to ‘allow the IRS to make a reasonable and intelligent investigation and evaluation of the taxpayer’s claim’”) meant that the Amended Refund Claims necessitated by the court’s decision, would relate back to the filing date of August 17, 1994. The Amended Refund Claims were filed within three months of the Sixth Circuit’s decision.

The *Blakely Court’s* lengthy footnote 9, 276 F.3d at 874, correctly summarized the main issue regarding timeliness of the taxpayers’ refund claims brought under 26 U.S.C. § 7422:

Plaintiffs’ brief makes clear that the issues raised in this case involve their challenge to the consent decree, which perfected the forfeiture of their property. Plaintiffs argue that misrepresentations on the part of the government induced them to enter into the consent judgment by promising Plaintiffs that their forfeited assets would be used to pay off their tax liability. See Plaintiffs’ Br. at 12. Thus, Plaintiffs admit that their suit revolves around their challenge to the consent judgment. Moreover, Plaintiffs admit that in order to file a tax refund suit, they must first have exhausted their administrative remedies by filing an administrative claim with the Secretary of the Treasury. See *McDonnell v. United States*, 180 F.3d 721, 722 (6th Cir. 1999) (explaining that 26 U.S.C. § 7422(a) requires taxpayer to first file an administrative claim before filing judicial action). . . .

Plaintiffs claim they did so by hand delivering the [54-page] August 17, 1994 letter to IRS agents. However, that argument was not made before the district court when it ruled on Plaintiffs’ motion, thus, they are barred from raising the argument here. *Anchor Motor Freight*, 899 F.2d at 559. Moreover, the 1994 letter fails to meet the requirements of an informal claim. See *Hale v. United States*, 876 F.2d 1258, 1262 (6th Cir. 1989) (noting that informal request for tax refund must apprise IRS that a refund is sought and for certain years). The 1994 letter fails to meet this standard.

276 F.3d at 874, n.9.

**But the court went on to add:**

Plaintiffs correctly contend that deficiencies in timely filed informal claims have been overlooked when an amendment, even if untimely, remedies such deficiencies. *United States v. Kales*, 314 U.S. 186, 194 (1941). However, Plaintiffs have yet to point to an amendment that remedies any deficiencies in the 1994 letter.

Thus the Sixth Circuit’s *Blakely* opinion effectively directed the filing of the amended refund claims three months later. It also made clear that the timeliness of that filing in April 2002 would need to be determined by applying the standards of *United States v. Kales* to the 54-page refund demand letter that taxpayers filed with IRS on August 17, 1994. Those standards required “a written component,” which communicated that a refund was being sought and “furnish[ed] sufficient information to ‘allow the IRS to make a reasonable and intelligent investigation and evaluation of the taxpayer’s claim.’”

*United States v. Kales* is unequivocal in maintaining that a letter satisfying the requirements of an informal claim will preserve the timeliness of a refund claim that is properly formalized after the lapsing of the statutory period. In it the Supreme Court states:

This Court, applying the statute and regulations, has often held that a notice fairly advising the Commissioner of the nature of the taxpayer’s claim, which the Commissioner could reject because too general or because it does not comply with formal requirements of the statute and regulations, will nevertheless be treated as a claim, where formal defects and lack of specificity have been remedied by amendment filed after the lapse of the statutory period. *United States v. Memphis Cotton Oil Co.*, 288 U.S. 62; *United States v. Factors and Finance Co.*, 288 U.S. 89; *Bemis Bro. Bag Co. v. United States*, 289 U.S. 28; *Moore Ice Cream Co. v. Rose*, 289 U.S. 373, 384. This is especially the case where such a claim has not misled the Commissioner and he has accepted and treated it as such. *Bonwit Teller and Co. v. United States*, 283 U.S. 258; *United States v. Memphis Cotton Oil Co.*, *supra*, 70.

314 U.S. at 194. The Supreme Court proceeded in *Kales* to deem a letter filed 16 years before its decision sufficient to preserve the taxpayer’s refund claim. In the federal court system the Supreme Court’s *Kales* decision has been cited or followed

378 times. It has never been disapproved and only once has its validity been questioned. That question related to an entirely different aspect of *Kales*. See *Farnsworth v. Phinney*, 297 F.2d 681,684 (51 Cir. 1962) (discussing whether a suit against a tax collector was *res judicata* against a taxpayer suing the United States). So once the IRS decides to follow the law as set forth in *Kales* and its many progeny the conclusion that the Longs' and Blakelys' amended refund claims were timely when filed will follow automatically because a 54-page refund demand letter easily qualifies as having "a written component" communicating that a refund is being sought, and "furnish[es] sufficient information to 'allow the IRS to make a reasonable and intelligent investigation and evaluation of the taxpayer's claim'."

After the *Blakely* decision came down the government made no effort to argue that refund claims would be untimely or to argue that the *Kales* standard had not been met. Its efforts centered on trying to defend the idea of taxpayers' "structuring" being a "civil" offense that provided an independent factual basis for civil forfeiture. This strategy was pursued from the trial court's August 21, 1997 vacatur of currency structuring convictions and ensuing dismissal of all currency structuring charges until the Deputy Attorney General's 2005 review acknowledged that there had been no basis for the forfeiture other than tax liability.

After 2008 the government ceased making any attempt to set forth a substantive defense of the double taxation, but simply set about repeatedly losing the refund claims and their eighty pages of attached documentation. Over the years I have probably filed and refiled these claims about eight times. In 2013, after Gregg Hoffmaster in the Office of Chief Counsel advised that I should file yet another lawsuit, I filed a mandamus action against the IRS Commissioner and Secretary of the Treasury seeking a court order that they cease diverting tax payments into grants to IRS Criminal Investigations and grant refunds for money so diverted. The government's response was to refuse to take any position on the merits or address them in any way, but simply to contest the venue of the court where the lawsuit was filed, notwithstanding the law's liberal handling of venue requirements for mandamus lawsuits.

### Conclusion

Examining IRS mishandling of the Country Folk Art Shows refund claims provides insight into abuses relating not only to civil asset forfeiture, but into the agency's handling of any refund claim. Even if a revenue agent could conjure a legally plausible ground for denying or greatly reducing the claims, the claims would still merit a good-faith response from the IRS. Seeing how the agency evaded its duty to provide such a response will show oversight agencies problematic tendencies that need to be controlled going forward. In addition, we appear to have witnessed continued stonewalling of the Oversight Subcommittee's efforts to elicit agency cooperation in remedying past abuses. If the new leadership is confirmed and allowed to lapse into the Koskinen tradition of being strongly committed to upholding the law in the abstract but very permissive in allowing abuses to continue unredressed, then this entire saga beginning with the imaginary law against "structuring generally," will mark a serious defeat for legislative oversight and efforts to sustain lawfulness in government.

