

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

October 20, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Rettig,

We write to request that you preserve all documents and communications in your custody relating to the Internal Revenue Service (IRS) decision memorandum detailing the recommendation to destroy 30 million unprocessed, paper-filed informational returns around March 2021. We also write to reiterate our request that the Department produce a copy of the decision memorandum to the Committee in a mutually agreeable format and venue. Committee Republicans have repeatedly sought this document and information. The Administration's refusal to respond to the Committee, engage in a substantive discussion with staff about the request, and ultimately deny access to the decision memorandum obstructs the Congress' important role to conduct oversight.

The Committee first learned of the decision memorandum in a briefing with the Treasury Inspector General for Tax Administration (TIGTA) to discuss a published report¹ documenting the IRS' operations. That report made the following statement: "The continued inability to process backlogs of paper-filed tax returns contributed to management's decision to destroy an estimated 30 million paper-filed information return documents in March 2021."² TIGTA claimed to have reviewed a memorandum detailing the IRS decision to destroy the returns and, seeing no concerns with sharing the memorandum, offered to provide the decision memorandum to the Committee once it obtained approval from the IRS. The IRS, however, denied the request.

The decision to destroy information returns diligently prepared by millions of American taxpayers is ripe for congressional oversight. Thus, on May 17, 2022, Committee staff requested a copy of the memorandum via e-mail. The IRS responded on May 18, 2022, indicating that it would not release the decision memorandum claiming that such a release would pose a "significant risk to the agency." This blanket refusal from the IRS based on a perceived risk to the agency is unacceptable. Congressional oversight does not stop whenever the executive branch identifies a perceived risk. The IRS should have engaged in a discussion with the

¹ Treasury Inspector General for Tax Administration, *A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing*, Report No. 2022-40-036 (May 4, 2022), available at <https://www.treasury.gov/tigta/auditreports/2022reports/202240036fr.pdf>.

² *Id.* at 2.

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Committee about how it could best accommodate congressional oversight while still addressing the agency's concerns. The IRS, however, made no offer of an accommodation and did not offer to even discuss a possible resolution to the matter.

On June 13, 2022, Ways and Means Committee Ranking Member Kevin Brady sent a letter reiterating the Committee's request for the decision memorandum.³ The letter also included questions about how the agency's document destruction will affect taxpayers and what steps the IRS is taking to improve its processing of paper-filed returns. To date, the agency has not provided the decision memorandum, nor has it responded to the questions in Ranking Member Brady's June 13 letter. We continue to seek answers to the questions asked in that letter.

In yet another effort to gain transparency on this issue, Ranking Member Brady and Oversight Subcommittee Ranking Member Tom Rice filed a Congressional Resolution of Inquiry (ROI), H. Res. 1283, on July 26, 2022.⁴ The ROI directed the Secretary of Treasury to provide to the House of Representatives a copy of the IRS Small Business/Self Employed Division Decision Memorandum regarding the decision to destroy approximately 30 million paper information returns around the time of March 2021, and any other memorandum related to the decision to destroy those information returns. Although Democrats voted to unfavorably report the ROI, Republicans remain committed to our duty to conduct oversight of the agency's processing and destruction of the paper-filed returns.

Despite the Administration's inadequate response to our initial requests, we continue to expect that the IRS will provide a response to Ranking Member Brady's questions and respond to the request for the IRS decision memorandum requested on May 17 and in the June 13 letter, which is attached here for your reference.

We are deeply concerned with the Administration's lack of transparency and cooperation. As such, we write to insist that you take all appropriate measures to collect and preserve all documents, communications, and other records that are relevant to the IRS' decision memorandum detailing the recommendation to destroy 30 million unprocessed, paper-filed informational returns. Specifically, this request includes, but is not limited to, all types of documents and essential communications between and among IRS employees related to the decision memorandum, and any other memorandum related to the decision to destroy those information returns.

Please respond to this letter by November 3, 2022, confirming that you have taken actions to preserve documents related to this matter. Please provide an answer to the June 13, 2022, letter by the same date. If you have any questions or wish to discuss the request, please contact Sean Clerget of the Ways and Means Committee staff at (202) 225-4021.

³ Letter from H. Comm on Ways and Means Republican Leader Kevin Brady to Internal Revenue Service Commissioner Charles P. Rettig (June 13, 2022).

⁴ H. Res. 1283, 117th Cong. (2022), *available at* <https://gop-waysandmeans.house.gov/wp-content/uploads/2022/09/H.-RES.-1283.pdf>.

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Sincerely,

Handwritten signature of Kevin Brady in black ink, featuring a stylized 'K' and 'B'.

Kevin Brady
Republican Leader
Committee on Ways and Means

Handwritten signature of Tom Rice in blue ink, with a clear 'T' and 'R'.

Tom Rice
Republican Leader
Subcommittee on Oversight

cc: William M. Paul
Chief Counsel
Internal Revenue Service

Douglas O'Donnell
Deputy Commissioner for Services and Enforcement
Internal Revenue Service

Lia Colbert
Commissioner of the Small Business / Self Employed Division
Internal Revenue Service