

The Kinder, Gentler IRS? Where?

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The Kinder, Gentler IRS? Where?

*Harvey Gilmore**

ABSTRACT – A WORD ABOUT TAXES AND ME

I was a practicing accountant for the better part of ten years. I prepared income tax returns, sales tax returns, property tax returns, payroll tax returns, and New York City Commercial Rent tax returns. Over the years, I've also prepared my own tax returns as well as those of friends, relatives, and other paying clients. Academically, I am in my twenty-fifth year as an undergraduate tax law professor. I have a Master of Science Degree in Taxation and a Master of Law in Taxation. What's the point of all that? Not much, really, except to say that I know a little something about taxes. The most important thing is this: generally, tax authorities and in particular, the Internal Revenue Service ("IRS") is NOT the friend of the taxpayer.

In this article, I will show why the Internal Revenue Service ("IRS") has a long-standing and well-deserved reputation as a fearsome, intimidating institution. As I will discuss below, the IRS has always been something of a taxpayer-unfriendly bully when it comes to collecting taxes. Therefore, I am convinced that the IRS is far more concerned with winning than with any kind of taxpayer equity.

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I. INTRODUCTION

There are two basic facts of tax life: (1) No one likes the Internal Revenue Service (“IRS”), and (2) people generally fear the IRS. We’ve all heard the ominous commercials: “The IRS can garnish your salary.” “The IRS can take your house.” “The IRS can freeze your bank accounts.” “The IRS can take your business.” “The IRS can send you to jail.” “The IRS can ruin you.” “Don’t take the IRS on alone.” And so on. Any time a person learns that he or she is being audited, the immediate reaction is to think the IRS is looking to nail them to the floor. Also, there are numerous stories of well-known celebrities who had trouble with the IRS: Joe Louis, Lou Costello, Bud Abbott, Redd Foxx, Wesley Snipes, Pete Rose, Leona Helmsley, Al Capone, Willie Nelson, Martha Stewart, Spiro Agnew, to name a few. Over time, the IRS has built a rather formidable and fearsome reputation, one I think that the IRS does not actively discourage.

II. WHY THE IRS IS UNIVERSALLY FEARED

What is it about the IRS that puts fear in the hearts of so many? There are many reasons that would justify this fear, not the least of which is the fact that the IRS is seemingly omnipotent and extremely intrusive. The following statements would support the fear of the IRS:

David A Dedman makes the following observations: “First, I would say their power. The IRS can garnish wages and seize assets. We know deep down they will get what they want.”¹ “Second, our helplessness. Most taxpayers feel that the IRS is a huge bureaucracy that doesn’t care about you or your tax situation.”²

Third, “the embarrassment. I think often taxpayers are embarrassed of their mistakes or the fact that they owe a large amount.”³ Finally, “[t]he federal government is extremely powerful, and having it snoop around your life is distressing and scary even when you’ve done nothing wrong.”⁴

1. David A Dedman, *Why We Fear the IRS*, HUFFPOST.COM, Mar. 10, 2016. https://www.huffpost.com/entry/why-we-fear-the-irs_b_9428340.

2. *Id.*

3. *Id.*

4. *Id.*

Charles C.W. Cooke noted, “I’m still terrified of the IRS. Why? Because the process of being audited — especially in person, which this funding will increase — is an absolute nightmare. It’s costly. It’s stressful. It’s invasive. It’s time-consuming. It’s easily manipulated by rogue political actors. And it is all of those things even if the saga concludes with a nice letter saying that everything is in order after all.”⁵ Cooke also mentioned, “The federal government is extremely powerful, and having it snoop around your life is distressing and scary even when you’ve done nothing wrong.”⁶

As I see it, it isn’t hard to see the IRS as a terrible perversion of the Robin Hood story. Instead of Robin Hood robbing the rich and giving the spoils to the poor (which is a Legal Ethics class debate for another time), the IRS just robs the poor. I certainly do not believe that the IRS cares about embarrassing taxpayers, irrespective of the circumstances, and therefore it is very easy to consider the IRS as a hostile force that is perhaps as Orwellian as a governmental agency can possibly get. One can see the IRS as foreboding, unfriendly, and hostile considering that they can put you in jail, take your stuff, and ruin your life. With the IRS’ aura of hostility and intimidation, I always keep my guard up when dealing with them. Consequently, this is an organization I assiduously avoid ever being friendly with. As I discuss below, there was one very infamous situation in which the IRS displayed a shocking, unconscionable lack of common decency, with tragic consequences.

III. IRS SETTLES WRONGFUL DEATH LAWSUIT?⁷

In one of the most heinous examples of IRS harassment in recent memory, in 1998 the IRS settled a wrongful death suit lodged against the agency by a taxpayer. The plaintiff, Mrs. Shirley Barron, filed a one-million-dollar lawsuit against the IRS, alleging that the IRS’ heavy-handed tactics in collecting an alleged \$400,000 tax debt drove her husband to suicide.⁸

5. Charles C.W. Cooke, *Americans Are Correct To Be Instinctively Terrified of the IRS*, NATIONALREVIEW.COM, Aug. 8, 2022. <https://www.nationalreview.com/corner/americans-are-correct-to-be-instinctively-terrified-of-the-irs/>.

6. *Id.*

7. *See, e.g.*, Mike Recht, *IRS Settles Suit With Widow*, SOUTHCOAST TODAY, May 7, 1998. <https://www.southcoasttoday.com/story/news/nation-world/1998/05/07/irs-settles-suit-with-widow/50571027007/>.

8. The Associated Press, *I.R.S. Settles a Widow’s Lawsuit over the Suicide of Her Husband*, N.Y. TIMES, May 7, 1998. <https://www.nytimes.com/1998/05/07/us/irs-settles-a-widow-s-lawsuit-over-the-suicide-of-her-husband.html>.

“Mrs. Barron’s husband, Bruce, a 47-year-old lawyer, killed himself by carbon monoxide poisoning in his garage in 1996 after learning that a bank was foreclosing on the couple’s home in Derry because the IRS had placed a lien on it.”⁹ Bruce Barron’s suicide note suggested a definite complicity between the IRS and the bank in question: “they are bigger than me . . . [o]ne sits, does nothing and watches you die. One needs to clear its books.”¹⁰

Not letting common decency get in its way of squeezing every last dime out of every taxpayer, the IRS continued hounding Mrs. Barron in the aftermath of her husband’s suicide. “After her husband’s death, the agency continued to pursue Mrs. Barron. The agency seized her Cape Cod vacation home, wages, and a retirement account, and placed liens against the life insurance benefits from her husband’s death.”¹¹ (But aren’t life insurance proceeds resulting from the death of the insured non-taxable?)¹² The IRS even went so far as to put a lien on the \$300 in their daughter’s bank account!¹³

Ratcheting up the pressure throughout the Barron’s ordeal, the IRS pursued Mr. and Mrs. Barron with a never-ending stream of bullying, intimidation, and personal humiliation:

Mrs. Barron claimed the IRS began forcing her husband’s law clients to pay the agency directly, humiliating him and harming his business. She also said her husband tried to do the honorable thing by negotiating a settlement when he could have cleared the debt by declaring bankruptcy.¹⁴

In September 1995, an IRS agent indicated the agency was prepared to accept Mr. Barron’s offer, the lawsuit said. But another agent, Donna Greeley, delayed action, and the IRS continued its pursuit. ‘They attempted to control and intimidate throughout,’ said Richard Maloney, another of Barron’s lawyers. ‘Bruce felt tremendous pressure. He saw no way out. It was terrifying for me to see.’¹⁵

Mrs. Barron ultimately fought back against the IRS’ aggression by filing suit, asking for \$1,000,000 in money damages for wrongfully causing the death of her husband, Bruce. “When they decided to take everything I had, I decided to fight back against the most feared and loathsome agency in the United States.”¹⁶

9. *Id.*

10. *Id.*

11. *Id.*

12. 26 U.S.C. § 101(a)(1).

13. George Esper, *Family’s Ordeal Fuels IRS Reforms*, L.A. TIMES, Mar.14, 1999. <https://www.latimes.com/archives/la-xpm-1999-mar-14-mn-17070-story.html>.

14. Recht, *supra* note 7.

15. *Id.*

16. Associated Press, *supra*, note 8.

Instead of litigating, the IRS opted to settle the case out of court. Under the terms of the settlement, “she agreed to drop her lawsuit and the agency agreed to drop its claim, which had reached more than \$400,000 with penalties and interest, her lawyers said. The agency also agreed to pay her legal fees of \$44,129.”¹⁷ Additionally, the IRS agreed to let Mrs. Barron keep her house as part of the settlement.¹⁸

I find it interesting that the IRS decided to settle the lawsuit.¹⁹ Considering how heinously the IRS acted in escalating the situation to this point, one could think the IRS, probably believing that it is never wrong, was conceited enough to believe that it would prevail in court. More likely, I think the IRS settled because it knew it would not get a favorable verdict in any jury trial.

As the IRS has always had an aura of unfriendliness and intimidation, I submit that no jury would have voted in favor of the IRS based on the facts of the case. Additionally, this would have been a public relations train wreck for the IRS if the facts of the IRS’ abusive practices had come to the surface. Thus, rather than take the chance of facing an unsympathetic, and likely anti-IRS jury, the IRS decided to take the lesser of two evils and come to a settlement.

In the end, no matter how this case resolved itself, I strongly believe that for as long as she lives, Mrs. Barron will always have the pain of losing her husband to IRS abuse. It is rather unconscionable that the IRS wouldn’t call off the dogs or be a little more considerate towards Mrs. Barron in her time of grief, especially as her widowhood was entirely the IRS’ fault. No settlement can ever compensate for that. I wonder what former IRS Commissioner Charles Rettig (or current Acting Commissioner Douglas O’Donnell) would say about that.

IV. IRS DISPROPORTIONATELY AUDITS LOWER-INCOME TAXPAYERS

If we accept the proposition that all taxpayers pay their fair share, then it should logically follow that all taxpayers should be subject to a similar risk of getting audited. Unfortunately, IRS practice shows us a completely different, and frightening reality.

17. *Id.*

18. *Id.*

19. I remember this case very well as I was just about to finish law school when this story broke. Prior to law school, I was a practicing accountant where I sat through more corporate tax audits than I care to remember. Tax audits, whether they be federal, state, or local, are always adversarial proceedings, with auditors looking for any potential exposure area to hit a taxpayer with a bill for additional taxes, penalties, and interest.

Recent reports show that the IRS audits lower-income taxpayers at a far higher rate than higher-income taxpayers.²⁰ According to the Transactional Records Access Clearinghouse (“TRAC”), a research data center at Syracuse University, the IRS’ own data shows that it audits households with less than \$25,000 of income at *five times the rate* of anyone else.²¹ According to 2021 fiscal year data, for every 1,000 returns submitted to the IRS by lower-income taxpayers, 13 of those returns end up being audited. However, for all other taxpayers, for every 1,000 returns submitted to the IRS, only 2.6 of those returns end up being audited.^{22,23}

This is astounding! Going back to my earlier point regarding the IRS’ very intimidating image, I suggest that this is their *modus operandi* at work, at least where lower-income taxpayers are concerned.

So why would the IRS go so hard after lower-income taxpayers when it conceivably can look at bigger issues (carried interest, transfer pricing, big corporations, and the like) and generate far greater tax revenues? Presumably, lower-income taxpayers do not have much in the way of itemized deductions and will therefore claim the standard deduction. Additionally, lower-income taxpayers often claim the Child Tax Credit, the Child and Dependent Care Credit, and perhaps the Credit for Other Dependents.

I think that the IRS considers lower-income taxpayers to be easier and perhaps more malleable targets. Why? Lower-income taxpayers likely cannot afford the services of a certified public accountant, a tax attorney, or an enrolled agent to look out for their interests during the course of an audit. With this dynamic, what’s to stop an auditor from pressuring a low-income taxpayer into acquiescing on one or more questionable assessments, or even the disallowance of their otherwise proper deductions and credits previously taken because the taxpayer is scared to death and just wants to get through the ordeal? Would a lower-income taxpayer be able to avail himself or herself of the appeals process after dealing with an overzealous, hostile, or even rogue agent? Even if the taxpayer receives a copy of the Taxpayer’s Bill of Rights, probably not. This leaves the taxpayer, without adequate representation, at the mercy of the IRS audit. For example:

20. Michael Hiltzik, *Proof the IRS Targets the Poor for Tax Audits While Leaving Millionaires Alone*, L.A. TIMES, March 14, 2022, <https://www.latimes.com/business/story/2022-03-14/who-does-the-irs-audit>.

21. *Id.*

22. *IRS Audits Poorest Families at Five Times the Rate for Everyone Else*, <https://trac.syr.edu/tracirs/latest/679/>.

23. Going back to my earlier point regarding the IRS’ very intimidating image, I suggest that this is their *modus operandi* at work, at least where lower-income taxpayers are concerned.

“The Professional Managers Association, a group representing IRS management officials, separately issued a statement Wednesday that seemed to confirm that the IRS is auditing low-income taxpayers at a higher rate than others. ‘In the absence of robust enforcement funding, the IRS disproportionately audits low-income Americans, often people of color, with the simplest tax returns to review,’ said PMA executive director Chad Hooper in a statement. ‘These taxpayers are also the least likely to receive taxpayer assistance services.’”²⁴

Yet, albeit unsurprisingly, Commissioner Rettig strongly disagreed with the findings of TRAC, even in the face of these facts, and was downright combative in his response. “[A]t a recent congressional oversight hearing, IRS Commissioner Charles Rettig blasted the earlier TRAC report. ‘That report from Syracuse University is absolutely 100% false,’ he said, in answer to questions from lawmakers. ‘I’m tired of having to deal with this issue. We audit high-income taxpayers more than any other category in the Internal Revenue Service. Taxpayers reflecting over \$10 million of income are audited at a rate exceeding 7%. Taxpayers at the \$25,000 level, which is primarily the Earned Income Tax Credit taxpayer and would be the only people we would look at, are audited at 1.1%. Those are correspondence audits.’”²⁵

Assuming what Commissioner Rettig said is true, his response *still* did not address why taxpayers who claim the Earned Income Credit stand a much higher chance of being audited, nor did his response do anything to ease the fears of lower-income, *law-abiding* taxpayers. What is it about correspondence audits that result in such a discrepancy? What is it about the Earned Income Tax Credit that leads to such disproportionality? I believe that there is a real story behind the IRS cover story of “correspondence audits.”

Nonetheless, Commissioner Rettig had this to say in an earlier report to Congress regarding the fact that his agency disproportionately targets lower-income taxpayers.

On the one hand, the IRS said, auditing poor taxpayers is a lot easier: The agency uses relatively low-level employees to audit returns for low-income taxpayers who claim the earned income tax credit. The audits — of which there were about 380,000 last year, accounting for 39% of the total the IRS conducted — are done by mail and

24. Michael Cohn, *IRS Continues to Audit Poorest Families More Heavily*, ACCOUNTING TODAY, March 30, 2022 <https://www.accountingtoday.com/news/irs-continues-to-audit-poorest-families-more-heavily-this-year>.

25. *Id.*

don't take too much staff time, either. They are 'the most efficient use of available IRS examination resources.'²⁶

It sure sounds like the poor, put-upon, and misunderstood IRS is trying to justify its audit practices as a function of budgetary considerations, doesn't it? If the IRS is truly saying that it disproportionately audits lower-income taxpayers because the agency is underfunded and cannot afford to go after bigger fish so to speak, here's some more evidence:

On the other hand, auditing the rich is hard. It takes senior auditors hours upon hours to complete an exam. What's more, the letter says, 'the rate of attrition is significantly higher among these more experienced examiners.' As a result, the budget cuts have hit this part of the IRS particularly hard.²⁷

For now, the IRS says, while it agrees auditing more wealthy taxpayers would be a good idea, without adequate funding there's nothing it can do. 'Congress must fund and the IRS must hire and train appropriate numbers of auditors to have appropriately balanced coverage across all income levels.'²⁸

Taking the IRS' pleading of budgetary poverty to its supposedly logical conclusion, the IRS must be saying that it not only cannot afford to bring in new talent, but it also cannot afford to promote its current audit staff to higher ranks to audit higher-income taxpayers. By doing so, the IRS increases the chance that its current audit staff becomes stagnant in their jobs. If there is no room for advancement, IRS staff will eventually seek greener pastures for career growth.

If that's the case, this does not send any positive message to future accounting graduates, or future tax law graduates for that matter, that the IRS is a viable career option. After all, what employee would want to work for an organization that can barely afford to pay them what they are worth and cannot afford to offer any future growth opportunities?

Holy cow! For the IRS to make this kind of admission is, for lack of a better word, stunning but I think a bit disingenuous also. Why? Because the IRS' claim that its budget can only afford to audit lower-income taxpayers is analogous to saying that a heavyweight boxer can only afford to fight middleweights due to budget constraints. Put differently, the heavyweight boxer cannot afford to train against other

26. Paul Kiel, *IRS: Sorry, But It's Just Easier and Cheaper to Audit the Poor*, ProPublica, (Oct. 2, 2019), <https://www.propublica.org/article/irs-sorry-but-its-just-easier-and-cheaper-to-audit-the-poor>

27. *Id.*

28. *Id.*

heavyweights. How ridiculous does that sound? Good job with that explanation, Commissioner.

In real life, businesses work within budgets every single day, as they make tactical decisions on what to spend money on and what opportunity costs, they must absorb to run their operations. If businesses can do this, there is no reason why the IRS cannot do the same. If lower-income taxpayers are really five times as likely to be audited compared to other taxpayers, why can't the IRS, even within its budget limits, do something to lower the odds?

To put some numbers to this, instead of auditing 13 out of every 1,000 returns filed by taxpayers with incomes under \$25,000, why not audit 10 out of every 1,000? And instead of auditing every 2.6 out of every 1,000 returns for all others, why not increase the number to 4 out of every 1,000? Admittedly, these numbers would be small, to begin with, but even a small start in the right direction is better than no movement at all. A good faith effort as slight as this could help lessen the fear people have of the IRS and demonstrate that poorer taxpayers are not always sitting ducks. Surely Commissioner Rettig (and Acting Commissioner O'Donnell) would have to agree with this point.

V. WHY DOESN'T THE IRS AUDIT HIGHER-INCOME TAXPAYERS?

On the other side of the audit, the issue is why the IRS is seemingly disinclined to go after higher-income taxpayers. According to Commissioner Rettig, the IRS is severely hamstrung in its ability to audit higher-income taxpayers because: “[t]here aren’t enough employees or resources at the IRS for the agency to go toe-to-toe with some of the largest businesses and individuals who don’t pay their taxes.”²⁹ Commissioner Rettig also explained, while testifying at a hearing before the Senate Finance Committee, that the IRS is “outgunned.”³⁰ “The resources outside the service on a particular case, more often than not, far exceed the resources we are able to devote. And out of 4.2 million partnership returns, we cannot touch 4.2 million, when service wide I have 6,500 field revenue agents, and I need to deploy those as best we can.”³¹

29. Jessie Bur, *IRS Employees “Outgunned” In The Fight To Enforce Taxes*, FEDERAL TIMES, Jun. 8, 2021 <https://www.federaltimes.com/management/2021/06/08/irs-employees-outgunned-in-the-fight-to-enforce-taxes/>.

30. *Id.*

31. *Id.*

While I understand that the IRS has been underfunded for well over the past decade,³² this fact is little consolation for the lower-income taxpayers who are routinely audited by the IRS. Why? Because the IRS is saying, in effect, *we're auditing you because we can't afford to audit Amazon with its high-octane team of lawyers and accountants*. This appears to be nothing more than the IRS' doing what the IRS does best: going after targets the IRS knows can't fight back.

If I were representing such a client, I would make a point of asking any audit examiner how he or she can justify coming after my completely innocent client when there are some actual tax cheats gaming the system as we speak. And, by the way, where is the IRS Office of Chief Counsel in the middle of all this? I find it interesting that the Office of Chief Counsel has been conspicuously silent on this issue.

Additionally, I would love to hear a response at the auditor level. But regardless of what the auditor could possibly say as a response, the fact remains that the IRS is openly making the innocent suffer by disproportionately targeting poorer taxpayers and hiding behind its now convenient cover story of being "underfunded."³³

VI. IRS MAKING EXAMPLES OF CELEBRITIES

Over the years, there have been numerous examples of well-known celebrities who have had tax issues with the IRS. These celebrities were brought to financial ruin. Did the IRS make heavy-handed examples out of these people to scare the rest of us into submission? It's arguable, and I would not be surprised if that was their actual intention. Still, it makes one wonder if the IRS could have acted more humanely in resolving the tax issues with these people.

One of the most enduring examples of the IRS' merciless mistreatment of taxpayers is that of former heavyweight boxing champion Joe Louis. When Louis was at his peak, he contributed to the war effort (World War II) by donating two of his purses to war relief organizations, one in the amount of \$65,200 to the Naval Relief Fund and another in the amount of \$45,882 to the Army Relief Fund.³⁴

32. See also, *The IRS is Significantly Underfunded to Serve Taxpayers and Collect* <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-IRS-Significantly-Underfunded.pdf>.

33. If I were still practicing, I would pointedly tell any audit examiner not to take out any agency frustration on my client because of the agency's budgetary shortcomings. They're NOT my client's fault!

34. Dr. Burton W. Folsom, *Joe Louis vs. the IRS*, MACKINAC CENTER FOR PUBLIC SAFETY, Jul. 7, 1997. <https://www.mackinac.org/V1997-22>.

The IRS persecution of Louis began years later when the IRS ruled that the purses he donated were taxable income, and the IRS would not let him claim a deduction for the purses he donated to the war effort. By the time the IRS tacked on penalties and interest, Joe Louis, was in a \$500,000 tax hole.³⁵ Thus, Louis had to keep boxing to pay off his tax bills, and every purse he earned went directly to the IRS.³⁶ Joe Louis was essentially a de-facto IRS employee working for them. “Louis retired in 1949, undefeated as a champion, but now he had to fight again. ‘I had to keep working to pay taxes,’ Louis said, ‘but the more I worked, the less I had.’”³⁷ Meaning, the more he made, the more the IRS took. Consequently, when Louis signed up to fight future champion, Rocky Marciano, Marciano would earn \$44,000 and Louis would earn \$132,000; all of which would go directly to the IRS.³⁸

Even conceding the institutional racism of the time, unconscionable in and of itself, the IRS’ treatment of Louis is just as unconscionable. Allegedly, the IRS did not even consider any offer and compromise or make any other efforts to treat Louis with any common decency. If Rocky Marciano had donated a purse or two to the Korean War effort, I wonder if the IRS would have gone after Marciano with the same vitriol level as Louis. Somehow, I doubt it. For me, this continues to be another indelible example of why the IRS will always be the taxpayer’s enemy.³⁹

Another example is the legendary comedy team Bud Abbott and Lou Costello, who ran afoul of the IRS late in their careers. They settled their tax debts by selling off much of their personal property along with their lucrative movie rights.⁴⁰ Sadly, Abbott and Costello’s tax problems left both men practically destitute when they died. Lou Costello died in March 1959 and Bud Abbott died in April 1974.

Finally, Redd Foxx, another legendary comedian, had run up a \$755,166 tax bill by 1989.⁴¹ The IRS responded by stripping Foxx of everything he owned. The IRS sent trucks to Foxx’s home and helped themselves to all available belongings they deemed worth it. The IRS

35. James Blears, *IRS KO's Joe Louis*, Oct. 26, 2021. <https://wbcboxing.com/en/irs-kos-joe-louis/>.

36. *Id.*

37. Folsom, *supra* note 30.

38. Blears, *supra* note 31s.

39. See also, Sean Cunningham, *5 American Icons Destroyed by the Tax Man*, ESQUIRE.COM, Apr. 15, 2010. <https://www.esquire.com/entertainment/a4483/destroyed-by-the-irs/>.

40. Amanda Greene, *15 Celebrity Tax Evaders*, WOMANSDAY.COM, Mar. 30, 2010. <https://www.womansday.com/life/a1421/15-celebrity-tax-evaders-105182/>.

41. Travis Watkins, *The Day the IRS Caught Up with Redd Foxx*, Nov. 15, 2017. <https://www.traviswatkins.com/blog/2017/november/the-day-the-irs-caught-up-with-redd-foxx>.

took the following items, while this is not a complete list, it is merely highlighting numerous items that were collected:

- His model T
- His Uzi
- His Redd Foxx records
- His Ukulele
- The watch Elvis gave him
- His personal photographs
- His Asian room furniture
- Even the jewelry around his neck⁴²

If that wasn't bad enough, the entire incident was captured on national television as TV crews recorded the entire incident, only adding to Foxx's humiliation.⁴³ I remember the incident, and I saw the news broadcast as it happened, and I was appalled. The IRS can attempt to rationalize all it wants collecting what was rightly owed, but there is nothing that can ever justify the IRS going out of its way to humiliate the man. I think it's entirely possible that the stress from that incident contributed to Foxx's fatal heart attack just two years later. The ordeal of losing everything to the IRS destroyed Foxx, both financially and emotionally.⁴⁴ At the time of Foxx's death in October 1991, he was alleged to have a net worth of negative \$3.5 million.⁴⁵

As mentioned earlier, it is obvious to me that the IRS does not care about embarrassing taxpayers to get its way. Nor, as I see it, does the IRS care about its heavy-handed collection tactics leaving taxpayers destitute. Were there no attempts to negotiate any settlements on the IRS' part? Was there no offer in the compromise agreements? I am hard-pressed to believe that there were.

In the above cases, we have taxpayers who lost their homes, potential movie royalties, and their financial independence. And these are cases that we know about. I'm reasonably sure that there are many other cases where taxpayers other than public figures were ruined by IRS aggression. Therefore, I submit that the IRS genuinely does not care that its aggressive operations leave vulnerable taxpayers in a position where they struggle to keep a roof over their heads, or perhaps wonder where their next meal is coming from. This is just unconscion-

42. *Id.*

43. *Id.*

44. *Id.*

45. Aramide Tinubu, *What Was Redd Foxx's Net Worth When He Died?*, April 12, 2021, <https://www.cheatsheet.com/entertainment/redd-foxx-net-worth.html/>.

able, and more evidence that would lead one to not only dislike the IRS but to distrust them as well.

VII. THE IRS AS A POLITICAL WEAPON?

If normal people have a justifiable fear of the IRS, what about those in the political realm who might be targets of politically motivated tax audits? The IRS Commissioner's direct superior is the Secretary of the Treasury. The Secretary of the Treasury's direct superior is the President of the United States, who has line authority over both individuals. Therefore, is it far-fetched that a sitting U.S. President could use the IRS as an attack dog to hound his enemies?

This scenario is neither far-fetched nor unprecedented. This has actually happened, as shown in the following instances.

While his misdeeds are now legendary, Richard Nixon went so far as to disclose the names of 200 people he deemed his enemies to the then IRS Commissioner, Johnnie Mac Walters. Nixon, through his intermediaries, suggested to Walters that he authorize the IRS to begin auditing individuals on Nixon's now infamous "enemies list."⁴⁶

Nixon sought to use the enemies list to target his opponents and he wanted to use the IRS to achieve that goal, Naftali said. 'The story is interesting because the IRS wouldn't do it,' he said. It didn't happen, not because the White House didn't want it to happen, but because people like Johnnie Walters said 'no.' Walters said he was stunned in 1972 when White House counsel John Dean gave him an envelope containing an "enemies list" of about 200 prominent Democrats. The election was approaching, and he understood that the White House wanted the Democrats 'investigated and some put in jail' Walters would write later in his book, *Our Journey*. 'I said to him, John, do you know what you're doing?' Walters recalled. 'He said, No, what do you mean?' Walters, in disbelief, walked out with the enemies list.⁴⁷

A couple of days later, he showed the list to Secretary of the Treasury George Shultz, his boss, and said that in his opinion the IRS should do 'absolutely nothing' with it. Shultz glanced at the list, threw it back across his desk and indicated that Walters should lock it up in his safe and do nothing further, Walters wrote. He personally sealed the list, locked it in the safe and told no one at the IRS he had it. 'We did not touch a single person on that list,' he said.⁴⁸

46. David Dykes, *Former IRS Chief Recalls Defying Nixon*, www.usatoday.com, May 26, 2013. <https://www.usatoday.com/story/news/nation/2013/05/26/irs-chief-defied-nixon/2360951/>.

47. *Id.*

48. *Id.*

Another example is George W. Bush, who was alleged to have ordered an audit of the National Association for the Advancement of Colored People (“NAACP”) in retaliation for criticism aimed at him by the then NAACP Chairman, Dr. Julian Bond.⁴⁹ Bond had earlier criticized Bush for turning down an invitation to address the NAACP and was the first sitting President since Herbert Hoover to snub the NAACP.⁵⁰ Bond further responded that the IRS audit was an open “attempt to silence the NAACP.”⁵¹

They are saying that if you criticize the president we are going to take your tax exemption away from you,” he said. “It’s pretty obvious that the complainant was someone who doesn’t believe that George Bush should be criticized, and it’s obvious of their response that the IRS believes this, too.”⁵²

A more recent example is Donald Trump. For someone whose own questionable tax filing history has been in the spotlight for a while, he apparently had no crisis of conscience in sending the IRS after former FBI Director James Comey and former deputy FBI director Andrew McCabe, both of whom were fired by Trump:

Trump raged about Comey and McCabe constantly — advisers say they were near the top of his proverbial enemies list as president — and former officials told *The Washington Post* that Trump mused frequently that they should be investigated. But former IRS officials said the National Review Program would be hard to use as a deliberate weapon.⁵³

By firing the two men, though, Trump set the pair up to make much more money than they did at the FBI — launching them into a new tax bracket that the IRS examines much more frequently than it does even well-paid government employees.⁵⁴

49. Kelly Brewington, NAACP Blames Tax Audit on Criticism of Bush, *THE BALTIMORE SUN*, Oct. 29, 2004. <https://www.baltimoresun.com/bs-xpm-2004-10-29-0410290318-story.html>.

50. *Id.*

51. *Id.*

52. *Id.* See also, Kelsey Snell, *IRS Audited NAACP in 2004*, *WWW.POLITICO.COM*, May 13, 2013. <https://www.politico.com/story/2013/05/irs-targeted-naacp-in-2004-091284>; See also, Kelly Brewington, Democrats Denounce IRS Audit of NAACP, *THE BALTIMORE SUN*, Oct. 30, 2004. <https://www.baltimoresun.com/news/bs-xpm-2004-10-30-0410300223-story.html>.

53. Jacob Bogage and Josh Dawsey, *By Firing His Enemies, Trump Made Their Taxes More Interesting to the IRS*, *www.washingtonpost.com*, Jul. 8, 2022. <https://www.washingtonpost.com/us-policy/2022/07/08/irs-trump-comey-audit/>; See also, Jeff Stein, *IRS Chief Faces Questions Over Audits of Trump Foes*, *www.washingtonpost.com*, Jul. 7, 2022. <https://www.washingtonpost.com/us-policy/2022/07/07/trump-irs-rettig-audit/>; Amber Gray-Fenner, *Were IRS Research Audits Used to Target Trump’s Enemies? Here’s Another Possible Explanation For Why Two Ex-FBI Officials Got Picked*, *www.forbes.com*, Jul. 11, 2022. <https://www.forbes.com/sites/ambergray-fenner/2022/07/11/can-irs-audits-be-used-to-target-political-enemies/?sh=14584bee2859>.

54. *Id.*

It is important to note that the IRS can be a presidential weapon, irrespective of party. Under President Bill Clinton, in addition to allegations that the IRS went after conservative groups ranging from the Heritage Foundation to the National Rifle Association,⁵⁵ Paula Jones was on the alleged IRS hit list. Jones had accused Clinton of sexual harassment when he was the Arkansas Attorney General.⁵⁶

She had publicly accused President Clinton of sexual misconduct—and was subjected to an IRS audit almost immediately after declining an offer to settle the case.” ‘I find the timing very peculiar,’ a spokesperson for the Jones family said at the time. ‘They’re a family with two little children. They have one car, they rent a little apartment. How many people renting and making under \$40,000 a year get audited?’⁵⁷

Finally, a recent Democrat President, Barack Obama, was implicated when the IRS targeted Tea Party and other conservative organizations because they happened on his watch: “In 2013, IRS official Lois Lerner revealed that conservative groups seeking tax-exempt status had been getting extra scrutiny, based on words such as ‘tea party’ or ‘patriots’ in their names. For conservatives, she confirmed their darkest suspicions. In the Tea Party heyday years of 2009 and 2010, hundreds of groups affiliated with the party had sought tax-exempt status as 501(c)(4) ‘social welfare’ organizations. IRS demands for documents left many of them in bureaucratic limbo for a year or more.”⁵⁸

I think this could have happened one of two ways. Either Obama actually or tacitly gave his OK, or Treasury Secretary Tim Geithner, IRS Commissioner Doug Shulman, or Lois Lerner did this, either individually or in tandem, with Obama unfortunately unaware as this happened on his watch. Just the same, Obama was harshly criticized for a while, although “there is no evidence to suggest President Obama had any personal knowledge of the most recent transgressions.”⁵⁹

55. History of IRS Abuse: Paula Corbin Jones, www.realclearpolitics.com May 15, 2013. https://www.realclearpolitics.com/lists/irs-scandal/paula_corbin_jones.html.

56. *Id.*

57. *Id.*

58. Peter Overby, *As IRS Targeted Tea Party Groups, It Went After Progressives, Too*, www.npr.org Oct. 5, 2017. <https://www.npr.org/2017/10/05/555975207/as-irs-targeted-tea-party-groups-it-went-after-progressives-too>; See also, Peter Overby, *IRS Apologizes For Aggressive Scrutiny of Conservative Groups*, www.npr.org Oct. 27, 2017. <https://www.npr.org/2017/10/27/560308997/irs-apologizes-for-aggressive-scrutiny-of-conservative-groups>.

59. History of IRS Abuse: Introduction, WWW.REALCLEARPOLITICS.COM May 15, 2013. <https://www.realclearpolitics.com/lists/irs-scandal/introduction.html>

The IRS has all taxpayers' names, addresses, and social security numbers at its fingertips. This taxpayer information would also be within reach of the IRS Commissioner, the Secretary of the Treasury, and the President of the United States. As the examples listed above show that the President can use the IRS to go after political enemies, it is certainly possible that any President can use the IRS to go after *anyone* he doesn't like and claim that person being audited was merely coincidental. What's to stop a President from using the IRS to persecute, for example, an author of a newspaper article critical of that President's policies? Or a public figure outside of politics who attended a fundraiser for his opponent? Or someone in academia? The possibilities are endless.

VIII. PRESUMPTION OF IRS CORRECTNESS

Going through a tax audit is tough enough by itself, and the IRS now ratchets up the pressure on the taxpayer by issuing a Notice of Deficiency (commonly known as the "90-day letter").⁶⁰ The Notice of Deficiency is the IRS notifying the taxpayer that it is proposing a tax deficiency.⁶¹ The 90 days refers to the IRS advising the taxpayer if the taxpayer disagrees with the proposed deficiency, the taxpayer has 90 days from the date of the notice to challenge the deficiency in the United States Tax Court.⁶²

This is all well and good, that the IRS leaves the door open for the taxpayer to put up a fight. However, the taxpayer still must swim upstream in any fight with them: any difference of opinion between the taxpayer and the IRS leaves the burden of proof with the taxpayer. Consequently, the taxpayer goes into a dispute against the IRS with apparently less than even odds of success.

Why is this the case? Because the IRS has a *presumption of correctness*. This means that courts will take the position that they will not look at how the IRS calculated its deficiency notice to the taxpayer.⁶³ Accordingly, judicial deference presumes that the Notice of Deficiency is in fact correct,⁶⁴ and the taxpayer's only hope is to disprove the IRS' position on the facts⁶⁵ or otherwise invoke Section 7491 of

60. *90 Day Notice of Deficiency*, www.taxpayeradvocate.irs.gov, Jun. 21, 2022. 90 Day Notice of Deficiency - TAS (irs.gov).

61. *Id.*

62. *Id.*

63. Bryan Camp, *Lessons from the Tax Court: Naked Assessments!*, Jul. 9, 2018 https://tax-prof.typepad.com/taxprof_blog/2018/07/lesson-from-the-tax-court-naked-assessments.html.

64. *See, e.g.*, *Helvering v. Taylor*, 293 U.S. 507 (1935), *Carson v. Commissioner*, 560 F.2d 693, 696 (5th Cir. 1977).

65. *Id.*

the Internal Revenue Code to shift the burden of proof back to the IRS.⁶⁶

While the IRS' presumption of correctness is not always bulletproof for the IRS,⁶⁷ I believe that the presumption of correctness adds one more layer to the IRS' fearsome reputation: *the IRS is right because it's the IRS*. Tying this back to my earlier point involving the IRS' disproportionate audits of lower-income taxpayers, the presumption of correctness can certainly intimidate those taxpayers, who do not have access to representation, into thinking that the big, bad, alpha-bully IRS can do no wrong. This is part of the aura of this agency that is authorized by Congress to collect taxes while treating taxpayers fairly. Sadly, as we have seen, there is very little to suggest that fairness is one of the better-developed skills of the IRS.

IX. MY DISAGREEMENTS WITH AUDITORS AND IRS ATTORNEYS

As mentioned previously, tax audits are adversarial affairs, and my experience has the scars of the "us vs. them" auditor mentality. One experience that I had was not with an actual audit, but with an individual state tax auditor, whom I thought had the making of a rogue agent down the road, judging by her attitude during our encounter. This experience turned into my finest hour as a practicing accountant.

It started on a rather nondescript level, as the corporation I was working for received a letter from the Pennsylvania Department of Revenue. The letter stated that the company had not filed its corporate income tax returns for the past couple of years. I discussed the situation with our controller, and he suggested that I call the number on the letter.

No problem. I contacted the revenue agent who had sent us the letter and asked for some additional clarification as to why she believed our returns were missing. I told her that I would go through our files and would be happy to send all our documentation to resolve the alleged delinquency.

Well, I guess she didn't like my use of the word "alleged" because she then snapped with this very nasty and stern response: "The returns aren't ALLEGEDLY delinquent, sir, they ARE delinquent!" Yet, it was the State's Department of Revenue who made the *allegation* that our returns were delinquent. They would not have sent us a deficiency

66. 26 U.S.C. §7491

67. *United States v. Janis*, 428 U.S. 433 (1976)

notice otherwise. Needless to say, there was “no charming her”⁶⁸ after that exchange, so I ended the conversation by telling her that I will get back to her by the end of the week.

How did it end? It turns out that we did file the returns in question. As we had multiple business locations throughout Pennsylvania, the company had filed consolidated returns under several different corporate names registered in Pennsylvania. I faxed her copies of the returns and canceled checks showing how much each corporation had paid for the prior two years.

When I called her back and asked if she had received the information I sent her, I was stunned at how quickly her attitude changed. I had shown that we were right on point with our tax filings and payments, which quite easily satisfied our burden of proof. She couldn't have been nicer to me during that conversation, as I think she realized that she might have overreacted the last time we spoke. As we wrapped up, I couldn't resist getting off a parting shot: “I guess this proves our returns weren't delinquent after all. . . ALLEGEDLY OR OTHERWISE.” She had nothing to say to that. I had her pinned and she knew it.

I submit, especially when a practitioner is representing his or her client, not only is the practitioner to zealously advocate the client's position, but it is sometimes necessary to give a little pushback if the audit examiner becomes unduly aggressive. Audits are tough enough without an auditor trying to misuse his or her position to push the taxpayer around.

Recently, I had the pleasure of attending a presentation at New York Law School where representatives of the IRS Office of Chief Counsel were making their sales pitch to current students to consider the IRS as a viable career option. I had asked one of the speakers about the indelible perception that the IRS is not a taxpayer-friendly organization. She responded that the agency is more committed to taxpayer fairness than winning. I didn't say anything after that as I didn't want to start a riot, but I walked out of the room thinking that her response was specious at best, or a questionable company line at worst, given the IRS' reputation as a bully.

68. Married With Children: *Can't Dance, Don't Ask Me* (Fox Television Broadcast March 18, 1989). (Principal: “She dances or she's expelled!” Al Bundy (explaining to his wife): “I tried. There's just no charming her, Peg.”) https://www.imdb.com/title/tt0642243/quotes/?ref_=tt_trv_qu

X. A MOMENT OF EQUALITY: WHY THE IRS IS NOT THE ENEMY

Notwithstanding everything I have discussed up to this point, some argue that the IRS is not the big bad boogeyman that people fear so much. I will show the counterarguments, and the reader can decide for himself or herself.

We know many of the arguments in favor of the IRS. The IRS collects taxes to finance the government's operations: national defense, infrastructure, homeland security, paying the salaries of federal employees, to catch tax cheats, and so on.

In response to concerns that the Inflation Reduction Act that President Joe Biden recently signed into law will enable the IRS to hire 87,000 new employees, another argument against demonizing the IRS goes like this:

A tiny fraction of the new agents will end up with a holster. The rest of them are to shore up a woefully understaffed entity. They are not the enemy. They are there to help ensure everyone pays their fair share (at least according to the law) to keep this country going. If you don't like laws which take money from you and use it in ways you don't like, get mad at Congress, not the IRS.⁶⁹

Continuing to make the IRS case is this argument:

Yes, I know, the IRS isn't exactly "fun." My heart drops into the pit of my stomach when I receive a letter with their logo on it. I get it. It seems like they keep playing "gotcha!" In any industry, dealing with auditors is not high on the list of entertainment. But being able to acknowledge the necessity of it, even if we do not like it, is required for society to run smoothly. And about all those new agents and billions in new funding: We the people have been complaining for years about the terrible service the IRS has been giving us (just try calling to ask a question about your taxes). This is Congress trying to address the issue.⁷⁰⁷¹

I admit that I have a hard time acquiescing to the idea that the IRS is a necessary evil, but I suppose I must. And I do so here and now with the greatest reluctance. That is as far as I will go in describing the IRS as any positive force.

69. Gary Silverman, *The IRS is NOT Your Enemy*, TIMES RECORD NEWS, Sept. 3, 2022. <https://www.timesrecordnews.com/story/opinion/columnists/2022/09/03/silverman-the-irs-is-not-your-enemy/65464368007/>.

70. *Id.*

71. See, e.g., Kelly Phillips Erb, *IRS is Hiring New Employees, Not Raising an Army*, Aug. 18, 2022. <https://news.bloombergtax.com/tax-insights-and-commentary/irs-is-hiring-new-employees-not-raising-an-army>; Laura Davison and David Ingold, *The \$80 Billion IRS Infusion Means More Audits – in 2026 or 2027*, www.bloomberg.com, Aug. 22, 2022. <https://www.bloomberg.com/news/articles/2022-08-22/the-irs-getting-87-000-agents-won-t-mean-more-audits-now>.

XI. CONCLUSION

The foregoing is my opinion as to why the IRS is still the fearsome, unfriendly beast it's always been. In recent years, the IRS' attempts to reinvent itself as a kinder, gentler IRS⁷² have not exactly been unqualified successes.⁷³ With the IRS' inglorious history as a precedent, this transformation into an ultra-sleek, transparent, taxpayer-friendly organization will not happen overnight if it ever does. As my musical hero, the late great Mr. Sam Cooke, once observed, "Rome Wasn't Built in a Day."⁷⁴ That said, I hope to live long enough to see the idea of the kinder, gentler IRS come to fruition. And even with the unlikely chance that this piece somehow gets me audited, I will believe in the "Kinder, Gentler IRS" when I finally see it.

72. Rocky Mengle, *IRS Reform: 12 Ways the Tax Agency Will Be More Taxpayer-Friendly Under the Taxpayer First Act*, www.kiplinger.com Jul. 2, 2019. <https://www.kiplinger.com/slide-show/taxes/t055-s001-how-the-irs-will-be-more-taxpayer-friendly/index.html>.

73. Naomi Jagoda, *Trust Still Broken at IRS, Leaving Rettig in Messaging Muddle*, www.bloomberglaw.com, Apr. 22, 2022. <https://news.bloomberglaw.com/daily-tax-report/trust-still-broken-at-irs-leaving-rettig-in-messaging-muddle>.

74. Sam Cooke, *Rome Wasn't Built in a Day*, on *AIN'T THAT GOOD NEWS* (RCA Records 1964).