

April 12, 2018

Senator Orrin Hatch, Chairman
Senator Ron Wyden, Ranking Member
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20515

RE: “The 2018 Tax Filing Season and Future IRS Challenges” April 12, 2018 Hearing

Dear Chairman Hatch and Ranking Member Wyden:

We write to you regarding the hearing on “The 2018 Tax Filing Season and Future IRS Challenges”¹ to bring your attention to *EPIC v. IRS*, a Freedom of Information Act case to obtain the tax records of President Trump.²

As you are aware, candidates for the Presidency have routinely released tax record information to the American public. Mr. Trump broke with that tradition even though he pledged to make this information publicly available. That fact combined with legitimate questions about the President’s financial relations with a foreign government that sought to influence the outcome of the 2016 Presidential election provided the basis for EPIC’s FOIA case to the IRS.³

On April 15, 2017, EPIC filed a Freedom of Information Act lawsuit against the IRS to enable the public release of President Trump’s tax records.⁴ As EPIC stated in the original FOIA request to the agency:

¹ *The 2018 Tax Filing Season and Future IRS Challenges: Hearing Before the S. Comm. on Finance*, 115th Cong. (2018), <https://www.finance.senate.gov/hearings/the-2018-tax-filing-season-and-future-irs-challenges> (April 12, 2018).

² *EPIC v. IRS*, No. 17-5225 (D.C. Cir. appeal docketed Oct. 4, 2017).

³ The Electronic Privacy Information Center (“EPIC”) is a nonpartisan research center established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC, *About EPIC*, <https://epic.org/epic/about.html>. EPIC is also a leading advocate for civil liberties and democratic values in the information age. In response to the finding of the Intelligence Community that the Russian government interfered with the 2016 Presidential election, EPIC launched a new project on Democracy and Cybersecurity. EPIC, *Democracy and Cybersecurity*, <https://epic.org/democracy/>.

⁴ Press Release, EPIC, *EPIC v. IRS: A Freedom of Information Act Lawsuit to Obtain the Tax Returns of Donald J. Trump* (Apr. 15, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-v-IRS-Press-Release-Apr-2017.pdf>; *EPIC v. IRS*, 261 F. Supp. 3d (D.D.C. 2017).

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to “correct misstatements of fact.”⁵ If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. President has financial dealings with a foreign adversary.⁶

There is a key provision in the Internal Revenue Code that permits the release of tax records in certain circumstances to correct misstatements of fact. This provision, 26 U.S.C. § 6103(k)(3), was enacted to ensure the “integrity and fairness [of the IRS] in administering the tax laws” in the aftermath of the Watergate scandal and related misuses of tax information by the Nixon White House.⁷ It allows the IRS to release tax records “with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact.”⁸ Former IRS Commissioner Margaret Milner Richardson stated that § 6103(k)(3) “permits the IRS to disclose tax return information to correct misstatements of fact without a waiver from the taxpayer.”⁹ In other words: the IRS does not need a waiver from President Trump to release his tax returns.

The IRS has used this disclosure power before. In 2000, the IRS used its § 6103(k)(3) authority to make ten separate disclosures of tax information.¹⁰ Indeed, as Senator Grassley has observed, § 6103(k)(3) dictates that certain “type[s] of factual misstatements should trigger disclosure of return information” depending on the “consequences of these misstatements” and “their degree of seriousness.”¹¹

There has never been a more compelling request presented to the IRS than the request from EPIC to obtain the tax records of President Donald J. Trump. Many individuals, including the President, have published conflicting statements of fact about the contents of Donald J. Trump’s tax returns and the extent of his business dealings with the Russian government. Following the election, President Trump tweeted on January 11, 2017: “Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA - NO DEALS, NO LOANS, NO NOTHING!”¹² However, family members, public figures, and news organizations have squarely disputed the President’s denials of Russian financial ties, including Donald Trump, Jr., Eric Trump, Sen. Chris Murphy, The New York Times, The Washington Post, and CBS News.

The IRS has the authority to release the President’s tax returns with the approval of the Joint Committee on Taxation. We urge the Senate Finance Committee to support this release. The public

⁵ 26 U.S.C. § 6103(k)(3).

⁶ FOIA Request from EPIC to IRS (Feb. 16, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170216-Request.pdf>.

⁷ *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).

⁸ 26 U.S.C. § 6103(k)(3).

⁹ *Final Remarks by Margaret Milner Richardson, Commissioner of Internal Revenue*, Fed. B.A. Sec. Tax’n Rep., Spring 1997, at 6, 9.

¹⁰ Internal Revenue Serv., *Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C) for Calendar Year 2000* at 3 (2001).

¹¹ 127 Cong. Rec. 22,510 (1981).

¹² *EPIC v. IRS*, 261 F. Supp. 3d 1, 4 (D.D.C. 2017).

has a right to review the tax returns of President Trump and to know about the extent of Russian interference with the 2016 Presidential election.

We ask that this statement be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ John Davisson

John Davisson
EPIC Counsel

/s/ Christine Bannan

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