

October 11, 2017

The Honorable Kevin Brady, Chairman
The Honorable Orrin Hatch, Vice Chairman
The Joint Committee on Taxation
502 Ford House Office Building
Washington, D.C. 20515

Commissioner John Koskinen
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

RE: The Release of President's Tax Returns

Dear Chairman Brady, Vice Chairman Hatch, and Commissioner Koskinen:

We write to you regarding the authority of the Internal Revenue Service and the Joint Committee on Taxation to initiate the public release of President Donald J. Trump's tax records under 26 U.S.C. § 6103(k)(3). The release of these records is necessary to determine the extent of Russian interference with the 2016 Presidential election and to ensure that the U.S. government takes necessary steps to safeguard political institutions against future attack. Under federal law, the Joint Committee on Taxation and the IRS Commissioner have the authority to release these records to "correct misstatements of fact" and to ensure the integrity and fairness of the system of tax administration.¹ This authority has been exercised several times in the past.² The undersigned organizations urge you to exercise this authority now and provide for the release of the President's tax records.

President Trump is the first major party presidential candidate in 40 years not to make his returns available for public review.³ Substantial questions have been raised about President Trump's financial ties to Russia and the Russian government. Though President Trump has repeatedly denied any financial dealings with Russia,⁴ these statements have been directly contradicted by his attorneys,⁵ by members of his own family,⁶ and by a wealth of investigative

¹ 26 U.S.C. § 6103(k)(3).

² See Joint Committee on Taxation, *Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C) for Calendar Year 2000* (JCX-47-00), May 22, 2001.

³ Julie Hirschfeld Davis, *Trump Won't Release His Tax Returns, a Top Aide Says*, N.Y. Times (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/us/politics/donald-trump-tax-returns.html>.

⁴ @realDonaldTrump, Twitter (July 26, 2016 6:50 PM), <https://twitter.com/realdonaldtrump/status/758071952498159616?lang=en> ("For the record, I have ZERO investments in Russia."); @realDonaldTrump, Twitter (Jan. 11, 2017 7:31 AM), <https://twitter.com/realdonaldtrump/status/819159806489591809?lang=en> ("Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA - NO DEALS, NO LOANS, NO NOTHING!").

⁵ Letter from Sheri A. Dillon & William F. Nelson, Tax Partners, Morgan Lewis & Bockius LLP, to President Donald J. Trump (Mar. 8, 2017) (identifying multiple sources of Russian income reflected in President Trump's tax returns); Matt Apuzzo & Maggie Haberman, *Trump Associate Boasted That Moscow Business Deal 'Will Get Donald Elected'*, N.Y. Times (Aug. 28, 2017), <https://www.nytimes.com/2017/08/28/us/politics/trump-tower-putin->

reporting.⁷ President Trump has also accused the IRS of targeting him for audits on religious and political grounds, an allegation which Commissioner Koskinen has denied.⁸

Though the Internal Revenue Code establishes as a “general rule” that tax “[r]eturns and return information shall be confidential,”⁹ the Code sets out numerous exceptions under which disclosure of tax records is appropriate. One of those exceptions is § 6103(k)(3), which states:

Disclosure of return information to correct misstatements of fact. -- The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer’s return or any transaction of the taxpayer with the Internal Revenue Service.¹⁰

Once the Joint Committee has approved a release of particular tax records, the IRS Commissioner may then release such documents “to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer’s return.”¹¹ Notably, § 6103(k)(3) permits the disclosure of taxpayer records “to the public at large” rather than “specified private individuals . . . or government officials.”¹²

Congress enacted § 6103(k)(3) as part of the Tax Reform Act of 1976.¹³ In the wake of the Watergate scandal, members of Congress had grown “alarm[ed]” about the “political misuse of the Internal Revenue Service” by the Nixon Administration.¹⁴ Section 6103 was a direct

felix-sater.html (“In January 2016, [Michael] Cohen wrote to Mr. Putin’s spokesman, Dmitri S. Peskov, asking for help restarting the Trump Tower project, which had stalled.”).

⁶ Paul Waldman, *With Trump and Russia, It’s All About the Money*, Wash. Post (July 19, 2017), <https://www.washingtonpost.com/blogs/plum-line/wp/2017/07/19/with-trump-and-russia-its-all-about-the-money/> (“Eric Trump told him that that they didn’t need loans from American banks for golf course projects, because ‘We have all the funding we need out of Russia.’”); Tom Hamburger et al., *Inside Trump’s Financial Ties to Russia and His Unusual Flattery of Vladimir Putin*, Wash. Post (June 17, 2016), (“‘Russians make up a pretty disproportionate cross-section of a lot of our assets,’ Trump’s son, Donald Jr., told a real estate conference in 2008[.]”).

⁷ E.g., Jeff Nesbit, *Donald Trump’s Many, Many, Many, Many Ties to Russia*, Time (Aug. 15, 2016), <http://time.com/4433880/donald-trump-ties-to-russia/>; Philip Bump, *Trump’s long history of seeking a politically inconvenient business deal in Russia*, Wash. Post (Aug. 28, 2017), <https://www.washingtonpost.com/news/politics/wp/2017/08/28/trumps-long-history-of-seeking-a-politically-inconvenient-business-deal-in-russia/>.

⁸ *Newsmakers with John Koskinen*, C-SPAN (Feb. 26, 2016), <https://www.c-span.org/video/?405379-1/newsmakers-john-koskinen> (“That’s something that would never cause you to be audited. I’ve tried to make clear, certainly since I’ve been commissioner, that we don’t care who you are, who you voted for, what party you belong to, whether you go to church or don’t go to church. If you hear from us in response to an inquiry, it is about something in your tax return.”).

⁹ 26 U.S.C. § 6103(a).

¹⁰ § 6103(k)(3).

¹¹ *Id.*

¹² *Church of Scientology of Cal. v. IRS*, 792 F.2d 146, 149 (D.C. Cir. 1986) (citing § 6103(k)(3)).

¹³ Pub. L. 94-455, § 1202, 90 Stat. 1520, 1678–79 (1976) (relevant section codified at 26 U.S.C. § 6103).

¹⁴ *Federal Tax Return Privacy: Hearings Before the Subcomm. on Admin. of the Internal Revenue Code of the S. Comm. on Fin.*, 94th Cong. 92 (1975) (statement of Rep. Jerry Litton).

response to these concerns, serving as a “legislative remedy to the flaws of Government exposed by the chain of abuses we call Watergate.”¹⁵

Section 6103(k)(3) was enacted to ensure “integrity and fairness in administering the tax laws” and to “protect . . . the tax system against unwarranted public attacks.”¹⁶ The Senate Finance Committee, which added the text of § 6103(k)(3) to the Tax Reform Act, emphasized that the core purpose of subsection (k) was to ensure the disclosure of certain tax records:

The committee decided that it was necessary to allow the disclosure of returns and return information decided in certain miscellaneous situations. . . . In each situation, the committee decided either that the returns or return information should be public as a matter of policy, or that the reasons for the limited disclosures involved outweighed any possible invasion of the taxpayer’s privacy which might result from the disclosure.¹⁷

As Sen. Chuck Grassley observed of § 6103(k)(3) in the years following its passage: certain “type[s] of factual misstatements should trigger disclosure of return information” depending on the “consequences of these misstatements” and “their degree of seriousness.”¹⁸ The propriety of a particular release “depends on the reason for the disclosure and the type of information to be disclosed.”¹⁹

In view of President Trump’s financial ties to Russia, his unprecedented refusal to publish his tax returns, and his repeated misstatements about the IRS and his sources of income, there has never been a more appropriate moment for the Joint Committee on Taxation and the Commissioner to release tax records pursuant to § 6103(k)(3). Moreover, the public interest in the release of this information could not be greater. Safeguarding our elections is crucial to government accountability, and the release of these documents would contribute significantly to the public’s understanding of the integrity of the 2016 election.

On August 18, 2017, the U.S. District Court for the District of Columbia ruled that the IRS may withhold President Trump’s tax records sought by the Electronic Privacy Information Center (EPIC) under the FOIA.²⁰ As the court explained:

EPIC alleged that Trump had indeed made several misstatements to the public. Specifically, he had insisted on Twitter (and, in substance, elsewhere):

For the record, I have ZERO investments in Russia.
Russia has never tried to use leverage over me. I HAVE NOTHING TO
DO WITH RUSSIA - NO DEALS, NO LOANS, NO NOTHING!

¹⁵ 122 Cong. Rec. 24,013 (1976) (statement of Sen. Weicker).

¹⁶ *Confidentiality of Tax Return Information: Hearing Before the Comm. on Ways and Means, 94th Cong. 22–23* (1976) (statement of Donald C. Alexander, Commissioner of Internal Revenue).

¹⁷ S. Rep. No. 94-938, at 340 (1976).

¹⁸ 127 Cong. Rec. 22,510 (1981) (statement of Sen. Grassley).

¹⁹ *Id.*

²⁰ *EPIC v. IRS*, No. CV 17-670 (JEB), 2017 WL 3600394 (D.D.C. Aug. 18, 2017).

See @realDonaldTrump, Twitter (July 26, 2016, 3:50 PM); *id.* (Jan. 11, 2017, 4:31 AM).²¹

The Court stated that “until President Trump or Congress authorizes release of the tax returns, EPIC (and the rest of the American public) will remain in the dark.”²² But the court also noted that the IRS has the authority to release the President’s tax returns with the approval of the Joint Committee on Taxation.

We urge the Committee to support the release and the IRS to release the returns. The public has a right to know about the extent of Russian interference with the 2016 Presidential election.

We urge you to act immediately on this request.

Sincerely,

Advocacy for Principled Action in Government
Citizens for Responsibility and Ethics in Washington (CREW)
Constitutional Alliance
Consumer Action
Consumer Watchdog
Center for Media and Democracy
Demand Progress
Electronic Privacy Information Center (EPIC)
Essential Information
First Amendment Coalition
Government Information Watch
In The Public Interest
National Workrights Institute
Niskanen Center
OpenTheGovernment
Privacy Times
Society of Professional Journalists
Sunlight Foundation

²¹ *Id.* at *3.

²² *Id.* at *1.