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THE TAX LAWYER

TAXES 10/06/2014

Is IRS A Smidgen Corrupt? Ask Lois Lerner, NetJets, Buffett & 150 Million Taxpayers

The IRS audits, sends bills, imposes penalties, files liens and levies. Yet incredibly, most of the money the IRS collects is self-assessed. We all fill out tax returns and *voluntarily* send in money. How much we believe in the system is critical to making it work.

Sure, part of the reason we comply is our fear that we'll be viewed as [willful risking jail](#) if we don't. But there may be a correlation between how much people cheat and their faith that the tax system is impartial. In a country where everyone knew the system was corrupt, cheating would likely be rampant. That's one reason the state of the IRS is so terribly important.

It is worth asking what most people think of the IRS these days? I don't mean your personal feelings when you get a letter from the IRS, even one via certified mail foretelling something serious. Or a knock on the door from the IRS with badges, maybe even guns. Anyone who has been through any of that knows it is unsettling even if you come out fine.



President Barack Obama and Warren Buffett in the Oval Office (Photo credit: Wikipedia)

But any dealings with the IRS today may be more unsettling than in the past because many have less confidence today that the system is fair and impartial. It is hard to overstate how important this is. Some of it comes back to the last 18 month who's-on-first routine on display from the IRS.

Lois Lerner wouldn't talk to Congress, although she is collecting a nice pension. Despite being held in [contempt of Congress](#) for refusing to testify, she hasn't been prosecuted. Maybe her refusal is constitutionally protected, maybe not. Yet after her long silence, in an [exclusive interview](#) with Politico, Ms. Lerner said she did nothing wrong and she considers *herself* the victim.

She bristled at any suggestion she had anything to do with destroying emails, [switching to texts](#) to avoid being traced, letting her own liberal views influence her treatment of tea party a_holes, etc. It isn't only Ms. Lerner who comes off as above the law. IRS Commissioner Koskinen did his share of testifying about the email mess. Sadly, he somehow managed to seem arrogant, uninformed, and perhaps even a tad dismissive that his organization had any explaining to do.

The IRS and its thousands of dedicated employees deserve far better. Yet given the IRS's current image problem, might some taxpayers feel justified in cheating on their taxes? I hope not, but I'll bet some might think of this. Some of the public may not be able to get past the apparent stonewalling. Some of the public may wonder if they would get a pass from the IRS if their hard drive ate their tax records.

Some taxpayers may go beyond fudging their taxes and take their distrust to the courts. It already happened with [True the Vote's lawsuit against the IRS](#). But you can't win without evidence. See [Judge sides with IRS in search for Lerner emails](#). More suits could be impacted too. As noted in [The Lois Lerner App](#), NetJets has asserted that the IRS "wiped clean a number of computer hard drives containing e-mails and other electronic documents that the government was required to produce."

The claim comes in NetJets suit against the IRS for \$643 million over the alleged misapplication of a ticket tax. The IRS counterclaimed for \$366 million, alleging that NetJets hasn't paid all taxes due. NetJets is the aviation business of Warren Buffett's Berkshire Hathaway. It should not be surprising that spoliation claims—the intentional destruction of evidence—may begin to surface and multiply.

Even President Obama was less than convincing with his famous "not even a smidgen of corruption" remark [to Fox News in February](#). There were just some folks down at the IRS who were "confused" about how to implement the law governing tax-exempt groups. "Confused" did sound better than the one about the rogue IRS employees in Cincinnati.

Back when Lois Lerner was talking in May of 2013, she planted a question in the audience at a bar association meeting so she could dissemble an answer. Perhaps it was well intentioned, but it came off as duplicitous. It was designed to get out ahead of the [TIGTA report](#) documenting the targeting. Ms. Lerner answered the plant on May 10, 2013, before the [TIGTA report](#) was issued May 14, 2013.

Will some taxpayers cheat after seeing this kind of behavior? I hope not, but some might justify it to themselves. When thousands of emails go missing from the key time period? And, when no one said *anything* about the emails being missing until *one year* into a federal investigation? Might some taxpayers cheat after seeing this kind of behavior?

As House Oversight and Government Reform Committee Chairman Darrell Issa (R-Calif.) said, "Do they really expect the American people to believe that, after having withheld these emails for a year, they're just now realizing the most critical time period is missing?" Mr. Issa may not have explicitly been worried that taxpayers might behave badly after the IRS behaves badly. Yet it's not an unreasonable thing to fear.

Ms. Lerner, Mr. Koskinen and everyone else who has had a role in this unfortunate drama may all have been operating entirely above-board. They all may have had the best of intentions. I think the overwhelming majority of IRS employees operate with integrity and do their level best. Yet some people may not agree.

Consider those taxpayers who were unfairly targeted, spending money and energy responding to tax exemption hassles. Unless they have somehow felt compensated or vindicated, they too may

have a decidedly grim view of their place in the tax system, or of the integrity of a system that is still about fairness and integrity.

Consider more generally a taxpayer who thinks he or she didn't get a fair shake. Whatever one's political views, politics are not supposed to matter to the IRS. Taxes and tax administration can't be even remotely based on politics. We all need to believe that, and more generally, in the fairness of the system. One's tolerance for coincidence should not have to be work overtime to be convinced.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.