

Dem Bid For Trump Returns May Be Too Narrow To Be Fruitful

By **Vidya Kauri**

Law360 (April 22, 2019, 3:20 PM EDT) -- The narrow scope of House Democrats' bid for President Donald Trump's tax returns may do little to either confirm or dissuade public suspicions about financial conflicts of interest or fraudulent conduct, but the effort could unearth information warranting further investigations.



The chairman of the House Ways and Means Committee has asked for President Donald Trump's individual tax returns, as well as returns for a revocable trust and seven business entities. (AP)

In the interest of overseeing the Internal Revenue Service's audit of the president's tax filings, House Ways and Means Committee Chairman Richard Neal, D-Mass., **has asked the agency** to produce Trump's individual income tax returns as well as returns for one revocable trust and seven business entities from 2013 to 2018. The committee also asked for administrative IRS records relating to the audits of these returns.

According to tax practitioners, the individual returns would be helpful only in determining the amount of tax paid and the effective tax rate. They may have a line item reflecting income that flows through from various business entities, but they wouldn't spell out Trump's net worth, since they do not list non-income-generating assets.

The business returns are sure to have more information that may help determine sources of income, overseas financial accounts, business ties with foreign entities, tax planning strategies or even the identities of some business partners, according to Seth Hanlon, a senior fellow at the left-leaning policy institute Center for American Progress. However, the usefulness of this information could be constrained given that the Democrats' request is limited to six years of returns and a fraction of the approximately 500 entities that are part of the president's sprawling business empire.

"If I were in [the Democrats'] shoes investigating the issues of tax compliance and overseeing the IRS and potentially other issues, I would be planning to follow up with additional requests," said Hanlon, who previously was an economic policy adviser to President Barack Obama and senior tax counsel for the Democratic staff on the House Budget Committee.

If the Democrats do succeed in obtaining the returns and other documentation they have requested — and they are likely to face a long, litigious battle as Trump challenges them on the basis of

taxpayer privacy and their constitutional authority to review his returns — it is difficult to know exactly what can be gleaned.

Some of these returns may contain only minimal information that flows down from another return, and it is not uncommon for the IRS to examine a return only to find that it doesn't have all the information it is looking for, according to Josh Ungerman, a tax attorney at Meadows Collier Reed Cousins Crouch & Ungerman LLP, who used to serve as an attorney in the IRS the U.S. Department of Justice's Tax Division.

"To really figure out what returns are going to be most helpful, you would need an organizational chart that shows how all the pieces fit together and what eventually affects the individual tax return," Ungerman said. "There's no guarantee that the production of the individual returns and the eight [other] returns are going to be the treasure trove of information that I think some people would like to debate."

Daniel Shaviro, a tax professor at the New York University School of Law, concurred that one might have to drill deep down into tiers of tax filings, as well as other documentation such as bank records and accounting figures, to evince the existence or absence of improper business dealings.

"How much you see depends on where the bodies are buried, so to speak, as compared to what has been made public," Shaviro said. "These are things that are worth pursuing in the interests of transparency and law enforcement and ... congressional oversight, but people can easily get their hopes too high about what will be there."

There is also the matter of whether the returns that may be produced are accurate. Ungerman pointed out that it's not uncommon to see errors on tax returns, and the presence of errors don't necessarily equate to taxpayer culpability.

One would have to go through a process of inquiry to determine if any errors were intentional or accidental oversights, if information was not adequately communicated, if tax advisers failed to interpret information correctly or took an aggressive position in claiming deductions or credits, and so on.

A typical IRS audit of wealthy individuals can last years, with agency staff members needing several layers of supplementary information to understand how everything fits together. **A March 2016 letter** from Trump's tax lawyers said that IRS examinations were still ongoing then from the 2009 tax year onward.

"And that's why the tax returns themselves are often not the most helpful document," Ungerman said. "If the IRS can't figure it out by just looking at the face of a return necessarily, I don't know that we're going to be able to."

A representative of Neal's office said that a reason for limiting the scope of the Democrats' request to the 2013-2018 tax years was that the IRS keeps only seven years of personal returns, and that it makes no difference if audits are ongoing or not.

The purpose of the request "is to examine the **mandatory presidential audit program** ... It is not to examine conflicts of interest or aggressive tax planning," Neal's office said in an email.

Regardless of what the tax returns show, there is a virtue in having lawmakers ensure that the IRS is auditing the president, who is essentially the boss of those working at the agency, in the same way that other wealthy taxpayers may be audited. While there is legitimacy in Republican arguments that the Democrats' attempt at IRS oversight is politically motivated and could discourage future citizens from running for public office, Trump's 2016 election campaign and presidency have been steeped in an unusual amount of controversy tied to his business dealings and transactions with foreign counterparts.

Glimpses of Trump's tax returns and other financial documents in the past have generated speculation about whether the president and his tax advisers either interpreted tax laws aggressively or committed outright fraud to evade taxes. Examples of such incidents include The New York Times' reporting of a **\$916 million business loss** deduction that Trump claimed in 1995 and

that could have allowed him to avoid paying federal income taxes for nearly two decades after, as well as the paper's exposé of **strategies the Trump family used** to make tax-free wealth transfers in the 1990s. Trump's lawyer has decried the Times' allegations of fraud and tax evasion as false and defamatory.

Trump's honesty has also been called into question in a **lawsuit** from the New York Attorney General's Office, alleging that he knowingly misused tax-exempt donations to the Donald J. Trump Foundation, a private, not-for-profit organization, for personal and political gain. The foundation, which is alleged to have lied about its participation in prohibited political transactions on its 2013 tax return, **shut down** during the course of the lawsuit.

These controversies and the complexity of Trump's business structures make it difficult to speculate exactly what could show up on his individual and business income tax returns. Possible deductions for items such as medical expenses and interest payments may not have much relevance to the public from a policymaking perspective, and charitable deductions could end up being read out of context, since money given to donor-advised funds or family foundations in any given year may not be disbursed to charities until years later.

However, the controversies also suggest that the Democrats have a valid purpose in requesting to examine Trump's returns and related IRS documents. Shaviro, of the NYU Law School, said the supporting documentation will be crucial to making any examination of Trump's returns more meaningful.

"A repeated joke that someone else told me ... is that there's not going to be a 1099 from Vladimir Putin," he said. "People don't send returns to the IRS saying, 'Here's my fraud.'"

So, while the most hardened Trump skeptics may have to temper their expectations about whether the tax returns can nail the president for any improper behavior, the returns would still give a clearer understanding of Trump's income streams, tax planning strategies and conflicts of interest in his role as a public servant.

"One thing I think that is important," said Hanlon at the Center for American Progress, "is that it completes the picture in combination with other information that's publicly available."

--Editing by Robert Rudinger and John Oudens.