



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 11, 2023

The Honorable J. Russell George
Treasury Inspector General for Tax Administration
901 D Street SW, Suite 600
Washington, D.C. 20024-2169

Re: Request for Investigation into the Internal Revenue Service's Failure to Conduct Mandatory Audits of Former President Donald J. Trump's Tax Returns

Dear Inspector General George:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that your office investigate repeated failures by the Internal Revenue Service ("IRS") to conduct full and timely audits of President Donald J. Trump's 2015 through 2019 tax returns as mandated by IRS policy. A recently issued report by the House Ways and Means Committee indicates that IRS-mandated audits of President Trump's tax returns were plagued by deficiencies, including inadequate staffing and inordinate delays. The revelations in the House Ways and Means Committee Report give rise to legitimate concerns about whether the mandatory audit program for presidential tax returns suffered from possible abuse, including undue political interference by Treasury and IRS officials, with the intent or effect of protecting former President Trump from the very type of scrutiny the program was intended to address.

The IRS's mandatory audit program for presidential tax returns has been in existence since 1977, when it was formalized in the aftermath of President Richard Nixon's use of questionable tax deductions.¹ By mandating routine audits of presidential tax returns, the IRS put a mechanism in place to ensure that no government employee would be responsible for making the affirmative decision to audit the president.² In the era of post-Watergate reforms, these measures helped restore public confidence in the government's ability to equally enforce tax laws against all U.S. taxpayers, including sitting presidents.

¹ See IRS Memorandum from Deputy Commissioner to All Regional Commissioners, June 6, 1977; House Committee on Ways and Means, *Report on the Internal Revenue Service's Mandatory Audit Program Under the Prior Administration (2017-2020)*, Dec. 20, 2022, ("House Ways and Means Committee Report"), at 8 - 9.

² House Ways and Means Committee Report, at 10.

The presidential audit mandate is currently found in the Internal Revenue Manual (“IRM”), which provides that “[i]ndividual income tax returns for the President and Vice President are subject to mandatory examinations.”³ Notably, the examination procedures outlined in the Internal Revenue Manual contemplate the need for sufficient staffing, including specialists, to examine complex tax returns by requiring that “IRS personnel, *including specialists*, . . . be assigned to the examination *as appropriate*.” (emphasis added).⁴

Like his predecessors, President Trump’s tax returns were subject to mandatory audit. However, the House Ways and Means Committee reported that the IRS did not commence its audit of President Trump’s 2015 tax return until April 3, 2019⁵ – the same day that House Ways and Means Committee Chairman Richard E. Neal first sent a letter to the IRS requesting copies of President Trump’s return information and related tax returns.⁶ In similar fashion, the IRS delayed auditing President Trump’s 2016 tax return until September 18, 2019, while his 2017, 2018 and 2019 tax audits were delayed from even beginning until after he left office.⁷ Of these, only President Trump’s 2016 tax return has been specifically designated by the IRS for “mandatory examination,” raising questions about how the other audits are being handled.⁸ Two years after the conclusion of President Trump’s term, none of those audits has yet been completed.⁹

The Committee report also revealed that IRS staffing has been woefully inadequate for reviewing former President Trump’s exceedingly complex tax returns, with “mostly” one revenue agent and no specialists assigned to audit returns that include “hundreds of related and pass-through entities, numerous schedules, foreign tax credits, and millions of dollars in [net operating loss] carryforwards.”¹⁰ The lack of specialists is particularly concerning since President Trump is alleged by the Committee to have manipulated tax code provisions pertaining to real estate taxes, made extensive use of pass-through profits and losses, and deployed aggressive tax strategies and decades-long tax avoidance schemes, including a \$916 million deduction.¹¹ The revenue agent assigned to the audit noted that “lack of resources was the reason for not pursuing certain issues on the former President’s returns.”¹²

³ See IRM §§ 3.28.3.4.3 (01-01-2019) [updated 3.28.3.5.3 (11-17-2020)] & 4.2.1.15.

⁴ *Id.*; see also, 1977 IRS Memorandum (“Personnel should be assigned to the examination as necessary, including specialists, to conduct the audit.”)

⁵ House Ways and Means Committee Report, at 1. Based on the date the 2015 tax return was filed, February 27, 2017, the Committee’s designated agents identified Trump’s 2015 tax return, as one of the five tax years (2015-2019) that should have been examined under the mandatory audit program. *Id.*, at 20.

⁶ House Ways and Means Committee Report, at 1. However, the IRS reportedly disputes this representation saying that the audit of the 2015 Trump tax returns started in January 2018, not in April 2019 when Mr. Neal made his first request. Richard Rubin, *Donald Trump’s Taxes Show Wide Use of Real-Estate Losses*, Wall Street Journal, Dec. 30, 2022, <https://www.wsj.com/articles/six-years-of-donald-trumps-tax-returns-released-by-house-committee-11672409384>.

⁷ House Ways and Means Committee Report, at 1. The 2017 and 2018 tax return audits commenced on March 23, 2021 and the 2019 tax return audit commenced on April 4, 2022. *Id.*

⁸ *Id.* at 20.

⁹ Charlie Savage and Alan Rappeport, *I.R.S. Routinely Audited Obama and Biden, Raising Questions Over Delays for Trump*, New York Times, Dec. 21, 2022, <https://www.nytimes.com/2022/12/21/us/politics/trump-irs-taxes.html>.

¹⁰ *Id.* at 24.

¹¹ *Id.* at 5, 20- 22, 24

¹² *Id.* at 24.

Notwithstanding the House Ways and Means Committee's ability to successfully obtain copies of President Trump's tax return after years of litigation,¹³ the Committee received limited information about the presidential audit process itself, including in its June 2019 briefing with then-IRS Chief Counsel Michael Desmond and other Treasury and IRS staff.¹⁴ Not only did Treasury and IRS staff who attended the June 2019 briefing refuse to answer the majority of questions asked by Committee staff, despite the Chairman's authority under Section 6103 of the Internal Revenue Code to request it, but there was no one in attendance who had relevant experience by having previously participated as an examiner in a mandatory presidential audit."¹⁵

The failure by Treasury and the IRS to timely and fully staff President Trump's mandatory audits while he was in office appears to not only violate IRS policy, but was particularly egregious since he refused to follow the norm established by his predecessors of voluntarily releasing his tax returns – falsely claiming he could not do so since his tax returns were under “audit” as his excuse.¹⁶ The delays and lack of adequate and specialized staffing rendered the mandatory audit program “dormant,”¹⁷ and significantly undermine public confidence in the IRS's ability and willingness to equally enforce tax laws against all U.S. taxpayers, including sitting presidents. The fact that the IRS reportedly promptly began audits into both President Trump's predecessor and his successor also calls into question the agency's equal enforcement of the law.¹⁸ This failure is further compounded by the lack of cooperation from Treasury and IRS officials during the House Ways and Means Committee investigation into the presidential audit process. All of these facts suggest possible undue political interference by Trump political appointees so as to protect former President Trump from the very type of scrutiny the program was intended to address. A fully functional mandatory audit program is essential to ensure that every president is in proper compliance with his tax obligations and that our tax laws are being administered fairly and without favor regardless of the size and complexity of any single president's financial portfolio.

As Treasury Inspector General for Tax Administration (“TIGTA”), your office is responsible for independent oversight of matters of the Department of the Treasury involving activities of the IRS and the IRS Office of Chief Counsel.¹⁹ In addition to all the standard authorities granted to Inspectors General under the Inspector General Act of 1978 to investigate fraud, waste and abuse,²⁰ TIGTA has several additional authorities, including to access tax information in the performance of its tax administration

¹³ *Id.* at 7-9.

¹⁴ *Id.* at 12.

¹⁵ *Id.* at 11-12.

¹⁶ Aila Sclicco, *Donald Trump Slammed for 'Lying' About Tax Audits Halting Records' Release*, Newsweek, Dec. 21, 2022, <https://www.newsweek.com/donald-trump-slammed-lying-about-tax-audits-halting-their-release-1768607>.

¹⁷ *Id.* at 20.

¹⁸ Savage and Rappeport, *New York Times*, Dec. 21, 2022.

¹⁹ Treasury Inspector General for Tax Administration, *Strategic Plan FY 2018-2022*, https://www.tigta.gov/sites/default/files/publications/2022-02/TIGTA_StrategicPlanFY18-FY22.pdf, (“Strategic Plan FY 2018-2022”) at 5.

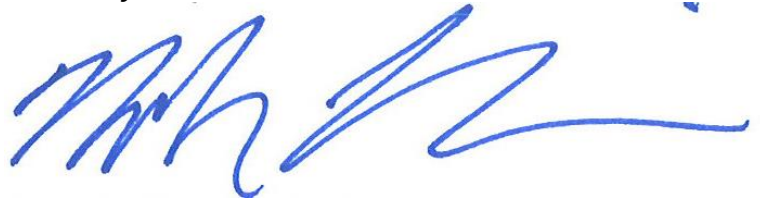
²⁰ 5 U.S.C. app. (2018 & Supp. III 2022).

responsibilities and to serve subpoenas and summonses as set forth in Internal Revenue Code § 7608(b).²¹

Accordingly, your office is uniquely positioned to investigate possible abuse, including systemic issues, stemming from the failure of Treasury and IRS officials to timely assign and appropriately staff the mandated examinations of President Trump's tax returns. As part of the investigation, your office should determine whether President Trump's Treasury and IRS political appointees or other staff unduly interfered with the routine audit process established in 1977 to ensure that our nation's tax laws are fairly administered and enforced with regard to all taxpayers, including then-President Trump.

CREW greatly appreciates your prompt attention to this urgent matter of national importance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
President

²¹ Strategic Plan FY 2018-2022, at 5.