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Lois Lerner, Former IRS Official, Remains Relevant On Tax Day

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President Trump is still facing a big backlash over his tax returns. Despite big protests, he has not released them, and there is no sign that he will. As this Tax Day passes, it seems unlikely that public cries for his tax returns are going away anytime soon. Yet curiously, some people on the right seem to be as upset with a now barely uttered name from the IRS's past, Lois Lerner. Ms. Lerner was the former IRS official at the center of the targeting scandal. That mostly forgotten issue has nothing to do with Trump's tax returns, and it is unlikely to garner the kind of popular outcry that has been triggered over Trump's returns.

Even so, some observers cannot let go of the IRS targeting scandal. Partisan treatment from the IRS is worrisome. Some claim that [Lois Lerner got off easy in the IRS scandal, and want it reopened](#). In fact, House Ways and Means Committee Chairman Kevin Brady and Tax Policy Subcommittee Chairman Peter Roskam sent a [letter](#) to Attorney General Jeff Sessions asking the Department of Justice to re-open a probe of her conduct. In the letter, Representatives Brady and Roskam wrote:

On April 9, 2014, the House Committee on Ways and Means voted to send a letter to the Department of Justice referring former IRS Exempt Organizations Division Director Lois G. Lerner for criminal prosecution. As indicated in the attached letter, the Committee's nearly three-year investigation uncovered evidence of willful misconduct on the part of Ms. Lerner. Despite this fact, and for what many believe were purely partisan reasons, the prior Administration refused to review Ms. Lerner's misconduct."

The lawmakers have urged the Department of Justice to "take a fresh look at the evidence" concerning Lerner's actions. They claim that:

Ms. Lerner used her position to improperly influence IRS action against conservative organizations, denying these groups due process and protection rights under the law. The Committee also found she impeded official investigations by providing misleading statements

in response to questions from the Treasury Inspector General for Tax Administration. Finally, Lerner risked exposing, and may have actually disclosed, confidential taxpayer information, in apparent violation of Internal Revenue Code section 6103 by using her personal email to conduct official business.”

IRS Commissioner John Koskinen is still at the helm of the agency, and there is no sign that he will be replaced. In addition to Ms. Lerner’s own conduct, there were numerous gaffes or glitches over the course of several years. To outsiders, the IRS seemed to behave in ways that no taxpayer engaged in a tax audit would be allowed to act. Taken as a whole, the IRS made itself look at least sloppy. For example, as recently as 2016, despite a court order to preserve documents, [the IRS wiped the hard drive](#) of an important IRS official, Mr. Samuel Maruca involved in hiring an outside law firm. Senate Finance Committee Chairman Orrin Hatch wrote [a letter to the IRS](#) complaining about the strange deal and its big fees.

The deal had nothing to do with Lois Lerner or targeting. Yet, the fact that the IRS wiped Mr. Maruca’s hard drive was a reminder of Lois Lerner and all that came with her. 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 consistently denied that 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](#). It was no surprise that the Justice Department wrote [a letter to members of Congress](#) announcing that Lois Lerner would face no criminal charges. The DOJ said there was *no* evidence that *any* IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives.

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. On Tax Day, some taxpayers might wonder if the IRS would be likely to accept similar taxpayer arguments.

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