

HOUSE COMMITTEE ON  
**WAYS & MEANS**

**REPORT ON THE  
INTERNAL REVENUE SERVICE'S  
MANDATORY AUDIT PROGRAM  
UNDER THE PRIOR ADMINISTRATION  
(2017-2020)**

Chairman Richard E. Neal  
December 20, 2022



## *PREFACE*

At the opening of every Congress, each person undertaking office as a member of the United States House of Representatives or the United States Senate swears to “support and defend the Constitution of the United States against all enemies, foreign and domestic.” Our civil servants and members of the armed forces pledge to do the same. The President of the United States must likewise swear that he or she “will to the best of my ability, preserve, protect, and defend the Constitution of the United States.” Unlike the custom in many other parts of the world, none of these officials owes any oath of loyalty to a king, a queen, an autocrat, or a political party.

The roots of this practice we observe today stretch back to our country’s earliest days. When the United States was founded, vesting a nation’s ultimate power and legal authority in a constitution—instead of in an individual—was a radical concept and a highly deliberate decision. The Framers understood this choice very well: they had been subjects of King George, who wielded power cruelly and arbitrarily. All around them, they had seen the consequences of unconstrained power preserved in the hands of an unaccountable leader who held himself above the law. The people were answerable to laws that they had no part in approving. They were required to pay heavy taxes and to quarter British soldiers in their homes against their will. They were subject to trials with no right to a jury. The justice system was misnamed: judges were selected and paid by the King—and expected to do his bidding. The host of insults to their autonomy and the miscarriages of justice mounted so high that eventually the colonists saw no alternative but to wage a war of independence.

When they won it and took on the task of organizing a new government, they were determined not to trade one autocrat for another. They negotiated a constitution that constrained power by distributing governmental authority across three separate and independent branches and establishing robust checks and balances among them. They required elections for many offices, with terms that expired after a specified period. They ensured that those who would hold office would be subject to public accountability through impeachment processes. They aimed to make their people citizens and not subjects, and their leaders representatives and not tyrants. While to this day an imperfect document, the U.S. Constitution was and remains a groundbreaking experiment in democracy.

This experiment, and these institutions, survive not because they are inevitable: they are not. They survive because we value and defend them. The Framers enshrined in our constitution a kernel of truth from the first tentative spark of the Magna Carta in 1215: that we consent to a rule of law, not a law of rulers. In the United States of America, no one is above the law, even—perhaps especially—the President.

Just like every other American, the President of the United States is obligated to pay taxes owed. This is a core responsibility of our common citizenship: without tax revenue, our government would cease to exist. Unlike many nations, we operate a largely voluntary tax compliance system, supported by oversight and auditing. That means that our revenue system—and hence our democracy—hinge on public faith that our tax laws are administered fairly and without favor.

Auditing the income taxes of the President of the United States is unlike auditing the income taxes of any other American. No one else has the power to sign bills into law—bills which could affect the President’s personal financial situation. Nor do they have the power to personally direct every department, agency, bureau, and office of the vast executive branch of government—opening limitless opportunities to affect the President’s personal finances. And no other American has the comparable power to appoint or terminate officials responsible for decisions that could affect the President’s personal financial prospects.

We maintain that how Presidents exercise these powers and the extent to which the Internal Revenue Service (IRS) audits and enforces our federal tax laws to ensure compliance by Presidents, are a valid and crucial subject of legislative scrutiny. The public must have confidence that our tax laws apply evenly and justly to all, regardless of power or position. The effort to provide oversight of the mandatory audit program is and always has been about ensuring that our tax laws are administered fairly and without preference.

The Committee’s investigation revealed only one mandatory audit was started under the prior Administration and the program was otherwise dormant, at best. For this reason, it is recommended that there should be a statutory requirement for the mandatory examination of the President with disclosure of certain audit information and related returns in a timely manner. Such statutory requirement would ensure the integrity of the IRS, enable IRS employees to fully audit all issues, and restore confidence in the Federal tax system. To this end, this report includes a discussion draft of legislation to codify the mandatory audit program and require certain disclosures.

**TABLE OF CONTENTS**

EXECUTIVE SUMMARY ..... 1

I. The Committee’s Investigation..... 4

II. Cause for Concerns ..... 5

III. The Committee’s Authority For Review ..... 5

    A. The Committee’s Jurisdiction ..... 5

    B. Section 6103 of the Code ..... 6

    C. Procedural History..... 7

IV. The Mandatory Audit Program..... 9

    A. History..... 9

    B. The Internal Revenue Manual ..... 10

    C. Department of the Treasury’s 2019 Congressional Briefing ..... 11

V. The Investigatory Review of the Returns and Return Information..... 16

    A. The Chairman’s Request ..... 16

    B. Tax Returns and Return Information Received and Reviewed..... 17

    C. Tax Returns Submitted to Committee Members in Executive Session ..... 17

    D. The Ownership of the Entities as Shown on the Returns..... 18

    E. Review of the Audit Files and Workpapers ..... 18

    F. Observations..... 19

VI. Findings and Recommendations ..... 23

    A. Congress should codify the mandatory audit program to require the IRS to (1) conduct mandatory audits while a President is in office and (2) publicly disclose related returns and return information. .... 23

    B. The IRS should revise the IRM procedures related to the mandatory examination of a President..... 24

    C. The IRS should provide staffing and resources necessary for a full and timely audit of the President and prescribe that the audit team must be comprised of two senior IRS agents, a partnership specialist, a foreign specialist, and a financial products specialist. .... 24

## EXECUTIVE SUMMARY

For nearly four years, the Committee on Ways and Means (Committee) has been investigating how the IRS enforces the federal tax laws against, and ensures compliance by, a President. In particular, the Committee sought answers about the IRS’s internal policy that requires a mandatory examination of individual income tax returns filed by Presidents and Vice-Presidents. This policy is found in the Internal Revenue Manual (Manual or IRM), a compilation of internal guidelines for IRS employees, and is not currently codified in the Internal Revenue Code of 1986, as amended (Code).

The Manual provides that the “[i]ndividual income tax returns for the President and Vice President are subject to mandatory examinations.” *See* IRM §§ 3.28.3.4.3 (01-01-2019) [updated 3.28.3.5.3 (11-17-2020)] & 4.2.1.15. The Manual contains no further information about the timing, scope, or oversight of the mandatory examination (also commonly referred to as a “mandatory audit”).

The Committee sought the return information and tax returns of the former President to investigate how the IRS’s mandatory audit program operated under the stress of a President who maintained financial interests in hundreds of related entities and reportedly was under audit every single year. The Committee expected to find that the mandatory audit program expanded to account for the former President. The Committee also expected to find that the mandatory examinations of the former President’s tax returns would have been started promptly and completed during his Presidency. However, the designating agents made a concerning discovery. The designated agents found that there was only one mandatory audit started and none completed during his four years in office. Clearly, the mandatory audit program was dormant, at best, during the prior Administration.

The former President was in office from January 20, 2017 through January 20, 2021. During those years, his individual income tax returns for tax years 2015 through 2019 were filed with the IRS on the dates below as listed on the transcripts of his tax account information. Under the Manual, his individual tax returns for those years should have been subject to a mandatory examination. Yet, the designated agents found the below information regarding the selection of the former President’s individual income tax returns for examination by the IRS. The former President’s individual income tax returns filed in 2018, 2019, and 2020 were not selected for examination until after he left office and only the 2016 tax return was subject to a mandatory examination.

<b>Tax Year</b>	<b>Date Return Filed</b>	<b>Date Selected for Examination</b>	<b>Designated by IRS as Mandatory Audit</b>
2015	February 27, 2017	April 3, 2019	No
2016	November 6, 2017	September 18, 2019	Yes
2017	November 5, 2018	March 23, 2021*	No
2018	November 11, 2019	March 23, 2021*	No
2019	November 9, 2020	April 4, 2022*	No
2020	May 16, 2022	None	No

*\*Former President no longer in office.*

Notably, the IRS sent a letter to the former President notifying him that his tax year 2015 return was selected for examination on April 3, 2019, which is the date the Chairman sent the initial request to the IRS for the former President’s return information and related tax returns.

The designated agents were told by the IRS that two of the entities the Chairman requested were included in the mandatory audit program—DJT Holdings LLC and DJT Holdings Managing Member LLC (DJTH Managing Member). The designated agents found the below information regarding DJT Holdings LLC’s date of filing on the transcripts and selection for examination and very little information for DJTH Managing Member.

<b>Tax Year</b>	<b>Date Return Filed</b>	<b>Date Selected for Examination</b>	<b>Designated by IRS as Mandatory Audit</b>
2015	October 10, 2016	July 25, 2019	No
2016	October 16, 2017	February 11, 2020	No indication
2017	October 8, 2018	March 19, 2021*	No
2018	October 21, 2019	January 28, 2022*	No
2019	October 12, 2020	April 5, 2022*	No
2020	February 21, 2022	None	No

\* Former President no longer in office.

During the prior Administration, it was clear that the mandatory audit program was not a priority and was not provided with the resources needed to ensure compliance by the former President. An internal IRS memo stated: “With over 400 flow-thru returns reported on the Form 1040, it is not possible to obtain the resources available to examine all potential issues.” The designated agents found that the following issues, among others, warranted examination by the IRS:

- *Charitable contributions*—whether the 2015 conservation easement deduction of \$21 million and other large donations reported on the Schedule A were supported by required substantiation.
- *Verification of Net Operating Loss Carryover Schedule*—whether the amount of net operating loss carryover in 2015 of \$105,157,825 and future years was proper.
- *Unreimbursed partnership/S corporation expenses*—whether the terms of the partnership agreements supported unreimbursed expense deductions totaling \$27 million over six years.
- *Related party loans*—whether loans made to the former President’s children are loans or disguised gifts that could trigger gift tax.
- *Cost of goods sold deductions by DJT Holdings*—whether these deductions of about \$126.5 million over five years is appropriate when it is not clear what DJT Holdings is selling from the face of the return.
- *LFB Acquisition LLC*—whether there is any support for changes in the management fees and general and administrative expenses of LFB Acquisition that were significantly higher in 2017 (\$1.9 million and \$2.8 million, respectively) than 2016 (\$750,000 and \$549,000, respectively) and 2018 (\$707,000 and \$570,000, respectively).

In light of the findings of this investigation, Committee action is necessary. Our tax system must function fairly and equitably, and Americans must have confidence that no taxpayer is able to operate above the law. This, of course, extends to the President of the United States, who is the single most powerful public official in the country. With this in mind, the Committee has the following recommendations regarding the mandatory audit program:

- Congress should codify the mandatory audit program to require the IRS to conduct mandatory audits while a President is in office and publicly disclose related returns and return information;
- The IRS should revise the Manual procedures related to the mandatory examination of a President; and
- The IRS should provide adequate and appropriate staffing and resources necessary for a full and timely audit of the President and prescribe that the audit team be comprised of two senior IRS agents, a partnership specialist, a foreign specialist, and a financial products specialist.

## **I. The Committee's Investigation**

There is virtually nothing known about the IRS's mandatory audit program other than that it is an internal policy and requires mandatory examinations of Presidents and Vice-Presidents. Since the IRS adopted this policy in 1977, Congress has been told nothing about the operation of this program.

Until recently, the Committee did not know for certain whether the IRS conducted these mandatory examinations and, if so, whether they were in accordance with this policy, thorough, and fair. At its core, the Committee sought to understand how the program is administered in practice and whether IRS agents are able to act without interference. The Committee also sought to understand whether the IRS's internal policy should be codified.

There were many unanswered questions at the start of this investigation about the how the mandatory audit program operates in practice, including, but not limited to:

- whether revenue agents have the necessary resources to undertake a thorough review of a President's tax returns on an annual basis in a timely manner;
- how many revenue agents are involved;
- when must examinations begin and end;
- whether the mandatory audit is any different than other audits;
- what happens to any ongoing audits when a President is sworn into office;
- what happens when a President disagrees with an IRS position;
- the manner in which revenue agents determine the scope of an examination;
- whether revenue agents are required to include certain issues in an examination;
- what tax years and tax returns are included in an examination;
- whether revenue agents review underlying business activities, especially activities involving related or pass-through entities;
- whether revenue agents have access to the necessary information to substantiate amounts on the tax return;
- whether there have been any proposed adjustments; and
- whether IRS agents are able to operate freely from improper interference by a President.



## **II. Cause for Concerns**

Both as a candidate and once elected, the former President had frequently attacked the integrity of the IRS's audit process. As a candidate, he stated that he "unfairly get[s] audited," and asked, "Why is it that every single year, I'm audited, whereas other people that are very rich, people are never audited[?]" He also surmised that he was frequently audited "because of the fact that I'm a strong Christian, and I feel strongly about it and maybe there's a bias." When he was President, he continued to express skepticism about the integrity of the IRS's audit system. The White House Press Secretary stated in October 2018 that "[t]he [P]resident and First Lady filed their taxes on time and as always, they are automatically under audit, which the [P]resident thinks is extremely unfair."

Numerous investigative reports have revealed that the former President, through the complex arrangements of his personal and business finances, has engaged in aggressive tax strategies and decades-long tax avoidance schemes, including taking a questionable \$916 million deduction, using a grantor trust to control assets, manipulating tax code provisions pertaining to real estate taxes, and extensively using pass-through entities. Media reports have also revealed that he benefited from massive conservation easements, and that certain of his golf courses failed to properly account for wages paid to employees, raising questions about compliance with payroll and Social Security tax laws. As President, he took pride in "brilliantly" maneuvering the tax laws to his personal benefit. Even as he was championing the Tax Cuts and Jobs Act of 2017, the former President referred to the tax code as "riddled with loopholes" for "special interests—including myself."

On February 7, 2019, the Committee's Subcommittee on Oversight held a hearing on legislative proposals related to Presidents' tax returns. Then-Subcommittee Chairman John Lewis explained that the Subcommittee was exploring, among others, two issues: "Does the public have a need to know that a person seeking or holding the highest office in our country obeys the tax laws?" and "[I]s it fair to expect the IRS to enforce Federal tax law against the President who is the head of the executive branch and has final control of the agency?"

## **III. The Committee's Authority For Review**

Since there have been so few Presidents in the mandatory audit program, and the dates of any action taken would identify a particular President, the IRS asserted that no information could be provided to the Committee about the program without disclosing confidential taxpayer information. Thus, Chairman Neal requested access to returns and return information pursuant to Section 6103(f) of the Code to answer the Committee's questions, address its concerns, and fulfill its legislative and oversight responsibilities.

### **A. The Committee's Jurisdiction**

The Committee is a standing committee to which the House has delegated broad legislative, investigative, and oversight authority over "[r]evenue measures generally," and the "[d]eposit of public monies," which encompass the Treasury, the IRS, and all aspects of the Nation's tax laws and their administration. Rules X of the Rules of the U.S. House of Representatives.

The Committee is also charged by the Rules of the House with conducting oversight of the IRS's administration and enforcement of the Nation's tax laws. The Committee prepared an "Oversight plan" for the 116<sup>th</sup> and 117<sup>th</sup> Congresses, which lists "Oversight of legislative proposals and tax law related to Presidential and Vice-Presidential tax returns" as one topic for Committee investigation.

**B. Section 6103 of the Code**

Section 6103(a) of the Code prohibits the disclosure of taxpayer returns and return information, absent an explicit statutory exception. One such exception, Section 6103(f)(1), *requires* in clear and mandatory terms that the Secretary of the Treasury produce such information, upon written request, to any of the three Congressional committees with jurisdiction over federal tax issues, including the House Committee on Ways and Means. Section 6103(f)(1) provides:

Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary *shall furnish* such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

26 U.S.C. § 6103(f)(1) (emphasis added). Section 6103(f)(1) contains no exception to Treasury's obligation to furnish returns or return information to the Congressional tax committees upon written request.

Treasury's mandatory duty to furnish tax return information to the Committee reflects Congress's longstanding concern that it have access to that information for its legislative and oversight functions. Congress initially codified the Committee's broad right of access in 1924, in the wake of obstacles hampering Congressional oversight of alleged Executive Branch wrongdoing. Before 1924, the law permitted the inspection of individual tax returns by order of the President and under rules prescribed by the Treasury Secretary. As part of its investigation of alleged bribery of high-ranking federal officials in exchange for no-bid leases at the Teapot Dome oil field, the Senate sought from President Coolidge the tax returns of those allegedly involved—a request that President Coolidge initially resisted. During that time, a Congressional committee likewise sought tax return information in connection with an investigation of the Bureau of Internal Revenue, the IRS's predecessor. Lawmakers questioned whether Treasury Secretary Andrew Mellon had improperly maintained ownership interests in certain businesses while at Treasury and whether the Bureau of Internal Revenue had given preferential treatment to Mellon and his businesses. Congress also recognized that access to tax return information would assist its legislative responsibilities. As Senator George Norris explained, access to tax returns would "enable [Congress] to legislate correctly and to finally get a law without loopholes."

In 1924, therefore, Congress passed and President Coolidge signed the precursor to Section 6103(f), which provided that the Congressional tax committees “shall have the right to call on the Secretary of the Treasury” for tax return information and that it “shall be [the Secretary’s] duty to furnish[] any data of any character contained in or shown by the returns.” Congress used that provision (as later codified in Section 6103(f) of the Code) when it investigated the tax returns of President Nixon.

Tax returns were designated public records until 1976 with disclosure permitted by statute, regulations, or executive order. In 1976, following revelations of wrongdoing by President Nixon and White House officials, Congress overhauled the tax code’s confidentiality provisions. Congress restricted the President’s control over access to tax returns and amended Section 6103 to provide that taxpayer returns “shall be confidential,” unless one of thirteen exceptions applies. 26 U.S.C. § 6103(a), (c)-(o). In Section 6103(f), Congress specifically retained the mandatory disclosure obligation that it had imposed on Treasury a half century earlier. (*See JCX-3-19, Background Regarding the Confidentiality and Disclosure of Federal Tax Returns (February 4, 2019).*)

The Committee has frequently relied on Section 6103(f) to obtain information relevant to its legislative and oversight functions—including tax returns and return information concerning specific individuals. However, on May 6, 2019, Treasury Secretary Mnuchin denied the Chairman’s request for certain tax returns and return information of the former President. Never before had the IRS refused to comply with a request from a Congressional tax committee for tax returns and return information under Section 6103(f)(1). Never before had the Treasury Secretary been involved in responding to a request for tax returns under Section 6103 of the Code. And never before had the Treasury Department formally considered whether there is a legitimate legislative purpose behind a Section 6103(f) request.

### **C. Procedural History**

Prior to April 3, 2019, there were three political appointees nominated by the former President and sworn into office who were involved in the Committee’s request for tax returns and return information: (1) the Secretary of the Treasury (Steven T. Mnuchin); (2) the Commissioner of the IRS (Charles P. Rettig); and (3) the IRS Chief Counsel (Michael Desmond).

On April 3, 2019, Chairman Neal sent a letter to IRS Commissioner Rettig requesting individual and select entity tax returns and return information of then-President Donald J. Trump pursuant to Section 6103(f) of the Code. On April 10, 2019, Secretary Mnuchin responded to Chairman Neal explaining that Treasury would not be able to complete review of the request by the April 10<sup>th</sup> due date. Secretary Mnuchin stated that Treasury had begun consultations with the Department of Justice (DOJ) regarding the request.

On April 13, 2019, Chairman Neal sent a letter to Commissioner Rettig stating that, if the IRS failed to provide the requested returns and return information by April 23, 2019, it would be interpreted as a denial of the request.

On April 23, 2019, Secretary Mnuchin responded to Chairman Neal stating that Treasury expects to provide the Committee with a final decision by May 6, 2019. On the same date,

Commissioner Rettig also sent a letter to Chairman Neal stating that Treasury referred the request to DOJ, and the IRS was awaiting further guidance and direction on legal issues prior to responding.

On May 6, 2019, Secretary Mnuchin responded to Chairman Neal stating that the requested tax returns and return information would not be provided. On the same date, Commissioner Rettig also responded to Chairman Neal stating that he concurs with the letter sent by Secretary Mnuchin.

On May 10, 2019, Chairman Neal issued a subpoena to Commissioner Rettig and Secretary Mnuchin for six years of Donald J. Trump's individual and select entity tax returns and return information. The IRS and Treasury failed to comply with the subpoena.

On June 10, 2019, Treasury and IRS staff provided a bipartisan briefing to Committee staff on the mandatory audit program. Committee staff prepared hundreds of questions, the majority of which Treasury refused to answer. Despite authorization under Section 6103(f) by the Chairman, Treasury said that they could not share confidential taxpayer information with Committee staff.

On June 13, 2019, Committee staff sent Treasury a list of unanswered questions from the briefing.

On June 21, 2019, Treasury acknowledged receipt of the June 13 letter and promised to provide the Committee with answers expeditiously. No answers were subsequently provided.

On June 28, 2019, Chairman Neal sent a letter to Treasury and the IRS reiterating concerns following the June 10 briefing.

On July 2, 2019, the Committee filed a lawsuit in the United States District Court for the District of Columbia to obtain the requested tax returns and return information. The case was assigned to Judge Trevor N. McFadden.

On June 16, 2021, Chairman Neal sent a letter to IRS Commissioner Rettig and Treasury Secretary Yellen requesting the individual and select entity tax returns and return information of the former President for tax years 2015 through 2020 pursuant to Section 6103(f). As an accommodation, the letter set forth the Committee's reasoning and need for the tax returns and return information. (*See Attachment A.*)

On July 30, 2021, the DOJ's Office of Legal Counsel (OLC) rendered an opinion that the Chairman's request was valid.

On December 14, 2021, the United States District Court for the District of Columbia ruled that the Committee could obtain the request tax returns and return information. On the same day, the former President filed an appeal in the United States Court of Appeals for the District of Columbia Circuit.

On August 9, 2022, a panel of three judges of the United States Court of Appeals for the District of Columbia Circuit affirmed the opinion of the United States District Court for the District of Columbia.

On August 18, 2022, the former President filed a petition for a rehearing en banc.

On October 27, 2022, the United States Court of Appeals for the District of Columbia Circuit denied the former President's petition for a rehearing en banc.

On October 31, 2022, the former President filed an emergency application for stay with the United States Supreme Court.

On November 1, 2022, United States Supreme Court Chief Justice John G. Roberts, Jr. stayed the mandate of the United States Court of Appeals for the District of Columbia Circuit pending further order of the Supreme Court.

On November 22, 2022, the United States Supreme Court denied the former President's application for stay of the mandate. On the same date, the United States Court of Appeals for the District of Columbia Circuit issued the formal mandate of the Court.

On November 23, 2022, agents designated by the Chairman Neal under Section 6103(f) (designated agents) began a review at the IRS National Office of the available tax returns and return information requested by the Chairman.

On December 11, 2022, Chairman Neal provided access to the requested tax returns and return information to Ranking Member Brady and his selected staff pursuant to a written request from the Ranking Member.

On December 14, 2022, the designated agents completed review of the requested tax returns and return information.

#### **IV. The Mandatory Audit Program**

##### **A. History**

History shows that it is reasonable to conduct oversight of the IRS's ability to fairly and fully enforce the tax laws against a President. (*See JCX-3-19.*) During the Nixon Administration, a question arose as to whether the IRS, an agency that is under and answering to the President, can be expected to fully examine the President's return without (actual or perceived) intimidation. In 1973, issues about President Nixon's tax compliance became a public concern. Questions arose concerning an undisclosed gift of presidential papers to the National Archives as well as other questionable deductions related to his 1969-1972 tax returns. President Nixon generally denied any impropriety. He also offered a letter the IRS had provided him noting his returns were accepted as filed and complimenting him on the care taken with preparation of his returns.

As the controversy continued, President Nixon sent a letter to Ways and Means Chairman Mills requesting that the Joint Committee on Taxation (JCT) review his returns. The letter also included a promise to pay any additional tax that may be due. Subsequent review by the JCT showed a deficiency of over \$470,000. (*See JCX 3-19.*)

On February 7, 2019, at a hearing of the Committee’s Subcommittee on Oversight, Joseph Thorndike, Director of the nonprofit, nonpartisan Tax History Project, described the history of the program as follows:

In 1977, however, the IRS established new procedures formally requiring an annual audit for both the president and vice president while in office. According to IRS officials at the time, the new policy was established “in the interest of sound administration” and in light of “everything that has happened in the past.” (footnote omitted.)

The “past” in question was almost certainly Nixon’s. And notably, Nixon’s returns had been audited by the IRS – twice. The second audit, conducted in concert with the JCIRT examination, found numerous problems with Nixon’s tax returns. But the initial audit of his 1971 and 1972 returns had concluded with a slightly obsequious note from one IRS district director to the president. “Our examination of your income tax returns for the year 1971 and 1972 reveal that they are correct, he wrote in June 1973. “Accordingly, these returns are accepted as filed. I want to compliment you on the care shown in the preparation of the returns.” (footnote omitted.)

Nevertheless, a mandatory audit, even if imperfect, was presumably better than the possibility of no audit whatsoever. Under the new IRS policy established in 1977, no IRS employee would be required to make the affirmative decision to audit the president; it would be routine.

(See Attachment B.)

## **B. The Internal Revenue Manual**

The Manual provides that the “[i]ndividual income tax returns for the President and Vice President are subject to mandatory examinations.” See IRM §§ 3.28.3.4.3. (01-01-2019) [updated 3.28.3.5.3 (11-17-2020)] & 4.2.1.15. The Manual contains no further information about the timing, scope, or oversight of the mandatory examination.

IRS guidelines specify that the individual returns of a sitting President and Vice President are subject to a mandatory examination. The auditing process for Presidents’ returns is not currently codified in the Code; instead, it is set forth in the Manual, a compilation of internal guidelines for IRS employees. The Manual provides that the “individual income tax returns for the President and Vice President are subject to mandatory [audit] examinations” and that “[r]elated returns, including estate and gift tax returns, will be handled in accordance with procedures relating to all taxpayers.” The Manual generally prescribes the process for the review of these returns, and emphasizes the need for expedition and sensitive handling, but it leaves numerous aspects of the audit process either ambiguous, unaddressed, or up to an auditor’s discretion. It does not specify the scope, length, or depth of the IRS’s examination of the returns (for example, whether the audit extends to business or related entities connected to the taxpayer, open tax years, or ongoing audits). Nor does it set out the makeup or decision-making structure of the IRS’s audit team, or how the IRS agents conducting the audit should interact with the President and those representing him.

1. 1977 IRS Memorandum

In 1977, the IRS formalized procedures for processing the income tax returns of Presidents and Vice-Presidents and for the mandatory examination of those returns. (*See Attachment C.*) Among other procedures the memorandum generally states that:

- All tax returns for the President and Vice-President will receive normal pipeline processing through the service center; and
- Individual income tax returns for the President and the Vice-President will be subject to mandatory audit examination.

2. Special Processing of Tax Returns

The Manual contains special procedures governing the processing of the individual tax returns filed by Presidents and Vice-Presidents. (*See Attachment D.*) For example, they are required to be mailed to a specified location and then to the Deputy Commissioner for Services and Enforcement. There also are special rules to ensure the privacy and security of these returns. The IRM further states that copies of the returns must be transmitted to the examining office, and the transmittal memo should contain the following directions:

- a. Regardless of the Discriminant Index Function (DIF) score, the returns will be examined.
- b. IRS personnel, including specialists, will be assigned to the examination as appropriate.
- c. The Examination Area Director, or his/her designee, will arrange for contact with the authorized representatives of the President and Vice President for the beginning of the examination.
- d. All relevant IRM procedures will apply to these examinations.
- e. The examination papers of the President and Vice President are subject to regular retention procedures Document 12990, RCS 23, Item 43a.

Additional processing procedures are provided for in another section of the IRM. (*See Attachment D.*) It states that, upon receipt of the returns in the examining group, they “must be assigned within 10 business days” and further states that “[t]he returns require expeditious handling at all levels to ensure prompt completion of the examinations.” *See* IRM § 4.2.1.15 (5) (emphasis added).

**C. Department of the Treasury’s 2019 Congressional Briefing**

Once the returns are processed, they are subject to a “mandatory examination.” There is no further elaboration on the operation of the mandatory examination program in the IRM.

On June 10, 2019, Committee staff, on a bipartisan basis, met with IRS and Treasury officials to receive a briefing on “Mandatory Examinations of Presidents’ and Vice Presidents’

Income Tax Returns.” Attendees at the meeting included then-IRS Chief Counsel Michael Desmond, IRS Counselor to the Commissioner Thomas Cullinan, then-IRS Deputy Commissioner for Services and Enforcement Kirsten Wielobob, IRS Senior Advisor to the Office of the Commissioner Dianne Grant, former Treasury Deputy Assistant Secretary for Legislative Affairs Frederick Vaughan, one IRS employee, and two former Treasury officials. They declined to answer all questions relating to the actual audits of any President, including basic questions such as how long those audits generally take or whether there have ever been any assessments made to Presidential returns.

#### 1. Briefing Materials

Prior to the briefing, Treasury officials sent a slide presentation to Committee staff, which would be used at the briefing. (*See Attachment D.*) The slides contained the following information about the mandatory audit program:

##### *Assignment and Scope of Exam*

- The appropriate business division for examination of a return is determined by the Office of the Deputy Commissioner for Services and Enforcement based on the complexity of the return and whether the Officeholder’s return (or related return) is already under examination by one of the divisions for prior years.
- The scope and depth of the mandatory examination is determined by the revenue agent by reference to established risk protocols.
- Examiners must use their professional judgment to set the scope of the examination.
- The initial examination scope determinations are revisited throughout the course of the mandatory examination and, at a minimum, must be evaluated at the midpoint of the examination and when a significant event occurs.
- The examiner must consider the facts and circumstances, evaluate internal controls and use professional judgment to determine whether the scope should be expanded or contracted. Examiners must document the reasons for expanding or contracting the scope of the examination.
- Based on risk protocols, the scope of the mandatory examination can be expanded to include prior year and related returns as well as other types of tax liabilities (*e.g.*, gift tax liabilities and employment tax liabilities with respect to household employees).
- Entity and other returns that impact the Officeholders’ income tax return (*e.g.*, the return of a partnership issuing a Schedule K-1 to the Officeholder) are subject to mandatory compliance checks.
- After the Officeholder’s return is assigned but prior to initial contact, the revenue agent will risk assess the return and review any large, unusual, or questionable items (LUQ items).



- The IRM contains a checklist of issues that the revenue agent should consider in the pre-contact analysis to determine whether an item on a return is an LUQ item.
- Whether an item on an Officeholder's return is an LUQ item will depend on the revenue agent's perception of the return as a whole and the separate items that comprise the return.
- Factors revenue agents are directed to consider when considering LUQs include: comparative size of the item, absolute size of the item, inherent character of the item, evidence of intent to mislead, beneficial effect of the manner in which an item is reported, relationship to other items, whipsaw issues, and missing items.
- In conducting the examination of an Officeholder's return, the revenue agent must exercise judgment in determining the depth required for the examination, *i.e.*, the degree of intensity and thoroughness applied in order to make a determination as to the correctness of a reported item.
- Factors the revenue agent should consider in making the depth determination include: type of evidence available or expected for the issue, complexity of the issue, materiality of the issue, and internal controls.
- The revenue agent may request advice or guidance from the Office of Chief Counsel on any technical or procedural matter related to the tax liability of the Officeholder.
- The revenue agent may also request informal advice from Counsel.

#### *Contact with Officeholder*

- The Examination Area Director or other appropriate manager arranges for preliminary contact with the Officeholder's authorized representative.
- After the planning phase and the initial manager contact, the assigned revenue agent will contact the Officeholder's representative to initiate the mandatory examination, sending an initial contact letter. The initial contact letter should include a focused Information Document Request informing the Officeholder of the specific information or documents to be provided at the initial appointment.
- Separate initial contact letters are sent to the Officeholder and their spouse in the case of a joint return filed under Section 6013.
- Generally, the Officeholder will have 14 days from the date of the initial contact letter to respond to the revenue agent.
- After sending the initial contact letter, the revenue agent will schedule an initial meeting with the Officeholder's representative.

- The examination of an Officeholder may include interviews of the Officeholder, the person preparing the Officeholder's return, or third parties with knowledge of items reported on the return.

#### *Disposition of Exam*

- After all the facts have been gathered through examination of books, records and supporting documents, interviews, etc. and the revenue agent has all the information to be considered in resolving the issues, the revenue agent applies their professional judgment to arrive at a conclusion regarding all items that were identified for examination.
- Revenue agents are given the authority to recommend the proper disposition of all identified issues, as well as any issues raised by the Officeholder.
- When the mandatory examination is complete, any proposed adjustments to the Officeholder's return are summarized and explained on an IRS Form 4549, Income Tax Examination Changes or an IRS Form 5701, Notice of Proposed Adjustment.
- The revenue agent should solicit agreement to any proposed adjustments and attempt to secure agreement to the proposed tax liability.
- The revenue agent must inform their group manager when they believe an examination will have unagreed issues.
- If there are unagreed issues, the revenue agent must issue the appropriate 30-day letter to transmit the examination report to the Officeholder's representative and provide 30 days to request consideration to the IRS Office of Appeals.

## 2. Discussions at the Briefing

At the briefing, Treasury declined to provide information about the actual operations of the mandatory audit program. Instead, Committee staff was provided vague information about the process used for mandatory examination. The following key questions and answers reinforced the need for the Committee's investigation and possible reforms:

**Q:** Trying to figure out if you have a taxpayer that has an open audit for certain business activity, but then the current return gets submitted. Does the individual return get pulled with the business return?

**A:** Wouldn't make a difference, focus is on the individual 1040.

**Q:** Do you start the audit the year it is filed?

**A:** There's not a prescription when to start the audit.

**Q:** On these audits, how big are the teams?

**A:** If we can go with one, we'll go with one. Depends on resources. No prescribed number.

**Q:** Just because it is written down in the Manual, that does not mean it is done. What kind of guarantee can you put in place that the IRM procedures are being followed?

**A:** Interesting question.

**A:** That is a Treasury policy question. Will take it back.

Notably, of the eight IRS and Treasury attendees present at the briefing, there was not one person who was or is involved in, or was or is an examiner for, a mandatory presidential audit.

### 3. Concerns After the Briefing

IRS and Treasury attendees declined to answer the majority of Committee staff questions for a range of reasons, including: (1) lack of authorization under Section 6103 despite Republican and Democratic Committee staff having Section 6103 authorization from the Chairman and knowledge of the limitations placed on return information when only a few taxpayers are involved, (2) objections raising various privileges, (3) inability to evaluate tax policy considerations, and (4) lack of awareness of specific internal policies and practices.

Committee staff also found various, important instances where IRS practice did not conform to procedures outlined in the Manual. The IRS and Treasury officials acknowledged that the Manual's provisions on audits of Presidents' returns are outdated and diverge from current practice. The briefing reinforced concerns about the substantial discretion an IRS revenue agent possesses in conducting the audit of presidential returns and the absence of guardrails to ensure that such employee is not subject to undue influence by a President or his representatives. The absence of direction on the scope of an audit reinforced the need for oversight and codification of procedures related to the mandatory examination of a President's return.

The briefing raised more concerns for the Committee about the IRS audit program. For example, the officials reported that the program lacks procedures for handling a President's grantor trust, the financial instrument the former President has reportedly used to organize his assets (eschewing the blind trust arrangement Presidents typically use and that the Manual explicitly contemplates). The officials also stated that a single IRS agent generally has substantial discretion in auditing a President's tax returns, raising concerns about the absence of safeguards to protect the audit process from improper political influence. The Committee's concerns are particularly acute because the Manual calls for contact between the IRS agent and the President's representative at the beginning of the examination. *See, e.g.,* I.R.M 3.28.3.4.3; 4.2.1.15.

On June 28, 2019, Chairman Neal notified Secretary Mnuchin and Commissioner Rettig that the briefing had "reinforced the Committee's need to review the actual return information as part of our oversight duties." Chairman Neal explained that review of the returns and audit-file information was necessary to "evaluate the accuracy of the President's claims about the audit system, assess the fairness and effectiveness of the audit program and the scope of the audits being performed on the President's returns," and "understand how particular provisions of the [tax code] are being enforced as part of the IRS's review."

**V. The Investigatory Review of the Returns and Return Information**

**A. The Chairman's Request**

On June 16, 2021, the Chairman requested the following tax returns and return information for each of the tax years 2015 through 2020:

1. The Federal individual income tax returns of Donald J. Trump.
2. For each Federal individual income tax return requested above, a statement specifying:  
(a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).
3. All administrative files (workpapers, affidavits, etc.) for each Federal individual income tax return requested above.
4. The Federal income tax returns of the following entities:
  - The Donald J. Trump Revocable Trust;
  - DJT Holdings LLC;
  - DJT Holdings Managing Member LLC;
  - DTTM Operations LLC;
  - DTTM Operations Managing Member Corp;
  - LFB Acquisition Member Corp;
  - LFB Acquisition LLC; and
  - Lamington Farm Club, LLC d/b/a Trump National Golf Club—Bedminster.
5. For each Federal income tax return of each entity listed above, a statement specifying:  
(a) whether such return is or was ever under any type of examination or audit; (b) the length of such examination or audit; (c) the applicable statute of limitations on such examination or audit; (d) the issue(s) under examination or audit; (e) the reason(s) the return was selected for examination or audit; and (f) the present status of such examination or audit (to include the date and description of the most recent return or return information activity).
6. All administrative files (workpapers, affidavits, etc.) for each Federal income tax return of each entity listed above.

Further, if no return was filed for the tax year requested, a statement that the entity or individual did not file a return for such tax year.

**B. Tax Returns and Return Information Received and Reviewed**

The Chairman received the following tax returns and return information (including IRS transcripts of tax account information) pursuant to his request:

- The Federal individual income tax returns (Forms 1040) and transcripts of Donald J. Trump for tax years 2015-2020;
- No returns for the Donald J. Trump Revocable Trust;
- The federal income tax returns (Forms 1065) and transcripts of DJT Holdings LLC for tax year 2015-2020;
- The federal income tax returns (Forms 1120S) and transcripts of DJT Holdings Managing Member LLC for tax years 2015-2020;
- The federal income tax returns (Forms 1065) of DTTM Operations LLC for tax years 2016-2020 and transcripts for tax years 2015-2019;
- The federal income tax return (Form 1120S) of DTTM Operations Managing Member Corp for tax year 2016 and transcripts for tax years 2015-2019;
- The federal income tax returns (Forms 1120S) of LFB Acquisition Member Corp for tax years 2015-2017 and transcripts for tax years 2015-2019;
- The federal income tax returns (Forms 1065) of LFB Acquisition LLC for tax years 2015-2020 and transcripts for tax years 2015-2019;
- The employment tax returns (Forms 940/941) and transcripts of Lamington Farm Club, LLC d/b/a Trump National Golf Club Bedminster for tax years 2015-2020;
- Electronic return information (approximately 1,100 workpapers and audit files including duplicates) for tax years 2015-2019 related to the above tax returns; and
- Paper return information (some duplicated in the electronic return information) for tax years 2015-2019.

**C. Tax Returns Submitted to Committee Members in Executive Session**

The Chairman is providing copies of the below returns to allow a full understanding of what issues and entities should have been, and need to be, included in the mandatory audit program. These returns, as filed by the former President, substantiate the veracity of this report and its observations, findings, and recommendations. (*See Attachment E.*)

- The federal individual income tax returns (Forms 1040) of Donald J. Trump for tax years 2015-2020;
- The federal income tax returns (Forms 1065) of DJT Holdings LLC for tax year 2015-2020;
- The federal income tax returns (Forms 1120S) of DJT Holdings Managing Member LLC for tax years 2015-2020;
- The federal income tax returns (Forms 1065) of DTTM Operations LLC for tax years 2016-2020;
- The federal income tax return (Form 1120S) of DTTM Operations Managing Member Corp for tax year 2016;
- The federal income tax returns (Forms 1120S) of LFB Acquisition Member Corp for tax years 2015-2017; and

- The federal income tax returns (Forms 1065) of LFB Acquisition LLC for tax years 2015-2020.

The above tax returns and return information do not include state tax returns, Forms W-2, and appraisals.

#### **D. The Ownership of the Entities as Shown on the Returns**

Based on the tax returns and return information reviewed, the type of tax return filed and the current ownership of the entities requested appears to be as follows:

- The Donald J. Trump Revocable Trust—no separate tax return and is a grantor trust;
- DJT Holdings LLC—files IRS Forms 1065 and is owned by DJT Holdings Managing Member (1%) and Donald J. Trump Revocable Trust (99%);
- DJT Holdings Managing Member LLC—files IRS Forms 1120S and is owned by The Donald J. Trump Revocable Trust (100%);
- DTTM Operations LLC—files IRS Forms 1065 and is owned by DTTM Managing Member Corp (1%) and DJT Holdings LLC (99%);
- DTTM Operations Managing Member Corp—files IRS Forms 1120S and is owned by Donald J. Trump (100%);
- LFB Acquisition Member Corp—files IRS Forms 1120S and is owned by Donald J. Trump (100%);
- LFB Acquisition LLC—files IRS Forms 1065 and is owned by LFB Acquisition Member Corp (1%) and DJT Holdings LLC (99%); and
- Lamington Farm Club, LLC d/b/a Trump National Golf Club Bedminster—no separate federal income tax returns (only Forms 940 and 941) and is owned by LFB Acquisition LLC (100%).

#### **E. Review of the Audit Files and Workpapers**

Overall, there were fewer documents than expected for returns filed for tax years 2015-2020. The electronic audit files related to the Committee's request were grouped by the IRS into three categories (2015, 2016, and 2017-2019). There were no 2020 audit files. There were approximately 1,100 electronic files (including many one-pagers and duplicates, drafts of letters and forms, and mailing envelopes) for the remaining five years. In addition, there were paper audit files (about one Bankers Box in size) that contained duplicates.

The audit files contained information and reports documenting the examination process, including contacts with the taxpayer's representatives, internal memos, examination timelines, agendas for meetings, risk analysis worksheets, various standardized IRS forms and letters (*e.g.*, notice of selection for examinations), Information Document Requests (IDRs) and their responses, sensitive case reports, Revenue Agent Case Quality Improvement forms, and information on underlying business activities of the taxpayer and related entities. Further, the audit files included numerous consents to extend the time to assess tax (IRS Forms 872-A).

Generally, an IRS examination begins when the IRS notifies a taxpayer that the return has been selected for examination. *See* IRS Publications 3498 (The Examination Process), 3498-A

(The Examination Process (Audits by Mail)), and 556 (Examination of Returns, Appeal Rights, and Claims for Refund). This notification applies to the President as well.

In the audit files, the designated agents found the documents evidencing the selection of tax returns for examination for tax years 2015-2019. The initial Notice of Examination (IRS Letter 2205) was sent to the former President for his IRS Forms 1040 for the tax years 2015-2019 on the following dates:

- Tax Year 2015: April 3, 2019
- Tax Year 2016: September 18, 2019
- Tax Year 2017: March 23, 2021
- Tax Year 2018: March 23, 2021
- Tax Year 2019: April 4, 2022

The initial Notice of Examination (IRS Letters 2205) was sent to DJT Holdings LLC for IRS Forms 1065 the tax years 2015-2019 on the following dates:

- Tax Year 2015: July 25, 2019
- Tax Year 2016: February 11, 2020
- Tax Year 2017: March 19, 2021
- Tax Year 2018: January 28, 2022
- Tax Year 2019: April 5, 2022

After the designated agents completed their review and the IRS was notified that the Committee would hold an executive session the following week, the IRS provided a letter to the Chairman in the late afternoon of December 15, 2022. The letter contained different examination start dates than the actual IRS notices in the audit files. In general, the dates in the IRS letter were all earlier, and some significantly, than the notices for selection sent to the former President that were contained in the audit files. (*See Attachment F.*)

Based on our review of the audit files and transcripts, the designated agents could not determine the basis of the dates the IRS referenced in the letter. For example, for tax years 2015 and 2017, the Examination Timelines for the Forms 1040 from the audit files, stated that the opening conferences occurred in June 2019 and April 2021, respectively. (*See Attachment G.*) Also contrary to the letter, the agenda for a team meeting between the former President's representatives and the IRS on February 4, 2022, states that the notice of selection for examination for DJT Holdings LLC was "issued on 1/28/2022." (*See Attachment H.*)

## **F. Observations**

The Committee stated its intent to look at the mandatory audit program on April 3, 2019. At the Treasury briefing later that year, Committee staff reinforced the fact that the Committee was interested in the operations of the program. Further, the Committee spent nearly four years in a court case attempting to get information about the program. The Committee's interest has been clear from the beginning, and its intent has been strong. With this in mind, the designated agents made the following observations about the operation of the mandatory audit program based on a review of the audit files and tax returns.

*The Program was Dormant.* The examinations for all tax years requested started on or after the Chairman sent his initial letter on April 3, 2019. The IRS only opened one mandatory examination from 2017 to 2020 for returns filed while the former President was in office. Although the tax year 2015 examination was opened on the same day of the Chairman's initial letter, it was not designated as a mandatory examination in the audit files. There was only one tax year in the audit file (201612) designated as a mandatory examination. With respect to tax year 2017, the audit papers in 2016 stated that it would be "evaluated and picked up for examination, if necessary," even though this tax year should have been subject to a mandatory examination. Despite knowledge of an ongoing Congressional investigation and the Manual, no priority was given to the mandatory audit program by the prior Administration.

*Tax Years that Should Have Been Included in the Mandatory Audit Program.* The designated agents identified five tax years (2015-2019) that should have been examined under the mandatory audit program based on the dates in the IRS transcripts that the Forms 1040 were filed. These years are tax years 2015-2019, and the tax returns for these years were filed while the former President was in office. However, instead of finding that all of these tax returns were subject to a mandatory examination, the designated agents found that only one tax year in the audit file (201612) was designated as a mandatory examination. The designated agents were not able to determine whether tax year 2020 was part of the mandatory audit program. The designated agents did not receive the 2020 Form 1040 until December 9, 2022, and did not receive any audit files for that tax return. Despite asking a number of times whether the 2020 tax year was included, no clear answer was provided by the IRS.

*Volume of Tax Returns and Audit Files.* The designated agents expected to find a large volume of tax returns and massive audit files related to the returns and return information requested based on reports in the media related to the former President's tax returns and audits. Instead, the designated agents found some electronic files (including many one-pagers and duplicates), about one Bankers Box in size of paper files, and about two Bankers Boxes in size of tax returns for the six years of tax returns and return information requested for the former President and eight business entities. The largest return, by size, was the Form 1040 for tax year 2017 because it included state tax returns as attachments.

*Taxpayer Cooperation.* There were no indications in the audit files that the former President took steps to expeditiously and timely resolve outstanding tax issues while in office. The audit files show continued disagreement with the examination facts. There also were efforts to prolong the examinations by taking certain actions, including seeking additional information under the Freedom of Information Act, failing to provide all the facts needed to resolve certain issues, and stating, in some cases, that they "would likely have additional relevant facts to present in its protest or at Appeals." While these actions may be within the rights of an ordinary taxpayer, it seems reasonable to expect the President to want to expedite and resolve any outstanding tax issues as head of the Executive Branch.

An internal memo noted tension between the IRS counsel and the former President's counsel, noting, "There has been some animosity between our counsel and taxpayer's counsel, so [manager] would like to explore options before assigning counsel to the newest cycle. While [manager] does not agree that taxpayer's counsel's dislike for our counsel is warranted, the animosity between the two does make the examination a little more difficult." Another internal



memo summarized a call between the revenue agents working on the case and the taxpayer's representatives. There was a discussion regarding the addition of two revenue agents to the review team due to the volume of the case, and the memo noted that the former President's representatives were concerned about the team size of revenue agents, stating "the team size increased by 300% (from 1 to 3)." The designated agents observed that the former President's representatives included partners in a global law firm and the former IRS Chief Counsel.

*Insufficient IRS resources.* The audit files referenced IRS resource constraints. An internal memo summarizing a call between the former President's representatives and an IRS audit team manager stated, "this return has about 400 flow-through returns reported on Schedule E and, since some of these are tiered, report a total of about 500 flow-through returns." The memo also stated that to "do a thorough review of these returns we would need a team much larger than the current team."

*Little substantiation.* There was little or no indication in the audit files that many of the numbers on the returns were flagged by the IRS for substantiation even when no supporting documents were provided with the return. For example, for the 2017 Form 1040, Statement 13 described the amount claimed for miscellaneous deductions subject to floor as "Section 212—\$4,092,689" with no further supporting documents. The designated agents also observed that the audit files contained the following:

Taxpayer is a Form 1040 individual tax return filer. Taxpayer hires a professional accounting firm and Counsel to prepare and file tax return. These parties perform the necessary activities to ensure that Taxpayer properly reports all income and deduction items from the numerous Schedule K-1's, 1099's, etc. that the Taxpayer receives.

*No complete picture of all entities of the former President.* The audit files did not contain a complete picture of all entities related to the former President, which made it difficult to determine the totality of deductions and expenses being taken. Of the entities requested, the audit files contained additional information about DJT Holdings LLC and very limited information about DJTH Managing Member. There did not appear to be a review of the related underlying company LFB Acquisition LLC, which claimed, for example, (1) expenses of more than \$1 million each year for greens fees and (2) a management fee that rose to nearly \$2 million in 2017 from \$750,000 in 2016.

*No complete picture of the totality of deductions taken across all schedules and statements of the former President.* The audit files did not contain any totals of the expenses taken and spread out across numerous schedules and statements or any notation that the totals had been reviewed. For example, the 2017 Form 1040 deducted expenses described as "supplemental business expenses." They each referred to a statement and each statement described the expense as "Other Business Expenses"—totaling more than \$2 million and spread across nearly 20 statements. On the 2018 tax return, the supplemental business expenses deducted across many statements totaled nearly \$2 million.

*Processing Markings.* Markings appear on some of the tax returns and attached schedules. The IRS told the designated agents that the markings were from the IRS code and edit function and were made to process the return.

*Staff of Joint Committee on Taxation (JCT) Closing Observations.* The staff of JCT (also designated as agents) provided the attached report identifying a number of issues raised during its review of the tax returns and return information. (See Attachment I.) The report includes the following closing observations:

- The staff disagreed with the IRS decision to not engage any specialists when there is a high degree of complexity in so many areas of taxation (such as those at issue).
- The staff failed to understand why the IRS believed that use of counsel and an accounting firm ensures accuracy and did not believe that high-net worth individuals should be subject to limited scope audits on this basis.
- The staff thought that the failure to audit donations in the year of the contributions may result in an unallowable charitable deduction being deducted in a future year.

In addition, the review by the staff of JCT revealed the following issues, among others, that warranted examination by the IRS:

- *Charitable contributions*—whether the 2015 conservation easement deduction of \$21 million and other large donations reported on the Schedule A were supported by required substantiation.
- *Verification of Net Operating Loss Carryover Schedule*—whether the amount of net operating loss carryover in 2015 of \$105,157,825 and future years was proper.
- *Unreimbursed partnership/S corporation expenses*—whether the terms of the partnership agreements support unreimbursed expense deductions totaling \$27 million over six years.
- *Related party loans*—whether loans made to the former President’s children are loans or disguised gifts that could trigger gift tax.
- *Cost of goods sold deductions by DJT Holdings*—whether this deduction of about \$126.5 million over five years is appropriate when it is not clear what DJT Holdings is selling from the face of the return.
- *LFB Acquisition LLC*—whether there is any support for changes in the management fees and general and administrative expenses of LFB Acquisition that were significantly higher in 2017 (\$1.9 million and \$2.8 million, respectively) than 2016 (\$750,000 and \$549,000, respectively) and 2018 (\$707,000 and \$570,000, respectively).

## **VI. Findings and Recommendations**

In order for our tax system to function fairly and equitably, Americans must have confidence that no taxpayer is able to operate above the law. This, of course, extends to the President of the United States, who is the single most powerful public official in the country. With this in mind, the Committee has the below findings and recommendations regarding the mandatory audit program.

### **A. Congress should codify the mandatory audit program to require the IRS to conduct mandatory audits while a President is in office and publicly disclose related returns and return information.**

#### Findings:

1. Under the prior Administration, there was a negligible, if any, difference between a regular field audit and a mandatory audit of the President. The Manual states that the returns are subject to mandatory examination. However, no special rules are provided for the scope and timing of the examination.
2. On February 27, 2016, the former President tweeted that “I unfairly get audited by the I.R.S. almost every single year.” The files show that one mandatory audit commenced between 2017 and 2020.
3. On October 10, 2018, the White House Press Secretary stated that “[t]he [P]resident and First Lady filed their taxes on time and as always, they are automatically under audit, which the [P]resident thinks is extremely unfair.” The tax year 2017 return, filed in November of 2018, was not selected for audit until he left office.
4. The mandatory audit program in the Manual does not advance tax compliance, public accountability, or confidence in our tax system.

#### Recommendation:

There should be a statutory requirement for the mandatory examination of the President with disclosure of certain audit information and related returns in a timely manner to ensure the integrity of the IRS, enable employees to fully audit all issues, and restore confidence in the Federal tax system.

In the litigation filed by the former President, he argued that Congress cannot constitutionally enact a statute codifying the Presidential audit program. The Committee believes that this argument is wrong. Nothing in the Constitution prohibits Congress from enacting a statute requiring the IRS to perform an audit of tax returns filed by all future Presidents and Vice Presidents, specifically to determine if those elected officials are, as a factual matter, adhering to all applicable tax laws. Just as a President does not have any constitutional immunity from paying federal taxes, no President is immune from an IRS audit to determine whether they are paying the taxes required by law. To this end, this report includes a discussion draft of legislation to codify the mandatory audit program and require certain disclosures. (*See Attachment J.*)

**B. The IRS should revise the Manual procedures related to the mandatory examination of a President.**

Finding:

The Manual does not provide the necessary details and guidance for the operation of the mandatory audit program.

Recommendation:

The IRS should review the mandatory audit program and revise the procedures set forth in the Manual for the program. Such audit should include all entities controlled directly or indirectly by the officeholder. Further, procedures should direct the start and likely completion of the audit within a year of filing the tax return. There should be a unique designation for the returns included in the mandatory audit program. While ensuring no unauthorized disclosures, the IRS should develop special procedures for the handling of the mandatory examination that support the needs of revenue agents conducting these examinations and accelerate the completion of these audits.

**C. The IRS should provide adequate and appropriate staffing and resources necessary for a full and timely audit of the President and prescribe that the audit team be comprised of two senior IRS agents, a partnership specialist, a foreign specialist, and a financial products specialist.**

Findings:

1. Insufficient IRS funding creates incentives for some taxpayers to take aggressive tax positions. The Inflation Reduction Act provides a long-term investment of \$79 billion in the IRS to improve tax fairness by, among other improvements, increasing the examinations of high-income taxpayers with complex partnership and passthrough returns.
2. The mandatory audit of the former President was conducted, mostly, by one revenue agent. The individual tax return of the former President included the activities of hundreds of related and pass-through entities, numerous schedules, foreign tax credits, and millions of dollars in NOL carryforwards. The revenue agent noted that the lack of resources was the reason for not pursuing certain issues on the former President's returns. An internal IRS memo stated: "With over 400 flow-thru returns reported on the Form 1040, it is not possible to obtain the resources available to examine all potential issues."
3. Former IRS Commissioner Rettig testified before the Committee that the IRS does "not have the resources to go after the bigs or the superbiggs, as we refer to them, and we get outgunned routinely in that space." The mandatory audit program requires sufficient resources.

Recommendation:

The IRS should direct some of the additional funding provided by the Congress in the Inflation Reduction Act to ensure that the mandatory audit program is fully funded and staffed. In addition, the IRS should prescribe that the audit team must be comprised of two senior IRS agents, a partnership specialist, a foreign specialist, and a financial products specialist.