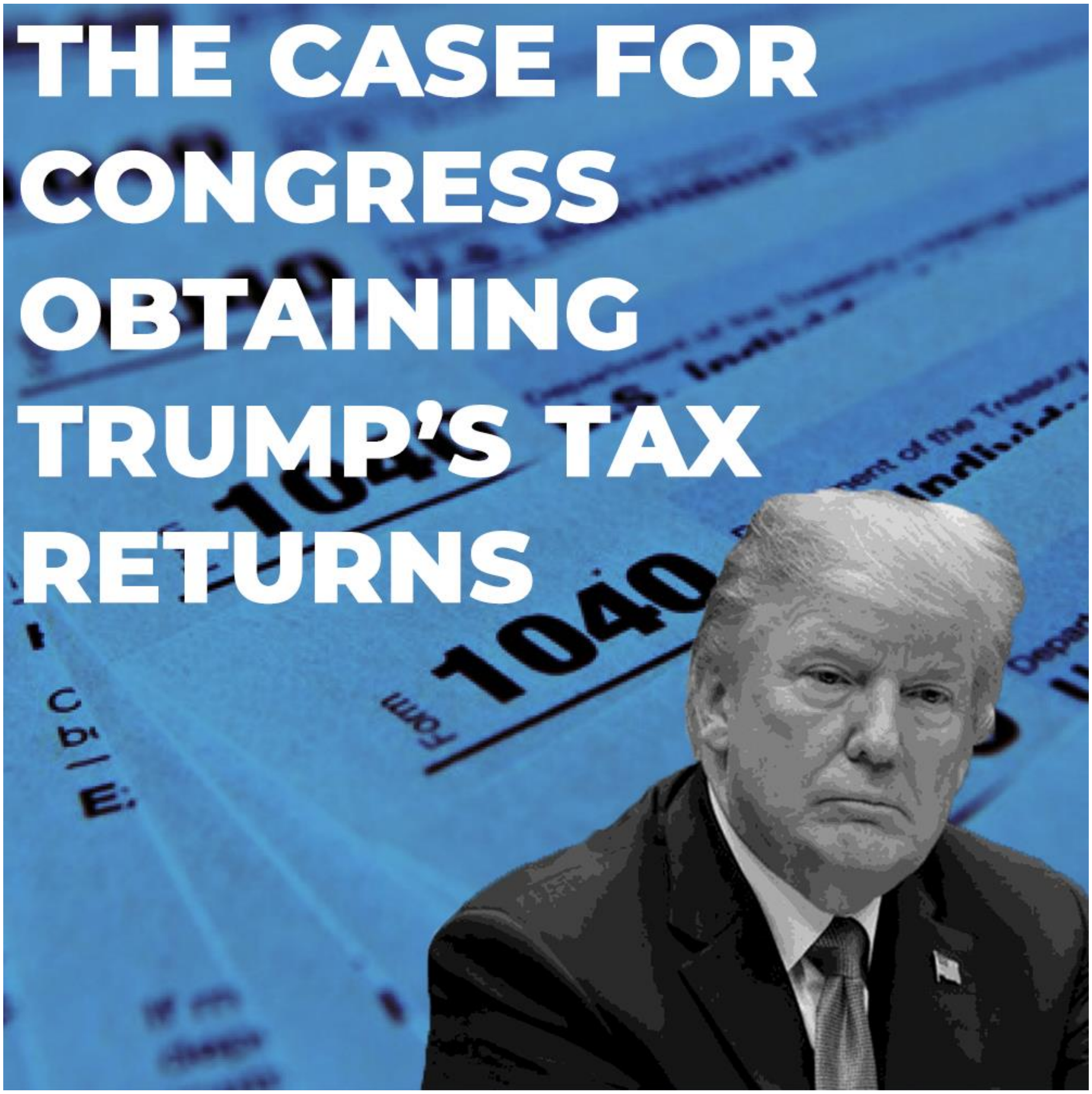


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## CREDITS

The primary author of this report is William Rice, Senior Writer at Americans for Tax Fairness. Frank Clemente, ATF's Executive Director, provided editorial direction.

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Americans for Tax Fairness
1101 17th Street NW, Suite 301
Washington, D.C. 20036
www.AmericansForTaxFairness.org

# THE CASE FOR CONGRESS OBTAINING TRUMP'S TAX RETURNS

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# THE CASE FOR CONGRESS OBTAINING TRUMP'S TAX RETURNS

## KEY FINDINGS

- The chairman of the House Ways and Means Committee has the authority to inspect the tax returns of any taxpayer, including the president, and may submit those tax returns to the full House for review, effectively making them public.
- The incoming House of Representatives should make it a top priority to obtain and review President Trump's tax returns, including those of his businesses and trusts. Trump's tax returns would be invaluable tools for two distinct and equally important investigations:
  1. As guides to the complex financial structures and tax loopholes used by the wealthy, including President Trump, to determine if they are avoiding their fair share of taxes through unfair special breaks and how laws should be reformed to stop such tax avoidance and/or evasion.
  2. As the best source of answers to vital questions about Donald Trump's presidency, including whether there are any conflicts of interest and/or foreign influences that could be adversely affecting his exercise of official duties.
- President Trump is a billionaire, and yet has responded with pride to charges of going years without paying any federal income taxes. Reviewing his tax history could help explain how the very wealthy can go tax free and how to prevent it.
- The principal source of President Trump's wealth—real estate—is infamous for the special treatment it receives under the tax code. Reviewing if and how President Trump has exploited real estate tax loopholes would provide a useful roadmap for reform.
- Despite his claims to the contrary, President Trump and his family probably benefitted greatly from the tax legislation he promoted and signed into law. The public has a right to know if his support for the law, and for subsequent tax cuts, is influenced by personal financial gain.
- Credible media reports have chronicled instances of unethical tax avoidance and even tax fraud by President Trump and his family. The public has the right to know if he has in fact committed such acts; if so, has he ever been held accountable for them and does the IRS have the authority and capacity to hold him accountable now.
- President Trump has been credibly charged with taking public action to protect and enhance his private wealth, particularly in relation to his luxury hotel a few blocks from the White House. His tax returns are likely to reveal potential conflicts of interest.
- The president has shown inexplicable deference to the leaders of foreign powers in conflict with the United States, including Russia and Saudi Arabia, raising the possibility that his business connections in those countries are influencing his conduct of American foreign policy and threatening national security. His tax returns and those of his business entities could provide evidence of foreign business connections that jeopardize his independence.

# INTRODUCTION

After more than three years in the dark about candidate and then President Trump's taxpayer status—whether he's an illustrative example of wealthy individuals dodging their fair share of taxes, has financial conflicts of interest that could influence his policy decisions, will derive private gain from his own tax-policy proposals, is being held accountable for any failure to meet his tax obligations—the new House of Representatives and the American people finally have the chance to learn the truth.

That truth has till now been blocked by President Trump's refusal to release his personal or business tax returns, despite 40 years of precedent,[1] constant demands by the press and public,[2] and his own frequent promises.[3]

The American people want the House to act. According to a recent poll, nearly two-thirds (63%) of respondents said the House should obtain President Trump's tax returns and release them to the public.[4] That majority opinion included 64% of independent voters.

President Nixon released his tax returns in 1973 in response to public questions about whether he was evading taxes.[5] President Ford released summaries of a decade's worth of his tax filings. Beginning with President Carter, presidents of both parties have routinely disclosed their annual returns, usually around Tax Day. Every major-party candidate except Ford has also released at least one year of past returns—and often many more—while running for president.[6] Other, earlier presidents and presidential candidates have also released personal tax information, which is available at the Tax History Project run by Tax Analysts.[7]

Although President Trump has repeatedly promised to follow those precedents and release his tax returns, to date he has failed to do so. Congress should no longer wait for him to volunteer this important information.

The House Committee on Ways and Means is among three congressional committees authorized to obtain directly from the IRS the tax returns of any taxpayer, including the president. Once the 116th Congress convenes in January, the new Ways and Means Committee should exercise this authority as part of a comprehensive investigation that seeks to answer a number of important policy questions vital to our democracy:

- Does our tax code contain overly generous tax breaks for wealthy individuals and profitable corporations that lets them avoid their fair share of tax?
- Are taxpayers able to use financial complexity, opaque business structures, or other devious means to defeat fair enforcement of the tax code?
- To what extent is President Trump, his family, or businesses benefitting from the 2017 tax overhaul he championed and signed into law?
- Has our president dodged his tax responsibilities? If so, has the IRS held him accountable in the past and is it equipped to do so now?
- Does President Trump have hidden business or financial conflicts of interest, especially with foreign powers, that have improperly influenced his policy decisions or could in the future?

## HOW CONGRESS CAN OBTAIN TRUMP'S TAX RETURNS

It was in the wake of an earlier scandal-plagued presidency riddled with corruption and conflicts of interest—the Harding Administration of the 1920s—that Congress gave itself the right to inspect individual tax returns. Congressional leaders knew that review of those detailed filings submitted under penalty of perjury was a key way to detect official misconduct by members of the executive branch.[8]

Under 26 U.S. Code § 6103(f), the chair of the House Ways and Means Committee (along with the chair of the Senate Finance Committee and the Joint Committee on Taxation) has the authority to request the tax returns of any taxpayer.[9] The law states that, upon receipt of such a request, the Treasury Secretary "shall furnish" the returns to the committee. Such authority was used to help unravel the Watergate scandal in the 1970s and as recently as 2014 by House Republicans.[10] The committee may in turn submit those returns to the full House for review, effectively making them public.[11]

In the case of President Trump, a complete review of his taxpayer status would require more than his personal tax returns. That's because President Trump's business, The Trump Organization, is not a single entity, but rather a collection of some 500 so-called "pass-through" business entities.[12] Pass-throughs—which include sole proprietorships, partnerships, limited liability companies (LLCs), and S corporations—pay no tax themselves. Instead, they pass through profits and losses to their owners, who pay any tax due on their personal returns at individual rates.

Even though they don't pay taxes directly, all but the smallest pass-throughs are required to file independent tax returns with the IRS for informational purposes. For instance, each of President Trump's partnerships is required to file Form 1065 every year, specifying the sources of its income, expenses, gains, losses, and other information.[13] An S corporation of which he is a shareholder must file Form 1120S, providing similar data.[14]

President Trump and his family have used trusts for intergenerational transfers of wealth.[15] Those trusts are also required to file returns with the IRS.[16]

Once again, the detailed information appearing in these specialized tax returns are not replicated in President Trump's personal returns, which would present only the total dollar amounts derived from these outside entities. To obtain a full picture of President Trump's business interests, financial situation, and tax practices—including, for example, any investments or business activities in particular foreign countries—Congress would need to review not only his personal returns but also the returns filed by relevant pass-throughs, trusts, and similar entities.

## WHY CONGRESS SHOULD OBTAIN TRUMP'S TAX RETURNS

The Supreme Court has held that Congress has broad authority to conduct investigations to carry out its legislative functions. Those functions include reviewing existing laws to determine how they are working and whether reforms are needed, analyzing executive branch actions to determine whether they faithfully execute the law, and providing appropriate checks and balances on the executive branch.[17] Obtaining the Trump tax returns would be a legitimate exercise of Congress' constitutional authority to conduct investigations for the following reasons.

## Reason 1: To Better Identify Areas of the Tax Code Needing Reform

President Trump is worth about $3 billion and owns a profitable business, the Trump Organization.[18] Yet evidence suggests that in many years he's paid little or no federal income tax. Offered the chance to refute that suggestion before a worldwide audience, he bragged about it instead: when Democratic presidential candidate Hillary Clinton asserted in a debate that her opponent had engaged in a pattern of paying "nothing in federal taxes," candidate Trump replied, "That makes me smart."[19]

Reports of a billionaire going tax-free and his alarming response to those reports should prompt the House Ways and Means Committee to conduct an inquiry to determine—as a matter of fact rather than conjecture—how much income President Trump has made and how much tax he has paid before and during his time in office. If the facts confirm that, for years, President Trump has earned substantial income yet been legally able to pay little or no tax, that would provide powerful evidence of significant defects in the tax code that need fixing.

### Real Estate Loopholes

Since President Trump is a real estate investor, such an inquiry could particularly enlighten lawmakers about reforms needed in the taxation of the real estate industry. This is needed because the current tax rules are written to provide these investors with a win-win situation and the Treasury Department with a lose-lose situation.

For example, when real estate investors make profits, they can defer reporting those to the IRS (through shelters such as like-kind exchanges) but when they have losses they can quickly report those losses to the IRS more easily than other taxpayers (through shelters like the special at-risk rules and passive loss rules for real estate). Investors get to write off the value of their real estate property even when that property is becoming more valuable. They can borrow to invest in real estate and put down almost none of their own money, then when the deal flops they can write off the losses. And if the lender forgives the debt, the investor doesn't have to report that as income either, the way other taxpayers would.

President Trump's returns might help Congress determine if such real estate tax breaks are overly generous and unfairly relieve investors of any meaningful tax obligation. The review could focus on the following real-estate tax preferences.

#### Depreciation

Businesses can write off, or "depreciate," the cost of certain property over time, reflecting gradual wear and tear that reduces value. But unlike, say, trucks and machinery, real estate often gains value over the years. (Only developed real estate can be depreciated, not raw land.) Yet, real estate professionals like President Trump are still allowed to depreciate commercial properties that are actually rising in market price, cutting their taxes even as their wealth grows.[20]

Real estate owners must give back some of the benefit of depreciation when they sell their property by paying a higher tax rate on the profit from the sale than they normally would. But for wealthy taxpayers like President Trump, that special "recapture" rate may be far below the size of the depreciation deductions taken over the years they owned the property.[21]

If confirmed as true, President Trump's reported use of depreciation to reduce or even eliminate large tax liabilities would provide a useful example of how this real-estate tax break may be abused. A 2016 *Washington Post* article reported, for example, that based on a filing President Trump made in the early 1980s to obtain a gambling license in New Jersey, he apparently paid zero federal income taxes in 1978 and 1979. The paper surmised he'd been able to zero out his taxable income, and therefore his tax bill, through depreciation deductions related to his real estate holdings.[22] A 2016 *Politico* article used a similar analysis to conclude that President Trump likely paid no federal income tax in 1991 and 1993. A 2016 *New York Times* article went farther, reporting that President Trump likely avoided paying any federal income taxes for up to 18 years, based upon the size of a depreciation loss he reported on a 1995 tax return leaked to the press: that loss was a staggering $916 million.[23]

When asked in the past about real estate depreciation tax deductions, President Trump who has called depreciation "a wonderful charge," stated: "I love depreciation."[24] A careful review of the Trump tax returns by the Ways and Means Committee could replace media speculation and those ad hoc remarks by the president with concrete information about how he actually used real estate depreciation deductions to lower his tax liability. That type of review could also provide the factual basis for a more informed policy discussion by the committee about whether and how this tax preference should be restricted to increase tax fairness.

### At-Risk Rule

Most taxpayers can only claim losses from businesses in which their own money is at risk. The "at-risk" rule prevents investing in a business with a loan secured by that business (a mortgage), then claiming the tax benefit if the business loses money.[25] But real estate investors like President Trump have a special exception, allowing them to reap tax-saving losses from properties they bought mostly with borrowed money—money they can avoid ever having to repay simply by walking away from the property. It's highly unlikely, for instance, that anywhere near the full $916 million loss Trump claimed on his 1995 tax return was his own money, as opposed to borrowed funds. A committee review of the Trump tax returns could provide invaluable information on how the at-risk rule is used by real estate professionals to avoid paying tax, and why and how this tax preference may need to be curtailed.

### Tax-Free Cancelled Debt

In most cases, cancelled debt is considered taxable income, because the forgiven debtor has received an economic benefit.[26] But under the existing tax code, cancelled debt related to commercial real estate is an exception to the rule and need not be counted as income. President Trump benefited from this exception when he borrowed billions of dollars in the 1980s, and then convinced his lenders to forgive much of that debt when his businesses began to fail in the early 1990s.[27] Because of the real estate loophole, President Trump apparently didn't need to report the forgiven debt as income. In addition, while he carried the debt, he was able to deduct the interest payments, further reducing his taxable income. A review of the Trump tax returns would provide an illuminating case history on how real estate professionals use this real estate exception to avoid paying taxes; it may also demonstrate why and how this loophole should be closed.

### Capital Loss Deductions

Businesses can suffer two kinds of losses. An "operating loss" occurs when expenses exceed income—more cash goes out than comes in. A "capital loss" comes from selling an asset for less than what it cost to purchase. Generally, when figuring taxable income, capital losses can only be subtracted from capital gains (which are sales of assets above their original purchase price). But real estate investors like President Trump enjoy a special tax break that enables them to subtract their capital losses from regular income, which is a better deal because regular income is taxed at higher rates than capital gains.[28] A committee review of the Trump tax returns could provide detailed information about how real estate professionals actually use capital loss deductions to avoid paying tax and why and how this real estate tax preference may need to be ended or curbed.

### Passive Losses

Tax reform in 1986 abolished "tax shelters" in which investments deliberately designed to lose money were used to reduce taxable income.[29] The 1986 tax law prohibited subtracting such "passive losses" from "active" income generated by a trade or profession. But in 1993, after heavy lobbying by the real estate industry—including a personal appeal by Donald Trump[30]—Congress allowed real estate professionals to once again use passive rental losses to reduce their active, taxable income.[31] A review of the Trump tax returns would disclose how and the extent to which real estate professionals are today using passive rental losses to avoid paying federal income tax; it could also provide the factual basis for an informed analysis of whether and how this tax preference should be changed.

These five real estate tax breaks (and two other real-estate tax loopholes—like-kind exchanges and interest deductions—that are discussed under "Reason 3" because they were advantaged under the Tax Cuts and Jobs Act championed by the president) illustrate how an examination of the Trump tax returns could lead to important policy analysis and reforms. Real estate professionals have long been rumored to enjoy unfair tax benefits; President Trump would provide an excellent case study to test those rumors. As President Trump himself remarked in 2016, when *Politico* asked him to comment on claims that he'd failed to pay taxes in some years, "Welcome to the real estate business."[32]

## Hiding Tax Liabilities in Complex Trusts and Business Organizations

Still another set of issues that could be examined through a review of the Trump tax returns involves the trusts that apparently name President Trump or his family members as beneficiaries. The Trump tax returns may contain evidence that would help the committee evaluate the extent to which those trusts were used to engage in for-profit business transactions while avoiding the payment of tax. The Trump tax returns could also contain evidence related to allegations made in an October 2018 *New York Times* expose that so-called GRAT trusts were used to transfer substantial wealth from President Trump's father to President Trump and his siblings, without paying gift or inheritance tax.[33] The Trump tax returns may contain information on other trusts as well, including their formation, holdings, operation, activities, and payment of tax. Depending upon what it learned from those returns, the committee could then evaluate whether tax rules on trusts needed to be strengthened.

Finally, an important issue profitably addressed by a committee review of the Trump tax returns would be the use of complex business structures to obscure and avoid tax liability. The Trump tax returns, including those filed by his 500 business entities (some with hidden owners or partners) could provide important information on how some wealthy taxpayers may be using opaque business ownership, offshore activities, or other devices to frustrate or impede enforcement of our tax laws. Depending upon the facts uncovered, the Trump tax returns could help identify specific weaknesses or gaps in the tax code which, if corrected, could strengthen tax enforcement.

Reforms could include measures to increase ownership transparency for business entities or simplify IRS rules for reviewing complex partnerships. The committee could also examine, for example, the creation of so-called "rebuttable presumptions." These would simplify the burden of proof that the IRS must meet in enforcement actions, including allowing the IRS to presume that U.S. taxpayers who form, transfer assets to, or receive assets from offshore entities control those entities and must include the entities' offshore income in their own taxable income, unless the taxpayer proves otherwise.[34]

The Trump tax returns may contain other types of tax deductions, credits, preferences, or benefits that would merit a similar policy review and analysis. As a billionaire who's expressed pride rather than umbrage at reports of his paying zero federal income taxes for years on end, President Trump could serve as an invaluable case study of what's wrong with the way we tax the wealthy.

If a committee review of the Trump tax returns proves that President Trump has avoided paying taxes for years using these and other legal but unethical tax-avoidance techniques (and see "Reason 4" below for a discussion of possible illegal tax evasion), it might show the biggest problem with our tax system is what's legal but shouldn't be. That would help Congress determine how to reform the tax code to improve tax enforcement and restore tax justice.

## Reason 2: To Determine the Extent to Which President Trump, His Family, and Businesses Are Benefiting from the 2017 Tax Law He Championed

During the debate over last year's GOP tax bill, President Trump falsely claimed that the Republican plan would "cost me a fortune."[35] His claim must be false because the tax law he championed concentrates its benefits on the wealthy,[36] and especially wealthy people who derive their income in the ways that President Trump does.[37]

But since President Trump has not released his tax returns, we can't know the extent to which he, his family, and his businesses will benefit from the 2017 tax law. We also don't know how much he would have benefitted from the second round of tax cuts he called for[38] and House Republicans passed in October 2018.[39]

In a representative democracy, it's imperative that voters know whether their elected officials are advocating policies for personal profit in addition to, or instead of, the public's benefit. Only then can they accurately judge the wisdom of the policy prescriptions and the conflicts of interest of the officeholder.

Following are some of the ways President Trump, his family, and his businesses may have benefited from various provisions of the 2017 tax plan he helped push through Congress and signed into law. Though based on the best information available, these are still speculations that should be replaced by the fact-based analysis only possible through a review of President Trump's tax returns, past and future.

### Top Individual Tax Rate Cut

Under prior law, income above roughly $480,000 for a married couple was taxed at a top rate of 39.6%.[40] Under the new Trump-GOP tax law, the top rate has fallen to 37%, and that rate applies only to income over $600,000 for a married couple.[41] Unless everything we think we know about the president's finances are wrong, the income of President Trump and his wife exceed those levels by many multiples. That means lowering the top tax rate and raising the threshold over which it applies should pay off handsomely for the First Family.

It is also possible, however, that the Alternative Minimum Tax (AMT, which earlier versions of the tax law sought to abolish, and the final version altered) will reduce or eliminate the tax benefits accompanying the lower rate, a question that can be resolved only by reviewing the relevant Trump tax returns. Pages from Trump's 2005 federal tax return leaked to the media[42] show that it was the AMT that that made up 85% of his tax liability[43] that year and prevented him from paying an income tax rate of just 3%[44] on income of over $150 million.

Determining the impact of the new AMT combined with the new lower rates on the tax liabilities of the wealthiest Americans is a critical component of the Ways and Means Committee evaluation of the new tax law.

## Corporate Tax Rate Cut

The keystone of the Trump-GOP tax law is an immediate, permanent cut in the top corporate tax rate from 35% to 21%—a 40% rate cut. The benefits of that corporate tax cut flow overwhelmingly to corporate shareholders.[45] President Trump's financial disclosure forms show that he, directly and through various trusts, owns millions of dollars in corporate stocks and mutual funds, and thus would benefit mightily from the corporate tax cut.[46] An analysis of the Trump tax returns would provide much more precise data on the extent of that tax benefit. That would deepen the Ways and Means Committee's understanding of how the corporate tax-rate cut affected the taxes of wealthy Americans.

## 20% Tax Deduction for Pass-Through Income

Pass-through businesses (which include sole proprietorships, partnerships, LLCs and S corporations) pay no federal income taxes at the corporate level. Instead, profits and losses pass through to the business owners, who pay any tax due on their personal returns at individual rates. Though 95% of the nation's businesses are pass-through entities,[47] the field is dominated by a handful of big players: half of all pass-through income goes to the wealthiest 1% of business owners.[48]

President Trump's business empire is a collection of more than 500 pass-through entities.[49] The Trump-GOP tax law allows pass-through business owners, for the first time, to deduct 20% of their pass-through business income from their taxable income, which effectively lowers the top tax rate to as low as 29.6%—7.4 percentage points below the 37% top marginal tax rate for the highest earners.[50] Many practical and policy questions have arisen about the operation and impact of this new tax deduction, including who can claim it, how much revenue will be lost, and its impact on tax fairness.[51]

Determining the impact of the new deduction on one of the biggest pass-through business owners in the country—Donald Trump—would be a good place to start a look for answers. Pages from Trump's 2005 federal tax return leaked to the media[52] show he had some $110 million in pass-through income (lines 12 and 17), suggesting that the new 20% tax deduction could have saved him nearly $11 million.[53]

Safeguards were supposedly built into the new pass-through tax deduction to prevent some types of businesses from taking advantage of it, including those that receive mostly "passive" income or that consist of a single person or small group. ***But surgically precise exemptions were written into those safeguards that allow certain real estate owners and investors, such as President Trump, to enjoy all of the new deduction's benefits.***

For instance: while common types of passive income like interest and dividends are ineligible for the new deduction and lower rates, rent, royalties and licensing fees are eligible.[54] It seems more than a coincidence those three types of revenue presumably form the bulk of the Trump Organization's pass-through income, given its specialization in real estate, Trump book sales, and licensing of the Trump name and brand.

Also: to ensure larger businesses claiming the pass-through deduction actually employ workers (since the new law in its very title claims to promote job creation), the new law ties eligibility to the amount of W-2 wages the business pays. If the business doesn't pay enough in wages, it can't claim the full deduction. But in last-minute Congressional negotiations, a second qualifier for getting the full deduction was slipped in: the value of certain capital investments. That new qualifier highly favors established real-estate investors like President Trump.[55]

Access to the president's tax returns would allow the Ways and Means Committee to judge the impact of the new pass-through deduction on wealthy pass-through business owners like Donald Trump, as well as whether special exceptions to the deduction's general rules unfairly favored him. This review would help the committee decide whether the pass-through deduction should be reformed or eliminated.

## Weakened Estate Tax

The estate tax, the only federal curb on the accumulation of dynastic wealth, is paid by only a tiny fraction of American families, estimated at just 1,700 in 2018.[56] The new Trump-GOP tax law doubled the amount excluded from the tax, from roughly $5.5 million for individuals and $11 million for couples, to about $11 million and $22 million, respectively. This weakening of the tax reduced its ability to narrow the nation's wealth gap and raise needed revenue.

Again, unless everything we know about the president's financial situation—including his annual financial disclosures—is a lie, the Trump family fortune exceeds the new exemption amount by millions or billions of dollars. Still, those higher exemption amounts mean his heirs would save around $4 million in estate taxes, assuming the estate pays at the 40% rate.[57]

The Ways and Means Committee should conduct a careful analysis of the Trump tax returns to determine the likely effect of the weakened estate tax on wealthy families. It should use the resulting data to deepen its understanding of how the new provisions work, how they will impact deficits and tax fairness, and whether the estate tax should revert to its former rules or perhaps be even further strengthened.

## New Real Estate Exemptions

In a few instances, the new Trump-GOP tax law eliminated or reduced unfair tax breaks in the tax code, but even then, in at least two cases, the law created new exemptions benefiting real estate professionals like President Trump. Those two instances can be summarized as follows.

- **Ending Like-Kind Exchanges (Section 1031 Exchanges)**. Capital gains taxes are usually due when an asset is sold for more than it cost. But under prior tax rules, investors in tangible items could indefinitely delay paying the capital gains tax if they kept reinvesting the proceeds in another item—called a "like-kind exchange."[58] If those gains were continuously rolled over until the taxpayer died, they were never taxed at all.[59] The Trump-GOP tax law took a positive step by closing the like-kind-exchange loophole[60] for real property, except that it also created an exemption for real estate investors like President Trump. The result is that everyday members of the public who own real estate will now have to pay capital gains taxes when they sell their property, but real estate pros like President Trump will continue to benefit from this handy way of avoiding taxes on their gains.[61]

- **Limiting Interest Deductions**. The Trump-GOP law took another positive step by requiring almost all businesses to accept new limitations on their right to deduct interest payments on their loans.[62] An exception was made for businesses with real estate investments, like the Trump Organization. President Trump has dubbed himself the "king of debt,"[63] and the best estimates are that he owes hundreds of millions of dollars in personal and business loans.[64] Yet neither he nor other real estate professionals will be subject to the new restrictions on interest tax deductions, forcing U.S. taxpayers to continue to subsidize these wealthy investors' debt.

As with the other tax changes discussed earlier, the Ways and Means Committee could use an analysis of how these preserved benefits help President Trump—an analysis only possible through access to his tax returns—to estimate their effect more generally on tax revenues and fairness.

Review of President Trump's tax returns would be even more helpful in investigating claims that he and his allies in Congress purposely carved out exceptions in the new law to specifically favor him. Since such suspicions of favoritism undermine public confidence in our tax system, they must be promptly and thoroughly addressed.

## Reason 3: To Determine Whether President Trump Pays All His Taxes and the IRS Has Held Him Accountable for Any Shortfall in the Past and Can Do So Now

Before taking office, President Trump claimed the IRS audited his tax returns "almost every single year."[65] Because the IRS is legally prohibited from disclosing the tax status of individual taxpayers except in public enforcement proceedings, we don't know if that's true. And if true, we have no way of knowing about any findings, assessments, settlements or payments that resulted from such audits. (Like all recent presidents, while he's in office Trump's returns will be automatically audited every year.[66])

Congress and the American people have a right to know if President Trump has paid all the taxes he owes and, if not, whether the IRS has taken appropriate enforcement actions. By obtaining and reviewing Trump's tax returns, the Ways and Means Committee could find out.
In addition, a Ways and Means investigation into President Trump's taxpayer status, facilitated by access to his tax returns, could be educational. Congress and the public could learn important information about audits of wealthy Americans and sitting presidents: how audits are triggered; who within the IRS actually audits a president's tax returns; who represents the president during such matters; what happens if the president fails to cooperate with IRS information requests; how disputes are elevated and resolved within the IRS; and what role, if any, is played by the IRS Commissioner, a presidential appointee.

Depending on the facts uncovered, the committee could consider necessary reforms. Perhaps all audits, assessments, settlements and payments of sitting presidents should be made public; periodic public status reports should be filed by the IRS in the event of tax disputes with a sitting president; and special arrangements made for a final decision-maker within the agency on matters involving a president's tax returns, with an IRS Commissioner nominated by the president under audit forced to recuse himself.

More important than facilitating the review of any ongoing or past audits of President Trump, access to his tax returns would allow the Ways and Means Committee to determine if there are any irregularities in his filings that would warrant audits and enforcement action.

In October 2018, the *New York Times* published a lengthy report on "dubious" tax avoidance strategies pursued by President Trump's family over the past half century, including what the paper declared to be "instances of outright fraud."[67] The Times story described a pattern of conduct by President Trump's father, Fred, as well as his heirs, that appeared to amount to deliberate tax evasion through several complex schemes. Among the principal allegations:

- Fred Trump severely undervalued assets transferred to his heirs to avoid paying hundreds of millions of dollars in gift and estate taxes.
- A shell company formed by the Trump family overcharged Trump properties for various expenses, thereby reducing the income reported by those properties and passing illicit profits to Trump family members without paying the taxes owed.
- Fred Trump disguised a $15 million gift to Donald Trump by purchasing a share in one of his son's buildings at market rates and then selling it back to his son at a tiny fraction of the purchase price.

The *Times* story alleges that President Trump was not merely a beneficiary of these tax-avoidance schemes, but an active participant in them.

As noted in the first section of this report, despite his wealth Trump has gone several years without paying any federal income taxes. There's yet another instance: long-time Trump chronicler David Cay Johnston determined that President Trump paid no federal income taxes in 1984, based on the findings by courts in two cases where he'd appealed (and lost) New York City and state tax assessments.[68] The judge in the city case noted with apparent disbelief that Mr. Trump had claimed huge business losses on his federal return even though he had no reported business income.

While it is not the role of Congress to pursue individual tax enforcement, it does carry the responsibility to evaluate how well the tax system is working: whether wealthy and powerful people are abusing the tax code or escaping IRS enforcement actions, and if so, what reforms are needed.

Research shows the American people view paying taxes as a vital civic obligation. A 2017 IRS Taxpayer Attitude Survey found, for example, that 88% of Americans believe it is "not at all" acceptable to cheat on taxes, while 95% completely or mostly agree that "it's every American's duty to pay their fair share of taxes." The survey also found that 89% of American taxpayers completely or mostly agree that "[e]veryone who cheats on their taxes should be held accountable."[69] The president is no exception.

During the Nixon Administration, it was discovered that the president had used improper deductions to pay less than a thousand dollars in taxes in years when he had more than $200,000 in income. If he hadn't resigned because of the Watergate scandal, the chairman of the House Ways and Means Committee at the time suggested this evasion might have been enough to force Nixon from office.[70]

In short, a final reason for Congress to obtain and review the Trump tax returns is to ensure that President Trump, like all other Americans, meets his legal obligation to pay taxes and cooperates with IRS oversight and enforcement efforts. Equally important is for Congress to ensure public confidence in the U.S. tax system by demonstrating that no one is above the law.

## Reason 4: To Determine if President Trump has Hidden Business or Financial Conflicts of Interest that are Influencing His Policy Decisions

President Trump has been an investor and business owner for decades: buying and building hotels, condominium towers, casinos, golf courses and more in the United States and nations around the globe. Foreign nationals—including from countries with opaque and crime-ridden economies—are regular buyers of his luxury housing units and investors in his other projects.

Contrary to past practice by other presidents, President Trump failed to place his assets in a blind trust upon assuming office. Instead, he has maintained ownership of all his businesses and investments, though he claims to have transferred day-to-day management of them to his adult children.[71] His ongoing ownership and receipt of income from his worldwide business operations mean that he is aware of how his official actions as president impact his personal finances, raising the possibility of frequent and sharp conflicts of interest.

These potential conflicts could arise from both domestic and, more seriously, foreign investments.

### Problematic Domestic Real Estate Investments

The most prominent potential conflict is mere steps from the White House: The Trump International Hotel on Pennsylvania Avenue, opened just a few months before Trump took office, is leased by his organization from the federal government. As owner of the hotel and head of the government, he is simultaneously tenant and landlord, immediately raising ethical concerns.

Of even greater concern is the potential for those wanting something from the government to ingratiate themselves with the president by patronizing his hotel. Conversely, Trump could encourage the continuing business of high-spending guests by providing government favors. The hotel—which features $100 cocktails and $500 rooms—has already become D.C.'s "new town square" where politicos and influence peddlers go "to get people to know you."[72]

Any quid-pro-quo would be illegal, but issues of national security also arise if the hotel patrons in question are, or work for, foreign nationals. (See section on Saudi Arabia, below.)

President Trump has been accused of influencing a government real estate decision to protect business at his hotel.[73] The FBI had planned to abandon its crumbling headquarters on Pennsylvania Avenue a block east of the Trump International. But according to Congressional Democrats—backed up by incriminating emails—the president blocked the planned move because he was afraid the valuable lot could be turned into a competing hotel.

For the past 23 years, Trump has leased a skyscraper in Lower Manhattan across the street from the New York Stock Exchange. His subtenants at 40 Wall Street have included a surprising number of accused and convicted felons, the cases often involving breach of federal securities law.[74] Landlord Trump might be tempted to intervene in prosecutions by President Trump's Justice Department to avoid his tenants going to jail.

Access to President Trump's tax returns could help the committee judge the seriousness of these and other potential conflicts of interest involving domestic investments.

## Foreign Investments: Russia

Russia is a long-standing U.S. adversary, stretching back to its days as the Soviet Union during the Cold War. American intelligence has concluded that Russia deliberately attempted to manipulate the U.S. 2016 presidential election.[75] Special counsel Robert Mueller has indicted 13 Russians as well as Russian organizations and businesses for that misconduct.[76] In response to those and other provocative acts, Congress has enacted legislation imposing a variety of sanctions on Russia, and is considering imposing more.[77]

In contrast, both before and after his election, President Trump has consistently defended Russia's actions, expressed open admiration for Russian President Vladimir Putin, and contended it is in the U.S. interest to work more closely with that country. He has done so despite harsh criticism even from within his own party for his inexplicable deference to Putin on matters of American security.[78] Questions have repeatedly arisen as to the reasons for President Trump's pro-Russian stance, including whether they result from hidden business or financial interests.

Those suspicions are not unwarranted. For more than 25 years, President Trump has sought and secured business deals and investments in Russia and with prominent Russians. In the late 1990s and early part of this century, for example, he engaged a Russian law firm to trademark various versions of his own name and that of his businesses.[79] In 2007, he traveled to the "Millionaire's Fair" in Moscow to promote Trump vodka.[80] In 2013, he brought his Miss Universe beauty pageant to Moscow, boasting that "almost all of the oligarchs were in the room."[81]

In 2008, his elder son and business partner, Donald Trump, Jr., was quoted as saying, "Russians make up a pretty disproportionate cross-section of a lot of our assets," adding that his family's businesses "see a lot of money pouring in from Russia."[82] In 2013, his other adult son, Eric, reportedly said, "We have pretty much all the money we need from investors in Russia" to finance Trump golf courses, although he denies making this statement.[83]

Buying high-end real estate for cash in Western nations—the type of deals offered by the Trump Organization—is a method favored by Russian oligarchs for offshoring their assets.[84] Cash purchases are also a way to launder money: proceeds from illegal activity are used to buy real estate, then that property is leased or resold, producing apparently untainted cash.[85]

According to a recent analysis by McClatchy, buyers with Russian or former Soviet Union connections bought 86 Trump-branded properties in Florida and New York in all-cash deals.[86] Most of the sales were of condominiums in buildings using the licensed Trump name rather than buildings owned or developed by the Trump Organization. But the Trump Organization received a licensing fee for each original sale and benefited from high prices in the aftermarket that helped to burnish the Trump brand. Several of the buyers had disreputable backgrounds, including ties to Russian organized crime; some had been accused or convicted of crimes ranging from Medicare fraud to running illegal betting rings.[87]

Trump has also in recent years been using a lot of cash to invest in real estate, after decades as the self-proclaimed "King of Debt." Instead of relying on loans from banks, between 2006-14 he spent over $400 million of his own money on real estate deals, including 14 cash-only transactions.[88]

In February of this year, Sen. Ron Wyden, the ranking Democrat on the Senate Intelligence Committee requested information from the U.S. Treasury Department about a suspicious Florida real estate deal in which Trump doubled his money, pocketing over $50 million, through the sale of a Palm Beach estate to a Russian oligarch.[89] Wyden stated that it was "imperative that Congress follow the money and conduct a thorough investigation into any potential money laundering or other illicit financial dealings between the President, his associates and Russia."

In 2010, Trump partnered with the Russian-run Bayrock Group to build a hotel in New York.[90] Around the same time, Russians, including many with questionable backgrounds, were big buyers of units in a Trump-branded property in Panama.[91] According to the hotel and condo tower's chief salesman, the Trump Organization failed to exercise the due diligence necessary in a crime-infested nation to determine the sources of buyers' funds.

Aside from those and other business dealings, President Trump and Russia are also connected through a global financial institution, Germany's Deutsche Bank. After the Trump Organization's near collapse in the early 1990s, Wall Street largely stopped doing business with him. Only Deutsche Bank would lend money for Trump real estate developments.[92] When President Trump took office, he was reportedly hundreds of millions of dollars in debt to the German bank.

At the same time that Deutsche Bank was alone among major banks in lending to Trump businesses it was also, according to American and British regulators, facilitating a $10 billion stock-trading scheme that enabled some Russian clients to improperly move huge sums of money into offshore accounts, misconduct for which the bank was recently fined over $600 million.[93] In November 2018, German police raided Deutsche Bank offices as part of a money laundering investigation.[94]

President Trump is also under scrutiny for his possible connections to a Russian state-run bank, VEB, which U.S. investigators are examining because it helped finance a Trump building in Toronto.[95]

In November 2018, Trump's former personal lawyer Michael Cohen pleaded guilty in federal court to lying about how long his client was involved in trying to build a luxury high-rise in Moscow. Trump began pursuing the deal in Sept. 2015 and Cohen admitted Trump had continued to try to make the deal until June 2016, as he was locking up the GOP presidential nod during the primaries and nearly to the eve of the Republican national convention that summer when he was formally nominated. Correspondence made clear that The Trump Organization would need the Russian government to help it obtain financing from a Russian bank. There was also discussion during this time among Trump and his advisers of giving Russian President Putin a $50 million penthouse suite.[96]

None of these past dealings tells us whether and to what extent President Trump has current business or financial connections in Russia or with Russian nationals, ties that may be influencing U.S. policy decisions. A letter released by his lawyers in May 2017 denying any such ties used careful language to limit the scope of the denial and thus left many questions unanswered.[97] One way to help resolve those questions would be to review the Trump tax returns, including those of the 500 or more businesses that make up the Trump Organization, to identify evidence of any current Russian business dealings, holdings, or financial interests.

## Foreign Investments: Saudi Arabia

American intelligence has by all accounts determined that the *de facto* head of Saudi Arabia, Crown Prince Mohammed bin Salman, ordered the brutal murder of Jamal Khashoggi, a journalist who resided in the United States and had become a high-profile critic of the Saudi regime.[98] The killing took place on the grounds of a Saudi embassy in Turkey, thus compounding the crime by violating the traditional role of embassies as places of refuge, not murder.

President Trump has increased American military aid to Saudi Arabia in its brutal war in Yemen, which has left thousands of civilians dead and in which the Saudis are accused of using famine as a weapon.[99] This runs counter to the trend of American allies in Europe, many of whom have cut off weapons sales to the kingdom in revulsion at Saudi abuses.[100]

Congress has in recent years been increasingly critical of Saudi Arabia: it voted to allow 9/11 victims to sue the kingdom because of its alleged support of the terrorist attack, and has considered legislation to sanction it over the Yemen war.[101]

In contrast to the U.S. intelligence community and our allies, President Trump has become one of the most vocal defenders of Saudi Arabia. His ongoing willingness to absolve Saudi Arabia of culpability in the Khashoggi murder—just on the kingdom's say-so—conflicts with the stance of nearly all other American political leaders of both parties.[102] His warnings that sanctioning Saudi Arabia would endanger U.S. arms sales, jobs, and profits have been an abrasive counterpoint to voices warning against global acceptance of Saudi Arabia's open violation of international laws and norms.[103]

Frustrated by President Trump's inexplicable embrace of the Saudi kingdom, two-thirds of the Senate voted in November 2018 to consider limiting his ability to support the Saudi war in Yemen.[104] In December, in what would be a stunning rebuke to any president, the Senate gave final bipartisan approval to imposing those limits on his war-making powers in Yemen and, in a separate, unanimous vote, officially blamed the Saudi crown prince for Khashoggi's murder.[105]

As with his approach to Russia, questions have arisen as to whether President Trump's pro-Saudi stance may be influenced by his business or financial dealings with the country rather than a diligent pursuit of the public interest.

When he was nearly broke in the early 1990s and selling off assets to raise cash, a Saudi prince supplied Mr. Trump with tens of millions of dollars by buying his yacht and later joining in a group that took the Plaza Hotel off his hands.[106] In 2001, he sold an entire floor of one of his buildings, across from the United Nations, to the Saudi Arabian government for $12 million. In 2015, soon after declaring his candidacy for president, the Trump Organization created eight companies whose names implied an intention to do business in the Mideast kingdom. (The Trump Organization has since declared that it shut down those Saudi-focused entities after President Trump won the election.)

At a campaign rally in 2015, Trump stated: “Saudi Arabia, I get along with all of them. They buy apartments from me. They spend $40 million, $50 million. Am I supposed to dislike them? I like them very much.”[107]

The Saudis have continued to be a reliable source of income for the Trump Organization even after President Trump’s move to the White House. A Washington lobbying firm that represents Saudi Arabia spent about $270,000 at Trump’s D.C. hotel from Dec. 2016 through Feb. 2017.[108] The firm shifted to Trump’s luxury hotel from one in Virginia shortly after he was elected, paying for an estimated 500 nights.[109] The lodging and catering fees were part of an effort to overturn a law that allows victim families to sue Saudi Arabia for its role in the 9/11 terrorist attack.

Maryland and the District of Columbia last year sued President Trump, claiming he’s violating the U.S. Constitution’s ban on “emoluments” because of the payments his D.C. hotel receives from foreign governments like Saudi Arabia.[110] A federal judge in July of this year allowed that suit to proceed,[111] and in December ordered the discovery phase of the case—the taking of sworn statements and provision of documents—to begin before the end of the month.[112]

## Foreign Investments: Other Nations

Researchers have identified dozens of other countries in which Trump’s business dealings could create conflicts of interest with his official duties.[113] Leading examples:

- The Philippines, where the developer of a Trump-licensed, $150 million Manila high-rise was appointed that country’s trade envoy to the U.S. by the Philippine president, another ruthless strong man Trump seems to admire.[114]
- Turkey, where Trump himself admitted he had “a little conflict of interest” because of his business ties, including Istanbul twin towers bearing his name—ties that seem to have influenced his approach to this key Mideast ally.[115]
- The United Arab Emirates, where Trump has lent his name to a golf resort and the local developer’s son—an honored guest at Trump’s inauguration—wrote on Instagram that he and the rest of the world were “looking forward to a lucrative 8 years ahead.”[116]

Media reports and speculation, however careful or widespread, are no substitute for Congressional oversight. Obtaining President Trump’s tax returns would be the best way to determine what in this sprawling circumstantial case for improper foreign influence has merit and needs addressing.

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