



Robert W. Wood

THE TAX LAWYER

TAXES 1/20/2016

IRS Wipes Another Hard Drive Defying Court Order...But You Must Keep Tax Records

Talk about Déjà vu. Despite a court order to preserve documents, [the IRS wiped the hard drive](#) of an important IRS official, Mr. Samuel Maruca.

Controversially, Mr. Maruca helped the IRS hire Quinn Emanuel, an outside law firm tasked with pursuing Microsoft. Hiring outsiders at over \$1,000 an hour (!) angered Senate Finance Committee Chairman Orrin Hatch, who wrote [a letter to the IRS](#) complaining about strange deal and the \$2.2 million fee.

Sen. Hatch [pointed](#) out that this was work the IRS and Justice Department should do. A federal judge was also [troubled](#). And when the questions were too probing, oops, the hard drive was wiped. Sound familiar? Meanwhile, of course, you have to keep all your receipts and tax records! Imagine if the IRS found out that you deleted emails or destroyed records? The fact that the IRS—accidentally—wiped Mr. Maruca's hard drive reminds everyone of Lois Lerner, the key IRS official who refused to testify about targeting conservatives.



Lois Lerner, the director of the Internal Revenue Service's exempt organizations office, listens during a House Oversight and Government Reform Committee hearing in Washington, D.C. on May 22, 2013. Lerner, the mid-level IRS official at the center of a controversy over treatment of small-government groups, invoked her right not to testify after reading a statement denying that she had committed any crimes. (Photo credit: Pete Marovich/Bloomberg)

In March 2014, nine months after receiving a congressional subpoena to preserve and turn over the information, the IRS deleted approximately 24,000 Lerner emails and destroyed Lerner's hard drive. Many emails were [lost forever](#) when 422 backup tapes were wiped clean *despite a preservation order and subpoena*. The House Oversight Committee [report](#) said the IRS failed to take even simple steps to ensure compliance with the order.

The IRS scandal broke in May 2013, but started in January 2010. That's when the Supreme Court found it unconstitutional in *Citizens United* to ban free speech by corporations, unions and other organizations. In August 2010, the IRS [distributed a list](#) asking for extra scrutiny for Tea Party organizations applying for tax exempt status. Lerner even met with the DOJ about *prosecuting* conservative groups.

Amid reports of targeting, [former IRS Commissioner Shulman testified](#) there was "absolutely no targeting" of conservative or Tea Party organizations by the IRS. [Mr. Shulman then stepped down](#) as Commissioner, replaced by Steven Miller. On May 10, 2013, during a bar meeting, Ms. Lerner admitted

targeting, calling it “absolutely incorrect, insensitive, and inappropriate.” Four days later, on May 14, 2013, the Inspector General [issued a report](#) confirming the targeting.

The next day, Acting IRS Commissioner [Steven Miller resigned](#). Ms. Lerner professed her innocence, then [took the Fifth](#). She was placed on [administrative leave](#), and shortly thereafter retired with full pension. The House held Ms. Lerner in contempt of Congress. Only then—on June 13, 2014, Friday the 13th—did the IRS *first* say it lost Lerner’s emails from 2009 to 2011. The IRS said hard drives and backups were destroyed, spending millions to try to recover them. Republicans were repeatedly accused of wasting money on all of this, since the IRS was above reproach.

President Obama always fervently denied there was *any* IRS problem, [not even a smidgen of corruption](#). Any missteps were innocent, entirely the fault of [bonehead decisions in local IRS offices](#). There was no targeting. Emails show there was no directive about targeting. Sorry, it turns out some of our emails are missing? Well, hard drives crash. We recycle them—which helps the environment. Besides, liberals got targeted too. There’s no smidgen of corruption. Cash bonuses? Those are unrelated. And the latest in the long line of excuses: it was all the Republicans’ fault.

It was no surprise that the Justice Department wrote [a letter to members of Congress](#) announcing that Lois Lerner will face no criminal charges. What about emails sent from Ms. Lerner’s [dog’s email account](#)? The dog is safe too. The DOJ said there was *no* evidence that *any* IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives.

Let’s see, is the IRS likely to accept similar taxpayer arguments?

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.