



Wood LLP

Tax Alert



Robert W. Wood

THE TAX LAWYER

TAXES 7/18/2014

Despite Yearlong Investigation Of IRS, DOJ Just Learned Of Lost Emails From News Media

With bigger and more catastrophic news stories, the kerfuffle about the IRS's Lois Lerner, her 2 years of 'lost' emails, and her cleverly off-the-grid texts seem comparatively unimportant. Yet they are anything but a laughing matter. The integrity of the IRS and tax system are vital to our economy.

Joe Taxpayer is probably worried about getting audited. Yet since most taxes are assessed and paid voluntarily, if we don't have trust, we're in trouble. Does Joe Taxpayer think the IRS is playing fair? Unlikely. And what does Joe Taxpayer think about the Justice Department and FBI investigation of the IRS?

Joe Taxpayer might even think that DOJ and FBI investigators are *themselves* worried about getting audited. That might help explain recent events. For over a year now, the DOJ and FBI have been investigating the IRS targeting scandal. Yet a DOJ lawyer testified before a Congressional committee that even *a year* into its investigation, DOJ *had no advance notice* of the 2 years' worth of emails the IRS says went missing *years ago*.

DEMAND AN IRS INDEPENDENT PROSECUTOR



PETITION

Whatever Joe Taxpayer may think, this is astonishing. On June 13, 2014, the IRS admitted that it lost Lois Lerner's emails from January 2009 through April 2011. DOJ says it learned of the missing emails after June 13, 2014 *from the media!* Oh, *those* two-years' worth of emails to and from the key IRS figure who refused to testify to Congress about her job as a top IRS official? They covered the *precise* period of time when the alleged IRS targeting of Tea Party groups took place.

Republican Rep. Ron DeSantis asked Deputy Attorney General James Cole, "So you actually read about it in the press and nobody in the IRS ever went to the Justice Department to give you a heads-up, knowing you were conducting the investigation that some evidence may have been destroyed?"

"Not before the 13th of June," Cole replied. "I think we learned about it after that, from press accounts," Mr. Cole told House Oversight and Government Reform subcommittee chairman Rep. Jim Jordan. Rep. Jordan pressed Mr. Cole, "Is it a big deal to you Mr. Cole, a big deal to the Justice

Department that the head of the Internal Revenue Service waited two months to tell the United States Congress, two months to tell the American people, and, most importantly, two months to tell the FBI and the Justice Department that they had lost Lois Lerner's emails?"

Mr. Cole's response seemed practically Presidential, "It depends on what the circumstances were behind," Cole responded. The whole story may eventually come out, but the investigation has taken on a decidedly pale complexion. Now there's a *new* DOJ investigation underway into the IRS missing emails. One might wonder if it will ever turn up even a smidgen of corruption.

Meanwhile, a federal court may prove to be tougher. In a suit against the IRS brought by [Judicial Watch](#), U.S. District Judge Emmet G. Sullivan ordered the IRS to explain what happened to Lois Lerner's emails. The DOJ has done its best to avoid having to explain much of anything to anyone.

It is another seedy chapter that casts further doubt on the tax system. In 2013, the IRS targeting scandal was already brewing, and Ms. Lerner asked an IT specialist at the IRS if the IRS saved texts? They are not saved automatically, came the response, but since saving them was *possible*, be careful. "Perfect," Ms. Lerner answered.

So the switch to texts was an even better way to adopt the IRS version of [Moscow Rules](#). Even President Obama's new IRS Commissioner Koskinen testified that he was completely unaware of the instant-messaging system. Still, he told a House committee he didn't think Ms. Lerner's response about the texts meant she was *happy* that IRS instant messages weren't saved. 'Perfect' must mean different things to different people.

In this veritable panoply of investigations, the IRS wants the Inspector General to finish another investigation of the computer failures. Then, said IRS Commissioner Koskinen, the IRS can decide what further steps it should take. Joe Taxpayer may already have some inkling just what those further steps are likely to be.

Meanwhile, Ms. Lerner's lawyer continues to say his client did nothing wrong. She refused to testify and was held in [contempt of Congress](#). She professed her innocence herself to a Congressional committee, then promptly clammed up asserting her constitutional right against self-incrimination. Her case was turned over to the U.S. Attorney for the District of Columbia.

It is conceivable that *if* Ms. Lerner is prosecuted, and *if* she is convicted, she [Could Face 11 Years In Prison](#). However, Joe Taxpayer probably has a good sense how likely this is to happen. In fact, Joe Taxpayer may well think that *he* is a lot more likely to go to jail for cheating on his taxes, than anyone connected to the IRS targeting mess is likely to be held to account. That's too bad, for if Joe Taxpayer can figure a way to outsmart the IRS or to get back at the government? Now he might just be a little more likely to do it.

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.