I must confess at the outset that I am a recovering Republican. In the past two presidential elections I voted for Barack Obama. During the presidency of George H.W. Bush, however, I was deputy and then acting assistant secretary of the Treasury for tax policy in 1992-1993. The Office of Tax Policy represents the administration on tax legislative matters before Congress and it oversees and works with the IRS on tax administration. During my tenure, I personally knew every occupant of that office and every IRS commissioner and chief counsel who served in those positions since I graduated from law school in 1972.

So what should we make of the recent shenanigans going on at the IRS? I believe some historical context would be helpful. The individuals holding senior IRS and Treasury tax positions have always been aware of their “duty to the system.” The collection of taxes goes to the very essence and functioning of our government. The perception and reality of fairness and integrity in this process is critical. Tax professionals describe our system as based on voluntary compliance. Individuals and corporations each year provide the government with tax or information returns to report taxes that are then voluntarily (albeit reluctantly) paid. The IRS does not have the capability to audit every return, and thus faith in the fairness of the system is critical to maximizing revenue. Despite political pressures that are inevitable in any governmental situation, the IRS and the Office of Tax Policy were historically far less susceptible to political influence than most government agencies. Moreover, the senior officials of these organizations were keenly aware of that tradition and the importance of maintaining a duty to the system.

The IRS has not always been pure. President Nixon had his famous enemies list of people who were audited. One of the people on that list was Mark Dayton, the current Democratic-Farmer-Labor Party governor of and former U.S. senator from Minnesota. (I confess that I supported and voted for him as well.) When the enemies list became public, a well-regarded tax lawyer from Cincinnati, Donald Alexander, was brought in to clean up the agency. And that he did. As well as having fine technical skills, he was known for his exceptional integrity throughout his entire career. I was privileged to serve under Treasury Secretary Nicholas Brady. Brady’s family controlled the Dillon Read investment banking firm, and the secretary had many friends on Wall Street and in the ranks of Fortune 500 CEOs. I attended a meeting with the secretary and one of the CEOs whose company had filed for an IRS private letter ruling regarding an issue involving literally billions of dollars. After I confirmed it was Treasury’s policy not to intervene in the private letter ruling process, the secretary simply told his friend that he and Treasury could not become involved. He did not ask me to quietly or informally monitor the requested ruling. The matter was over and Brady simply honored the rules.

So far, so good. A periodic scandal or two, but the system worked. In the early 1990s, however, things changed. The Republicans, led by Newt Gingrich, captured Congress and portrayed the IRS as the evil symbol of big government. Civil service jobs and pensions were threatened and many skilled senior servants left the IRS for the private sector. These were just the type of experienced people who recognized that business was not always wrong and who had the experience, confidence, and authority to make balanced decisions.
The dysfunction picked up steam with the emergence of the IRS restructuring movement. There was a call for a “kinder, gentler IRS,” which was answered by Congress with passage of the Internal Revenue Service Restructuring and Reform Act of 1998. The legislation was supported by the American Bar Association Section of Taxation and the American Institute of Certified Public Accountants. It was decided that the newly reorganized IRS should be run by a business professional: Tax law was too important to be run by tax lawyers or accountants. The first nontax IRS commissioner, Charles O. Rossotti, by most accounts was an outstanding commissioner. He came from a strong data-processing background and implemented steps to bring the agency into the 20th century.

Rossotti’s accomplishments notwithstanding, the IRS restructuring was akin to rearranging the deck chairs on the Titanic. The boxes on the organizational chart may have changed but the operation of the agency only became worse. The sham tax shelters of the 1990s emerged and it was fast times on K Street. Special interest tax legislation increased in the Clinton and George W. Bush years. “Gucci Gulch” prospered as never before, culminating with Jack Abramoff and the notion that compensation of tax lawyers should be based on the taxes saved, not unlike that of a plaintiff’s contingent fee tort lawyer.

It is unclear what registers with the American public anymore. Average citizens now are so cynical about Washington (with good reason) that they have almost become immune to scandals. Even major sex scandals hardly raise an eyebrow. What has happened at the IRS, however, is serious business, and it requires a far more proactive approach than we have so far seen.

The president in May appointed an acting commissioner who, like most of his key appointments, is well known to the president and whose loyalty to the White House is unquestioned. Consistent with the modern trend, acting IRS Commissioner Daniel Werfel, who is not a tax professional (nor is he the former Dallas Cowboys quarterback with a similar name), was first assigned that position. His proposed successor, John Koskinen, is a 74-year-old turn-around specialist and former Freddie Mac chairman. His background lacks sterling tax credentials. Business as usual, however, will not restore the agency’s credibility with the American public. Neither will congressional hearings or studies.

Some have suggested the appointment of a special prosecutor, but the Justice Department and Attorney General Eric Holder have their own set of credibility problems. Moreover, it is not clear that the problem involves one or several “bad actors” who should be punished criminally. Rather, it highlights a cultural and systemic problem that needs to be studied by experienced tax professionals who will analyze the problems and recommend solutions.

I suggest that the president and the chairs of the House Ways and Means and Senate Finance committees appoint a blue-ribbon commission to address those issues. For example, the president and each committee chair might appoint three members to the commission with input from groups such as the ABA tax section, the AICPA, and the Tax Executives Institute. The restructuring “reforms” of the 1990s have run their course. The Titanic has sunk and so has morale within the IRS and Treasury. Taxes are so important that maybe it is time for a tax professional to lead the IRS. At a minimum, the public deserves a bipartisan detailed analysis from knowledgeable and prominent tax experts of what went wrong and how it can be fixed.