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MEETING ON DOCUMENTS PROTECTED UNDER

INTERNAL REVENUE SERVICE CODE SECTION 6103

Tuesday, November 5, 2023

House of Representatives,

Committee on Ways and Means,

Washington, D.C.

The Committee met, pursuant to call, in Room 1100, Longworth House Office Building, Hon. Jason Smith [Chairman of the Committee] presiding.

Chairman Smith. The Committee will come to order.

Mr. Smith, you are recognized for a motion.

Mr. Smith of Nebraska. Mr. Chairman, I move that if the Committee votes to submit to the House any information, the entire transcript of today's executive session proceedings be made public upon completion of our meeting.

Chairman Smith. Without objection, so ordered.

Mr. Schweikert, you are recognized for a motion.

Mr. Schweikert. Mr. Chairman, given the sensitivity surrounding the confidential taxpayer information, pursuant to House Rule XI(2)(g)(1), I move that the Committee enter into closed executive session for consideration of materials protected under Internal Revenue Code 6103.

Chairman Smith. The question is on entering into closed executive session for consideration of materials protected under Internal Revenue Code Section 6103.

The clerk will call the roll.

The Clerk. Mr. Buchanan?

Mr. Buchanan. Yes.

The Clerk. Mr. Buchanan, yes.

Mr. Smith of Nebraska?

Mr. Smith of Nebraska. Yes.

The Clerk. Mr. Smith of Nebraska, yes.

Mr. Kelly?

Mr. Kelly. Yes.

The Clerk. Mr. Kelly, yes.

Mr. Schweikert?

Mr. Schweikert. Yes.

The Clerk. Mr. Schweikert, yes.

Mr. LaHood?

[No response.]

The Clerk. Dr. Wenstrup?

Mr. Wenstrup. Yes.

The Clerk. Dr. Wenstrup, yes.

Mr. Arrington?

Mr. Arrington. Yes.

The Clerk. Mr. Arrington, yes.

Dr. Ferguson?

Mr. Ferguson. Yes.

The Clerk. Dr. Ferguson, yes.

Mr. Estes?

Mr. Estes. Yes.

The Clerk. Mr. Estes, yes.

Mr. Smucker?

Mr. Smucker. Yes.

The Clerk. Mr. Smucker, yes.

Mr. Hern?

Mr. Hern. Yes.

The Clerk. Mr. Hern, yes.

Mrs. Miller?

[No response.]

The Clerk. Dr. Murphy?

Mr. Murphy. Yes.

The Clerk. Dr. Murphy, yes.

Mr. Kustoff?

Mr. Kustoff. Yes.

The Clerk. Mr. Kustoff, yes.

Mr. Fitzpatrick?

Mr. Fitzpatrick. Yes.

The Clerk. Mr. Fitzpatrick, yes.

Mr. Steube?

Mr. Steube. Yes.

The Clerk. Mr. Steube, yes.

Ms. Tenney?

Ms. Tenney. Yes.

The Clerk. Ms. Tenney, yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

The Clerk. Mrs. Fischbach, yes.

Mr. Moore?

Mr. Moore of Utah. Yes.

The Clerk. Mr. Moore, yes.

Mrs. Steel?

Mrs. Steel. Yes.

The Clerk. Mrs. Steel, yes.

Ms. Van Duyne?

Mr. Van Duyne. Yes.

The Clerk. Ms. Van Duyne, yes.

Mr. Feenstra?

Mr. Feenstra. Yes.

The Clerk. Mr. Feenstra, yes.

Ms. Malliotakis?

Ms. Malliotakis. Yes.

The Clerk. Ms. Malliotakis, yes.

Mr. Carey?

Mr. Carey. Yes.

The Clerk. Mr. Carey, yes.

Mr. Neal?

Mr. Neal. No.

The Clerk. Mr. Neal, no.

Mr. Doggett?

Mr. Doggett. No.

The Clerk. Mr. Doggett, no.

Mr. Thompson?

Mr. Thompson. No.

The Clerk. Mr. Thompson, no.

Mr. Larson?

Mr. Larson. No.

The Clerk. Mr. Larson, no.

Mr. Blumenauer?

Mr. Blumenauer. No.

The Clerk. Mr. Blumenauer, no.

Mr. Pascrell?

Mr. Pascrell. No.

The Clerk. Mr. Pascrell, no.

Mr. Davis?

Mr. Davis. No.

The Clerk. Mr. Davis, no.

Ms. Sanchez?

Ms. Sanchez. No.

The Clerk. Ms. Sanchez, no.

Mr. Higgins?

Mr. Higgins. No.

The Clerk. Mr. Higgins, no.

Ms. Sewell?

[No response.]

The Clerk. Ms. DelBene?

Ms. DelBene. No.

The Clerk. Ms. DelBene, no.

Ms. Chu?

Ms. Chu. No.

The Clerk. Ms. Chu, no.

Ms. Moore?

[No response.]

The Clerk. Mr. Kildee?

Mr. Kildee. No.

The Clerk. Mr. Kildee, no.

Mr. Beyer?

Mr. Beyer. No.

The Clerk. Mr. Beyer, no.

Mr. Evans?

Mr. Evans. No.

The Clerk. Mr. Evans, no.

Mr. Schneider?

Mr. Schneider. No.

The Clerk. Mr. Schneider, no.

Mr. Panetta?

Mr. Panetta. No.

The Clerk. Mr. Panetta, no.

Mr. LaHood?

Mr. LaHood. Yes.

The Clerk. Mr. LaHood, yes.

Mrs. Miller?

[No response.]

The Clerk. Ms. Sewell?

[No response.]

The Clerk. Ms. Moore?

Ms. Moore of Wisconsin. What is the question? I couldn't get in. The answer is no.

The Clerk. Ms. Moore, no.

Chairman Smith?

Chairman Smith. Yes.

The Clerk. Chairman Smith, yes.

Chairman Smith. The clerk will report the vote.

The Clerk. The ayes are 24. The noes are 17.

Chairman Smith. There being 24 ayes and 17 noes, the motion is agreed to.

At this point I ask that all members of the public, press, member office staff, and non-designated Committee staff leave the room so we can enter into closed executive session.

[Pause.] Chairman Smith. The Committee is now in executive session. And under House Rule XI clause (2)(k)(7), evidence taken in executive session may not be released or used in public sessions without authorization of the committee.

We are in executive session because the matters and materials under discussion contain confidential taxpayer information protected by Section 6103 of the Internal Revenue Code.

Pursuant to Section 6103(f)(4)(A), as Chairman, I have designated the members and staff in this room as my agents for the duration of this executive session.

At this point, designated staff will distribute the materials under consideration.

The Committee will now proceed with review of the new documents provided by Mr. Ziegler to the Committee. These documents are more evidence that President Biden was not forthcoming and honest with the American people when he said that he had no knowledge of his son's foreign business dealings.

It also shows the incredible level of access Hunter Biden and his business associates had in Vice President Biden's office while working for foreign businesses.

One document alone provides data on hundreds of emails showing that Joe Biden used aliases to communicate one-on-one directly with Hunter Biden's business partner, who set up the Biden shell companies, and that the White House communicated directly with Hunter Biden while he was out selling the Biden brand around the world.

Exhibit 606 provides only a small window into Joe Biden's use of private email addresses and aliases, but the data here is very interesting. The file reveals 327 emails. Thirty-eight emails were sent from the White House to Joe Biden's alias accounts, with Hunter Biden copied on them, 54 emails that showed Joe Biden emailing one-on-one with Hunter Biden's business partner Eric Schwerin, the close adviser who structured the Biden shell companies.

Suspiciously, email traffic between Joe Biden and Schwerin would routinely increase before and after the Vice President's various trips to Ukraine. In the days before Joe Biden's June 2014 trip, he and Schwerin exchanged five emails. After that trip and before the Vice President's November trip back to Ukraine, he and Schwerin emailed an astonishing 27 times.

After the November trip, Vice President Biden threatened the President of Ukraine he would withhold $1 billion in foreign aid if a prosecutor looking into corruption at Burisma wasn't fired. The prosecutor was later fired. That pattern repeated itself for Biden's other Ukraine trips.

Hundreds of messages from alias emails raise questions of whether Joe Biden was trying to hide the existence and content of these messages. If investigators had not been stonewalled, the IRS investigation into Hunter Biden's tax fraud and business dealings would have naturally laid bare Joe Biden's direct involvement.

The documents also help show why investigators wanted to look into possible criminal campaign finance violations. These suspicions stemmed from Hollywood lawyer Kevin Morris spending over $2 million to pay Hunter Biden's unpaid taxes.

James Biden, the President's brother, told the FBI that despite not knowing who Morris was, he was told to thank him on behalf of the family.

When questioned by investigators, Hunter Biden's tax preparer referred to Morris

as an adviser to both Hunter and the Biden family.

According to exhibit 607A provided by Mr. Ziegler in February 2020, just weeks before the Super Tuesday primary elections that would decide the future of Joe Biden's candidacy, Morris emailed Hunter Biden's business team that his unpaid taxes posed, "considerable risk personally and politically,".

What makes this bizarre is that Morris and Hunter Biden had only recently met. In fact, they met for the first time just 2 months before this email was sent. This email shows that the whistleblowers' concern in investigating potential campaign finance charges against the Biden campaign were founded. Kevin Morris seems to have treated Hunter Biden's unpaid taxes as a political liability he needed to fix for the Biden family.

This evidence from these new documents makes it clear that Joe Biden lied about not only his knowledge, but seemingly his involvement. They show that the Biden name was being sold around the world in exchange for access and influence and that investigators were stopped at every turn from pursuing leads that would have led to Joe Biden.

I urge my colleagues to vote to release these documents to help the American people see the facts for themselves about Joe Biden's conduct.

Thank you.

And I now recognize the Ranking Member for his opening statement.

Mr. Neal. Thank you, Mr. Chairman.

After 11 months, the majority continues to mistake Congress, a legislative body, for a law enforcement body. Last year, the courts were clear, "Congress cannot exercise its investigative powers for the purpose of law enforcement because the power of law enforcement is vested in the executive and judicial branches,".

With this Committee still not a law enforcement body and lacking any

independent power to enforce tax laws against private citizens, where is the legislation? They have certainly had plenty of time to put something together.

For that matter, why is the majority still relying on these whistleblowers to transmit information? Why not make their own request using the power of our Committee?

They lack a legitimate legislative purpose because this exercise has no broader significance. It is merely to embarrass Joe Biden.

The only thing that the American people will learn today is how Republican elected officials are willing to pursue what appears at this moment to be a hopeless case. These documents don't show anything new, but they might kick up one dust particle that fits the cherry-picked political narrative, and for my colleagues that seems to be enough.

It is the weaponization of the Committee, and it will not work for the American people. I must tell you, the idea that Joe Biden was home putting out hundreds of emails confounds me.

And with that, I yield back the balance of my time.

Chairman Smith. The Committee will now proceed to consideration of the documents before you, which include one affidavit and accompanying exhibits provided to the committee by IRS Special Agent Joseph Ziegler.

The materials have been available for member review in the committee office since 10 a.m. on December 4th, and members have been designated since December 1st.

I will now turn to Sean Clerget, Chief Oversight Counsel, to provide a brief description of the materials for consideration. I would ask that members hold their questions until after his presentation.

Mr. Clerget, you are recognized.

Mr. Clerget. Chairman Smith, Ranking Member Neal, and members of the

Committee, the documents Chairman Smith is presenting to the Committee here today contain information related to Internal Revenue Code 26 U.S.C. Section 6103.

Section 6103 makes tax returns and return information confidential, subject to specific authorizations or exceptions in the statute. The statute anticipates and allows for whistleblowers to come forward and share information with Congress under Section 6103(f)(5) if the whistleblower has or had access to a return or return information and believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

Specifically, the statute permits a person with access to returns or return information to disclose such information to the Committee on Ways and Means or any person designated by the chairman to receive such information.

Our tax privacy laws also allow for a process by which this Committee can receive information, consider it, and submit it to the House of Representatives. That process has been used several times in the Committee's recent history, including four times in the past 5 years. Those include executive sessions in 2019, late 2022, and twice in 2023.

As you recall, this process began when counsel for Gary Shapley sent the chairs and ranking members of this Committee -- of multiple committees -- a letter on April 19, 2023. The letter outlined, at a high level, the nature of information Mr. Shapley wished to share with the Committee. Majority and minority Committee staff received an attorney proffer from Mr. Shapley's legal counsel and then scheduled a voluntary interview with Mr. Shapley.

Mr. Shapley was removed from the case on May 15, 2023, along with the rest of the IRS team. After that removal, Special Agent Joseph Ziegler came forward to share information with the Committee.

On May 26, 2023, and June 1, 2023, Committee staff conducted voluntary

transcribed interviews of Mr. Shapley and Mr. Ziegler. Each interview lasted approximately 7 hours and included information protected by Section 6103.

On June 22, 2023, the Committee held an executive session to consider the transcripts and related materials. The Committee voted to submit those materials and a transcript of the proceeding to the House of Representatives.

Following public testimony before the Oversight and Accountability Committee, Mr. Ziegler and Mr. Shapley provided documents protected under Section 6103 to this committee over several weeks in August and September, and the committee voted to submit those materials to the full House on September 27, 2023.

On October 30, 2023, Mr. Ziegler provided additional materials to the Committee. Every document in the production was provided by Mr. Ziegler to Committee majority and minority staff designated under Section 6103.

Chairman Smith is presenting those materials to the Committee for consideration today. The documents include the following: one affidavit and related exhibits. The affidavit describes the exhibits produced.

Those exhibits include the following: Mr. Ziegler's 2021 and 2022 performance reviews; an email chain between Mr. Ziegler, Mr. Shapley, and the newly assigned IRS agents who took over the Hunter Biden tax case; an email chain, some of which the committee previously released, detailing Mr. Shapley's request for approval to take administrative leave for protected whistleblower activities; updated whistleblower guidance that was sent by IRS Commissioner Werfel to all IRS employees on July 7, 2023; emails between Mr. Ziegler and Mr. Daly at DOJ Tax related to the cancellation of certain meetings; an email chain between Mr. Shapley, Mr. Batdorf, and Mr. Waldon regarding a third taxpayer conference in the Hunter Biden investigation that was delayed; an 11-page document combining search results on email data containing the date, to, from, and cc

fields for email accounts used by Hunter Biden, Eric Schwerin, and James Biden that also includes suspected emails of former Vice President Joe Biden, based on known and identified aliases; a memorandum of interview with Troy Schmidt, Hunter Biden's return preparer; emails between Troy Schmidt and Kevin Morris regarding the preparation and filing of Hunter Biden's tax returns; an email and attachment regarding a September 2017 attorney engagement letter between Hunter Biden and Patrick Ho.

Many of the documents produced to the Committee contained redactions when the Committee received them. The Committee's majority and minority staff reviewed the materials, and minority staff had the opportunity to provide or propose additional redactions.

The Committee made redactions to exhibit 606 and exhibit 608. Given the nature of exhibit 606, the Committee redacted the domain name of any email address that did not contain a dot-gov email address. The Committee also made an additional redaction to exhibit 608.

That concludes my overview. Thank you. And I am happy to take your questions.

Chairman Smith. Thank you.

Are there any technical questions for Mr. Clerget?

Mr. Neal.

Mr. Neal. I yield my time to Mr. Doggett.

Chairman Smith. Mr. Doggett.

Mr. Doggett. Mr. Clerget, the only questions I have for you are just the same ones that I asked you on September 27 when you and I were last talking here.

At any time in your investigation have you utilized the statutory authority that the Chairman of our Committee has under Section 6103 to request documents directly from

the Internal Revenue Service?

Mr. Clerget. Outside of the process we participate in, in the executive sessions, no.

Mr. Doggett. Okay. Therefore, the only information you have concerning the IRS pertinent to our work today is what Mr. Ziegler and Mr. Shapley have provided you in the way of documents or in their testimony?

Mr. Clerget. That is correct, with the caveat that we did release a document from Commissioner Werfel, a letter that he provided in the first executive session of this year. But yes.

Mr. Doggett. Understood. And the last reference that Mr. Ziegler made was to Tony Bobulinski. Am I correct that you have only that FBI summary that we looked at last time and you have not requested the interview transcript?

Mr. Clerget. That is correct. We have not requested the interview transcript for Mr. Bobulinski.

Mr. Doggett. Is there any reason why you haven't done that?

Mr. Clerget. It is ultimately a decision for the Chairman and the Committee.

Mr. Doggett. I see. And in fact, I talked to you about that in questioning you last time and pointed out that Mr. Bobulinski had been very eager to tell his story, appearing on the Tucker Carlson show, and that he said, quote, "I have thousands of documents, text messages, WhatsApp conversations regarding -- a recording of the sitting President in his own voice."

Have you made any attempt to get any of those thousands of documents, those text messages, those WhatsApp conversations, or a recording of Joe Biden in his own voice on the matters that are in front of this committee?

Mr. Clerget. We have released WhatsApp messages that you have seen, but

outside of that, no.

Mr. Doggett. But you made no attempt to get any of this information that Mr. Bobulinski says that he possesses?

Mr. Clerget. Not as of today.

Mr. Doggett. Is there any reason for that?

Mr. Clerget. Ultimately, a decision for the Committee and the Chairman.

Mr. Doggett. You told me on September 27, "I think those are all documents we would consider requesting as we continue our investigation." But though another couple of months has gone by, no effort has been made to get any of that information?

Mr. Clerget. As of today, we have not requested those documents.

Mr. Doggett. Thank you very much.

Chairman Smith. Mr. Pascrell is recognized for technical questions.

Ms. Moore is recognized for technical questions.

Ms. Moore of Wisconsin. Thank you, Mr. Chairman.

I was curious about exhibit 202 and 203. It seems in exhibit 202 someone, U.S. Assistant District Attorney of Delaware Lesley Wolf, is writing a memo. This says as a priority someone needs to redraft attachment B.

I am not sure what this is cut and pasted from. But other than the distribution, location, and identity stuff at the end, none of this is appropriate within the scope of this warrant. "Please focus on FARA evidence only." And then in highlight, "There should be nothing about Political Figure 1 in here."

I guess I am very curious. Is attachment B included in these materials? You know, our whistleblowers seemed to rely a lot on this document with regard to establishing something about Political Figure Number 1. But this U.S. Attorney says that he shouldn't be included in here and after they say that this stuff is inappropriate and not

within the scope of the warrant.

And so how are we to evaluate this without knowing what -- this was a conveyance memo?

Mr. Clerget. So, my understanding of these two documents, exhibit 202 and 203, exhibit 202 is the email back and forth. And my understanding is that exhibit 203 is an excerpt from the attachment B referenced in exhibit 202. So, they go together.

So Political Figure 1 is defined in exhibit 203 as being former Vice President Joe Biden. And the exhibit 202 is demonstrating communication from Ms. Wolf --

Ms. Moore of Wisconsin. So that is not a picture. Those are redacted words for something.

Mr. Clerget. Yes, that is correct. So, what is on this -- if you are looking at the slides that Mr. Ziegler that is in your binder today.

Ms. Moore of Wisconsin. Yes, yes,

Mr. Clerget. We previously released these two documents in larger format. But, yes, he provided us exhibit 203 only showing that number 18, Political Figure 1, and he redacted the rest of that document.

Ms. Moore of Wisconsin. So we didn't get -- the thing that is here, we don't know what this is.

Mr. Clerget. We don't have the full attachment B.

Ms. Moore of Wisconsin. Okay. So I guess I am not understanding how to evaluate this. What does this prove?

Mr. Clerget. I can only tell you what Mr. Ziegler says in his affidavit that connects to this.

Ms. Moore of Wisconsin. What did he say?

Mr. Clerget. He is essentially stating that this is an example of prosecutors when

they were prosecutors drafted this attachment and wanted to pursue information related to Joe Biden, and Ms. Wolf asked them to remove the reference to Joe Biden.

Ms. Moore of Wisconsin. Right. She removed it and after saying it was kind of irrelevant and they should focus on some other FARA, whatever it is, evidence. This is the person that felt it was inappropriate. That is an example that they have given us of the obstruction.

Mr. Clerget. That is my understanding of their testimony.

Ms. Moore of Wisconsin. Oh, okay. Just to be clear. Thank you.

I yield back.

Chairman Smith. Any additional technical questions for Mr. Clerget?

Seeing none, we will move to strike the last word.

Mr. Neal.

Mr. Neal. Thank you, Mr. Chairman.

So after all these months when we frequently in Washington make reference to the term "the smoking gun," not only is there not a smoking gun, there is not even a body.

We now have taken valuable time from this Committee when we could be talking about a government shutdown, when we could be talking about tax extenders that I hope will be done sometime this month. There should be opportunities for us to revisit a trade agenda where I know many members of this Committee would like to proceed. And still we find ourselves caught up in this treadmill of asking the same rounds of questions and largely getting the same number of answers.

So here we are with the jurisdiction of this Committee that is the envy of Congress, if not legislative bodies across the world, only to discover that we are again caught up in this endless cycle of veering into political geography that we have little, if

any, jurisdiction over.

If there is a matter of criminality that has been alleged and then from there proved, then the matter could be referenced and sent along to the Justice Department. But that wouldn't make for the opportunity to fill in the "what if" questions, the conspiracy theories, and the chaos that has now engulfed the legislative body that we so cherish.

I hope that at some point this Committee will return to the routine jurisdictions that have made us a desirable setting for the much-needed idea that the rest of Congress often follows our lead in this room.

And, as I anticipate again, the whistleblowers today, as Mr. Doggett has pointed out, [are] free to come back and say what they want. That should not be determined to be a conclusion, however. And today, challenged as they were, both sides predictably offered questions that they think reinforces their own opinion as a basis instead of perceived fact.

We should have the opportunity here, I hope, to get on to another legislative agenda. And the one that we would like to get to on this side is pretty clear. We have asserted it time and again.

But we can't do it if we are going to continue to have the chaos on the House floor, theories that are promoted, and votes on the House floor over cutting the salary of the Secretary of Defense to one dollar when members on the other side can't get but 52 votes, and then they blame the legislative body for not being able to pass the budget cuts that they proscribe to be essential to our functioning democracy.

I hope that at some point, Mr. Chairman, we can actually get back to legislating, get back to the responsibilities that this Committee has, and move an agenda that we think the American people are deserving of.

I would lay out structurally, as I have with Governor Romney and others, an opportunity for us to make some very desirable tradeoffs to get an extenders tax package done before the end of the year. And I hope that we at some point will revisit what the Committee's jurisdiction really is about.

I yield back, Mr. Chairman.

Chairman Smith. Thank you.

Additional members wish to strike the last word?

Mr. Pascrell.

Mr. Pascrell. Thank you, Mr. Chairman.

Having read through again 6103, it can be divided into two areas.

One area is protection of the taxpayer, very, very clear, what the government owes that taxpayer in terms of confidence and privacy.

The other part of 6103, what is the taxpayer's responsibility, whomever that taxpayer might be, of reporting income, of writing on the document itself what he is culpable of, and what process we can use, as the Federal Government, and what the IRS can use in tracking down his specific responsibilities and what he owes.

So I have heard a lot of conspiracy theories today, and I know that is the culture that we are in. Whether it be one side or the other is immaterial. That is where we are at.

But conspiracy proponents come in categories. Some work, as the two witnesses today came, they work for the IRS. They were given an assignment. They were looking at it. And everything they wrote I have tried to read. I am sure I haven't read everything, but I am pretty close.

There seems to be a difference between suspect -- the example given by Mr. Ziegler that this happened at the same time just before this, that before that, but no

proof that he wasn't doing a grocery order with his son. I don't know what it was. You do, apparently. Well, then spill it on the record.

There is no place -- now you may say, well, the President never came forward to testify to say this is what he said and this is who he talked to. But then so we are not sure what that is. So we are speculating. We are speculating.

This is not evidence. Speculation is not evidence. You can assume all you want, but if you are going to bring this to the next level of criminality, you have to have -- cliche -- the smoking gun.

There is no smoking gun yet. It may come next week, next month, or never. But we have no right to drag someone's reputation -- you know, the Biden crime family? Well, that is pretty convenient. It sounds good. It is television. It is cable. But it is not evidence.

So I would be very careful in moving on. I like evidence, I like the facts so that we can make a judgment. Although we are not judging criminality on this Committee, wherever it goes, wherever this goes.

So I think, Mr. Chairman, I wish you well. I don't think you are going to be there, but I wish you well. And we are waiting for the evidence.

Not one person on this Committee cited evidence today. They asked questions of the two witnesses, who gave us a great amount of their time, personal time, but there was no evidence, nothing you can hang your hat on. And we are going after this.

I do not hear any broken laws here by the President of the United States. And I will stay here after the meeting today, and I want you to come over and tell me what the evidence is of criminality.

I yield back.

Chairman Smith. Mr. Wenstrup is recognized to strike the last word.

Mr. Wenstrup. Yeah. Thank you, Mr. Chairman.

One of the things I tried to point out today, that this committee really should take into great consideration is processes within our agencies, because we do have oversight over them. We fund them here in Congress.

And if they are not sticking to their own rules, if they are not adhering to their own protocol, the only people that can correct that and have oversight over it is us. And that is a big part of what we are talking about here today.

And the problem we have in our agencies is that when they violate their own rules and their own protocol, nothing happens to them. We have learned that with the FBI. We are learning it here. Unelected people do whatever they darn well please, and we sit back and do nothing? Shame on us.

And if you can't at least look at this situation and evaluate how much went wrong within the agencies that violated basically standard operating procedures that every other American has to live by, then shame on us. Don't write this off, as Mr. Pascrell just said.

We have a lot to look at here. It is not just criminal behavior, and all those things are involved. But when you break down your own procedures, that it means people come forward and put their careers on the line, we can't ignore it.

I yield back.

Chairman Smith. Mr. Davis is recognized to strike the last word.

Mr. Davis. Thank you, Mr. Chairman.

You know, I have listened to conversation, read documents, listened to witnesses, talked to people in the street, spoke with people in the bar, talked with people at the church, watched MSNBC, FOX News, radio, WVON, WBBM.

Still I have not seen one scintilla of evidence that suggests to me that President

Biden has done anything wrong or personally benefited in any way from the business activities of any member of his family. Nor do I see or feel any connection between what our whistleblowers have told us today and the President.

As a matter of fact, I am often reminded by Mr. Neal that Ways and Means is not a law enforcement entity. And we are all spending valuable time searching for problems and evidence that does not exist. There is no smoking gun. And no matter how many times you try, you cannot find what does not exist.

It is always good and interesting to go hunting and fishing. But I think we have a lot of other fish to fry, like the war in Gaza, the war in Ukraine, trying to figure out how to make sure that homeless people don't go hungry at Christmastime.

And so, yes, we have heard what we have heard, but we have got many other issues that we could be tackling. And I think our country would be better off and well off if we spent time delving into those. I call them the people's business.

So, Mr. Chairman, I think we have heard what we have heard, but no evidence.

And I yield back.

Chairman Smith. Mr. Doggett is recognized to strike the last word.

Mr. Doggett. Thank you, Mr. Chairman.

If there is any evidence of wrongdoing by Joe Biden, he should be held accountable, and I am prepared to do that personally. If there is no evidence and only an attempt to smear Joe Biden, those engaged in this process should be held accountable, and I think they will be.

This Committee has had an opportunity to do a full and thorough investigation of these matters, and it has chosen not to do that. It could have requested from the Internal Revenue Service under 6103 all of the relevant documents. It chose to take a different approach, and that is to rely on the two witnesses we have seen today instead

of getting all the facts.

We know from the reference to Mr. Bobulinski that there is someone out there who claims that he even has the President in his own words, in his own voice, talking about these matters, but they have no interest in getting that information.

What they do have an interest in is leaking selectively information from this proceeding. I would ask unanimous consent to include in the record today's Politico indicating that while we have operated in secrecy, that they obtained a copy of the 78-page report ahead of its release today. And in their request for impeachment Republicans have been pursuing two tracks. Their conclusion here is that the report that they got, the 78 pages, contains no smoking gun, and certainly it does not.

I would ask to have that included.

Chairman Smith. Mr. Doggett, I will include that into the record.

[The information follows:]

******** COMMITTEE INSERT ********

Playbook: Ukraine makes a final plea

By **RYAN LIZZA**, **RACHAEL BADE** and **EUGENE DANIELS** | 12/05/2023 06:17 AM EST

With help from Eli Okun, Garrett Ross and Bethany Irvine

DRIVING THE DAY

FIRST IN PLAYBOOK — The latest salvo in the House GOP drive to impeach Joe Biden comes today as the Judiciary, Ways and Means, and Oversight committees jointly release an interim staff report on one of the **HUNTER BIDEN** investigations.

We obtained a copy of the 78-page report ahead of its release today. In their quest for impeachment, Republicans have been pursuing two tracks: President **JOE BIDEN's** potential involvement in any foreign business dealings of his relatives and any interference by the Biden administration into the criminal investigation of his son. Today's report is an update on that second line of inquiry, which was sparked by a pair of IRS agents who came forward to claim they believed there were some irregularities in the DOJ's Hunter probe.

The report, which contains no smoking gun, comes as the House GOP is likely to vote on formalizing an impeachment inquiry next week and hopes to make a decision on whether to pursue articles of impeachment in January. ***Read the report***

IT'S BOOK DAY — "Liz Cheney, outspoken Trump critic, weighs third-party presidential run," by WaPo's Maeve Reston: "While promoting her new book 'Oath and Honor: A Memoir and a Warning,' the former Wyoming congresswoman — who was defeated by a Trump loyalist last year — is warning that Trump could transform America's democracy into a dictatorship if he is reelected."

Z'S LAST PLEA — High-level Ukrainian officials are scheduled to be in D.C. today to make a last-minute appeal to Republicans to back an aid package.

ANDRIY YERMAK, the powerful chief of staff to President **VOLODYMYR ZELENSKYY**, will be making the rounds on Capitol Hill today. He will be joined by Ukraine's minister of defense and the speaker of the Ukrainian Parliament.

THE JUSTICE DEPARTMENT'S DEVIATIONS FROM STANDARD PROCESSES IN ITS INVESTIGATION OF HUNTER BIDEN

Interim Staff Report of the

Committee on the Judiciary,
Committee on Ways and Means, and
Committee on Oversight and Accountability

U.S. House of Representatives

December 5, 2023

Chairman Smith. But I just want to point to you that is the Judiciary report. That is not Ways and Means. And so it doesn't relate to this hearing.

Mr. Doggett. All right.

Chairman Smith. And it doesn't have 6103. That is not our Committee and what we are discussing today.

Mr. Doggett. I appreciate the correction.

Chairman Smith. Because it is a felony if that happened.

Mr. Doggett. According to this, it is the latest salvo, Judiciary, Ways and Means, and Oversight. But I will accept your correction.

I will also ask to have included in the record two documents from the Treasury concerning exceptions to the loan issue that has been raised.

Chairman Smith. Without objection.

[The information follows:]

******** COMMITTEE INSERT ********

Department of the Treasury

Internal Revenue Service

Publication 550
Cat. No. 15093R

Investment Income and Expenses

(Including Capital Gains and Losses)

For use in preparing

2022 Returns

Get forms and other information faster and easier at:

- IRS.gov (English)
- IRS.gov/Spanish (Español)
- IRS.gov/Chinese (中文)
- IRS.gov/Korean (한국어)
- IRS.gov/Russian (Русский)
- IRS.gov/Vietnamese (Tiếng Việt)

Contents

Future Developments

For the latest information about developments related to Pub. 550, such as legislation enacted after it was published, go to IRS.gov/Pub550.

Reminders

Foreign source income. If you are a U.S. citizen with investment income from sources outside the United States (foreign income), you must report that income on your tax return

paid, the transaction is described as trading a bond flat. The defaulted or unpaid interest is not income and is not taxable as interest if paid later. When you receive a payment of that interest, it is a return of capital that reduces the remaining cost basis of your bond. Interest that accrues after the date of purchase, however, is taxable interest income for the year received or accrued. See *Bonds Sold Between Interest Dates*, later in this chapter.

Below-Market Loans

If you make a below-market gift or demand loan, you must report as interest income any forgone interest (defined later) from that loan. The below-market loan rules and exceptions are described in this section. For more information, see section 7872 of the Internal Revenue Code and its regulations.

If you receive a below-market loan, you may be able to deduct the forgone interest as well as any interest you actually paid, but not if it is personal interest.

Loans subject to the rules. The rules for below-market loans apply to:

- Gift loans,
- Compensation-related loans,
- Corporation-shareholder loans,
- Tax avoidance loans, and
- Certain loans made to qualified continuing care facilities under a continuing care contract.

A compensation-related loan is any below-market loan between an employer and an employee or between an independent contractor and a person for whom the contractor provides services.

A tax avoidance loan is any below-market loan where the avoidance of federal tax is one of the main purposes of the interest arrangement.

Forgone interest. For any period, forgone interest is:

- The amount of interest that would be payable for that period if interest accrued on the loan at the applicable federal rate and was payable annually on December 31, minus
- Any interest actually payable on the loan for the period.

Applicable federal rate. Applicable federal rates are published by the IRS each month in the Internal Revenue Bulletin. The Internal Revenue Bulletin is available through *IRS.gov/IRB*. You also can find applicable federal rates in the Index of Applicable Federal Rates (AFR) Rulings at *https://irs.gov/applicable-federal-rates*.

See chapter 5, *How To Get Tax Help*, for other ways to get this information.

Rules for below-market loans. The rules that apply to a below-market loan depend on whether the loan is a gift loan, demand loan, or term loan.

Gift and demand loans. A gift loan is any below-market loan where the forgone interest is in the nature of a gift.

A demand loan is a loan payable in full at any time upon demand by the lender. A demand loan is a below-market loan if no interest is charged or if interest is charged at a rate below the applicable federal rate.

A demand loan or gift loan that is a below-market loan generally is treated as an arm's-length transaction in which the lender is treated as having made:

- A loan to the borrower in exchange for a note that requires the payment of interest at the applicable federal rate, and
- An additional payment to the borrower in an amount equal to the forgone interest.

The borrower generally is treated as transferring the additional payment back to the lender as interest. The lender must report that amount as interest income.

The lender's additional payment to the borrower is treated as a gift, dividend, contribution to capital, pay for services, or other payment, depending on the substance of the transaction. The borrower may have to report this payment as taxable income, depending on its classification.

These transfers are considered to occur annually, generally on December 31.

Term loans. A term loan is any loan that is not a demand loan. A term loan is a below-market loan if the amount of the loan is more than the present value of all payments due under the loan.

A lender who makes a below-market term loan other than a gift loan is treated as transferring an additional lump-sum cash payment to the borrower (as a dividend, contribution to capital, etc.) on the date the loan is made. The amount of this payment is the amount of the loan minus the present value, at the applicable federal rate, of all payments due under the loan. An equal amount is treated as original issue discount (OID). The lender must report the annual part of the OID as interest income. The borrower may be able to deduct the OID as interest expense. See *Original Issue Discount (OID)*, later.

Exceptions to the below-market loan rules. Exceptions to the below-market loan rules are discussed here.

Exception for loans of $10,000 or less. The rules for below-market loans do not apply to any day on which the total outstanding amount of loans between the borrower and lender is $10,000 or less. This exception applies only to:

1. Gift loans between individuals if the gift loan is not directly used to buy or carry income-producing assets, and
2. Compensation-related loans or corporation-shareholder loans if the avoidance of federal tax is not a principal purpose of the interest arrangement.

This exception does not apply to term loans. The general below-market loan rules will continue to apply even if the outstanding balance is reduced to $10,000 or less.

Exception for loans to continuing care facilities. Loans to qualified continuing care facilities under continuing care contracts are not subject to the rules for below-market loans for the calendar year if the lender or the lender's spouse is age 65 or older at the end of the year. For the definitions of qualified continuing care facility and continuing care contract, see Internal Revenue Code 7872(g)(4) and (h).

Exception for loans without significant tax effect. Loans are excluded from the below-market loan rules if their interest arrangements do not have a significant effect on the federal tax liability of the borrower or the lender. These loans include:

1. Loans made available by the lender to the general public on the same terms and conditions that are consistent with the lender's customary business practice;
2. Loans subsidized by a federal, state, or municipal government that are made available under a program of general application to the public;
3. Certain employee-relocation loans;
4. Certain loans to or from a foreign person;
5. Gift loans to a charitable organization, contributions to which are deductible, if the total outstanding amount of loans between the organization and lender is $250,000 or less at all times during the tax year; and
6. Other loans on which the interest arrangement can be shown to have no significant effect on the federal tax liability of the lender or the borrower.

For a loan described in (6) above, all the facts and circumstances are used to determine if the interest arrangement has a significant effect on the federal tax liability of the lender or borrower. Some factors to be considered are:

- Whether items of income and deduction generated by the loan offset each other;
- The amount of these items;
- The cost to you of complying with the below-market loan rules, if they were to apply; and
- Any reasons other than taxes for structuring the transaction as a below-market loan.

If you structure a transaction to meet this exception and one of the principal purposes of that structure is the avoidance of federal tax, the loan will be considered a tax-avoidance loan, and this exception will not apply.

Limit on forgone interest for gift loans of $100,000 or less. For gift loans between individuals, if the outstanding loans between the lender and borrower total $100,000 or less, the forgone interest to be included in income by the lender and deducted by the borrower is limited to the amount of the borrower's net investment income for the year. If the borrower's net investment income is $1,000 or less, it is treated as zero. This limit does not apply to a loan if the avoidance of federal tax is one of the main purposes of the interest arrangement.

U.S. Savings Bonds

This section provides tax information on U.S. savings bonds. It explains how to report the interest income on these bonds and how to treat transfers of these bonds.

Department of the Treasury
Internal Revenue Service
Private Letter Ruling

Private Letter Ruling 9852047

UIL Number(s) 7872

Date: 09/30/98

Internal Revenue Service Department of the Treasury P.O. Box 7604 Ben Franklin Station Washington, DC 20044

Person to Contact:

Telephone Number:

Refer Reply to: CC:DOM:FI & P:2/PLR-118308-97

“This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.”

Index. No.: 7872.00-00

LEGEND:

Taxpayer = * * *

X

Date x

Month y

a = * * *

b

c

d

e

f = * * *

g = * * *

h = * * *

i = * * *

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o = * * *

This is in response to a letter dated September 18, 1997, as supplemented by a letter dated July 8, 1998 from your authorized representatives requesting a ruling on behalf of Taxpayer concerning whether client funds that are temporarily held by Taxpayer in the course of Taxpayer's business as a provider of payroll processing services qualify for exemption from the below-market loan provisions of section 7872 of the Internal Revenue Code under section 1.7872-5T of the temporary Income Tax Regulations.

FACTS

Taxpayer is engaged in the business of providing payroll data processing services to small businesses. Taxpayer charges a fee for each payroll that it processes. This fee varies depending upon the volume and complexity of the services performed.

Among the services Taxpayer offers is a tax payment service in which Taxpayer makes payroll tax withholding payments to federal, state and local taxing authorities on behalf of its clients. Taxpayer also offers a direct deposit service whereby Taxpayer transfers employee wages paid by its clients to employee savings and checking accounts in banks, savings and loan associations and credit unions. Finally, Taxpayer offers employee benefits administration services whereby Taxpayer makes payments for benefit coverage costs on behalf of its clients.

In the course of providing the above services, Taxpayer receives fund advances from its clients,and temporarily holds and invests these advances for its own account until its clients' obligations become due. Taxpayer's policy of collecting funds before the required deposits and payments are due ensures that the aggregate funds transferred to the Taxpayer by the Taxpayer's clients are at all times equal in amount to the aggregate liabilities that Taxpayer is required to pay.

Taxpayer collects payroll tax withholding payments by depositing into one of its collection accounts a pre-authorized bank draft drawn on the client's account. For those clients that utilize Taxpayer's direct deposit service, the deposit of the client's bank draft is generally made one day before the client's payroll payment date so that the draft may be processed and credited to Taxpayer prior to the time Taxpayer is obligated to transfer the funds to the employees' bank accounts. For those clients that utilize only the tax payment service, the deposit of the client's bank draft is usually made on the client's payroll payment date. The payroll payment date is the date on which both the client pays its employees (for example, each Friday, every other Friday, the 15th and 30th or 31st of each month, etc.) and the liabilities arise for withholding and employment tax deposits.

On the following day (or on the same day for clients using only the tax payment service), the client's funds are transferred from the collection account in which they were initially deposited to a central account where they are pooled with the funds of Taxpayer's other clients. Taxpayer transfers the funds necessary to satisfy present payroll, federal, state, and local tax obligations of its clients from the

central account to a disbursement account at the time such obligations become due. In addition, Taxpayer transfers any funds collected for employee benefit services (e.g., insurance premiums) to the disbursement account when due for payment to the specific vendors. By the end of each day, the funds in the disbursement account are paid, through various sub- accounts, to the taxing authorities (tax payment service), employees (direct deposit service), or vendors (employee benefit service).

Taxpayer invests funds that it holds temporarily in the central account in short-term taxable and tax-exempt securities until such funds are needed in Taxpayer's disbursement account. These short-term taxable and tax-exempt securities include variable rate demand notes, commercial paper, time deposits, municipal notes, and money market funds.

Taxpayer invests a portion of the funds collected for payroll tax liabilities in a long-term investment account. Due to the intervals between its receipt and disbursement of funds and the staggered payroll and tax payment dates of its large volume of clients, Taxpayer accumulates a core amount of funds which are not immediately needed to pay its clients' payroll tax liabilities. Periodically, Taxpayer transfers these funds to X, a wholly-owned subsidiary of Taxpayer. X provides cash management services to Taxpayer, and invests the funds contributed to it by Taxpayer in long-term taxable and tax-exempt securities.

Taxpayer represents that due to its manner of collection, disbursement, and handling of funds, and because of the fungible nature of cash and the large volume of clients it serves, it is administratively and technologically impractical for Taxpayer to determine how much of a particular client's funds from a specific collection transaction remain on hand at any particular time. Taxpayer represents further that it cannot ascertain how long a client's funds from anindividual collection transaction are held, to which investments they are allocated, or whether they are invested in tax-exempt obligations. Therefore, Taxpayer neither distributes nor credits income earned on the funds to its clients.

Approximately a employers presently use Taxpayees tax filing service. For each payroll processed, Taxpayer collects an average of approximately $b in total payroll tax liabilities from the employer. Payroll tax liabilities include federal withholding taxes, state income tax withholding, and state unemployment and disability insurance liabilities, with federal employment taxes comprising the largest share of the total collection. Taxpayer may hold these funds for a period as short as one day in the case of federal and state income tax withholding obligations, or for as long as four months for state unemployment and disability insurance obligations. Taxpayer estimates that it holds amounts collected for the various payroll tax liabilities an average of eight days. During its most recent fiscal year, Taxpayer completed over c transactions involving the collection and payment of payroll tax liabilities.

Over d employers currently use Taxpayer's direct deposit service. The average amount collected by Taxpayer for each payroll processed is approximately $e. Taxpayer generally holds these funds for one business day before distributing the funds to employee bank and savings accounts. During its most recent fiscal year, Taxpayer completed over f transactions for this service.

Taxpayer performs a minimal amount of services related to the collection and payment of costs for employee benefit coverage as part of its total business. For its most recent fiscal year, Taxpayer earned total investment income of $g from investing these funds.

Taxpayer maintains a highly automated collection system to facilitate the collection and payment of benefits, withholding, and employment tax liabilities. The system is designed to collect sufficient funds for the total benefits, withholding and employment tax deposit liabilities from the client's bank account

in a single transaction on the client's payroll payment date. Taxpayer's system is also designed to calculate the appropriate deposit dates for these liabilities based on the deposit rules for each taxing jurisdiction. 1

Clients of Taxpayer are generally subject to one of two Federal deposit due date schedules for withholding and employment tax deposits. A client's applicable due date is based upon the employer's total deposit liability; employers with larger total deposit liabilities generally are required to make deposits semi-weekly, and employers with smaller total deposit liabilities generally are required to make deposits monthly. Whenever a client's accumulated tax liability exceeds $100,000 in a deposit period, however, the client is required to make its federalwithholding and employment tax deposit by the following business day. As of date x, h% of Taxpayer's total tax payment service client base were semi-weekly depositors (including clients who are required to make payments on the next business day). The remaining i% are monthly depositors.

During Month y, federal withholding tax collections represented j% of all withholding and employment tax deposit funds collected by the Taxpayer. State withholding and employment taxes accounted for k% of the funds collected, with the remaining i% accounting for other taxes.

Based upon federal withholding taxes alone, Taxpayer holds over m% of its client's funds for less than one week. For example., most Federal withholding taxes collected for a Friday payroll payment date are generally required to be deposited by the following Wednesday. The percentage of funds held by Taxpayer for less than one week increases further when state withholding funds are taken into account.

Taxpayer has represented that designing a collection system to collect funds only when the client's withholding and tax deposit liabilities become due would be both complex and impractical, and would increase the likelihood of system errors. Developing such a system would require the development of multiple sets of collection procedures and appreciably add to the costs of Taxpayer's services.

LAW and ANALYSIS

Section 7872 was added to the Code by section 172 of the Tax Reform Act of 1984, Pub. L. No. 98-369, 98 Stat. 494, 699 (July 18, 1984). Congress recognized that a below-market loan is the economic equivalent of a loan bearing a market rate of interest, coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. In many instances, the failure to tax below-market loan transactions in accordance with their economic substance provides taxpayers with opportunities to avoid a number of tax rules. See, H.R. Rep. No. 432, 98th Cong., 2d Sess., pt. 2, at 1373 (1984).

Section 7872 recharacterizes a below-market loan (a loan under which the interest rate charged is less than the applicable Federal rate) as two transactions. First, there is a transaction in which the lender makes a loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate; in addition, there is a transfer of funds by the lender to the borrower (the imputed transfer). The timing and characterization of the imputed transfer by the lender to the borrower are determined in accordance with the substance of the transaction.

Section 7872(a) provides that in the case of a below-market gift loan or demand loan, the forgone interest shall generally be treated as transferred from the lender to the borrower and retransferred from the borrower to the lender as interest at the end of each calendar year. Forgone interest is defined by

section 7872(e)(2) as the excess of the amount of interest which would have been payable at the end of the calendar year had the interest accrued at the applicable Federal rate, over the interest payable on the loan properly allocable to such period.

Section 7872(b) provides that for term loans, the borrower of a below-market rate loan is treated as having received from the lender, on the date the loan is made, cash in an amount equal to the excess of the amount loaned over the present value of all payments required under the loan. This imputed transfer of cash is treated as original issue discount, with the result that the borrower is treated as paying interest to the lender at a constant rate over the term of the loan.

Section 7872(f)(6) defines a term loan as any loan which is not a demand loan. Section 7872 (0(5) defines a demand loan as any loan which is payable in full at any time on demand of the lender.

The legislative history of section 7872 indicates that the term “loan” should be interpreted broadly. Any transfer of money that provides the transferor with a right to repayment may be a loan. For example, advances or deposits of all kinds may be treated as loans. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1018 (1984), 1984-3 (Vol. 2) C.B. 272.

Congress intended that section 7872 would apply only to the below-market loans enumerated in subparagraphs (A) through (F) of section 7872(c)(1) : gift loans, compensation-related loans, corporation-shareholder loans, tax avoidance loans, and loans to qualified continuing care facilities. Under section 7872(c)(1)(E) , a loan that is not a gift loan, compensation-related loan, corporation-shareholder loan or qualified continuing care facility loan may also be subject to section 7872 to the extent provided in regulations if the interest arrangement has a significant effect on the tax liability of the borrower or the lender. H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1018, 1019 (1984), 1984-3 (Vol. 2) C.B. 272.

Section 7872(c)(1)(B) , concerning compensation-related loans provides, in part, that section 7872 shall apply to any below-market loan directly or indirectly between an independent contractor and a person for whom such independent contractor provides services. The imputed transfer in a compensation-related loan is treated as a payment of compensation from the lender to the borrower.

Section 7872(c)(1)(D) provides that section 7872 shall apply to any below-market loan one of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

Section 1.7872-5T(a) of the temporary regulations provides that notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in section 1.7872-5T(b) because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender. However, section 1.7872-5T(a)(2) provides that if a taxpayer structures a transaction as a loan exempt under section 1.7872-5T(b) and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D) .

Section 1.7872-5T(b)(14) of the temporary regulations provides an exemption for loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of section1.7872-5T.

Section 1.7872-5T(c)(3) of the temporary regulations provides that whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among

the factors to be considered are: (i) whether items of income and deduction generated by the loan offset each other; (ii) the amount of such items; (iii) the cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and (iv) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

Congress intended that the term “loan” be interpreted broadly for purposes of section *787* 2. The fund advances that Taxpayer receives from its clients are considered “loans” for purposes of section *787* 2. Although Taxpayer earns interest income from the investment of these funds, Taxpayer does not pay or accrue interest on the funds to its clients.

Since the fund advances between Taxpayer and its clients are loans received by an independent contractor from a person for whom the independent contractor provides services, the advances are compensation-related loans under section 7872(c)(1)(B) .

Section 7872 does not apply to the advances, however, if the advances qualify for an exemption under section 1.7872-5T(b) , and the advances are not recharacterized as tax avoidance loans under section 7872(c)(1)(D) .

Under the facts and circumstances test described in paragraph (c)(3) of section 1.7872-5T , the advances Taxpayer receives from its clients qualify for exemption as loans the. interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower under section 1.7872-5T(b)(14) .

The items of income and deduction generated by the loan would offset each other if section 7872 were applied to the advances with respect to both Taxpayer and its clients. Taxpayer borrows funds from its clients only in amounts that are necessary for Taxpayer to make required payments and deposits for it's clients. Therefore, with respect to Taxpayer, the compensation- related fee income imputed to Taxpayer by section 7872 would be offset by interest deductions for the imputed interest payments deemed paid by Taxpayer to its clients. With respect to Taxpayer's clients, the imputed interest income generated by the application of section 7872 would be offset by deductions for the compensation-related fees deemed transferred to Taxpayer for payroll services.

Taxpayer performs payroll services for a large volume of different clients each with numerous payroll dates, and the amount of money advanced for each payroll service performed is relatively small. Furthermore, Taxpayer has use of each client's funds for only a short period of time. Therefore, the application of section 7872 to each advance would result in generating relatively small amounts of income and deduction.

The costs to Taxpayer of complying with section 7872 would be significant. Taxpayer has represented that due to its manner of collection and disbursement of funds and the large volume of transactions it must perform, it Would be difficult and expensive for Taxpayer to calculate the interest imputed to the numerous advances received from particular clients.

Finally, the advances to Taxpayer are not structured as loans that pay interest at the applicable Federal rate because Taxpayer's business requires Taxpayer to have clients funds on hand before it transfers the funds to taxing authorities, employees, and vendors. Taxpayer must collect these funds in advance to protect itself against having to make client payments from its own funds. Client business practices also dictate that a client's various payroll obligations be advanced to Taxpayer in a lump sum

on or before a client's payroll payment date, rather than forwarded to Taxpayer as each of the client's separate obligations becomes due.

The advances received by Taxpayer will be classified as tax avoidance loans under section 7872(c)(1)(D) if a principal purpose of the lender (Taxpayer's client) or of the borrower (Taxpayer) of using the below-market arrangements of the loan is to avoid tax.

Tax avoidance is a principal purpose of the interest arrangement if it is a principal factor in the decision to structure the transaction as a below-market loan, rather than as a loan requiring the payment of interest at a rate that equals or exceeds the applicable Federal rate and. a payment by the lender to the borrower. See H.R. Rep, No. 98-861, at 1019; 1984-3 (Vol. 2) C.B. 273.

In the present case, Taxpayer services over Q clients having various staggered payroll and tax payment dates, and performs over o collection transactions per year. Taxpayer uses an automated system whereby Taxpayer collects each client's funds in advance in a single transaction on the client's payroll payment date. Among other reasons, Taxpayer uses this collection system to ensure that Taxpayer has adequate funds on hand to pay the obligations of its clients when such obligations become due. Taxpayer collects only the amount of funds that are necessary for it to conduct its business as a payroll process service provider, and holds the majority of those funds for only short periods of time.

Due to its manner of collection, disbursement, and handling of funds, and because of the fungible nature of cash, it is administratively and technologically impractical for Taxpayer to determine how much of a particular client's funds from a specific collection transaction remain on hand at any particular time. Developing and using a system to collect funds only when a client's various withholding and tax deposit liabilities become due would be complex and impractical for both Taxpayer and its clients, increase the likelihood of errors, and appreciably add to the costs of Taxpayer's services. Therefore, tax avoidance is not a principal purpose of the interest arrangements of the advances made to Taxpayer by its clients.

CONCLUSION

Wage and payroll tax withholding payments advanced to Taxpayer by its clients in the course of Taxpayer's business as a payroll processing service provider are exempt from the below-market loan provisions of section 7872 of the Code under section 1.7872-5T(b)(14) of the temporaryregulations.

No opinion is expressed on the tax effects of this ruling under any other provisions of the Code or regulations, or the tax effects of any conditions existing at the time of, or effects resulting from, this ruling that are not specifically covered by the conclusion set forth above.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax returns of the taxpayer involved for the taxable year(s) in which the conclusions rendered in this ruling letter are applicable.

Sincerely yours,

Assistant Chief Counsel

(Financial Institutions & Products)

William E. Coppersmith

Chief, Branch 2

1 Forty-two states and the District of Columbia impose a personal income tax. Seven of those jurisdictions generally require state withholding taxes to be deposited on the same day as the federal payment, although these states may use different thresholds to determine which employers are semi-weekly depositors and which are monthly depositors. An additional seven states use deposit rules substantially similar to the federal deposit rules. Many other states require more frequent deposits of withholding taxes, such as on a weekly basis.

General Information

Date Filed	Wed Sep 30 00:00:00 EDT 1998
Citation	DK:BNA-IRS\PLR\199852047; DK:BNA-IRS\PLR\9852047; irs plr 199852047; irs plr 9852047; 9852047

Department of the Treasury
Internal Revenue Service
Private Letter Ruling

PLR 201426002 - Section 6041 - Information at Source

Internal Revenue Service
Department of the Treasury
Washington, DC 20224

Number: 201426002
Release Date: 6/27/2014
Index Number: 6041.00-00, 6049.00-00,
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Date of Communication:
Person To Contact:
Telephone Number:
Refer Reply To:
CC:PA:02
PLR-121576-13
Date:
March 31, 2014

Legend

Taxpayer =

Dear [redacted data]:

This ruling replies to your letter dated May 7, 2013, and subsequent correspondence dated June 27, 2013, and November 19, 2013, submitted on behalf of Taxpayer in which you request that the Internal Revenue Service rule that fee credits earned by certain account holders are not subject to reporting under either section 6041 or section 6049 of the Internal Revenue Code (Code).

Facts:

Taxpayer is a bank as defined under section 581 of the Code. Taxpayer offers two different fee credit programs under which its commercial account holders and tax exempt recipients (“customers”) receive an allowance (“fee credit”) that can be used to offset certain fees for banking services. Both fee credit programs are offered for demand deposit accounts used for daily business operations. The services for which the fee credits may be used include the following: check processing, transaction processing, wire transfers, account analysis, deposit and withdrawals, posting of debits and credits and payment of checks.

Under both fee credit programs, the fee credit is calculated by applying a fee credit rate to the investable balance. The investable balance is the account ledger balance minus float (a portion of the balance unavailable to the customer while deposited items clear). Fee credit rates are most frequently determined by Taxpayer using a rate committee that determines the rate for a specific customer type

based on market rates and competitive factors. Fee credits may also be based on indexed rates, such as Libor or 90-day T-Bill and are subject to Taxpayer's discretion.

Under the first program (the “Noninterest Fee Credit Program”), excess or unused fee credits are not paid in cash and may not be withdrawn by the customer. However, certain government, nonprofit, educational and healthcare account holders can use excess or unused fee credits to pay for banking services provided by third party vendors through vendor contracts with Taxpayer. The services are ancillary to the customers' banking relationship with Taxpayer and include armored car services, courier services, check supplies, and lock boxes. But in certain cases, the customer, rather than Taxpayer, contracts directly with the third party vendor to provide services with respect to the customer's account.

Under the second program (the “Hybrid Fee Credit Program”), the fee credits may only be used to offset fees for banking services up to a set limit. Taxpayer pays interest on any unused account balance not required to offset fees. Taxpayer concedes that any stated interest paid on the unused account balance is interest for purposes of sections 6041 and 6049 of the Code.

Taxpayer represents that fee credit programs are extremely common in the banking industry, and has offered empirical evidence supporting that representation. Taxpayer and other banks offer the fee credit programs to encourage banking relationships with commercial customers as well as to provide an incentive to customers to maintain large balances. They are also used to manage a bank's interest expense, a significant element to which shareholders and market analysts look when evaluating banking institutions.

Taxpayer also represents that developing systems capable of reporting the amount of fee credits actually used by customers would be a large and costly administrative burden. Furthermore, a majority of the customers who receive the fee credits are exempt recipients for purposes of the reporting rules under sections 6041 and 6049 . Therefore, any system established for reporting fee credits developed by Taxpayer would be used for only a small number of customers. Taxpayer states that if it actually paid interest on the deposits and charged the customers a fee for the banking services it provides, the income and deductions generated by the transaction would offset one another. The interest income received by a customer would be offset by a deduction for the bank fees, and the service fee income received by Taxpayer would be offset by a deduction for interest paid to the customer.

Law:

Interest generally is includible in a recipient's gross income under section 61(a)(4) of the Code and section 1.61-7 of the Income Tax Regulations (regulations). The term interest means amounts paid for the use or forbearance of money, which includes amounts, whether or not designated as interest, paid on savings accounts and other deposit arrangements.

Section 6041(a) of the Code requires information returns from persons engaged in and making payment in the course of a trade or business of rent, salaries, wages, premiums, and income of $600 or more in a taxable year. Section 6041(a) allows certain exceptions, including payments to which section 6049(a) applies.

Section 6049(a)(1) requires information returns for payments of interest aggregating $10 or more to any other person during the taxable year.

Section 7872 recharacterizes a below-market loan as an arm's-length transaction in which the lender

made a loan to the borrower in exchange for a note requiring the payment of interest at a statutory rate. As a result, the parties are treated as if the lender made a transfer of funds to the borrower, and the borrower used these funds to pay interest to the lender. The transfer to the borrower is treated as a gift, dividend, contribution of capital, payment of compensation, or other payment depending on the substance of the transaction. The interest payment is included in the lender's income and generally may be deducted by the borrower. See H.R. Conf. Rept. No. 98-861, at 1015 (1984), 1984-3 C.B. (Vol. 2) 1, 269.

Section 7872(f)(5) of the Code defines a demand loan as any loan which is payable in full at any time on demand of the lender. The legislative history of section 7872 indicates that the term “loan” should be interpreted broadly. Any transfer of money that provides the transferor with a right to repayment may be a loan. For example, advances or deposits of all kinds may be treated as loans. H.R. Conf. Rept. No. 98-861, at 1018 (1984), 1984-3 (Vol. 2) C.B. 1, 272.

Congress intended that section 7872 of the Code would apply only to the below-market loans enumerated in subparagraphs (A) through (F) of section 7872(c)(1) : gift loans, compensation- related loans, corporation-shareholder loans, tax avoidance loans, and loans to qualified continuing care facilities. H.R. Conf. Rept. No. 98-861, at 1018, 1019 (1984), 1984-3 (Vol. 2) C.B. 272. Under section 7872(c)(1)(E) , to the extent provided in regulations, a loan that is not a gift loan, compensation-related loan, corporation-shareholder loan or qualified continuing care facility loan may still be subject to section 7872 if the interest arrangement has a significant effect on the tax liability of the borrower or the lender.

Section 7872(c)(1)(B) of the Code, concerning compensation-related loans provides, in part, that section 7872 shall apply to any below-market loan directly or indirectly between an independent contractor and a person for whom such independent contractor provides services. The imputed transfer in a compensation-related loan is treated asa payment of compensation from the lender to the borrower.

Section 7872(c)(1)(D) of the Code provides that section 7872 shall apply to any below-market loan one of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

Section 7872(i)(1)(C) of the Code provides that the Secretary shall prescribe regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or borrower.

Section 1.7872-5T(b) of the Temporary Income Tax Regulations lists transactions that are exempt from section 7872 of the Code because the interest arrangements of such loans do not have a significant effect on the Federal tax liability of the borrower or lender, provided that they do not have a principal purpose of tax avoidance. See section 1.7872-5T(a).

Section 1.7872-5T(b)(2) of the regulations exempts from the provisions of section 7872 of the Code accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business.

Section 1.7872-5T(b)(14) of the regulations exempts from the provisions of section 7872 of the Code those loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in section 1.7872-5T(c)(3).

Section 1.7872-5T(c)(3) of the regulations provides that whether a loan will be considered a loan the

interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all the facts and circumstances. Among the factors to be considered are (i) whether items of income and deduction generated by the loan offset each other, (ii) the amount of such items, (iii) the cost to the taxpayer of complying with the provisions of section 7872 of the Code if such section were applied, and (iv) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the AFR and a payment by the lender to the borrower.

Analysis:

In the present situation, the deposit held by Taxpayer in a customer's account is a loan from the customer to Taxpayer. In lieu of paying interest on the deposit, Taxpayer provides banking services to the customer through the use of bank fee credits. The loan is a compensation-related loan under section 7872(c)(1)(B) of the Code.

Section 7872 of the Code does not give rise to taxable income, however, if the loan qualifies for an exemption under section 1.7872-5T(b) of the temporary regulations, and the loan is not recharacterized as a tax avoidance loan under section 7872(c)(1)(D) .

In the present situation, Taxpayer, a bank under section 581 of the Code, pays the fee credits on certain commercial demand deposit accounts of its customers in the ordinary course of its business. See section 1.7872-5T(b)(2) of the temporary regulations. Under the facts and circumstances test described in section 1.78725T(c)(3), the fee credit programs have no significant effect on any Federal tax liability of the lender or the borrower under section 1.7872-5T(b)(14).

The items of income and deduction generated by the loan would offset each other if section 7872 of the Code were applied to the fee credits with respect to both Taxpayer and its customers. The imputed interest income received by a customer would be offset by a deduction for the bank fees and charges that are reduced by the fee credits. Likewise, the service fee income received by Taxpayer would be offset by a deduction for imputed interest deemed paid to the customer. The costs to Taxpayer of complying with section 7872 of the Code would be significant and would have little if any Federal tax impact. Developing systems capable of tracking the amount of fee credits actually used by customers would be a large and costly administrative burden. Furthermore, as noted above, most customers in the fee credit programs are exempt recipients under the reporting rules. Therefore, the costs for Taxpayer to comply with the provisions of section 7872 outweigh the benefits of requiring Taxpayer to comply with the provision if it were applied.

Taxpayer has offered a number of non-tax reasons for structuring the transaction as a below-market loan. The fee credit programs encourage banking relationships with commercial customers and provide an incentive to customers to maintain large balances. Taxpayer has represented that fee credit programs are industry wide and are used to manage Taxpayer's interest expense, a significant element to which shareholders and market analysts look when evaluating banking institutions. For the reasons discussed above, the application of section 7872 of the Code to the fee credit programs would not have a significant effect on the tax liability of Taxpayer or its customers.

The fee credit programs will be classified as tax avoidance loans under section 7872(c)(1)(D) of the Code if a principal purpose of Taxpayer or the customers of using the below-market arrangement of the loan is to avoid tax. Tax avoidance is a principal purpose of the interest arrangement if it is a principal factor in the decision to structure the transaction as a below-market loan, rather than as a

loan requiring the payment of interest at a rate that equals or exceeds the AFR and a payment by the lender to the borrower. See H.R. Rep. No. 98-861, at 1019; 1984-3 (Vol. 2) C.B. 273.

The fee credit program used by Taxpayer does not have tax avoidance as a principal purpose. Taxpayer has offered a number of non-tax reasons for structuring the transaction as a below-market loan. Furthermore, because the items of income and deduction for both parties would offset each other if the transaction were not structured as a below-market loan, there is no tax to be avoided. Therefore, tax avoidance is not a principal purpose of the fee credit program. Accordingly, for the reasons explained above the fee credit program is not subject to tax under section 7872 of the Code.

In contrast, section 7872 of the Code does not apply to the fee credits earned in lieu of interest that the account holder uses to pay for third party vendor services if the account holder selects and contracts the third party vendor. This situation is not a compensation-related loan described in section 7872(c)(1)(B) because Taxpayer does not directly or indirectly provide the services. Therefore, the fee credits earned in lieu of interest that are used to pay the third party vendor for services result in interest income to the customer under section 61(a)(4) . Accordingly, in this case, payments made by Taxpayer to third party vendors on behalf of its account holders are reportable as interest under section 6049 unless the account holder is an exempt recipient.

Conclusion:

Below-market loans as described above that are made pursuant to the Noninterest Fee Credit Program and the Hybrid Fee Credit Program are compensation-related loans under section 7872 of the Code but qualify for exemption under section 1.7872-5T of the temporary regulations. Because these loans will not generate imputed interest under section 7872 , there is no reportable interest under section 6049 or other reportable income under section 6041 . However, fee credits used to pay third party vendors selected and contracted by the account holder give rise to interest income under section 61(a)(4) reportable under section 6049 .

Holdings:

(1) The fee credits earned and used to offset Taxpayer's bank fees with respect to “Noninterest Bearing Accounts” in the first program are not subject to the information reporting requirements imposed by sections 6049 or 6041 of the Code;
(2) Fee credits that are used to pay a third party vendor in lieu of interest where Taxpayer subcontracts directly with the vendor to provide ancillary banking services are not subject to information reporting (under either section 6049 or section 6041 of the Code) to the account holder, whether or not the account holder is an exempt recipient;
(3) Fee credits that are used to pay a third party vendor in lieu of paying the account holder interest are reportable as interest on Form 1099-INT where the account holder selects and contracts with the third party vendor unless the account holder is an exempt recipient;
(4) The fee credits described above, with the exception of interest on any unused balances, earned and used to offset Taxpayer's bank fees with respect to “Hybrid Accounts” are not subject to the information reporting requirements imposed by sections 6049 and *6041of* the Code; and (5) The stated interest on any unused balances paid to “Hybrid Accounts” is subject to Form 1099-INT reporting under section 6049 when paid to a nonexempt recipient.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Pamela Wilson Fuller
Senior Technician Reviewer
(Procedure & Administration)

cc:

General Information

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Mr. Doggett. And say with reference to the two witnesses upon which the Committee has relied exclusively, and specifically Mr. Ziegler, he has speculated that Mr. Biden committed wrongdoing without providing any evidence of the same.

To support his speculation, he has provided us five documents. Only two of those are new today. One is exhibit 607A, which is two lines that does not reference Joe Biden in any way. And the other is a list of aliases that are already publicly available in exhibit 606.

He relies on three old documents that we have had for some time. Those documents also, several of them written when Joe Biden was -- about the time that Joe Biden was a private citizen and Donald Trump was President in 2017, also show no evidence of any wrongdoing by Joe Biden.

And then that gets us to the speculation that, since you referenced, Mr. Chairman, the Judiciary Committee, the speculation growing out of the Oversight Committee yesterday, where suddenly today in this Committee the payment of three car payments for a truck of $1,380 each are suddenly transformed into regular monthly payments to Joe Biden from the Chinese passed through a Hunter Biden company.

I think this kind of smear campaign, this kind of character assassination without facts is truly outrageous. We do not have today any new facts that are meaningful, any new documents that cast any more evidence of wrongdoing by the President than we had when the Speaker of the House announced that there was not evidence to justify an impeachment inquiry. Nothing to justify his change of heart that we now have a duty to have an investigation of impeachment of the President.

The only duty that has been imposed on this Republican set of colleagues is the duty imposed by Donald Trump. Under four indictments, over 90 charges of criminal misconduct, he needs to be able to say they all do it and discount them accordingly.

And so we find our colleagues following the Pied Piper right off the cliff.

I yield back.

Chairman Smith. Mr. Arrington is recognized to strike the last word.

Mr. Arrington. Thank you, Mr. Chairman.

I guess this may break from conventional process here, but I am wondering if my friends -- and I mean that, my friends, Democrat friends -- have a suggestion on what we should do with our oversight responsibility, our constitutional duty to hear from these gentlemen, who seem very credible.

Forget Joe Biden, the President, and the bigger picture of has he committed an impeachable offense. I am not even going there. To hear what has happened. These guys couldn't do their job. They were removed from doing their job, seemed to be penalized for trying to just pursue truth as they would in any other investigation.

That can't happen. I don't care if it is my children or your children or the President's or a former President, that is the sort of thing that we have to -- I think we have to be exceptionally focused and serious about it, because there is such a perception by the American people that we play by a different set of rules, "we" being folks in politics, members of our families, and this whole sort of two-tiered justice that I have heard -- and I believe it to be sincere -- from my Democrat colleagues.

So what --

Mr. Schneider. Would the gentleman yield?

Mr. Arrington. What should we do to pursue justice in this case and accountability so that we prevent it from happening in the future, just on those grounds?

Yes, I am happy to yield.

Mr. Schneider. Thanks, Jodey.

I hear you. And I feel like you, very strongly about the idea that there shouldn't

be two sets of rules and that there shouldn't be special preference for individuals.

And I think on the Oversight Subcommittee or the Committee as a whole, there may be a time to do that and we should do that, and I am happy to sit with you and work on it.

But I sit here today, December 5th, I look at the things we need to do not just in this Committee but as the whole Congress. I am going to focus on this Committee.

This is not the first priority that this Committee as a whole should be focusing on. We have tax extenders we should be talking about. We have healthcare issues we should be talking about.

There are so many important things that we haven't talked about for the last number of months because of other things that have distracted this Committee.

And I am not saying that what you are raising is a distraction. The point you are raising is something that is due consideration.

But the sequence of things reflect the priorities we have as a body. Our priorities should be doing the business of the American people to make sure we are raising the quality of their lives, we are making it easier for them to pay their bills, we are making it easier for them to secure their families.

And instead, we are doing what, in many respects today, sure feels like a wild goose chase or a hunt for information that may or may not be there.

Mr. Arrington. And I understand where you are coming from with respect to trying to prioritize the needs of the American people, the threats to our country. But what is a greater need or threat than the lack of institutional integrity, than the levers of power being wielded inequitably, than the lost confidence by the electorate, by the American people in institutions?

So I would just say -- and I agree with you.

Mr. Schneider. That is big, I mean, because it is huge, and it should be reflected in everything we do and how we conduct ourselves --

Mr. Arrington. No question.

Mr. Schneider. -- every single day. And if we were focused on the priorities and responsibilities of this Committee as assigned, I think the American people might have a little more respect for the institution.

If we worked across the aisle, as we do individually -- we all get along very well. We can sit together. We had lunch in the back. We talked about things. If we went from those conversations that we have in the library and brought them to substance and policy from the dais and we delivered that into votes for real substantive issues on the floor of this House that could then get to the Senate -- and that is another story --

Mr. Arrington. If I may, let me reclaim my time and just end with this.

I don't disagree with much of what you are saying, but to put it in perspective, I think this constitutional, sacred constitutional responsibility to provide oversight, to make sure things are done in an evenhanded way, in a fair and equitable way, and to make sure there is no corruption in the way we are meting out our responsibility to enforce the law, that sort of check and balance is about as big as it gets.

And the confidence that our citizens have in our institutions -- which, by the way, is waning so desperately, so significantly that it is going to be difficult to put any of this back in the box.

And so that is why I think this is serious. It is bigger than just one case. And I don't know -- I still don't know yet from my colleagues what they would recommend we do after hearing this if you think this is credible. I certainly do.

I know I have gone over my time, and I yield.

Chairman Smith. Thank you, Mr. Arrington.

Further members wish to strike the last word?

Mr. Smith.

Mr. Smith of Nebraska. Thank you, Mr. Chairman.

I would like to associate myself with Mr. Arrington's comments and concerns and questions that, if not this, then what?

We have had whistleblowers, credible individuals in the trenches of an investigation speak out, and what are we to do? Ignore them? Vilify them? Accuse them of partisanship? Or, I go back to again, just ignoring them? And I would love to hear what the critics of this current effort would propose to carry out our responsibility.

I don't enjoy these kinds of meetings and gatherings. It is not something I seek out. But when I hear what has taken place, I feel it is my duty. I would hope we would all feel like it is our duty collectively to get to the bottom of this.

Now, I would speculate that some might say, well, just let the investigation go on perhaps even farther past the statute of limitations than has already passed.

Our efforts are important. Our jobs are important. And the duty that we have constitutionally to serve as oversight, as Mr. Arrington very appropriately pointed out, we need to do our job.

This is part of the process. This is not a vote to indict. This is not a vote to convict. This is a vote to allow the information, allow the facts to move forward so that we can exercise the solemn duty that we have.

I personally find much of the evidence chilling, absolutely chilling, that a line prosecutor would give heads-up to the defense of what is happening. I am disturbed by that, and I would hope others are here as well.

I don't want to rush to a conclusion. Good grief. That is obvious. But let's allow this process to proceed so that the facts can guide what we are doing.

And I get there will be biases along the way. That is only human. But I would hope that collectively we can elevate ourselves above the biases that might exist so that, yes, we can get those facts and have those move forward for the sake of our country and the sake of many an institution across our own government so that there can be a better result along the way.

We owe that to the American people. I think we owe that to each other. We certainly owe that to our constituents.

Thank you. I yield back.

Chairman Smith. Any additional members wish to strike the last word?

Mr. Larson.

Mr. Larson. Let me just say that our colleagues, the last couple of speakers, I think point to what Mr. Neal said at the outset about this Committee has importance and significance. And I was interested as well in a lot of things that I heard.

But that is not what is happening here behind closed doors in this theater that legislating has become for the purposes of messaging after the theater has taken place.

Yeah, it would be unbelievably good to hear about the IRS. It would have been good to have their people here too as well to give their side of the story and the Department of Justice to hear their side of the story.

But if these two are the only two people that we are going to hear from to lay out the theater of the day, how can you help but think that you don't take this as a farce, as a "Saturday Night Live," instead of getting to the truth.

It would have been incredibly interesting, I think, from the perspective, because everybody has feelings about how agencies operate and do they overstep and what can we do to further look into that to ease the burden of the American people, but not when it is part of a charade that we are asked to be part of that is going to take place behind

closed doors.

And the public doesn't get to see this frank conversation between us. As was pointed out, we could have great conversations over lunch and in the back room, but then come to this floor and again go to separate corners as well.

I think the more that we get back -- and we have got a lot of important issues. I didn't hear anyone mention Social Security, but I will. And we got a lot of important issues that we have to get to on this Committee, and it is important that we do so on behalf of the American people.

And you know what? Mr. Neal is right. We are the premier Committee in all of the Congress. People look to us as an example of how Congress should act and respond.

I don't think this is our best day or our best performance, but I do believe that the people on this committee, on both sides, are more than capable of delivering that.

I yield back.

Chairman Smith. Additional members wish to strike the last word?

Mr. Wenstrup. Mr. Chairman?

Chairman Smith. You have already striked the last word. So, if someone wants to yield to you --

Mr. Hern.

Mr. Hern. Mr. Chairman, I yield to Mr. Wenstrup.

Mr. Wenstrup. I won't take 5 minutes.

But I will say to Mr. Larson, we can walk and chew gum, and we should. And there is a lot of talented people here, and we can do more than one thing at a time. But oversight and having the American people trust this government and our agencies is huge.

And so, I am more than willing to work with you, take a lead, do whatever we

need to do to bring in the other people to get to the bottom line. And actually, we may need to legislate.

That when people don't adhere to the rules in the agencies, that somehow, there is a level of criminality that is associated with that rather than just saying, oh, was that wrong? I shouldn't have done that. We have that potential, and we should do it.

And it is not just in this agency. In my mind, it is across the board. So I will be glad to work with you on that.

I yield back.

Mr. Thompson. Mr. Chairman?

Chairman Smith. Mr. Thompson.

Mr. Thompson. I yield to the ranking member.

Chairman Smith. Mr. Neal.

Mr. Neal. Thank you, Mr. Thompson.

I take the sincerity that has been offered by my colleagues over here for what it is: Truthful. But this evidence was cherry-picked. We have two witnesses today who both acknowledged, to their credit, they have been denied promotions.

Every one of us in this room who has held elected office, we have dealt with those who were denied promotions, and we know the result.

I don't understand, as the witnesses were brought forward, why we might not have had a second panel of their supervisors, or those who might come in from the Justice Department. If there is a matter here to be referenced and referred based on criminality, we should embrace it. We are not trying to stop that.

But I thought that what we could have done here was to make sure, for purposes of clarity, that there were competing voices within the jurisdiction of the Internal Revenue Service and/or the Justice Department that might have offered a conflicting

point of view.

Today, as predicted, based upon the presentations that were made by the two witnesses, we knew where this was headed. Yet, as I noted before, not only is there not a smoking gun, there is no body. That is the reality.

So, we are going to continue down this nebulous path of constructing the scenario that we wish to have constructed because we have largely drawn conclusions based on opinion as opposed to fact. So I don't doubt what Mr. Arrington or Dr. Wenstrup had to say for a second.

I have been here long enough to know something: We have been on this road for a long, long time, and if anybody thinks that, for most members of this Committee, it just happened while you were in Congress, we have been headed in this direction for a long period of time.

But the witnesses today, I thought, offered more anger than they offered clarity. And I hope in the future, we might have a discussion -- a dialogue as to what the witnesses might be chosen for and to have at least an opposing point of view.

With that, thank you. I yield back my time.

Chairman Smith. Additional members wish to strike the last word?

Mr. Pascrell, you have already been recognized.

So does anyone want to yield Mr. Pascrell time?

Mr. Schneider.

Mr. Schneider. Thank you, Mr. Chairman.

Before I yield my time, I will point out the irony. We are talking about building trust as we sit here in executive session rather than the public hearing what we are saying today.

I would like to yield my time to Mr. Pascrell.

Mr. Pascrell. Mr. Speaker, President, whatever -- Chairman, I want to associate myself with both sides that have spoken in the last half hour. I think it is meaningful. Something meaningful came out of this.

Here is what gets me. A family has been desecrated already. On speculation -- on speculation -- we call it the Biden crime family. Think about that. That is maybe for your Presidential contender. Everybody on this panel is above that, and you know it, and I know it. And we did a lot of speculating today and have continued to hurt. I don't think that gets us anyplace, to be very honest with you.

I yield back, Mr. Chairman.

Chairman Smith. Do further members wish to strike the last word?

Seeing none, we will move to amendments. Are there any amendments?

Seeing none, I now recognize Mr. Schweikert for a motion.

Mr. Schweikert. Mr. Chairman, I move that the Committee submit to the House of Representatives the materials under consideration today, which are comprised of one affidavit and accompanying exhibits, the official hearing transcripts from this morning's proceedings, and the official markup transcripts from this proceeding.

Chairman Smith. The Committee will return to open session to vote on the motion offered by the gentleman from Arizona. Prior to opening the doors, all material under consideration will be collected by designated staff.

[Pause]

Chairman Smith. All right. The question is on the motion from the gentleman from Arizona to submit the aforementioned 6103 materials to the House.

The clerk will call the roll.

The Clerk. Mr. Buchanan?

Mr. Buchanan. Yes.

The Clerk. Mr. Buchanan, yes.

Mr. Smith of Nebraska?

Mr. Smith of Nebraska. Yes.

The Clerk. Mr. Smith of Nebraska, yes.

Mr. Kelly?

Mr. Kelly. Yes.

The Clerk. Mr. Kelly, yes.

Mr. Schweikert?

Mr. Schweikert. Yes.

The Clerk. Mr. Schweikert, yes.

Mr. LaHood?

Mr. LaHood. Yes.

The Clerk. Mr. LaHood, yes.

Dr. Wenstrup?

Mr. Wenstrup. Yes.

The Clerk. Dr. Wenstrup, yes.

Mr. Arrington?

Mr. Arrington. Yes.

The Clerk. Mr. Arrington, yes.

Dr. Ferguson?

Mr. Ferguson. Yes.

The Clerk. Dr. Ferguson, yes.

Mr. Estes?

Mr. Estes. Yes.

The Clerk. Mr. Estes, yes.

Mr. Smucker?

Mr. Smucker. Yes.

The Clerk. Mr. Smucker, yes.

Mr. Hern.

Mr. Hern. Yes.

The Clerk. Mr. Hern, yes.

Mrs. Miller?

[No response.]

The Clerk. Dr. Murphy?

Mr. Murphy. Yes.

The Clerk. Dr. Murphy, yes.

Mr. Kustoff?

Mr. Kustoff. Yes.

The Clerk. Mr. Kustoff, yes.

Mr. Fitzpatrick?

Mr. Fitzpatrick. Yes.

The Clerk. Mr. Fitzpatrick, yes.

Mr. Steube?

Mr. Steube. Yes.

The Clerk. Mr. Steube, yes.

Ms. Tenney?

Ms. Tenney. Yes.

The Clerk. Ms. Tenney, yes.

Mrs. Fischbach?

Mrs. Fischbach. Yes.

The Clerk. Mrs. Fischbach, yes.

Mr. Moore?

Mr. Moore of Utah. Yes.

The Clerk. Mr. Moore, yes.

Mrs. Steel?

Mrs. Steel. Yes.

The Clerk. Mrs. Steel, yes.

Ms. Van Duyne?

Ms. Van Duyne. Yes.

The Clerk. Ms. Van Duyne, yes.

Mr. Feenstra?

Mr. Feenstra. Yes.

The Clerk. Mr. Feenstra, yes.

Ms. Malliotakis?

Ms. Malliotakis. Yes.

The Clerk. Ms. Malliotakis, yes.

Mr. Carey?

Mr. Carey. Yes.

The Clerk. Mr. Carey, yes.

Mr. Neal?

Mr. Neal. Yes.

The Clerk. Mr. Neal, yes.

Mr. Doggett?

Mr. Doggett. Yes.

The Clerk. Mr. Doggett, yes.

Mr. Thompson?

Mr. Thompson. Aye.

The Clerk. Mr. Thompson, yes.

Mr. Larson?

Mr. Larson. Yes.

The Clerk. Mr. Larson, yes.

Mr. Blumenauer?

[No response.]

The Clerk. Mr. Pascrell?

Mr. Pascrell. Yes.

The Clerk. Mr. Pascrell, yes.

Mr. Davis?

Mr. Davis. Yes.

The Clerk. Mr. Davis, yes.

Ms. Sanchez?

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez, yes.

Mr. Higgins?

Mr. Higgins. Yes.

The Clerk. Mr. Higgins, yes.

Ms. Sewell?

[No response.]

The Clerk. Ms. DelBene?

Ms. DelBene. Aye.

The Clerk. Ms. DelBene, yes.

Ms. Chu?

Ms. Chu. Aye.

The Clerk. Ms. Chu, yes.

Ms. Moore?

Ms. Moore of Wisconsin. Aye.

The Clerk. Ms. Moore, yes.

Mr. Kildee?

Mr. Kildee. Yes.

The Clerk. Mr. Kildee, yes.

Mr. Beyer?

Mr. Beyer. Aye.

The Clerk. Mr. Beyer, yes.

Mr. Evans?

Mr. Evans. Yes.

The Clerk. Mr. Evans, yes.

Mr. Schneider?

Mr. Schneider. Yes.

The Clerk. Mr. Schneider, yes.

Mr. Panetta?

Mr. Panetta. Yes.

The Clerk. Mr. Panetta, yes.

Mrs. Miller?

[No response.]

The Clerk. Mr. Blumenauer?

[No response.]

The Clerk. Ms. Sewell?

[No response.]

The Clerk. Chairman Smith?

Chairman Smith. Yes.

The Clerk. Chairman Smith, yes.

Chairman Smith. The clerk will report the vote.

The Clerk. The ayes are 40. The noes are zero.

Chairman Smith. There being 40 ayes and zero noes, the motion is agreed to, and the materials are submitted to the House of Representatives.

Without objection, members have 2 additional days to file with the Committee clerk supplemental, additional, dissenting, or minority views.

There being no further business before the Committee, the Committee stands adjourned.

[Whereupon, at 4:56 p.m., the Committee was adjourned.]