

Trump's IRS Audit Files Offer 'Treasure Trove'—If Congress Ever Gets Them

Internal documents would let lawmakers understand how tax agency scrutinizes president



President Trump heads into the White House on April 15. A U.S. president's tax returns are subject to mandatory audit under an IRS policy dating to 1977. PHOTO: ANDREW HARNIK/ASSOCIATED PRESS

By *Richard Rubin*

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WASHINGTON—Democrats want six years of President Trump's tax returns, and those should be plenty interesting. But it is the other documents they are seeking—administrative files for the president's IRS audits—that may prove most revealing.

Experienced tax lawyers could take the returns, the audit files and Mr. Trump's responses to IRS questions and quickly understand the status and core issues of any IRS inquiry into the president.

“That IRS working file is a treasure trove of information,” said Josh Ungerman, a former IRS and Justice Department attorney who represents taxpayers in Dallas.

The file would show what the IRS was examining and why, and could include the agency's audit plan, auditors' notes, back-and-forth with Mr. Trump and correspondence within the IRS. Each piece could reveal financial information the president has kept from the public and from House members who are invoking a law that requires the administration to provide anyone's tax documents to them.

If lawmakers obtain those files after a court battle that now seems likely, they could learn whether the issues examined were flagged by agency computers or whistleblowers.

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The files could show which figures the IRS agents considered doubtful and why, said Mark Matthews, a former senior IRS official now at Caplin & Drysdale law firm. They might indicate whether penalties should be imposed, as well as IRS managers' comments on agents' findings. In addition, workpapers could reveal what issues the IRS didn't address.

The files requested by the House Ways and Means Committee are familiar to tax lawyers—because they can request and get them from the IRS when defending taxpayers. Lawyers sometimes sue the IRS under the Freedom of Information Act to get the documents, and the government can hold back information regarding internal deliberations and consultations with attorneys.



Internal Revenue Service Commissioner Charles Rettig listens during a House Appropriations subcommittee hearing on April 9. Rep. Richard Neal last week asked Mr. Rettig to hand over President Trump's tax filings. PHOTO: ANDREW HARRER/BLOOMBERG NEWS

Committee Chairman Rep. Richard Neal (D., Mass.), whose jurisdiction includes the tax code, requested the administrative files related to six years of Mr. Trump's personal returns and some of his business returns.

The administration [missed Mr. Neal's April 23 deadline](#) and the president's personal lawyer has said the request is politically motivated and thus doesn't have a legitimate legislative purpose. The Treasury Department said Tuesday that it and the Justice Department are studying the legal issues and expect to reach a decision by May 6.

Democratic investigators' stated purpose for requesting the returns is to probe how adequately IRS employees are auditing the president who oversees them.

That is an issue that reaches back to Richard Nixon's presidency. Mr. Nixon asked congressional investigators to go through his returns and they found problems that resulted in the president paying more than \$400,000 in back taxes and other costs.

If Mr. Neal eventually gets the documents, he couldn't release them publicly without a committee vote. He could designate members of his staff or the nonpartisan experts at the Joint Committee on Taxation to review the documents.

Any returns that Mr. Trump files as president are presumably subject to a mandatory audit under an IRS policy dating to 1977. During the 2016 presidential campaign, he declined to release any of his tax returns as previous candidates had, saying at times that he couldn't do so because he was under audit, though no law prohibits that. His lawyers released a letter that year saying that the IRS had finished audits from 2002 through 2008 but was still examining tax returns since then. The combination of mandatory and pre-presidential audits means the IRS likely has a significant file on Mr. Trump and his businesses. Mr. Trump's lawyers haven't provided any updates on his audits since 2016.

The apparent extent of Mr. Trump's audits suggests that he and the government have agreed to extend deadlines that typically require the IRS to finish audits within three years after a return is filed—or six years for certain significant omissions of income.

For the overburdened IRS, agreeing to extend that deadline provides more time. For the taxpayer, extending the date can prevent a dispute from heading into the public forum of the court system.

The administrative files and work papers would contain all of that extension information. They would also show what additional information the auditors are seeking.

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“The administrative files are going to show what efforts they made,” whether superficial or in-depth, said Robert McKenzie, a partner at Saul, Ewing, Arnstein & Lehr LLP in Chicago.

Mr. Neal's request isn't broad enough, said Steve Rosenthal, a senior fellow at the Tax Policy Center in Washington.

The chairman should have asked for more years of information, going all the way back to the oldest tax year that is still under audit. That way, he said, lawmakers could see the origins of any inquiries into Mr. Trump and explore how the IRS handled the case before he was president and after.

“If you really want to see how the process unfolds, you really have to go back,” he said.

Sophisticated business owners often treat a tax return as the opening bid in a negotiation with the IRS, he said, knowing they can settle later. That is a pattern, Mr. Rosenthal adds, that fits the president’s way of doing business.

“He views taxes like he views other financial arrangements from lenders and the like,” he said. “OK, maybe I owe you money, but how much can we settle for?”

—*Laura Saunders contributed to this article.*

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