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President Obama, Audit Threats, And Rogue IRS Employees

The fallout from the IRS targeting flap isn't over. The key lost emails could be the result of *bona fide*, unanticipated, and irreversible computer crashes. Yet some still see finger-prints of a cover-up. It provides fodder for the online equivalent of jawing around the water-cooler. Either way, conservative groups are outraged.

More broadly, there is a general malaise about the IRS and our tax system. It is not enough for the IRS to do a good job of enforcing the tax laws in a fair and non-discriminatory way. As important, the IRS needs to be *perceived* as fair. If profiling is a dirty word, it should be equally dirty when the IRS does it. Truly, audit targeting is scary.

No matter how good your records may be, no one wants to face an audit. On the contrary, most of us would prefer to steer clear of an audit. That's what makes profiling such a hot button. Consider Mr. Logan Clements, the producer of "Sick and Sicker," a film regarded as anti-Obamacare. The [Washington Times](#) noted that the IRS is auditing Mr. Clements for the first time in his life.



(AP Photo/Lauren Victoria Burke, File)

Coincidentally, this comes on the heels of the conservative [Breitbart News announcement](#) that it, too, is being audited. No one can say if any of it is politically motivated. It probably isn't and is probably pure unadulterated coincidence. Still, [Mr. Clements](#) says the IRS has demanded a "ridiculously long list" of documents. The tax issues are troubling even if one cannot be certain there was anything amiss.

One gets an even greater feeling that the coincidences are too great when one adds that retired IRS Exempt Organizations maven [Lois Lerner actually sought to audit Senator Chuck Grassley](#). Fortunately, cooler heads at the IRS prevailed, and it didn't go after Sen. Grassley after all. The House Committee on Ways and Means weighed in, given the serious repercussions of having a sitting [GOP Senator targeted by Ms. Lerner](#).

Want still more coincidences? Don't forget President Obama's audit quip in 2009 in a commencement speech. The President joked about Arizona State University's decision not to award him an honorary degree:

"I really thought this was much ado about nothing, but I do think we all learned an important lesson. I learned never again to pick another team over the Sun Devils in my NCAA brackets. . . . President [Michael] Crowe and the Board of Regents will soon learn all about being audited by the IRS."

It was an innocent remark, but some pundits didn't see any humor. Comedians joke about such things, not Presidents, especially not with the history this charged issue has had. It would only be a few years before the 'rogue employees' excuse could be used about IRS targeting. In the meantime, a clever remark can go a long way.

'Gee, I thought you wanted me to ice that guy,' a mafia button man might say. With plausible deniability, the don might get off scot free. Presumably, though, we can't see what Ms. Lerner told her exempt organization subordinates in Cincinnati. If there were truly rogue employees, might they have misunderstood their mission and gotten overzealous?

We do not know how much of this may have occurred. But that doesn't mean there is no problem. If you aren't happy with the IRS, you're not alone. House Republicans aren't either, trying a while back for a passel of not yet passed tax bills with zesty names:

STOP IRS Act, H.R.2565. Actually, this bill has an alternate handle too, the *Stop Targeting Our Politics Act*. If passed, this law that would expand the existing grounds for firing an IRS employee. New firing offenses would include performing, delaying, or failing to perform (or threatening) any official action—including an audit—for purposes of personal gain or for a political purpose.

The Stop Playing on Citizen's Cash Act, H.R.2769. This proposed law would impose a moratorium on *any* IRS conference until the Treasury Inspector General submits a report to Congress *certifying* that IRS has implemented all the recommendations in its report.

Government Spending Accountability Act of 2013, H.R.313. This proposed law would limit any government agency from spending more than \$500,000 to support a single conference.

Government Customer Service Improvement Act of 2013, H.R.1660. This bill would require the Director of the Office of Management and Budget (OMB) to develop government-wide standards for customer service delivery.

The Taxpayer Bill of Rights Act of 2013, H.R.2768. This bill would amend the tax code to say the duty of the IRS Commissioner is to ensure that IRS employees are familiar with and act in compliance with certain taxpayer rights.

The IRS has a hard job to do, and the vast majority of its employees are fair and doing their best. Whatever label you give it, here's hoping the IRS gets back on its feet with real accountable leadership to get the government's work done.

You can reach 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.