

RESOLUTION OF INQUIRY DIRECTING THE SECRETARY OF THE TREASURY TO PROVIDE TO THE HOUSE OF REPRESENTATIVES A COPY OF THE INTERNAL REVENUE SERVICE SMALL BUSINESS/SELF EMPLOYED DIVISION DECISION MEMORANDUM REGARDING THE DECISION TO DESTROY APPROXIMATELY 30,000,000 PAPER INFORMATION RETURNS AROUND THE TIME OF MARCH 2021, AND ANY OTHER MEMORANDUM RELATED TO THE DECISION TO DESTROY THOSE INFORMATION RETURNS

SEPTEMBER 28, 2022.—Referred to the House Calendar and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means,  
 submitted the following

**ADVERSE REPORT**

together with

**DISSENTING VIEWS**

[To accompany H. Res. 1283]

The Committee on Ways and Means, to whom was referred the resolution (H. Res. 1283) of inquiry directing the Secretary of the Treasury to provide to the House of Representatives a copy of the Internal Revenue Service Small Business/Self Employed Division Decision Memorandum regarding the decision to destroy approximately 30,000,000 paper information returns around the time of March 2021, and any other memorandum related to the decision to destroy those information returns, having considered the same, reports unfavorably thereon without amendment and recommends that the resolution not be agreed to.

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## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

H. Res. 1283 requests that the Secretary of the Treasury provide the House of Representatives with a copy of the Internal Revenue Service Small Business/Self Employed Division Decision Memorandum regarding the decision to destroy approximately 30,000,000 paper information returns around the time of March 2021, and any other memorandum related to the decision to destroy those information returns.

### B. BACKGROUND AND NEED FOR LEGISLATION

On July 26, 2022, H. Res. 1283 was introduced by Representative Tom Rice (for himself and Mr. Brady). H. Res. 1283 is a resolution of inquiry, which is a method infrequently used by the House of Representatives to obtain certain factual information from the Executive Branch. Under clause 7 of rule XIII, a resolution of inquiry is subject to a motion to discharge from committee if the resolution is not reported by the committee to which it was referred within 14 legislative days of its introduction. Accordingly, the Committee on Ways and Means scheduled a markup of H. Res. 1283 within the 14-day period.

The Committee reported the resolution unfavorably because, among other flaws, the IRS told the Committee that the document sought by this resolution would wholly jeopardize voluntary compliance and release of the document would represent a significant risk to the agency.

In September 2021, the Treasury Inspector General for Tax Administration publicly reported that the IRS destroyed about 30 million paper information returns earlier that year. These information returns were primarily from tax year 2019 and were to be processed in 2020. They were destroyed because the IRS's antiquated systems did not allow these returns to be processed after the end of that year. The IRS also needed to use the same computer system to process business returns needed to provide COVID relief, which had a higher priority at the end of 2020.

The returns destroyed amounted to less than one percent of the 3.2 billion information returns processed by the IRS in 2020. The IRS has stated that the destruction of these forms will have no impact on taxpayers. The IRS also provided an extensive bipartisan briefing to the Committee on this matter.

This resolution does nothing to help everyday Americans put food on the table, pay their bills, or take care of their families. Committee Democrats are focused on legislation and policies that help women, families, seniors, and all Americans. For these reasons, the Committee reported the resolution adversely.

### C. LEGISLATIVE HISTORY

#### *Background*

H. Res. 1283 was introduced by Representative Tom Rice on July 26, 2022 (for himself and Mr. Brady) and was referred to the Committee on Ways and Means.

#### *Committee hearings*

The Committee on Ways and Means held no hearings on H. Res. 1283.

#### *Committee action*

The Committee on Ways and Means marked up H. Res. 1283 on September 20, 2022, and ordered the resolution reported adversely (with a quorum being present) by a roll call vote.

## II. EXPLANATION OF THE BILL

H. Res. 1283 directs the Secretary of the Treasury to provide to the House of Representatives, within 14 days of adoption, a copy of the IRS Small Business/Self-Employed Division memorandum, and any other relevant memorandum regarding the decision to destroy approximately 30 million paper information returns around the time of March 2021. The Secretary is required to provide these items with limited redactions as necessary to protect IRS methods so as not to jeopardize voluntary compliance if publicly disclosed.

## III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H. Res. 1283 on September 20, 2022.

The resolution, H. Res. 1283, “Of inquiry directing the Secretary of the Treasury to provide to the House of Representatives a copy of the Internal Revenue Service Small Business/Self Employed Division Decision Memorandum regarding the decision to destroy approximately 30,000,000 paper information returns around the time of March 2021, and any other memorandum related to the decision to destroy those information returns.” was ordered adversely reported to the House of Representatives by a recorded vote (with a quorum being present) of 24 yeas to 17 nays:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Doggett .....	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Thompson .....	X	.....	.....	Mr. Buchanan .....	.....	X	.....
Mr. Larson .....	X	.....	.....	Mr. Smith (NE) .....	.....	X	.....
Mr. Blumenauer .....	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Kind .....	X	.....	.....	Mr. Smith (MO) .....	.....	X	.....
Mr. Pascrell .....	X	.....	.....	Mr. Rice .....	.....	X	.....
Mr. Davis .....	X	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sánchez .....	X	.....	.....	Mr. LaHood .....	.....	X	.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Higgins .....	X	.....	.....	Dr. Wenstrup .....	.....	X	.....
Ms. Sewell .....	X	.....	.....	Mr. Arrington .....	.....	X	.....
Ms. DelBene .....	X	.....	.....	Dr. Ferguson .....	.....	X	.....
Ms. Chu .....	X	.....	.....	Mr. Estes .....	.....	X	.....
Ms. Moore .....	X	.....	.....	Mr. Smucker .....	.....	X	.....
Mr. Kildee .....	X	.....	.....	Mr. Hern .....	.....	X	.....
Mr. Boyle .....	X	.....	.....	Mrs. Miller .....	.....	X	.....
Mr. Beyer .....	.....	.....	.....	Dr. Murphy .....	.....	X	.....
Mr. Evans .....	X	.....	.....	Mr. Kustoff .....	.....	X	.....
Mr. Schneider .....	X	.....	.....	.....	.....	.....	.....
Mr. Suozzi .....	X	.....	.....	.....	.....	.....	.....
Mr. Panetta .....	X	.....	.....	.....	.....	.....	.....
Mrs. Murphy .....	X	.....	.....	.....	.....	.....	.....
Mr. Gomez .....	X	.....	.....	.....	.....	.....	.....
Mr. Horsford .....	X	.....	.....	.....	.....	.....	.....
Ms. Plaskett .....	X	.....	.....	.....	.....	.....	.....
Chairman Neal .....	X	.....	.....	.....	.....	.....	.....
Totals .....	24	.....	.....	Totals .....	.....	17	.....

#### IV. BUDGET EFFECTS OF THE BILL

##### A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

##### B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the resolution involves no new or increased budget authority. The Committee further states that the resolution involves no new tax expenditure.

##### C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Congressional Budget Office did not provide a cost estimate of the resolution.

#### V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

##### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

##### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the resolution contains no measure that authorizes funding. Therefore, no statement of general performance goals and objectives is required.

### C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the resolution does not contain Federal mandates on the private sector. The Committee has determined that the resolution does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### D. ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by the resolution.

### E. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the resolution does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(2) of the Congressional Accountability Act.

### F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the resolution, and states that the provisions of the resolution do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

### G. HEARINGS

In relation to compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives, the Committee states that no hearings were held on this resolution.

### H. APPLICABILITY OF HOUSE RULE XXI, CLAUSE 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that “It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase.” The Committee, after careful review, states that the resolution does not involve any retroactive Federal income tax rate increase within the meaning of the rule.

### I. TAX COMPLEXITY ANALYSIS

Section 4022(b) of Pub. L. No. 105–266, the Internal Revenue Service Restructuring and Reform Act of 1998 (the “RRA”), requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the resolution contains no provision that amends the Internal Revenue Code of 1986 and has “widespread applicability” to individuals or small businesses within the meaning of the rule.

#### J. DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the resolution establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

#### **VI. CHANGES IN EXISTING LAW MADE BY THE BILL**

Pursuant to clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, the Committee advises that H. Res. 1283 does not make any changes to existing law.

## VII. DISSENTING VIEWS

Committee Republicans strongly oppose the Committee's action of unfavorably reporting H. Res. 1283, Resolution of inquiry directing the Secretary of the Treasury to provide to the House of Representatives a copy of the Internal Revenue Service Small Business/Self Employed Division Decision Memorandum regarding the decision to destroy approximately 30,000,000 paper information returns around the time of March 2021, and any other memorandum related to the decision to destroy those information returns.

Congressional oversight is one of the most important responsibilities of the U.S. Congress, and Resolutions of Inquiry (ROIs) are one of the methods used by the U.S. House of Representatives to obtain information from the executive branch. ROIs simply demand that the administration turn over basic information to Congress. This information is critical because it allows the Congress to ensure the executive branch's compliance with congressional intent; evaluate program performance; prevent the executive branch's encroachment on the legislative branch's powers; assess an agency's ability to manage and carry out program objectives; and acquire information from the executive branch that can inform policymaking.

Moreover, Congressional Republicans have repeatedly sought information from the Administration about the expected and actual impact of these policies. Transparency is essential because it promotes accountability and provides information for the Congress and Americans about what the federal government is doing. Despite the Biden Administration stating that President Biden would "bring transparency and truth back to the government to share the truth, even when it's hard to hear," the Administration has ignored the need for congressional oversight and completely failed on its promise. The American people deserve to know how their government works and we will hold the Biden Administration accountable for its disastrous policies.

On May 4, 2022, the Treasury Inspector General for Tax Administration (TIGTA) published a report<sup>1</sup> discussing Internal Revenue Service (IRS) operations as follows: "[t]he continued inability to process backlogs of paper-filed tax returns contributed to management's decision to destroy an estimated 30 million paper-filed information return documents in March 2021." This report garnered press attention and Republican Committee staff began investigating this decision.

During a briefing from TIGTA, Committee staff learned that the IRS has in its possession a decision memorandum regarding the decision to destroy the 30 million paper-filed information returns that

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<sup>1</sup>Treasury Inspector General for Tax Administration, *A Service-Wide Strategy Is Needed to Address Challenges Limiting Growth in Business Tax Return Electronic Filing*, Report No. 2022-40-036 (May 4, 2022), available at <https://www.treasury.gov/tigta/auditreports/2022reports/202240036fr.pdf>.

was put together at least in part by the Small Business/Self Employed Division. The IRS has declined to provide the Committee with a copy of the document despite multiple requests in writing, claiming that “release” of the document would reveal methods and pose a significant risk to the agency. Moreover, despite Committee’s willingness to work with the IRS to reach some sort of accommodation, the IRS did not make itself available to schedule a call with committee staff nor did the agency suggest any alternatives or accommodations such as allowing review of the document in a confidential setting. In doing so, the Administration is preventing Congress from conducting basic oversight to understand the agency’s decision-making process around the destruction of tax return information.

This lack of cooperation from the Administration is unacceptable, especially since this Committee has a clear oversight role when it comes to the IRS and the decision to destroy these paper returns warrants serious, substantive review. Given the clear need for oversight on this issue it is disappointing that Committee Democrats have blocked the request for this information.

KEVIN BRADY,  
*Ranking Member.*  
TOM RICE.

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