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Trickle-Down Compliance: How Codifying the Mandatory Presidential Audit Can Improve Tax Morale and Tax Compliance

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Notes

Trickle-Down Compliance: How Codifying the Mandatory Presidential Audit Can Improve Tax Morale and Tax Compliance

EMMA BRADEN[†]

A functioning government requires tax revenue, and democratic legitimacy requires a nation's leaders be subject to the same laws as its citizens. The president's tax behavior is an opportunity to address both needs. With a projected increase in the tax gap, there is a need for a politically viable, cost-effective way to increase revenues. In December 2022, the House Ways and Means Committee released a report revealing that the IRS failed to perform mandatory annual audits of former President Donald Trump's taxes. The revelation imperils public trust in tax administration, requiring a new approach to guarantee accountability for a president's tax behavior. Thus far, discussion of Trump's taxes has focused on voluntary disclosure and possible repercussions for Trump himself. This Note is novel in its focus on the presidential audit and its proposed implications for tax morale. First, it establishes the symbolic significance of presidents' tax behavior and the power of tax morale to increase tax compliance. Then, the Note proposes a codified mandatory presidential audit that maximizes the impact of the audit on taxpayers' compliance.

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INTRODUCTION

Numerous allegations of impropriety and criminal conduct against prominent government figures came out in 2022 and 2023. Some have resulted in formal investigations, including multiple indictments against former President Donald Trump¹ and tax-related charges against President Joe Biden's son, Hunter Biden.² These highly publicized examples of accountability for purported noncompliance demonstrate to the public that even presidents and their families are not above the law. But there has not been the same assurance regarding a president's taxes.

At the end of 2022, the House Ways and Means Committee released a report ("Report") about the Internal Revenue Service's ("IRS") mandatory audit program under former President Donald Trump.³ The Report revealed that the IRS did not audit Trump as the Internal Revenue Manual ("IRM") required.⁴ Shortly after the Committee released the Report, the House introduced the Presidential Tax Filings and Audit Transparency Act⁵ ("PTFATA") to codify the annual audit of the president and reassure taxpayers "that the tax *collector* in chief is also a tax *payer* in chief."⁶ The PTFATA did not make it beyond the House.⁷ Under the current IRM procedure, administration of the mandatory presidential audit is inconsistent and lacks congressional oversight, which undermines taxpayers' confidence in the president's compliance. At the same time, there has been highly partisan debate about IRS spending.⁸ This Note

1. *Trump Has Been Indicted in a Fourth Case. Here's Where All the Investigations Stand*, ASSOCIATED PRESS (Aug. 14, 2023, 9:58 PM), <https://apnews.com/article/donald-trump-investigations-other-charges-b8b064a00caad4306fb54d2f6a320468> [<https://web.archive.org/web/20230815173307/https://apnews.com/article/donald-trump-investigations-other-charges-b8b064a00caad4306fb54d2f6a320468>] (last visited Jan. 31, 2024).

2. Tom Winter & Dareh Gregorian, *Hunter Biden Misdemeanor Tax Charges Are Dismissed—For Now*, NBC NEWS (Aug. 17, 2023, 5:26 PM), <https://www.nbcnews.com/politics/joe-biden/hunter-biden-misdemeanor-tax-charges-are-dismissed-now-rcna100527>.

3. RICHARD E. NEAL, CHAIRMAN, H. COMM. ON WAYS & MEANS, 117TH CONG., REPORT ON THE INTERNAL REVENUE SERVICE'S MANDATORY AUDIT PROGRAM UNDER THE PRIOR ADMINISTRATION (2017-2020) (Dec. 20, 2022).

4. WAYS & MEANS COMM. REPORT, *supra* note 3, at 1.

5. Presidential Tax Filings and Audit Transparency Act of 2022, H.R. 9640, 117th Cong. (2022).

6. Joseph J. Thorndike, *Why and When Did the IRS Stop Auditing the President?*, TAX NOTES (Dec. 27, 2022), <https://www.taxnotes.com/opinions/why-and-when-did-irs-stop-auditing-president/2022/12/27/7fh18>; H.R. 9640.

7. H.R. 9640.

8. *See generally* Inflation Reduction Act of 2022, H.R. 5376, 117th Cong. § 10301 (2022) (enacted); Emily Cochrane & Alan Rappoport, *House Republicans Vote to Rescind I.R.S. Funding*, N.Y. TIMES (Jan. 9, 2023), <https://www.nytimes.com/2023/01/09/us/politics/house-republicans-irs-funding.html>; Jeff Mason, *Biden Slams House Republicans' Plans on Taxes, Says They Will Make Inflation Worse*, REUTERS (Jan. 12, 2023), <https://www.reuters.com/world/us/biden-slams-house-republicans-plans-taxes-says-will-make-inflation-worse-2023-01-12>; *Depletion of IRS Enforcement Is Undermining the Tax Code: Hearing on the Disappearing Corporate Income Tax Before the H. Comm. on Ways & Means*, 116th Cong. (2020) (Testimony of Chye-Ching Huang, Senior Dir. for Econ. Pol'y, Center on Budget and Policy Priorities).

proposes a cost-effective remedy. Congress should create a statutory requirement for the IRS to perform and publicize an annual audit of the president to increase transparency and accountability into IRS procedure, as well as foster morale by capitalizing on the high visibility of the president's taxes.

Part II explores the significance of the president's taxes throughout tax history, including the voluntary release of presidential candidates' tax returns⁹ and the IRS mandatory audit of the president and vice president.¹⁰ Both practices lapsed under Donald Trump's candidacy and presidency, leading to substantial public attention and debate.¹¹ Thus far, scholarship has focused on the merits of mandating tax return disclosure.¹² This Note extends discussion to the mandatory audit.

Part III provides an overview of the foundational concepts in tax morale literature and highlights three tax morale factors that are sensitive to presidential tax behavior: (1) reciprocity among taxpayers, (2) procedural fairness and justice in tax administration, and (3) public trust in government officials. Scholars have identified the influence of government leaders' behavior on tax morale, but this Note focuses specifically on the connection between the tax behavior of the President of the United States and tax morale of American taxpayers.¹³ Finally, Part IV demonstrates why the IRM's presidential audit harms tax morale and how a codified mandatory audit could better target tax compliance using tax morale guidance.

I. THE PRESIDENT'S TAXES

Attitudes towards presidents' taxes evolved throughout the twentieth century. Discussion about their significance began with debate about exemption

9. See Jack Fay & Connie Shum, *U.S. Presidents and Personal Income Tax: Did They Pay Their Fair Share?*, 6 J. BUS. & EDUC. LEADERSHIP 1, 9 (2016). See generally *Presidential Tax Returns*, TAX NOTES, <https://www.taxnotes.com/presidential-tax-returns> (last visited Oct. 7, 2023).

10. Joseph J. Thorndike, *Tax History: Why Presidents Are Audited Every Year*, TAX NOTES (Feb. 25, 2019), <https://www.taxnotes.com/tax-history-project/tax-history-why-presidents-are-audited-every-year/2019/02/22/2957m>.

11. See, e.g., Michael D. Shear, Steve Eder & Patricia Cohen, *Donald Trump's Taxes: What We Know and Don't Know*, N.Y. TIMES (Mar. 15, 2017), <https://www.nytimes.com/interactive/2016/us/politics/donald-trump-taxes-explained.html>.

12. See, e.g., Thorndike, *supra* note 10; Amandeep S. Grewal, *The President's Tax Returns*, 27 GEO. MASON L. REV. 439, 439 (2020); Joshua D. Blank, *Presidential Tax Transparency*, 40 YALE L. & POL'Y REV. 1, 1 (2021).

13. See e.g., Ctr. for Tax Pol'y & Admin., *What Drives Tax Morale?*, OECD 8 (2013), <https://web.archive.org/2016-05-18/221775-what-drives-tax-morale.pdf> ("Citizens' perceptions of public officials, especially tax officials, can influence attitudes towards taxation."); Benno Torgler, *Tax Morale in Latin America*, 122 PUB. CHOICE 133, 138 (2005) ("If the president acts trustworthily, people might be more inclined to pay their taxes."); Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX REV. 599, 614 (2007) ("[H]aving an important person in a group (a minister, for example) or a person that people admire or respect (e.g., celebrity) emphasize tax compliance could strengthen compliance.").

for presidential salaries following ratification of the Sixteenth Amendment in 1913.¹⁴ In the 1970s, the resignations of President Richard Nixon and Vice President Spiro Agnew amidst criminal investigations, including alleged and charged tax evasion, gave rise to the modern emphasis on transparency and frequent disclosure.¹⁵ This evolution solidified tax participation as a democratic ideal and the symbolism attached to the president's tax behavior.

A. THE SIGNIFICANCE OF PRESIDENTS' TAXES

Shortly after the Internal Revenue Act of 1862 passed to help fund the American Civil War, Chief Justice Roger B. Taney exempted federal officials from taxation in a letter to the Treasury Secretary.¹⁶ Chief Justice Taney argued that taxes on federal officers would disrupt the balance of powers between the branches and violate the Constitution's compensation clauses, which prohibited diminishing certain federal salaries.¹⁷ As a result, presidential salaries were exempted from federal income tax without question until the Sixteenth Amendment.

The modern era of income taxation began with the 1913 ratification of the Sixteenth Amendment, which purported to phase out tax exemption for federal employees through 1916.¹⁸ Tax collection under the new regime began three days before President Taft was set to leave office, and in 1914, Taft was the first president to report his salary (although it was only three days' worth and he simultaneously claimed the exemption).¹⁹ Citing decades of precedent in support of the exemption, federal officers challenged the 1916 phaseout.²⁰ However, popular sentiment and subsequent supporting legislation had resolutely shifted in favor of a tax regime that applied universally.²¹ In 1921, President-elect Warren Harding ended the matter when he expressed his position against any exemption for the executive.²² In hindsight, this public and definitive stance may

14. James F. Vivian, *The Last Tax-Exempt President*, 19 PRESIDENTIAL STUD. Q. 107, 107 (1989).

15. *Presidential Tax Returns*, *supra* note 9.

16. Cynthia G. Fox, *Income Tax Records of the Civil War Years*, NAT'L ARCHIVES (1986), <https://www.archives.gov/publications/prologue/1986/winter/civil-war-tax-records.html>; Joseph J. Thorndike, *Does Trump Avoid Taxes? Many Other Presidents Did*, TAX NOTES (Nov. 19, 2019), <https://www.taxnotes.com/opinions/does-trump-avoid-taxes-many-other-presidents-did/2019/11/19/2b4n3>.

17. Fox, *supra* note 16; U.S. CONST. art. I, § 6, cl. 1; U.S. CONST. art. II, § 1, cl. 7; U.S. CONST. art. III, § 1.

18. Vivian, *supra* note 14, at 107.

19. *Id.*

20. *Id.* at 113.

21. *Id.* at 111. ("A 'perfectly equitable' tax law was not possible, Kitchin wrote, and everyone, including presumably the president, should willingly shoulder a share of the burden. *The Outlook* magazine, among others, readily agreed to the principle. 'Taxation should reach as many, not as few, citizens as possible,' it asserted. 'We must not jeopardize our spirit of democracy.'")

22. *Id.* at 115.

have avoided a “demoralizing institutional confrontation.”²³ Although presidents after Harding were subject to tax without exemption, little is known about presidential taxes in the decades following because the IRS affords their returns the same confidentiality as other taxpayers.²⁴

B. THE TRADITION OF VOLUNTARY DISCLOSURE OF THE PRESIDENTS’ TAXES

Although the IRS keeps presidents’ taxes confidential, they are publicly available today because presidents, vice presidents, and candidates for both offices—with one recent exception—voluntarily release them.²⁵

1. *The History of Voluntary Tax Disclosure*

The first highly publicized voluntary tax disclosure occurred during the 1952 presidential campaign between Dwight D. Eisenhower and his opponent, Governor Adlai Stevenson.²⁶ When Richard Nixon, during his vice presidential campaign as Eisenhower’s running mate, faced accusations of campaign finance misconduct, Nixon publicly denied any wrongdoing, released a detailed account of how he spent the funds in question, and provided a law firms’ independent audit as confirmation.²⁷ In that same statement, Nixon redirected scrutiny to his political opponents and made this challenge to them: “[C]ome before the American people, as I have, and make a complete financial statement as to their financial history, and if they don’t it will be an admission that they have something to hide.”²⁸ This backfired when Stevenson and his running mate, Senator John Sparkman, responded releasing their tax returns and pressured Eisenhower and Nixon to match their display of transparency.²⁹ Eisenhower obliged with a summary of tax information (although not his actual returns), and Nixon declined, but the pair won election several weeks later anyway.³⁰

After the 1952 election, two decades passed without scrutiny of candidates’ taxes until fresh allegations against then-President Nixon and Vice President Spiro Agnew brought them to the foreground.³¹ Perhaps having learned from the election in 1952, Nixon preemptively requested review of his 1971 and 1972

23. *Id.*

24. *Id.*; Thorndike, *supra* note 16.

25. *Presidential Tax Returns*, *supra* note 9.

26. Joseph J. Thorndike, *Timelines in Tax History: Tax Codes, Tax Reform, and Tax Preferences*, TAX NOTES (Oct. 24, 2022), <https://www.taxnotes.com/featured-analysis/timelines-tax-history-tax-codes-tax-reform-and-tax-preferences/2022/10/21/7f8cj>.

27. President Richard Nixon, Checkers Speech at the El Capitan Theatre (Sept. 23, 1952); Thorndike, *supra* note 26.

28. Thorndike, *supra* note 26.

29. *Id.*

30. *See id.* (describing questions over Eisenhower’s favorable tax treatment of income from a book deal while serving as Army chief of staff several years prior).

31. *Presidential Tax Returns*, *supra* note 9.

taxes.³² Not only did the IRS find no errors, the examiner sent Nixon a letter lauding him for the “care shown in the preparation of [the] returns.”³³ Nixon offered the IRS letter in defense after journalists leaked questionable deductions on the returns,³⁴ but it only exacerbated suspicions when the author of the IRS letter received a promotion,³⁵ and the Joint Committee on Taxation (“JCT”) found deficiencies that triggered the IRS to revisit its audit.³⁶ That same year, Agnew resigned and pleaded no contest to one charge of tax evasion.³⁷ Upon succeeding Agnew to the vice presidency, Gerald Ford preemptively released a summary of his own tax information to alleviate public concern.³⁸ Then, during the 1976 presidential campaign, Ford and several other candidates published summaries of their tax information.³⁹ Until 2016, every U.S. president and vice president, as well as every candidate for those offices, had voluntarily released their tax returns.⁴⁰

2. *Donald Trump Interrupted the Voluntary Disclosure Tradition*

Presidents and vice presidents continued the voluntary disclosure tradition uninterrupted for forty years until Donald Trump refused to release his tax returns, both as a candidate in 2016 and while in office.⁴¹ Vigorous debate and litigation surrounding the release of his returns lasted from 2019 until the House Ways and Means Committee made them public in late 2022.⁴² Some of the speculation surrounding Donald Trump’s returns mirrors the allegations made prior to Nixon’s resignation. As in 1973, the JCT examined Trump’s returns and found issues that warranted IRS examination,⁴³ including large deductions.⁴⁴

32. Fay & Shum, *supra* note 9, at 5.

33. *Nixon Cited Clearance by I.R.S. After Audit Notice, Paper Says*, N.Y. TIMES, June 19, 1974, at 35.

34. *Id.*; *Presidential Tax Returns*, *supra* note 9.

35. Eileen Shanahan, *I.R.S. Official Who Praised Nixons Promoted to Head Philadelphia Office*, N.Y. TIMES, Mar. 26, 1974, at 26.

36. N.Y. TIMES, *supra* note 33, at 35.

37. Jerry Landauer, *Agnew Resigns, Is Fined for Tax Evasion, Put on Probation; Other Charges Dropped*, WALL ST. J., Oct. 11, 1973, at 3; *United States v. Agnew*, 428 F. Supp. 1293, 1293 (D. Md. 1977).

38. Israel Shenker, *Ford’s Net Worth Put at \$256,378*, N.Y. TIMES, Nov. 16, 1973, at 25.

39. Fay & Shum, *supra* note 9, at 9.

40. *Presidential Tax Returns*, *supra* note 9.

41. Shear et al., *supra* note 11.

42. Elena Moore, *House Democrats Release Trump’s Tax Returns*, NPR (Dec. 30, 2022, 11:47 AM), <https://www.npr.org/2022/12/30/1146215064/trumps-tax-returns-released>.

43. STAFF OF J. COMM. ON TAX’N, 117TH CONG., REP. TO THE H. COMM. ON WAYS & MEANS CHAIRMAN RICHARD NEAL 12 (Comm. Print 2022); *cf.* STAFF OF J. COMM. ON INTERNAL REV. TAX’N, 93RD CONG., EXAMINATION OF PRESIDENT NIXON’S TAX RETURNS FOR 1969 THROUGH 1972 4 (1974) (summarizing the Committee’s assessed deficiencies and interest owed on President Nixon’s for the years 1969–1972, totaling \$476,431).

44. STAFF OF J. COMM. ON TAX’N, 117TH CONG., REP. TO THE H. COMM. ON WAYS & MEANS CHAIRMAN RICHARD NEAL 12–15 (Comm. Print 2022) (summarizing the Committee’s view that some or all of the

Despite this, the IRS did not audit President Trump and those issues were not examined.⁴⁵ Further, a 2019 whistleblower report alleged that political appointees improperly interfered with the mandatory presidential audit.⁴⁶ Unlike Nixon who never faced criminal charges, four grand juries have since indicted Trump on a range of state and federal charges.⁴⁷ These include the Manhattan District Attorney's indictment for falsifying business records that implicated Trump's personal taxes.⁴⁸

Following Trump's refusal to release his tax returns, legal pundits and scholars debated whether the voluntary tradition should become a legal obligation. Arguments in favor of mandating release of tax returns emphasize the importance of exposing conflicts of interest and relative tax burdens to voters.⁴⁹ Renowned tax historian Joseph Thorndike called the voluntary nature "corrosive" for its contribution to political strife, because individuals who validly choose not to disclose leave these issues open to speculation by opponents.⁵⁰ On the other hand, arguments against enforcing disclosure emphasize that the confidentiality afforded to all taxpayers equally applies to presidents and candidates.⁵¹ Some argue that "politically motivated" attacks on personal tax information are too high a cost when weighed against documents that were not ultimately informative for the public.⁵² While Trump's tax returns

deductions Trump claimed for charitable contributions, business expenses, costs of goods sold, and hotel expenses required further inquiry); cf. STAFF OF J. COMM. ON INTERNAL REV. TAX'N, 93RD CONG., EXAMINATION OF PRESIDENT NIXON'S TAX RETURNS FOR 1969 THROUGH 1972 5-6 (1974) (summarizing the Committee's view that some or all of the deductions Nixon claimed for charitable gifts, depreciation, business expenses, and gasoline tax were not allowable).

45. WAYS & MEANS COMM. REPORT, *supra* note 3, at 1.

46. Press Release, Senate Democrats, Schumer and Wyden Call for Investigation Into Potential Undue Influence on IRS Audits of President Trump (Oct. 8, 2020), <https://www.democrats.senate.gov/newsroom/press-releases/schumer-and-wyden-call-for-investigation-into-potential-undue-influence-on-irs-audits-of-president-trump>; Alan Rappeport, *Treasury Officials Pressured I.R.S. on Trump Tax Audit, Whistle-Blower Alleges*, N.Y. TIMES, Oct. 3, 2019, at A18.

47. Tom Geoghegan, *Trump Indictments: A Very Simple Guide to His Four Big Legal Cases*, BBC NEWS (Aug. 25, 2023), <https://www.bbc.com/news/world-us-canada-66508259>.

48. *Trump Has Been Indicted*, *supra* note 1.

; Jonah E. Bromwich, Ben Protess, William K. Rashbaum & Michael Gold, *The Case Against Donald Trump: What Comes Next?*, N.Y. TIMES (Apr. 5, 2023), <https://www.nytimes.com/article/trump-indictment-criminal-charges.html> ("Mr. Trump was indicted last week, becoming the first current or former American president to be charged with a crime.").

49. Blank, *supra* note 12, at 5-6.

50. David D. Stewart & Joseph J. Thorndike, *Interview: Trump's Tax Returns and the Future of Transparency*, TAX NOTES (Jan. 18, 2023), <https://www.taxnotes.com/opinions/interview-trumps-tax-returns-and-future-transparency/2023/01/18/7fw2x>.

51. Grewal, *supra* note 12, at 456-57.

52. See Daniel I. Weiner & Lawrence Norden, *Presidential Transparency: Beyond Tax Returns*, BRENNAN CTR. FOR JUST. (June 21, 2017), <https://www.brennancenter.org/media/268/download>; *Comm. on Ways & Means, United States H.R. v. U.S. Dep't of Treasury*, 45 F.4th 324, 338, 340 (D.C. Cir. 2022); Stewart & Thorndike, *supra* note 50; Shear, Eder & Cohen, *supra* note 11.

showed very little paid in taxes and significant claimed losses, without more information, commentators and politicians can only speculate as to the legitimacy of the returns.⁵³ Both perspectives focus on Trump's tax behavior and potential consequences for him as an individual, rather than on the broader implications for tax administration and future presidents.

Recently, tax scholar Joshua Blank connected presidential tax behavior to broader public perception of the tax system.⁵⁴ Blank also finds tax returns inadequate to inform the public about the president's tax behavior because they only represent the taxpayer's self-assessed taxes.⁵⁵ Instead of using this to discourage mandating release of tax returns, he proposes requiring public disclosure of more tax information, including controversies and audits with the IRS.⁵⁶ More information would offer increased transparency into candidates' and presidents' taxes, as well as into IRS processes themselves.⁵⁷ Blank demonstrates that the president's taxes are useful beyond individual accountability by arguing how comprehensive, mandatory disclosure contributes to better-informed public oversight into presidents' compliance and tax administration.⁵⁸

C. THE INTERNAL REVENUE PROCEDURE FOR MANDATORY AUDITS OF THE PRESIDENT

Presidential tax compliance became a policy priority for the IRS after mishandling Nixon and Agnew's taxes. In 1977, the IRS adopted a new internal procedure to annually audit the president and vice president "in the interest of sound tax administration" and because of "everything that ha[d] happened in the past."⁵⁹ The stated goal was to "automatically relieve[] any particular IRS employee' of the burden of whether to audit a presidential tax return."⁶⁰ At the time, the Carter administration openly "endorse[d]" the new procedure "to allay any concerns in the public about the President's payment of taxes."⁶¹ As with voluntary disclosure, this practice lapsed during Trump's presidency.

53. Stewart & Thorndike, *supra* note 50; Shear, Eder & Cohen, *supra* note 11.

54. Blank, *supra* note 12, at 6–7.

55. *Id.* at 30.

56. *Id.* at 61, 64–66.

57. *Id.* at 7.

58. *Id.*

59. Thorndike, *supra* note 10.

60. Bill Curry, *Yearly Audits Set for Carter, Mondale*, WASH. POST, June 21, 1977, at A8.

61. *Id.*

1. *The Mandatory Audit Procedure*

The Internal Revenue Manual (“IRM”) contains the IRS’s internal practice guidelines, including the mandatory audit of the president.⁶² It mandates an audit for the president, vice president, and new IRS employees.⁶³ Until the IRS identifies them as subject to mandatory review, these returns are processed like those of any other taxpayer.⁶⁴

According to the IRM, the IRS must audit the federal income tax returns of the president and the vice president every year.⁶⁵ First, the IRM requires that tax examiners mail the returns to the Field Director in Austin in double-sealed envelopes.⁶⁶ Throughout review, examiners must treat the originals carefully to avoid unnecessary folding, bending, or other damage, and ensure that any “edit marks and stamps are neatly placed.”⁶⁷ Upon receipt, the reviewer stores the returns in an orange folder and keeps them in a locked drawer or cabinet when not in use.⁶⁸ In addition to meticulous preservation for the National Archives, the IRM emphasizes strict confidentiality and expediency at every stage of the review process.⁶⁹

The IRS also audits new employees by default, although only in the first year after taking the position.⁷⁰ The IRM states, “[a]s the administrators of our nation’s tax system, our dedication to the highest standards of ethical behavior and conduct promotes the public trust in our honesty, fairness and efficiency.”⁷¹ Examiners mail new employee audits to the Employee Audit Reviewer in Baltimore in an envelope labeled “confidential.”⁷² The Employee Audit Reviewer must also keep audits in an orange folder, but otherwise the IRM procedure for new employee audits is not as explicit as the procedure for the president’s and vice president’s returns.⁷³ Both procedures show the particular care the IRS takes when auditing returns of government officials.

62. IRM 3.28.3.2 (Jan. 1, 2020)–IRM 3.28.3.6.2.2 (Nov. 17, 2020); IRM 4.2.1.15 (Apr. 23, 2014).

63. IRM 4.8.4.2(1)(c) (May 20, 2014).

64. IRM 3.28.3.5.1(1) (Jan. 1, 2020); IRM 3.28.3.5.3 (Nov. 17, 2020).

65. IRM 3.28.3.5.3(3)(a) (Nov. 17, 2020) (“Regardless of the Discriminant Index Function (DIF) score, the returns will be examined.”).

66. IRM 3.28.3.2(3) (Jan. 1, 2020).

67. IRM 3.28.3.2(4) (Jan. 1, 2020).

68. IRM 4.2.1.15(7) (Apr. 23, 2014); IRM 4.8.4.2.4(2) (Mar. 12, 2015).

69. IRM 3.28.3.5.1 (Jan. 1, 2020); IRM 4.2.1.15 (Apr. 23, 2014).

70. *See* IRM 4.2.6.4 (Mar. 4, 2013).

71. IRM 4.2.6.2(1) (Jun. 1, 2007).

72. IRM 4.2.6.7 (Aug. 9, 2019).

73. *Compare* IRM 4.2.6.3.5(4) (Mar. 4, 2013) *with* IRM 3.28.3.2 (Jan. 1, 2020) (requiring the President and Vice President’s original returns be handled carefully for the National Archive).

2. *The Mandatory Presidential Audit Lapsed*

The mandatory presidential audit did not receive much attention or oversight from the public, the media, or Congress since the practice started in 1977.⁷⁴ However, the House Ways and Means Committee began investigating the mandatory audit procedure in 2019, culminating in congressional release of former President Trump's individual tax returns.⁷⁵ The Committee's 2022 Report called the program "dormant, at best," and revealed that the program has operated without congressional oversight or review since its inception decades before.⁷⁶ The Committee found that the IRS started only one audit during Donald Trump's four years in office, the former President's returns warranted IRS examination, and the IRM procedure "does not advance tax compliance, public accountability, or confidence in our tax system."⁷⁷ As a response, the Committee recommended a statutory requirement for annually auditing the President and public disclosure of that audit "to ensure the integrity of the IRS, enable employees to fully audit all issues, and restore confidence in the federal tax system."⁷⁸

The public response to the report was strong and negative. Most media coverage blamed the IRS, with the several outlets accusing the agency of failure,⁷⁹ "neglect,"⁸⁰ "scandal,"⁸¹ and being "asleep at the wheel."⁸² Andrew Sidamon-Eristoff, writing for Bloomberg Tax, said, "[w]hether this failure reflects abject incompetence or willful and possibly illegal submission to political pressure from the White House or its allies, the implications are horrendous for the IRS, our culture of voluntary compliance, and public faith in our institutions."⁸³ Other reporting blamed Donald Trump's complex finances

74. Andrew Sidamon-Eristoff, *IRS Early Failure to Audit Trump Returns Is a Scandal in Itself*, BLOOMBERG TAX (Jan. 13, 2023, 1:45 AM), <https://news.bloombergtax.com/tax-insights-and-commentary/irs-early-failure-to-audit-trump-returns-is-a-scandal-in-itself> ("The IRS' mandatory presidential audit program receded into bureaucratic obscurity until Donald Trump refused to disclose his tax returns.").

75. WAYS & MEANS COMM. REPORT, *supra* note 3.

76. *Id.* at 20; Thorndike, *supra* note 6.

77. WAYS & MEANS COMM. REPORT, *supra* note 3, at 22–23.

78. *Id.* at 23.

79. Josh Boak, Meg Kinnard, Lisa Mascaro & Brian Slodysko, *Mandatory IRS Audit of Trump Taxes Delayed During Presidency, House Panel Says*, PBS (Dec. 21, 2022, 1:15 PM), <https://www.pbs.org/newshour/politics/mandatory-irs-audit-of-trump-taxes-delayed-during-presidency-house-panel-says> ("The IRS failed to pursue mandatory audits of Donald Trump on a timely basis during his presidency . . .").

80. *Why Did the IRS Neglect to Audit Trump During His First Two Years in Office?*, NPR (Dec. 27, 2022, 5:06 AM), <https://www.npr.org/2022/12/27/1145579351/why-did-the-irs-neglect-to-audit-trump-during-his-first-2-years-in-office>.

81. Sidamon-Eristoff, *supra* note 74.

82. Benjamin Guggenheim, *IRS Asleep at the Wheel on Trump Audits, House Tax Writers Say*, POLITICO (Dec. 21, 2022, 12:13 AM), <https://www.politico.com/news/2022/12/21/irs-trump-tax-report-00074921>.

83. Sidamon-Eristoff, *supra* note 74.

and purported tax avoidance for the lapse.⁸⁴ There is widespread agreement that the IRS devoted too few resources to the audit, primarily because decreased funding made it impossible to hire enough specialized examiners to tackle such convoluted returns.⁸⁵ When the IRS audited President Joe Biden two times in so many years since taking office, it further highlighted the disparate treatment of wealthy taxpayers with complicated finances and a tax collection agency ill-equipped to review them.⁸⁶

3. Recent Legislation to Codify Mandatory Audits for the President

Following the Committee's Report and recommendation, the House swiftly passed the Presidential Tax Filings and Audit Transparency Act ("PTFATA").⁸⁷ Although the Act is a response to the lapsed IRM procedure, the proposed Code section differs from the IRM in some important ways. The Act mandates publicized reports to Congress throughout the audit, including 90 days from filing to release an update, periodic reports every 180 days, and a final report within 90 days of completion—with the possibility of an extension upon request.⁸⁸ Unlike the IRM procedure, which leaves discretion to the examiner, the PTFATA enumerates areas of required review.⁸⁹ For example, the audit would include all tax information relating to business entities, estates, and trusts of the president and the president's spouse, and a look back rule capturing any of the described entities held by the president within the "[four] immediately preceding taxable years."⁹⁰ This would capture all taxes for four years prior to election up until the penultimate year of the president's term. In addition to the reports, the Act would require the IRS to release each of the relevant returns and all audit materials to the public.⁹¹ Only identifying information of other

84. Eric Lutz, *Donald Trump Somehow Avoided a Mandatory IRS Tax Audit for Two Years as President*, VANITY FAIR (Dec. 21, 2022), <https://www.vanityfair.com/news/2022/12/donald-trump-avoided-irs-audit-in-first-two-years-of-presidency>.

85. Alan Rappeport, *Trump Tax Case Shows a Squeeze in I.R.S. Funding*, N.Y. TIMES, Dec. 23, 2022, at A1 ("[T]he agency has become increasingly unable to crack down on wealthy taxpayers who push the legal limits to lower their tax bills and have the means to fend off audits if they get caught.").

86. See Richard Rubin & Annie Linskey, *Donald Trump's 2015–2019 Tax Returns Remain Under Audit, While IRS Finished Two for Biden*, WALL ST. J. (Dec. 22, 2022, 2:02 PM), <https://www.wsj.com/articles/irs-finished-two-biden-audits-while-trump-investigations-continue-11671733086>; Thorndike, *supra* note 6 ("We have no other assurance that the president is following the same laws that the rest of us follow And if the IRS can't be relied upon to do this to follow their own rules, [] that is extremely disappointing.")

87. Presidential Tax Filings and Audit Transparency Act, H.R. 9640, 117th Cong. (2022).

88. Compare H.R. 9640 with IRM 4.2.1.15 (Apr. 23, 2014).

89. Compare H.R. 9640 with IRM 4.8.4.2.3.3 (Apr. 18, 2022).

90. H.R. 9640 § 2(a).

91. The Act lists audit materials that are to be publicly released. For example, *see id.* § 2(a) ("[A] description (including the amount) of each proposed adjustment, adjustment, and controversy with respect to such examination together with a description of how such proposed adjustment or controversy was resolved (or a statement that such proposed adjustment or controversy was not resolved, as the case may be)"; "Any written

individuals would be withheld from public view.⁹² The Act would also confine family attribution rules for corporate stock to spouses for the purposes of the presidential audit.⁹³ As an added measure, the Act would allow the Treasury Secretary to commence an examination if the president fails to file a tax return within sixty days of the expected date of file.⁹⁴ Another significant departure from the IRM is that the PTFATA would only require auditing the president, leaving the audit of the vice president to IRM procedure.⁹⁵

Upon introducing the bill, Ways and Means Committee Chairman Richard Neal emphasized that the purpose of the bill was to allow “congressional oversight of Presidential tax compliance” and “preserve the integrity of the Presidency and the integrity of the tax system.”⁹⁶ Opposition to the bill mirrors arguments in the literature regarding mandatory tax disclosure, with accusations that the PTFATA is a partisan “weapon” against private tax information, and taxpayer confidentiality should apply equally to the president.⁹⁷ In support of the bill, Chairman Neal echoed the longstanding sentiment that no federal employee is “above the law.”⁹⁸ Representative Jim McGovern said, “[f]rankly, we are codifying into law something that I and many other Americans thought was already happening, mandatory tax audits for the most powerful person in the country, followed by public disclosure of those taxes in the interest of transparency and public scrutiny.”⁹⁹

The history of presidents’ tax behavior and public reaction to Donald Trump’s taxes establish the social and political value of the president’s taxes. Public resistance to the presidential tax exemption did not revolve around collecting revenue or individual enforcement, but instead on whether democratic ideals demand tax compliance from those who hold the highest offices.¹⁰⁰ In so doing, the earliest presidents to pay taxes stand as significant examples of

communication which identifies such return as being subject to examination.”); *id.* § 2(b) (“Any written communication which proposes the adjustment of any item on such return, any report by an examiner related to such proposed adjustment, and any supervisory approval of any penalty proposed as part of such adjustment.”); *id.* (“Any memorandum or report of the Internal Revenue Service Independent Office of Appeals with respect to such return, and any denial of any request described in subparagraph (B).”); *id.* (“Any notice of deficiency with respect to such return.”); *id.* (“Any closing documents with respect to the examination of such return, including any closing agreement or no change letter.”).

92. *See id.*

93. Compare H.R. 9640 with I.R.C. § 267(c)(4).

94. H.R. 9640 § 2(a).

95. Compare H.R. 9640 with IRM 3.28.3.2 (Jan. 1, 2020)–3.28.3.6.2.2 (Nov. 17, 2022), & 4.2.1.15 (Apr. 23, 2014).

96. 168 CONG. REC. H9992 (2022) (statement of Rep. Richard Neal).

97. 168 CONG. REC. H9992–93 (2022) (statement of Rep. Kevin Brady); 168 CONG. REC. H9994 (2022) (statement of Rep. Adrian Smith).

98. 168 CONG. REC. H9992 (2022) (statement of Rep. Richard Neal).

99. 168 CONG. REC. H9968 (2022) (statement of Rep. Jim McGovern).

100. *See supra* Part II.A.

progress toward more equitable tax administration.¹⁰¹ Stevenson, Sparkman, and Eisenhower first used voluntary tax disclosure to assuage public fear about noncompliance, but the allegations and conviction of Nixon and Agnew necessitated disclosure from presidents and vice presidents while in office.¹⁰² Every subsequent candidate, president, and vice president that made voluntary disclosures further cemented the tradition. Public reaction to Trump's deviation from convention highlighted the significance of disclosure to tax compliance norms and the symbolic value attached to the President's taxes.

III. THE PRESIDENT'S TAXES IMPACT TAX MORALE

Responses to presidential tax behavior do not focus on the individual compliance of the president himself, but rather on ways that those behaviors represent the tax administration more broadly. A noncompliant president calls into question the integrity of the entire institution. Tax morale literature has shown how preserving the integrity of tax administration improves compliance, which is crucial under a voluntary tax system.¹⁰³ The Treasury Department projects continuing increases in the difference between the taxes owed to the government and taxes timely paid, also known as "the tax gap."¹⁰⁴ Closing the tax gap requires increased tax compliance and enforcement of deficiencies.¹⁰⁵ Public enforcement of tax laws increases taxpayers' perception of detection and enforcement by the IRS, as well as having broader implications for tax morale. This Part introduces the existing literature on tax morale, including three factors that relate to presidential tax compliance.

A. FOSTERING TAX MORALE IS A COST-EFFECTIVE MECHANISM TO INCREASE TAX COMPLIANCE

Decades of literature tried and failed to fully explain tax compliance using a cost-benefit framework that only considered detection and enforcement.¹⁰⁶ This rational-actor model posits that efficient tax administration relies on a utility-maximizing "tax rate, []detection probability, and []penalty imposed

101. See *supra* Part II.A.

102. Thorndike, *supra* note 26.

103. The United States uses a voluntary tax system where the taxpayer has the obligation to assess and declare taxes owed to the government. Camila Olate, René Orozco, & Joseph Stead, *What is Driving Tax Morale?*, OECD 10 (2019) (Public Consultation Document, Development Centre & Centre for Tax Policy and Administration), <https://www.oecd.org/tax/tax-global/public-consultation-document-what-is-driving-tax-morale.pdf>.

104. U.S. DEP'T OF THE TREAS., THE AMERICAN FAMILIES PLAN TAX COMPLIANCE AGENDA 1 (May 2021), <https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf>.

105. See I.R.S. News Release IR-2022-192 (Oct. 28, 2022).

106. See generally Michael G. Allingham & Agnar Sandmo, *Income Tax Evasion: A Theoretical Analysis*, 1 J. PUB. ECON. 323 (1972).

conditional on the evasion being detected.”¹⁰⁷ Under this model, an individual is only willing to pay taxes to avoid a penalty. But even a low risk of detection accompanies a voluntary compliance rate of 84% in the United States.¹⁰⁸ In fact, enforcement and detection explain so little of tax compliance, that “the puzzle of tax compliance [is] why people pay taxes instead of evading them.”¹⁰⁹ Tax morale broadly encompasses any factors that contribute to taxpayer compliance that “fall outside the standard, expected utility framework.”¹¹⁰

The literature further connects tax morale with tax compliance. For example, one study found higher tax compliance in Costa Rica compared to Switzerland.¹¹¹ Controlling for other institutional differences, the primary difference in the two cultures was stronger social norms of compliance in Costa Rica.¹¹² Other studies focusing on the United States, Botswana, South Africa, and Spain found similarly strong correlations between social compliance norms and tax morale.¹¹³

Higher tax morale increases compliance without necessarily increasing enforcement, so policies that foster tax morale can be highly cost-effective in the long term.¹¹⁴ The rational-actor model would suggest that higher risk of detection and enforcement improves compliance, but research shows taxpayers are sensitive to enforcement that is too strict.¹¹⁵ “[I]ncreased levels of deterrence might disrupt the trust between government and citizens,” which actually undermines tax morale and may decrease compliance as soon as the perceived risk decreases.¹¹⁶ Enforcement and incentives work best in tandem.¹¹⁷ Renowned tax morale scholar Marjorie Kornhauser proposes that the way to strike a balance is through “‘institutional integrity’ which goes beyond ‘mere procedure’ to encompass the whole matrix of values, purposes and

107. Erzo F. P. Luttmer & Monica Singhal, *Tax Morale*, 28 J. ECON. PERSPECTIVES 149, 149 (2014).

108. U.S. DEP’T OF THE TREASURY, *supra* note 104, at 3.

109. Lars P. Feld & Jean-Robert Tyran, *Tax Evasion and Voting: An Experimental Analysis*, 55 KYKLOS 197, 197 (2002).

110. Luttmer & Singhal, *supra* note 107, at 150.

111. See generally Benno Torgler, *Tax Morale and Tax Compliance: A Cross Culture Comparison*, in PROC., ANN. CONF. ON TAX’N AND MINUTES OF THE ANN. MEETING OF THE NAT’L TAX ASS’N 63, 72 (2003).

112. *Id.*

113. *Id.* at 67.

114. Comm. of Fiscal Affs. F. on Strategic Mgmt., *Principles of Good Tax Administration*, OECD Ctr. for Pol’y & Admin., GAP001 (1999) (“The promotion of voluntary compliance should be a primary concern of revenue authorities.”) [hereinafter OECD, *Principles of Good Tax Administration*].

115. Ioana Alexandra Horodnic, *Tax Morale and Institutional Theory: A Systematic Review*, 38 INT’L J. SOCIO. & SOC. POL’Y 868, 873 (2018); Kornhauser, *supra* note 13, at 624.

116. Horodnic, *supra* note 115, at 873.

117. See generally Kent W. Smith & Loretta J. Stalans, *Encouraging Tax Compliance with Positive Incentives: A Conceptual Framework and Research Directions*, 13 LAW & POL’Y 35 (1991).

sensibilities.”¹¹⁸ Improving tax morale increases compliance and requires less enforcement resources in the long term.

Studies have identified myriad personal, social, political, and cultural factors that influence the tax morale in a given regime. Personal qualities with demonstrated effects on tax morale include demographics, such as sex,¹¹⁹ age,¹²⁰ and economic status.¹²¹ A taxpayer’s “sense of community,”¹²² “civic participation,”¹²³ and “support for democracy”¹²⁴ all improve tax morale. Studies have identified certain cultures¹²⁵ and norms¹²⁶ that impact taxpayer attitudes toward compliance. For example, intolerance of different ethnicities lowers tax morale,¹²⁷ but church attendance improves tax morale.¹²⁸ Governments cannot easily influence such intrinsic motivations and characteristics, but there is growing evidence showing how policy interventions may increase tax morale and compliance.¹²⁹ Trust in government generally, but especially in tax authorities, is fundamental to tax morale.¹³⁰ Policies that advance transparent, fair, and consistent tax administration are all important considerations when lawmakers try to influence tax morale.¹³¹

B. TAX MORALE FACTORS RELEVANT TO THE PRESIDENT’S TAXES

Of the many factors identified in tax morale literature, three directly implicate presidential tax behavior: (1) conformity and reciprocity; (2) procedural fairness and justice; and (3) political trust. This Subpart explains research supporting each factor and discusses the implications of the revelation that the mandatory audit procedure lapsed during Donald Trump’s presidency.

118. Kornhauser, *supra* note 13, at 624.

119. Horodnic, *supra* note 115, at 875 (“Women have higher tax morale than men . . .”).

120. James Alm & Benno Torgler, *Culture Differences and Tax Morale in the United States and Europe*, 27 J. ECON. PSYCH. 224, 233 (2004).

121. *Id.*

122. Horodnic, *supra* note 115, at 874.

123. *Id.*

124. *Id.* at 876.

125. Alm & Torgler, *supra* note 120, at 233.

126. *Id.* at 227.

127. *Id.* at 240.

128. *Id.*

129. Luttmer & Singhal, *supra* note 107, at 159, 164–165.

130. Horodnic, *supra* note 115, at 871 (providing a more comprehensive survey of tax morale factors).

131. OECD, *Principles of Good Tax Administration*, *supra* note 114, at 6.

1. *Reciprocity and the “Downward Spiral” of Noncompliance*

As social beings, humans are motivated to conform to group norms.¹³² This phenomenon has been documented in tax compliance literature.¹³³ Individual taxpayer compliance is sensitive to the behavior (or perceived behavior) of other taxpayers, called reciprocity.¹³⁴ When taxpayers discover that others are “cheating” or that cheating is tolerated, it “can . . . lower tax morale [and] change compliance behavior.”¹³⁵ In reaction to that noncompliance, an otherwise compliant taxpayer may change her behavior to avoid feeling like a “chump.”¹³⁶ The opposite is also true: where an individual knows or believes that most other taxpayers are compliant, she will experience higher tax morale and willingness to comply.¹³⁷

Studies have repeatedly confirmed the connection between reciprocity and tax compliance.¹³⁸ Experiments on data from around the world have shown higher tax morale where there is high perceived compliance and lower tax morale where there is known tax avoidance. More recently, a study using the World Values Survey to measure various social and political factors influencing tax morale found a positive correlation between tax morale and personal reciprocity and duty toward society.¹³⁹ In 2010, the UK saw an increase in payments after sending out letters to taxpayers that had not paid taxes on time. The letters stated, “9 out of 10 people in Britain pay their taxes on time.”¹⁴⁰ The increase reveals that taxpayer compliance relates to the perception that others are following tax laws, not only to the risk of enforcement by tax authorities. Overall, the literature confirms that feeling positively about others’ compliance triggers reciprocation.

Reciprocity is a powerful instrument to influence tax morale because it is self-replicating.¹⁴¹ Every example of noncompliance depletes tax morale and discourages compliance in others, creating what Kornhauser calls a “downward spiral.”¹⁴² Likewise, every additional example of compliance builds the sense

132. Kornhauser, *supra* note 13, at 613; Smith & Stalans, *supra* note 117, at 40 (describing “the strong tendency for humans to try to reciprocate in kind behaviors directed toward them”).

133. Smith & Stalans, *supra* note 117, at 40.

134. See Kornhauser, *supra* note 13, at 613; Horodnic, *supra* note 115, at 879; Luttmer & Singhal, *supra* note 107, at 158–60 (referring to the phenomenon described here as “peer effects,” and “reciprocity” as the relationship between the taxpayer and the government).

135. Kornhauser, *supra* note 13, at 613.

136. *Id.*

137. *Id.* at 616.

138. Horodnic, *supra* note 115, at 874.

139. Savas Çevik, *Tax Morale in Socio-Political Interactions: Insiders and Outsiders*, 16 J. APPLIED BUS. & ECON. 101, 110 (2014).

140. Luca Di Donato, *Behavioural Research and Corruption: A New Promise For Governments*, 24 EUR. L. J. 510, 518 (2018).

141. Kornhauser, *supra* note 13, at 616–17.

142. *Id.* at 603.

that everyone else reliably pays taxes, encouraging reciprocal compliance among taxpayers.¹⁴³ Using this understanding, a policy can then create a positive feedback loop between tax morale and tax compliance if it effectively publicizes compliance so that taxpayers reciprocate.

Reciprocity requires publicity to signal group norms and encourage conformity to those norms. But opportunities to demonstrate compliant tax behavior in the United States are rare because returns are generally confidential.¹⁴⁴ Presidents' and candidates' tax returns have been the most notable exceptions as a result of voluntary disclosure.¹⁴⁵ When these politicians release their returns, they “signal[] that [they are] trustworthy, honest, or reliable.”¹⁴⁶ In this way, presidential tax returns are proof to other taxpayers that the president pays taxes and is subject to tax law. With this prominent example of compliance, taxpayers are more likely to reciprocate, solidifying a norm of compliance and improving tax morale.

Focus on a president's taxes creates a highly visible reciprocity issue. Widespread media coverage and public debate made Donald Trump's taxes possibly the most visible tax returns in history. Many interpreted Trump's refusal to disclose, coupled with “commentary touting non-payment of taxes,” to mean that he was noncompliant or paid very little in taxes.¹⁴⁷ If a compliant taxpayer feels like a “chump” next to peers who cheat, then the reciprocal effect is only magnified when the cheater is the president because his returns carry greater symbolic value.

Although attention to presidential taxes is recent and research is still evolving, a 2021 study, by scholars of business and accounting ethics Jonathan Farrar, Dawn W. Massey, Errol Osecki, and Linda Thorne, connected “vertical equity, voting behavior, and taxpayers' compliance intentions.”¹⁴⁸ In their paper, they found that taxpayers who believed Donald Trump paid less than his fair share of taxes and who still voted for him were comparatively less compliant.¹⁴⁹ The relationship suggests that voters saw Trump's tax behavior as an authorization to pay less taxes themselves. These results demonstrate how the perceived tax behavior of political leaders could harm tax morale and consequently tax compliance.

143. *Id.* at 616.

144. *Id.* at 613; *see also* Marjorie E. Kornhauser, *Doing the Full Monty: Will Publicizing Tax Information Increase Compliance?*, 18 CAN. J. L. & JURIS. 95, 100 (2005).

145. *See supra* Part I.

146. Kornhauser, *supra* note 13, at 613.

147. Jonathan Farrar, Dawn W. Massey, Errol Osecki & Linda Thorne, *The Association Between Vertical Equity and Presidential Voting Behavior and Taxpayers' Compliance*, 172 J. BUS. ETHICS 101, 101 (2021).

148. *Id.* at 102.

149. *Id.*

2. *Perceptions of Justice and Procedural Fairness*

Taxpayers' belief in just government tax administration raises tax morale.¹⁵⁰ The perception that the IRS enforces tax law equally and fairly “builds trust, loyalty, identification, and commitment that can survive the occasional negative interaction with the authority.”¹⁵¹ Contributing factors include “participation in the process and belief authorities ‘hear’ the individual . . . ; belief in the neutrality of the decision; belief in the neutrality of the decision-maker; and . . . [a] belief in the legitimacy of the authority and trust in it”¹⁵² To increase tax morale and tax compliance, it is vital that the IRS demonstrates integrity and fairness in tax administration¹⁵³

Perceptions of procedural fairness and justice necessitate equal application of law to laypeople and government officials, including the president.¹⁵⁴ To maximize positive effects on tax morale, tax authorities should administer the law transparently to reassure the public as to equitable enforcement.¹⁵⁵ Fair enforcement reassures compliant taxpayers that tax authorities are holding evaders to account—and that they are not “chumps.”¹⁵⁶ On the other hand, increased enforcement does nothing to instill trust in other taxpayers and lacks the self-replicating effect of reciprocity.¹⁵⁷

Failure to follow the mandatory presidential audit may also contribute to perceptions of unfairness for low-income taxpayers because, based on the salary of the office, the president is always a high-income taxpayer. In addition to the \$400,000 salary given to all presidents,¹⁵⁸ Donald Trump is a self-professed billionaire.¹⁵⁹ The IRS is already under scrutiny for auditing the lowest income Americans at a rate far higher than high income taxpayers, even though—unlike the President—they are not under automatic audit.¹⁶⁰ Although reform to address inequitable audits is outside the scope of this Note, this clearly exacerbates the appearance of an unjust enforcement regime.

150. Kornhauser, *supra* note 13, at 615.

151. *Id.*

152. *Id.* at 614.

153. *Id.* at 616.

154. Horodnic, *supra* note 115, at 871.

155. Di Donato, *supra* note 140, at 523.

156. Kornhauser, *supra* note 13, at 625–626.

157. Dan M. Kahan, *Trust, Collective Action, and Law*, 81 B.U. L. REV. 333, 343 (2001).

158. *Salaries: Executive, Legislative and Judicial*, U.S. H.R. PRESS GALLERY (Jan. 2015), <https://pressgallery.house.gov/member-data/salaries> (listing the president's salary as \$400,000).

159. Farrar et al., *supra* note 147, at 103.

160. *IRS Audits Poorest Families at Five Times the Rate for Everyone Else*, TRAC IRS (Mar. 8, 2022), <https://trac.syr.edu/tracirs/latest/679>.

3. Political Trust

Political trust encompasses perceptions that government officials are effective and ethical.¹⁶¹ Studies have explained high tax morale in the United States with higher political trust compared to other countries.¹⁶² Multiple studies have found that trust in authorities has “strong and significant effects on tax morale” and provides the necessary legitimacy for effective policy-making.¹⁶³ Low political trust, as a result of “[c]orruption and inefficiency of government institutions,” stymies social norms of compliance that benefit tax morale.¹⁶⁴ Similar to reciprocity, taxpayers are not motivated to comply if authorities do not do so either. Much research on political trust has been done in developing countries that experience rampant corruption.¹⁶⁵ Political trust is especially important in the tax administration context because tax collection relies on voluntary compliance.¹⁶⁶ Therefore, any legislation aimed at improving tax morale requires a stable, accountable political environment in which to thrive.¹⁶⁷

There is much less research supporting which specific public officials’ behavior influence tax morale most, but it appears that offices of higher authority are more determinative for tax morale. For example, in *Social Traps and the Problem of Trust*, political scientist Bo Rothstein asserts: “Social trust comes from above and is destroyed from above.”¹⁶⁸ Applied to the tax context, Rothstein found that trust in authorities was vital to tax compliance in Sweden and Denmark.¹⁶⁹ Further, economist Benno Torgler identified high tax morale where there was higher trust in presidents of Latin American countries, even compared to trust in all government officials.¹⁷⁰ Trustworthy officials build a positive “relationship between taxpayers and tax authorities.”¹⁷¹ This logic extends to the President of the United States, where the executive nominates the Treasury Secretary and IRS Commissioner. Exploration into this connection using the case of Donald Trump’s tax returns is still developing.¹⁷² One of the purposes of releasing the President’s tax returns was to unearth possible conflicts

161. See Horodnic, *supra* note 115, at 871.

162. Alm & Torgler, *supra* note 120, at 236–37.

163. Çevik, *supra* note 139, at 104; see also Horodnic, *supra* note 115, at 871 (synthesizing literature on the relationship between trust in government and tax morale).

164. See Çevik, *supra* note 139, at 104.

165. See Torgler, *supra* note 13, at 138, 144.

166. See Di Donato, *supra* note 140, at 517.

167. *Id.*

168. BO ROTHSTEIN, *SOCIAL TRAPS AND THE PROBLEM OF TRUST* 199 (2005).

169. *Id.* at 2.

170. Torgler, *supra* note 13, at 144.

171. See generally Lars P. Feld & Bruno S. Frey, *Trust Breeds Trust: How Taxpayers Are Treated* (U. of Zurich Inst. for Empirical Rsch. in Econ., Working Paper No. 98, 2002) (describing the relationship as a “psychological contract”); see also Torgler, *supra* note 13, at 154.

172. See generally Farrar et al., *supra* note 147 (establishing a connection between Donald Trump’s tax behavior and individual’s voting behavior).

of interest that would undermine trust in a candidate or a sitting president, which supports trust in those politicians.¹⁷³ The United States has low corruption, but political trust requires diligent maintenance because it is hard-won and easily lost.¹⁷⁴

The IRS creates uncertainty about the president's tax compliance with inconsistent administration of its own practices. This harms political trust. Under an effective mandatory audit, any controversy regarding President Donald Trump's tax returns would have been handled internally by the IRS.¹⁷⁵ Due to high political trust, members of Congress assumed that the audits were correctly identifying and remedying any deficiencies in presidents' taxes.¹⁷⁶ Instead, the JCT and Ways and Means reports publicized issues that warranted IRS examination that went unexamined.¹⁷⁷ This raises concerns that the IRS did not adequately scrutinize President Trump's taxes until there was external review to prompt it. In combination with whistleblower reports that Trump appointees interfered with audits of the President's taxes,¹⁷⁸ it would be reasonable for any taxpayer to question the legitimacy of the tax system and the possibility of improper influence. Even if none of the allegations are true, taxpayer perceptions are enough to harm tax morale because political trust relies on the *belief* that officers are not corrupt. Without reassurance that IRS procedures identify and remedy impropriety, many taxpayers could assume that President Trump was noncompliant and feel more empowered to avoid taxes themselves. In this way, procedural fairness and reciprocity are inextricably linked with political trust. The following Part investigates the relationship of these factors with the existing procedure and proposed legislation.

IV. CODIFYING THE MANDATORY PRESIDENTIAL AUDIT USING LESSONS IN TAX MORALE

The history of the presidents as taxpayers, discussed in Part II, highlights presidents' tax behavior as a symbol of compliance norms and a functioning tax system. Part III established the correlation between higher tax morale and tax compliance, as well as ways in which compliant presidential tax behavior instills trust in tax administration and assuages public concerns about procedural

173. Blank, *supra* note 12, at 5–6.

174. John Halpin, Navin Nayak & Ruy Teixeira, *Trust in Government in the Trump Era*, CTR. FOR AM. PROGRESS (May 24, 2018), <https://www.americanprogress.org/article/trust-government-trump-era>.

175. IRM 3.28.3.5.3 (Nov. 17, 2020).

176. Thorndike, *supra* note 6; 168 CONG. REC. H9991 (2022) (text of Presidential Tax Filings and Audit Transparency Act, H.R. 9640, 117th Cong. (2022)).

177. Asha Glover, *Parts of Trump's Returns Warranted Exam By IRS, JCT Finds*, LAW360 (Dec. 21, 2022, 6:52 PM), <https://www.law360.com/tax-authority/articles/1560498/parts-of-trump-s-returns-warranted-exam-by-irs-jct-finds>.

178. Rappeport, *supra* note 46.

fairness, justice, and corruption. This Part demonstrates why the existing mandatory, but underenforced, presidential audit needs to be replaced with a statutory requirement, then proposes new legislation based on tax morale literature to maximize its impact on overall compliance.

A. THE IRM PROCEDURE HARMS TAX MORALE

The existing audit procedure mandated by the IRM failed under Donald Trump. This highlighted its shortcomings and harmed tax morale. First, the IRM is not legally enforceable¹⁷⁹ and lacks congressional oversight. As a result, there is no guarantee the IRS actually conducts the audit. A lapse in procedure could reoccur, further threatening tax morale. Of course, the House Ways and Means Committee or Senate Finance Committee can request information about the presidential audit—as it did to investigate the audits under the Trump administration. Although oversight is possible, every investigation would require political action, which takes more time and attention than an automatic and compulsory annual report.

As partisan entities, discretionary investigations by congressional committees are not an ideal mechanism for oversight. Committees are likely more willing to scrutinize taxes of presidents from the opposing party, which leaves investigations prone to political bias or accusations of partisanship. This harms perceptions of fair administration of the audit and trust that officials act without improper influence. In turn, biased oversight of the audit is detrimental to tax morale.

Most importantly, the IRM presidential audit procedure lacks transparency and visibility. For the president's taxes to trigger reciprocal compliance, taxpayers need evidence of a compliant president. It is particularly important after the House Ways and Means Committee report revealed the failure of the audit under Donald Trump, a revelation that likely contributes to perceptions of procedural unfairness. Continuing with unpublicized audits does nothing to correct its damage to tax morale. Without disclosure of the audit process and results, the public would not have any proof that the IRS performs audits going forward. This creates speculation about the fairness and integrity of the tax authority, further impairing tax morale. Even when the IRS diligently audits the president, any effect on tax morale is lost because fostering positive reciprocity and political trust first requires taxpayers *know* the IRS's practices and the president's tax behavior. Therefore, the IRM needs replacing.

179. STEPHANIE HUNTER MCMAHON, PRINCIPLES OF TAX POLICY 48 (2018).

B. THE PTFATA MISSES THE OPPORTUNITY TO USE THE MANDATORY PRESIDENTIAL AUDIT TO IMPROVE TAX COMPLIANCE

The PTFATA correctly identified the failure of the IRM procedure and necessity for a codified presidential audit to restore public confidence in tax administration. First, a codified audit would be legally enforceable. A statutory provision is more transparent and accessible to taxpayers than IRS internal procedures. Further, the Act remedies the lack of transparency under the IRM with regular, required, public disclosure. This provides Congress the opportunity to guarantee the IRS performs the audit with regular updates throughout the process. Finally, the Act goes into much more detail about the parameters of the audit to avoid discretionary enforcement that causes a lapse like that under Trump. Each of these elements of the bill would increase tax morale.

However, the PTFATA's partisan backdrop undermines any argument that its purpose is uniform accountability and transparency, regardless of whether it is in fact political strategizing. After years of litigation with the Democrat-controlled House Ways and Means Committee, Congress obtained and released former President Donald Trump's tax returns.¹⁸⁰ Unsurprisingly, the vote was along party lines.¹⁸¹ Shortly after, and only days before Republicans took control, the House passed the PTFATA.¹⁸² Although Chairman Neal and other bill sponsors continually attest to the bipartisan aims of general presidential accountability and transparency,¹⁸³ the circumstances surrounding its enactment remain vulnerable to accusations of partisanship. Although presidents, regardless of party, would be audited, the perception of partisan manipulation undermines the integrity of the proposed bill and political trust. This harms tax morale, and in turn, compliance.

In addition to its damaging effect on tax morale, the Act also upsets the usual balance of authority between the legislative and executive branch. In an attempt to prevent future lapses of the mandatory presidential audit, the PTFATA gives more authority to Congress over the content of the audits instead of leaving the scope up to the IRS examiner's discretion.¹⁸⁴ However, Congress is not best-placed to make decisions regarding individual audits because it requires the technical knowledge of a skilled tax professional. The PTFATA's specifications for the scope or details of the audit risks exclusively remedying problems discovered on Donald Trump's returns. A better bill would maintain

180. Boak et al., *supra* note 79.

181. *Id.*

182. H.R. 9640; Mychael Schnell, *House Passes Bill Requiring Presidential Tax Audits After Revelation Trump Skirted Scrutiny*, THE HILL (Dec. 22, 2022, 1:09 PM), <https://thehill.com/homenews/house/3785369-house-passes-bill-requiring-presidential-tax-audits-after-revelation-trump-skirted-scrutiny>.

183. See 168 Cong. Rec. H9992 (2022) (statement of Rep. Richard Neal).

184. Compare IRM 4.8.4.2.3.3 (Apr. 18, 2022) with H.R. 9640 (listing inclusions for the audit, such as any corporations, partnerships, estates, or trusts of the president or the president's spouse).

IRS flexibility in administering an audit appropriate in light of each president's tax returns.

Finally, the PTFATA is not cost-effective. While reports to Congress improve transparency, updating Congress every 180 days is excessive to oversee an annual audit.¹⁸⁵ The scope of the audit under the Act mandates what may in practice be an unnecessarily broad and complicated audit.¹⁸⁶ Not only is this approach more costly, but it also forgoes an opportunity to encourage tax compliance using the symbolism attached to the president's taxes.

C. USING THE MANDATORY PRESIDENTIAL AUDIT TO IMPROVE TAX MORALE

To replace the IRM procedure and ameliorate problems with the PTFATA, this Subpart proposes features for a statutory mandatory audit of the president using strategies drawn from tax morale literature. After summarizing the proposal, the following subparts consider public disclosure, timing, scope, and inclusion of other relevant taxpayers in the new audit procedure.

1. *Proposed Legislation to Replace the PTFATA*

The mandatory presidential audit should be codified, and to do so, this Note proposes an alternative to the PTFATA. Under this proposal, the IRS will conduct an annual audit of the president every year while in office. Shortly before Tax Day the following year, the IRS would be required to release a report summarizing the status of the audit, make it publicly available on the IRS website, and read it before Congress. The summary would include the information most important to the public: whether the president timely filed a tax return, the amount of income reported, the amount of tax paid, what types of deductions the president claimed, the number and type of sources of the president's income, the same information about the spouse's income if the president filed jointly, an estimate for how long it will take to complete the audit, and the status of any controversy.¹⁸⁷ At least to start, only the president and vice president would be subject to the audit procedure. Apart from the above parameters for the public report, the IRS auditor would have discretion over the audit itself.

2. *Publicizing the Audit*

To effectively influence taxpayer perceptions and beliefs about tax administration, the most important feature of a policy aimed at increasing tax

185. H.R. 9640 § 2(a).

186. *See id.*

187. These are the types of details released regarding President Joe Biden's most recent tax returns. Rubin & Linskey, *supra* note 86.

morale is visibility.¹⁸⁸ Requiring an annual report before Congress accomplishes this goal. The IRM procedure is not as transparent or accessible to most Americans as legislative proceedings, which are regularly televised and covered in the media.¹⁸⁹ There would be media coverage of the report on C-SPAN, and it may receive more attention in years following public controversy regarding the president's taxes. Following release before Congress, members of Congress may request more information and audit materials to ensure that the audit proceeded as planned.

From this summary and questioning, taxpayers would learn about the president's compliance, compare the president's effective tax rate to their own, and identify potential conflicts of interest. Revealing the president's income and taxes paid allows a taxpayer to see that the president complied.¹⁹⁰ Seeing that even the highest official of the United States pays taxes will reassure taxpayers that they are not "chumps" for paying taxes, thus encouraging reciprocal compliance. Additionally, the publicized report gives taxpayers more information about the fairness of the tax system because they can compare their tax burden relative to a high-income taxpayer.¹⁹¹

Reports that a president has large or numerous sources of income could encourage Congress and the public to investigate conflicts of interest with businesses or obligations to third parties. As a recent example, the majority of President Biden's income came from his presidential salary.¹⁹² Revealing this information eliminated any concerns about large gifts or significant conflicts of interest involving business entities.¹⁹³ Analysis and publicity of basic information about the president's taxes from the IRS in this way negates concerns about corruption, which instills political trust. However, the audit only has this effect on tax morale if taxpayers have consistent access to the information.

3. *Frequency of the Audit*

An annual mandatory audit serves tax morale by triggering reciprocity, perceptions of justice, and political trust. First, individuals are expected to pay

188. Kornhauser, *supra* note 13, at 614; *see also* Kornhauser, *supra* note 144, at 101 ("[R]ecent scholarly research . . . indicates that publicity is a more powerful tool in augmenting compliance than previously thought.").

189. *See, e.g.*, C-SPAN, [c-span.org](https://www.c-span.org).

190. *See supra* Part III.B.1.

191. *See* Blank, *supra* note 12, at 5–6; U.S. H.R. PRESS GALLERY, *supra* note 158 <https://pressgallery.house.gov/member-data/salaries> (listing the president's salary as \$400,000).

192. Press Release, The White House, The President and Vice President Release Their 2022 Tax Returns (Apr. 18, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/18/the-president-and-vice-president-release-their-2022-tax-returns>.

193. *See* George K. Yin, *Congressional Authority to Obtain and Release Tax Returns*, 154 TAX NOTES 1013, 1014 (2017).

taxes annually, so confirmation that the president is doing the same encourages reciprocal behavior. Second, evidence that the president is subject to the same laws as other taxpayers demonstrates fairness and justice of the tax system. This is especially true for the 600,000 or more taxpayers also experiencing an audit that year.¹⁹⁴ Finally, repetitive examples of compliant behavior build institutional trust over time. Generally higher trust supported over many years protects tax morale from detrimental effects if there are future noncompliant presidents.¹⁹⁵

4. *Timing of the Audit*

To make further use of the symbolic nature of the president's tax behavior, it is most effective to release the audit report near Tax Day, April 15, of the following year. Publicizing the audit in the lead up to Tax Day creates an "external cue[] to activate tax compliance norms . . . at the time returns are filed."¹⁹⁶ Given that a president may file as late as October 15 with an extension, this gives IRS examiners six months to create a summary of the information listed in Part IV.B.2 and a full year between required reporting. The PTFATA's regular public releases are costlier and more often than necessary to keep the president's taxes visible. Instead of updates throughout the year, it is preferable to wait for a more complete examination that takes full advantage of timing to improve tax morale.

5. *Parties Subject to the Mandatory Audit*

The same IRM audit procedure has applied to the vice president, and previous proposed legislation to mandate disclosure of tax returns included both the president and vice president.¹⁹⁷ Any highly visible government official's taxes implicate reciprocity, fairness, and political trust, so auditing their returns would also have a positive impact on tax morale. Although logistics for administering the audit are better left to the IRS internal procedure, Congress should decide which parties are subject to the mandatory audit to avoid inconsistency with the IRM and to accomplish the legislative purpose of raising tax compliance. Beyond the president, Congress should expand the audit judiciously because audits are resource intensive.

194. TRAC IRS, *supra* note 160.

195. Kornhauser, *supra* note 13, at 615 ("Procedural justice builds trust, loyalty, identification, and commitment that can survive the occasional negative interaction with the authority. Commercial companies, for example, devise complaint procedures which preserve customer loyalty even in the face of negative experiences. Procedural justice can work similarly in the tax context.").

196. *Id.* at 619; see Smith & Stalans, *supra* note 117, at 35.

197. IRM 4.8.4.2(1) (May 20, 2014); Presidential Tax Transparency Act, H.R. 347, 117th Cong. (2021); For the People Act, H.R. 1, 117th Cong. (2021).

Most married persons file jointly, so conducting a separate audit of the president's spouse is usually unnecessary, but the PTFATA requires a mandatory audit of the president and the president's spouse.¹⁹⁸ To conserve resources and maximize impact of the audit in the instances where married presidents choose to file separately, the IRM's employee audit procedure provides a less invasive approach. Instead of auditing the employee's spouse, the examiner merely conducts a brief survey of the spouse's returns to decide if further examination is necessary.¹⁹⁹ The examiner should avoid involving more parties than the president, except where the returns raise suspicions. The goal of the survey for the president's separately-filing spouse should be to prevent using the spouse's taxes to hide information relevant to the president. The IRS audit report to Congress would include a summary of the survey or any examination deemed necessary.

When compared to the president, the vice president is the only other officer that holds similar symbolic significance for tax morale purposes. Based on early debates about exemption, the president's taxes hold the most symbolic value to the public. However, the advent of voluntary disclosure tradition following Spiro Agnew's tax evasion brought vice-presidential taxes to light. Like the president, the vice president is recognizable from campaigning for office and is typically an experienced politician or public figure. Given the cost and political volatility of IRS funding, the audit should be limited to the president and vice president to start.

The symbolic value and additional benefit to tax morale is less clear for other prominent federal officials. As the highest members of their respective branches and agencies, cabinet secretaries, the Attorney General, the House Speaker, the Senate Majority Leader, and Supreme Court Justices are situated similarly to the president and vice president. While public compliance from these offices would benefit public trust in government officials, they are not all as public facing and their taxes do not hold the same significance historically. Additionally, existing financial disclosure requirements may negate the need for auditing these individuals initially. Senate-confirmed political appointees for the cabinet and Supreme Court already submit required financial disclosure and an ethics evaluation, and the confirmation process is highly publicized.²⁰⁰ Senators and Representatives also have regular disclosure requirements, some of which

198. H.R. 9640 § 2(a).

199. IRM 4.8.4.2.3.3 (Apr. 18, 2022).

200. See U.S. OFF. OF GOV'T ETHICS, FINANCIAL DISCLOSURE, https://www.oge.gov/web/oge.nsf/ethicsofficials_financial-disc; WHITNEY K. NOVAK, CONG. RSCH. SERV., LSB10949, FINANCIAL DISCLOSURE AND THE SUPREME COURT 1 (2023).

are made public.²⁰¹ Whether these disclosure requirements are sufficient is an important question that may warrant changes to the audit procedure in future.²⁰²

The visibility and symbolism of the presidency makes it the most potent for tax morale. Because the IRM currently treats the president and vice president equally, the codified procedure should continue the practice.²⁰³ Including positions beyond the president and vice president in the mandatory audit scheme requires weighing the benefits to tax morale against the resources necessary to perform the audits consistently.

6. *Scope of the Audit*

While the legislative purpose of the mandatory audit is to increase oversight and transparency to improve tax morale, ultimate control over audits requires technical knowledge and experience. The IRS should be given broad discretion over the scope of the audit, at least to start. This is a much more limited scope than in the PTFATA to make the audit more cost-effective.²⁰⁴ Congress may revise the code in future if consistent issues arise in the audit reports. Any adjustment to the scope should still strive to balance deference to the examiner's expertise with larger tax morale objectives. The importance of IRS flexibility to administer an audit is evident in the contrast between the returns and audits for Donald Trump and Joe Biden.²⁰⁵ Defining the scope of the public report is more important to tax morale than the scope of the audit itself because most details would not be published.

7. *Conclusion: Codifying the Proposed Audit*

It is vital to codify the presidential audit to guarantee visibility. Unlike the IRS, the House Ways and Means Committee and JCT have authority “to obtain, inspect, and disclose” otherwise confidential information under Internal

201. See U.S. SENATE, SENATE PUBLIC FINANCIAL DISCLOSURE, https://www.senate.gov/pagelayout/legislative/g_three_sections_with_teasers/lobbyingdisc.htm; H. COMM. ON ETHICS, SPECIFIC DISCLOSURE REQUIREMENTS, <https://ethics.house.gov/financial-disclosure/specific-disclosure-requirements>.

202. See generally Robert Barnes & Ann E. Marimow, *Clarence Thomas Has For Years Claimed Income From a Defunct Real Estate Firm*, WASH. POST (Apr. 18, 2023, 8:00 AM), <https://www.washingtonpost.com/investigations/2023/04/16/clarence-thomas-ginger-financial-disclosure/> (addressing raised concerns about the Supreme Court justices' commitment to accurately reporting details about their finances, drawing on recent news of Justice Thomas' failure to do so); Shiyin Chen, *Justice Thomas Reported Income From Defunct Firm, WaPo Says*, BLOOMBERG (Apr. 16, 2023, 11:04 AM), <https://www.bloomberg.com/news/articles/2023-04-16/clarence-thomas-reported-income-from-defunct-firm-wapo-says#xj4y7vzkg> (reporting on recent allegations regarding Justice Clarence Thomas's adherence to financial disclosure requirements).

203. If Congress codifies mandatory audit is only for the president, the IRM should discontinue the practice for the vice-president as a separate procedure. Inconsistency across similarly situated positions would likely undermine fairness.

204. See *supra* text accompanying notes 183–184.

205. Rubin & Linskey, *supra* note 86.

Revenue Code § 6103(f).²⁰⁶ Codification can allow for automatic annual release of the IRS report using the authority under § 6103(f). An automatic disclosure removes the discretion that would otherwise leave the procedure open to political bias and minimizes the resources needed to act on the disclosure.²⁰⁷ The more visible the audit, the more its power to increase compliance.²⁰⁸ Even one highly visible audit increases reciprocity, public perception of fairness, and transparency as to any conflicts of interest.²⁰⁹ Regular IRS review confirming either compliance or timely resolved controversies will reassure the public as to the institutional integrity of the tax system.²¹⁰ With annual information about the president's tax information, taxpayers get regular insight into the IRS process, thereby increasing trust in the president and tax administration.²¹¹ Clear and consistent messaging regarding the president's compliance means taxpayers are more likely to feel reciprocity with the system, as well as an increased probability of detection.

The mandatory audit proposed in this Note also resolves the enforcement balancing problem posed in the tax morale literature.²¹² By limiting the audit to only one or two taxpayers (up to four, including their spouses), the mandatory audit program is not so punitive as to threaten tax morale. On the other hand, it signals that the IRS actively enforces tax laws, particularly if the audit reveals the president was deficient and owes additional taxes. With minimal resources, the mandatory audit strikes just the right balance between measures that are too strict or too lax.

Finally, framing this proposal as nonpartisan is more feasible than the PTFATA. The Treasury Department estimates that the tax gap “will rise to about \$7 trillion” by 2029.²¹³ This projected increase makes any compliance initiative a valuable revenue generator, but the political volatility of IRS funding means it is important to do so cost-effectively.²¹⁴ Raising tax morale is a tool to raise revenue through increased tax collection, without politically unpopular tax rate increases or increased enforcement.²¹⁵ Although proponents of the PTFATA emphasized its symbolic value, the legislative history and media coverage portrayed the Act as a political reaction to the lapse of the IRM audit under

206. Yin, *supra* note 193, at 1013.

207. See *supra* Part IV.A.

208. See Kornhauser, *supra* note 144, at 101.

209. Kornhauser, *supra* note 13, at 614.

210. See *supra* Part III.B.3.

211. See Blank, *supra* note 12, at 76.

212. See *supra* text accompanying notes 122–128.

213. U.S. DEP'T. OF THE TREAS., *supra* note 104, at 3.

214. See Cochrane & Rappeport, *supra* note 8; Rappeport, *supra* note 85.

215. See *supra* Part III.A.

former President Trump.²¹⁶ By contrast, tying the audit to a tax morale purpose targets increased revenue instead.

D. POTENTIAL PITFALLS OF A MANDATORY AUDIT

Although this proposal can improve tax morale and compliance, it raises several concerns, including reducing tax morale by revealing a noncompliant president, how to measure tax morale, invading privacy, and constraining the pool of political candidates.

1. *The President is Noncompliant*

Given the objective of the law is to highlight tax compliance from government leaders, there is a risk it would reveal just the opposite. An audit summary could publicize unresolved controversies that indicate the president did not comply with tax law. Publicized noncompliance would harm tax morale through negative reciprocity. In this scenario, effective and transparent resolution of the president's noncompliance would offset the negative impact on reciprocity by improving perception of procedural justice. Ideally, predecessors' compliance would have contributed to tax morale such that it could survive occasional damaging examples. In the worst case, where the president evaded taxes, public knowledge would damage tax morale. But democratic legitimacy fundamentally requires transparency and accountability for a president's criminal behavior.

Alternatively, after using deductions, credits, and effective tax planning, a compliant president's audit may also show little to no tax liability, despite a \$400,000 annual salary. Public knowledge that a high-income taxpayer has so little tax liability could harm lower-income taxpayer's perceptions of fairness in tax administration. This is a risk of the mandatory audit, but again the importance of transparency outweighs any temporary detriment to tax morale. One of the mandatory audit's ultimate goals is to highlight a functioning tax system, but the system is imperfect. The audit summary may elicit negative reactions to the tax system. Perceived unfairness in compliant behavior is better resolved through the political process. Transparency and public debate that inform changes in law and administration are beneficial to lasting institutional integrity.²¹⁷ If the mandatory audit contributes to a legislature and tax authority that are more responsive to public perception of fairness and procedural justice, it can only further build tax morale.

216. See 168 Cong. Rec. H9992 (2022) (statement of Rep. Richard Neal); 168 Cong. Rec. H9969 (2022) (statement of Rep. Jim McGovern).

217. Blank, *supra* note 12, at 76 (“[I]ncreased tax transparency would offer valuable social benefits, including a better-informed electorate, improved public tax education, and enhanced public oversight over the IRS.”).

2. *Measuring Tax Morale & Its Impact on Compliance*

Once enacted, it is important to track the effect of the mandatory audit on tax morale and compliance to identify and make any necessary changes. Congress should include a provision in the legislation for nonpartisan tax advisors, such as the JCT or Office of Tax Policy, to regularly report on the efficacy of the presidential audit for changing taxpayer willingness to comply and actual compliance. However, tax morale metrics (such as trust, fairness, and morality) are nuanced and difficult to measure, which prevents lawmakers from assessing changes in tax morale and attributing those changes to legislation.²¹⁸ Luca Di Donato, a scholar of European law, proposes a way to track the effects of behavioral approaches to regulation called a consultation tool, which relies on an independent body of technical experts to measure and modify regulation based on new findings regarding tax morale.²¹⁹ While the IRS can report on its findings, measurement should primarily be left to a different government entity, given the agency's past failure to follow the audit. It may be worthwhile to direct more government resources toward researching ways to effectively measure and implement tax morale in tax legislation going forward, not only for the mandatory audit.

3. *Privacy*

Opponents to the PTFATA aptly raised concerns that a mandatory audit could publicize the president's private tax information without limitation.²²⁰ Any candidate for president should be prepared for a public life of more regulation and reduced privacy, but this Note's proposal confines disclosure to what is necessary to accomplish its tax morale goals. The audit would only apply to the years that the president is a candidate or in office, so it is already limited to the period of the president's public life. Additionally, this Note proposes releasing a high-level summary, limited to the information relevant to tax morale, which is less invasive than a fully publicized audit. However, the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Taxation still have great latitude to release taxpayer information under § 6103.²²¹ Whether congressional disclosure of taxpayer information requires limitation is outside the scope of this Note.²²²

218. See Di Donato, *supra* note 140, at 517.

219. See *id.* at 520.

220. 168 Cong. Rec. H9993 (2022) (statement of Rep. Kevin Brady); 168 Cong. Rec. H9992 (2022) (statement of Rep. Adrian Smith).

221. Yin, *supra* note 193, at 1013.

222. See *generally id.* (discussing the history of congressional authority to obtain and release tax returns under § 6103 and arguing for limiting language in the code).

4. *Reduced Pool of Political Candidates*

Heightened scrutiny into candidates' finances could discourage qualified people with complicated finances from seeking election.²²³ The same could be true of a mandatory annual audit into their affairs once elected. A reduced pool of candidates is a valid concern, but previous wealthy candidates—including Mitt Romney, Andrew Yang, and Tom Steyer—have run for president despite existing financial disclosure requirements and all voluntarily released tax returns.²²⁴ A mandatory audit is more likely to deter candidates with a history of aggressive tax strategies or noncompliance than those who vocally support fair taxation.²²⁵ A candidate pool consisting of enthusiastic and compliant taxpayers is beneficial to tax morale.

CONCLUSION

This Note proposed a mandatory audit of the president that capitalizes on the value of the president's tax behavior to tax morale. Its goal is to increase tax compliance in a cost-effective way. Past presidents' behavior demonstrates the significance of the president's taxes and informs modern practices, including the mandatory audit. The failure of the IRS to audit Donald Trump brought the IRM procedure to the foreground, and ongoing investigations into Trump's conduct while in office only furthers the urgency to restore public faith in tax administration. However, the need to audit the president extends beyond the Trump presidency because the growing tax gap requires a politically viable solution. This Note addressed both concerns by proposing a codified presidential audit that regularly and manifestly broadcasts tax compliance as a democratic value to encourage taxpayer reciprocation, increases observed justice and fairness through accountability for even the highest official, and restores political trust in the president and IRS with greater transparency into the audit.

223. Blank, *supra* note 12, at 73–74.

224. *Presidential Tax Returns*, *supra* note 9. To view individual tax returns, input “Andrew Yang,” “Tom Steyer,” or “Mitt Romney,” respectively, into the “Search By Name” field.

225. See Taylor Nicole Rogers & Juliana Kaplan, *Democrats Are Set To Unveil a New Billionaire's Tax and Some of the Wealthiest Americans Are Glad. Here Are Some of the Ultrawealthy Who Want Higher Taxes*, BUS. INSIDER (Oct 26, 2021, 11:30 AM), <https://www.businessinsider.com/billionaires-asking-for-wealth-tax-americans-disney-soros-buffett-dalio> (listing Mark Cuban, Marc Benioff, Ray Dalio, George Soros, and Bill Gates among the billionaires who have publicly advocated “for higher taxes on the wealthy”).
