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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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June 19, 2014

Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20230

Dear Commissioner Koskinen:

On Monday, June 16, 2014, Senator Wyden and I met with you to discuss the Senate Finance Committee's continuing investigation of the Internal Revenue Service's (IRS) handling of certain applications for tax-exempt status. Our discussion focused on records pertaining to Lois Lerner, the former Director of Exempt Organizations. You informed us that the IRS recently learned that Ms. Lerner's computer malfunctioned in June 2011, and that as a result, the IRS will not be able to produce all emails sent and received by Ms. Lerner before that date. Earlier in the day, IRS staff met with Committee staff to discuss these same issues. The information presented by you and other IRS employees during these meetings was consistent with the letter that the IRS sent to Senator Wyden and me on Friday, June 13, which provided further details about the IRS' document retention and collection processes, and the problems with Ms. Lerner's computer.

As a result of these limitations, the Committee will never be able to access all relevant emails sent and received from Ms. Lerner for a two-year period that is central to our investigation. I am greatly dismayed by this development, but I am even more concerned about why it took so long for the IRS to discover this critical problem, and why once discovered it took so long for the IRS to bring it to the Committee's attention when you understood that we were diligently working towards the release of a bi-partisan report. Indeed, we now know that the IRS informed the Treasury Department, which in turn informed the White House, about Ms. Lerner's lost emails in April. It is outrageous that the IRS waited an additional two months to inform the Committee.

Since I just met with you on Monday, I was surprised to learn additional information about the IRS' document productions when the House Ways & Means Committee issued a press

release yesterday. That release stated that in addition to Ms. Lerner, the IRS may have also lost records for “six other IRS employees involved in the targeting of conservative groups.” Specifically, I understand that on Monday, IRS staff informed the Ways & Means Committee staff that the IRS may have lost records for the following IRS employees: Nikole Flax, Michelle Eldridge, Kimberly Kitchens, Julie Chen, Tyler Chumney, and Nancy Heagney.

This information is clearly relevant for the Finance Committee’s investigation, as Senator Wyden and I have previously requested records for all six of these employees. Ms. Flax has been of particular interest, as she was the Chief of Staff to former Acting Commissioner Steven Miller and communicated with Ms. Lerner and Mr. Miller about the processing of tax-exempt applications. Ms. Flax also had direct communications with the White House and the Office of Management and Budget about a variety of matters. For those reasons, at the outset of the investigation, Committee staff identified Ms. Flax as a top-priority custodian. At no time did you or your staff give any indication that Ms. Flax had suffered a computer malfunction that may have resulted in lost records; to the contrary, the IRS represented to Committee staff that the IRS had produced all of Ms. Flax’s relevant records.

I am troubled that the IRS’ data loss may not have been limited to Ms. Lerner, but I am even more troubled that you and your staff failed to raise this issue when we met on Monday. Clearly, someone was aware of this information when we met and chose not to disclose it to me. This is a critical omission of information to the Senate Committee responsible for conducting oversight of the administration of the federal tax system – an omission of information that is clearly relevant to our investigation.

I need a full account of the information that the IRS provided to the House Ways & Means Committee on Monday. I need to know when the IRS first discovered this information; who was aware of this information on Monday; and why it was not brought to my attention when we met. I also need to know to what extent you were aware of this information when you met with Senator Wyden and me. Finally, I need to know when you first became aware that the IRS had informed the Treasury Department that some of Ms. Lerner’s emails may be missing, and whether the IRS has had any subsequent discussions with the Treasury Department or the White House about that matter. I ask that you provide this information to me personally.

If and when these preliminary issues are resolved to my satisfaction, the Committee will require a thorough account of the information that is no longer in the IRS’ custody, the steps that IRS has taken to attempt to recover it, and the expected effect on our investigation.

As a result of the past week's developments, I have serious concerns about whether the IRS productions to date have included all relevant information in the possession of the IRS, or whether there is more "missing" information that has not been brought to the Committee's attention. Under your leadership, the IRS must proactively inform the Committee of any potential limitations affecting this investigation. I expect that all future discussions will include full and open disclosure.

Sincerely,

A handwritten signature in blue ink, reading "Orrin Hatch". The signature is written in a cursive style with a large initial "O". A horizontal line is drawn underneath the signature.

Orrin G. Hatch
Ranking Member
Senate Finance Committee