

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on the Department of Treasury's Refusal to turn over President Trump's Tax Records

Treasury Refuses to Comply with Tax Disclosure Requirements

Every major party's Presidential nominee since 1976 has disclosed his tax information.¹ While running for office in 2016, Donald Trump indicated he would not release any tax information until the ongoing audits of his prior tax returns were completed by the Internal Revenue System ("IRS").² Investigations into Trump's tax returns started in 2002 and the specific audit Trump referred to began in 2009.³ On April 3, 2019, Richard Neal, Chairman of the Ways and Means Committee in the House, requested Trump's tax returns for the previous six years from the IRS.⁴ Neal stated that his purpose for the request was to evaluate Federal tax laws and the effectiveness of the current IRS's practice to audit Presidents' tax returns.⁵

Steven Mnuchin, Secretary of the Department of the Treasury ("Treasury"), refused the request on the grounds that the request lacked a legitimate legislative purpose.⁶ Instead, Mnuchin suggested providing the Committee with information explaining "how the IRS conducts mandatory examinations of Presidents . . ."⁷

¹ Robert Farley, *Trump Wrong About Tax Law*, FACTCHECK.ORG (April 11, 2019), <https://www.factcheck.org/2019/04/trump-wrong-about-tax-law/>.

² Donald Trump (@realDonaldTrump), TWITTER (May 11, 2016, 4:51 PM) https://twitter.com/realDonaldTrump/status/730500562022760448?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E730500562022760448%7Ctwgr%5Eshare_3&ref_url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F07%2F09%2Fus%2Fpolitics%2Ftrump-taxes.html.

³ Katie Rogers, *Trump on Releasing His Tax Returns: From 'Absolutely' to 'Political Prosecution'*, NY TIMES (July 9, 2020), <https://www.nytimes.com/2020/07/09/us/politics/trump-taxes.html>.

⁴ Letter from Richard Neal, Comm'r, H.R. Comm. on Ways and Means, to Charles Rettig, Comm'r, Internal Revenue Serv. (April 3, 2019), <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Neal%20Letter%20to%20Rettig%20%28signed%29%20-%202019.04.03.pdf>.

⁵ Id.

⁶ Letter from Steven Mnuchin, Sec'y, Dept. of the Treasury, to Richard Neal, Comm'r, H.R. Comm. on Ways and Means (May 6, 2019), https://home.treasury.gov/system/files/136/Secretary-Mnuchin-Response-to-Chairman-Neal-2019-05-06.pdf?mod=article_inline.

⁷ Id.

Neal cited IRS Code § 6103(f) as authority for the request.⁸ Section 6103 generally makes an individual's tax information confidential.⁹ Therefore, such tax information may not be disclosed by a governmental body without the taxpayer's consent.¹⁰ However, an exception to this general rule is § 6103(f)(1), which directs that "the Secretary *shall* furnish" requested tax information to the Ways and Means Committee.¹¹ If the chairman of the Committee requests a particular taxpayer's returns, the Secretary may only disclose the information when sitting in a closed executive session.¹² Although § 6103(f) lacks limitations on requests, the Committee's requests are bound by legal limitations that restrict Congress's investigative authority.¹³ Investigations conducted by Congress must not breach Constitutional rights and privileges, and must further a legislative purpose.¹⁴

Congress's investigative authority is "broad and indispensable . . . [and] encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them."¹⁵ Although broad, the authority is limited. Seeking to expose for the sake of exposure or inquiring into the private affairs of citizens are not valid uses of Congressional power.¹⁶ However, if the request exposes an individual or inquires into the private affairs of citizens that could result in valid legislation, the request falls under Congress's authority.¹⁷

Chairman Neal requested Trump's tax returns, citing a legislative purpose of investigating the current Federal tax laws in regards to IRS audit procedures for a sitting president.¹⁸ No Federal

⁸ Neal, *supra* note 4, at 1.

⁹ 26 U.S.C. § 6103(a) (2012) .

¹⁰ *Id.*

¹¹ *Id.* at § 6103(f)(1). Note, Congress provided this directive specifically to "address perceived difficulties in acquiring tax information during congressional investigations during the Harding Administration's Teapot Dome scandal." David Carpenter et. al., *Congressional Access to the President's Federal Tax Returns*, Cong. Research Serv. 2 (May 7, 2019) <https://fas.org/sgp/crs/secretcy/LSB10275.pdf>.

¹² 26 U.S.C. § 6103(f)(1).

¹³ Carpenter, *supra* note 11 at 2.

¹⁴ *Id.*

¹⁵ *Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2031 (2020).

¹⁶ Carpenter, *supra* note 11 at 3.

¹⁷ *Id.* Note, this is partially because Congress's informing function is indispensable to ensure to the public that the government is working properly and efficiently. See *Watkins v. U.S.*, 354 U.S. 178, 200 (1957) ("The public is, of entitled to be informed concerning the workings of its government."). The informing function is Congress's power "to inquire into and *publicize corruption*, maladministration or inefficiency in agencies of the Government." *Id.* at 233 n. 33 (emphasis added). Congress's informing power may even be stronger than the legislative power. *Congressional Oversight of the Executive*, Final Report of the Joint Committee on the Organization of Congress (Dec. 1993) <https://archives-democrats-rules.house.gov/Archives/jcoc2am.htm#6> (citing Woodrow Wilson's *Congressional Government*).

¹⁸ Neal, *supra* note 4 at 1.

tax laws currently exist requiring an IRS audit of Presidents' taxes. However, the Internal Revenue Manual ("IRM") requires an audit.¹⁹ The IRM is not a law, but the IRS's internal policy document.²⁰ An internal policy is not binding on the IRS. If Congress begins to pursue the enactment of a federal law mandating the audit of a president, Congress would be operating within its legislative power, as all federal tax laws are enacted by Congress. Any requests pursuant to such a potential law would presumably further a legitimate legislative purpose.

In July 2019, the Ways and Means Committee sued the Treasury and IRS over nondisclosure of Trump's tax returns.²¹ Chairman Neal asked the court to enforce a subpoena requesting the documents.²² The Justice Department, defending the Treasury's actions, claim that Neal seeks the President's tax returns solely for the purpose of releasing them to the public – a clear violation of privacy rights.²³ The lawsuit was put on hold in January 2020 by U.S. District Judge Trevor McFadden in Washington, D.C. in anticipation of several similar decisions being issued later in the year by higher courts.²⁴

Further investigation about what Secretary Mnuchin or others at the Treasury Department may know or have communicated with the President about his tax records would be essential to proving any criminal misconduct in connection with the complete failure of Treasury to comply with § 6103.

¹⁹ Mnuchin, *supra* note 6.

²⁰ *Qureshi v. U.S.* 67 Fed.Cl. 783, 788 (Fed. Cl. 2005).

²¹ Richard Rubin, *House Panel Sues Treasury for Trump Tax Returns*, WALL STREET J. (July 2, 2019), <https://www.wsj.com/articles/house-panel-sues-u-s-treasury-for-trump-tax-returns-11562081358>.

²² *Id.*

²³ *Id.*

²⁴ Jan Wolfe, *U.S. Judge Puts on Hold House Lawsuit Seeking Trump Tax Returns*, REUTERS (Jan. 14, 2020), <https://www.reuters.com/article/us-usa-trump-taxes/u-s-judge-puts-on-hold-house-lawsuit-seeking-trump-tax-returns-idUSKBN1ZD2TK>.