



U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

December 21, 2023

The Honorable Daniel Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Werfel:

On November 21, 2023, shortly before the Thanksgiving holiday, the Internal Revenue Service (IRS) committed a lawless act by delaying the implementation of a new IRS Form 1099-K reporting threshold that Congressional Democrats and President Biden enacted into law. Additionally, the IRS went a step further by even rewriting the law itself, changing important provisions as it sees fit. This comes after the agency announced a similar action last year on December 23, 2022, right before the Christmas holiday. The timing of these announcements makes it clear that the agency hopes Congress will not notice its refusal to implement a law passed by Congress and signed by the President. Well, we noticed.

We write to ask you to provide the Committee with dates you are available between January 29 and February 7, 2024, to testify before the Committee on Ways and Means regarding why the agency believes it does not have to implement laws passed by Congress and signed by the President.¹ The role of the Executive Branch is to execute the laws, not make them or delay them. Your announcement's blatant disregard for the separation of powers and our nation's constitutional order is alarming. We look forward to your appearance to answer questions about this decision.

In 2021, President Biden signed into law, the *American Rescue Plan Act of 2021*, which lowered the Form 1099-K threshold to \$600 from the longstanding threshold of \$20,000 and over 200 transactions. The threshold was lowered after it was proposed by the Department of Treasury, as written in their Fiscal Year 2022 Revenue Proposals.² The Democratic-drafted law states that the change "shall apply to returns for calendar years beginning after December 31, 2021."³ On November 21, 2023, the Internal Revenue Service (IRS) announced a delay in the

¹ We seek testimony on this, and other topics related to the functioning and decision making of the IRS.

² U.S. Dept. of the Treasury, General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals (May 2021), <https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf>.

³ American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9674 (2021)

Form 1099-K reporting threshold in 2023 and announced plans to set a threshold of \$5,000 in 2024.⁴

To be clear, we did not vote for, nor do we support, the lowering of the Form 1099-K threshold. However, we have serious concerns with the IRS's actions that have continually ignored the clear letter of the law, and now your agency appears to be writing an entirely new policy without the authority to do so. The legislation that our Democrat colleagues passed on a party line vote very clearly states that the Form 1099-K threshold was set at \$600 for tax year 2022 and onward. The enacted law did not give the IRS room to delay or change this threshold.

The IRS reported that if the *American Rescue Plan Act of 2021* had been implemented correctly, over 44 million American taxpayers would have received a Form 1099-K from an online payment platform, gig economy app, or online marketplace, an increase of at least 30 million forms due to the new policy.⁵ This would have caused mass confusion for millions of these taxpayers, many of whom would not actually owe any tax from utilizing these platforms and engaging in the modern online economy. The November 21 announcement cited “the complexity of the new provision” and “the large number of individual taxpayers affected” as reasons for the second delay.⁶ These were many of the same arguments Congressional Republicans made when Democrats enacted this law. Nonetheless, they decided to press forward. The IRS's failure to provide clear guidance to taxpayers and the agency's apparent interest in protecting the President during an election year are not reasons enough to delay implementing laws passed by Congress almost three years ago.

We agree with you that the IRS is not prepared to implement the law. That is why we passed H.R. 190, the *Saving Gig Economy Taxpayers Act*,⁷ through the Committee on Ways and Means earlier this year as part of the *Small Business Jobs Act*, which would return the threshold to the time-tested standard of \$20,000 and 200 transactions. Congress has the power to legislate. The IRS does not. We do not like the law congressional Democrats passed and that President Biden signed, but we cannot ignore the rule of law violations involved in the agency's decision. We cannot imagine how frustrated and upset our Democratic colleagues must be by your decision not to implement one of their signature pieces of legislation that would send 44 million new tax forms to Americans.

⁴ Internal Revenue Service, *IRS announces delay in Form 1099-K reporting threshold for third party platform payments in 2023; plans for a threshold of \$5,000 for 2024 to phase in implementation*, (Nov. 21, 2023), <https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation>.

⁵ U.S. Government Accountability Office, *Tax Enforcement: IRS Can Improve Use of Information Returns to Enhance Compliance* (Nov. 15, 2023), <https://www.gao.gov/products/gao-24-107095>.

⁶ Internal Revenue Service, *IRS announces delay in Form 1099-K reporting threshold for third party platform payments in 2023; plans for a threshold of \$5,000 for 2024 to phase in implementation*, (Nov. 21, 2023), <https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation>.

⁷ H. Res. 190, *Saving Gig Economy Taxpayers Act*, 118th Congress (2023)

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As such, please contact the Majority Staff of the Ways and Means Committee no later than January 5, 2024, to provide dates you are available to testify to the Committee between January 29 and February 7, 2024.

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means



Vern Buchanan
Member of Congress



Adrian Smith
Member of Congress



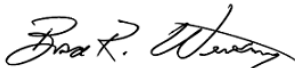
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Brad R. Wenstrup, D.P.M.
Member of Congress



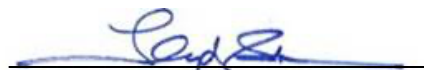
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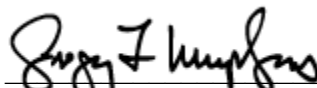
Lloyd Smucker
Member of Congress



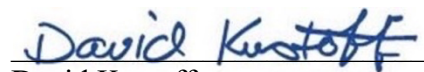
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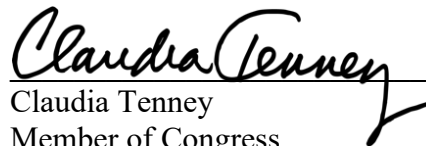
David Kustoff
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Brian K. Fitzpatrick
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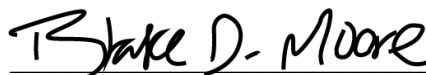
W. Gregory Steube
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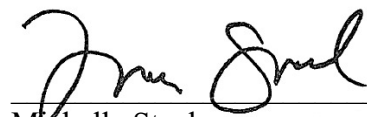
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