

Tim 'Not to My Recollection' Geithner and Justice Wilson

By David Cay Johnston

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Timothy Geithner is one lucky man. Not because he had Robert Rubin as a mentor and not because he was head of the Federal Reserve Bank in New York when investment and commercial bankers ran wild, but because when he cheated the government on his payroll taxes, he wasn't working for the IRS.

Had Geithner been working at the IRS, here is what he could have expected for being suspected of shorting the government tens of thousands of dollars in payroll taxes: He might have been roused from bed before dawn in a commotion that terrified his children and embarrassed his wife when it awoke the neighbors. He would have been treated like a scheming criminal and, while not subjected to what the Bush administration euphemistically called "enhanced interrogation techniques," he would have been scared enough to suffer a stroke or heart attack, like some of those grilled by the agents from the Treasury Inspector General for Tax Administration.

Had he told them that he failed to pay his Social Security, Medicare, and unemployment taxes in full because TurboTax did not alert him to the problem, TIGTA agents almost certainly would have called him a liar and warned him about criminal prosecution.

The TIGTA agents would have thrust in his face the documents that he was given when he worked at the IMF, telling him that while those taxes were not withheld from his pay, his salary was grossed up to cover them. They would have waved his own signed statements acknowledging that he had to pay the levies and had been given step-by-step instructions on how to calculate the amount due.

Any suggestion by Geithner that it was just a mistake, that the law is too complicated, or that the software made him do it would have drawn derisive laughter and worse, based on what IRS clerks whom TIGTA went after have told me and have testified about in proceedings aimed at saving their jobs.

Section 1203 of the Internal Revenue Service Restructuring and Reform Act of 1998 provides that "in general...the Commissioner of Internal Revenue shall terminate the employment of any employee of the Internal Revenue Service if there is a final administrative or judicial determination that such employee committed

any act or omission," including "willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect."

The Treasury inspector general has interpreted that law as a license to go after people who made, the record later showed, minor or innocent mistakes, including some mistakes caused by the government.

That Geithner was treated to one standard of justice while lowly IRS clerks face another can, however, become a turning point for our tax system and produce change for the good. And what is the new administration about but the promise of change for the good?

Geithner now has the power to end this kind of official discrimination, which should offend every American because it mocks the promise of equal justice under the law. Geithner can start fixing it by directing us down the road to a tax system that is simple, fair, and just. Whether that day dawns will be up to Geithner — it will be a public test of his skill, his character, and whether he learns from his past.

The Obama administration, eager to get someone the president believes can best stabilize a collapsing financial sector, pulled one over on the people by presenting Geithner as an innocent victim, someone baffled by the complexity of the tax code, and by suggesting there exists a previously unheard-of defect in TurboTax. I set up a dummy tax return, and it asked me again and again about payroll taxes. One of Geithner's handlers suggested that if one ignores the interview program and uses TurboTax in a particular (and unusual) way, these flags do not arise.

By claiming the tax code is just too complex, the new administration soft-pedaled conduct that could have been construed much worse. Typical of naïve editorials and commentary was this from *The Dallas Morning News* on January 14:

Yes, Timothy Geithner, the treasury secretary-designate should have paid his Social Security and Medicare taxes. The \$43,000 mistake was not trivial, though the tax code is so convoluted that his error seems to have been an honest one.

This is what happens when expert spin from Washington influences editorial writers who opine without first reporting the facts.

The Senate Finance Committee asked some good questions. The ranking minority member, Republican Sen. Chuck Grassley of Iowa, established that Geithner used TurboTax in some years.

"Did the software prompt you to report income and pay self-employment taxes on your IMF income?" Grassley asked.

"Not to my recollection," Geithner replied.

Grassley evidently was not prepared for that answer, as revealed by the next two words in the transcript and an abrupt pause, which suggest he was reading from a prepared list of questions.

"If yes — well, not to your recollection," and with that Grassley let Geithner off the hook by ending his questioning.

Geithner told Sen. John Kyl, R-Ariz., that, yes, he was alerted again and again that he owed payroll taxes and he signed documents acknowledging that he owed them.

"Every payroll statement I got would — gave me an opportunity to realize this mistake earlier," Geithner said. "And the initial documentation the IMF gave me as a new employee laid this out clearly. And when I went through that, in providing those forms to the committee, it was very clear that this was an avoidable mistake. It should have been avoided. And as I said, if I had caught it earlier and not established that initial pattern in how I was meeting my obligations, I would not have been in the position where, for those two years I was working there and the tax years that have — that applied, which I had not met those obligations. You're right. I had many opportunities to see it."

Has there ever been more explicit testimony about negligence, if not willful blindness?

Kyl said that Geithner's explanation "strikes me as somewhat implausible. When you're given a piece of paper to sign, and — I mean, you'd at least look at the title, I would presume, and the title says 'Tax Allowance Application for U.S. Federal, State Income Taxes and Social Security Tax.'"

While Kyl calls it "somewhat implausible," I see no reason to use a qualifier. Luckily for Geithner, he was not testifying under oath.

That noted, we should keep in mind that we want competent leaders running our government, not supposed saints. The case of James Wilson, the framer of the Constitution who drafted the language counting slaves as three-fifths of a person, provides perspective and shows how public good can be refined from the crucible of financial error.

In the early days of our republic, a real estate bubble arose, bursting in the panic of 1796-1797 and causing problems not unlike our own today. Wilson was among those wiped out. Wilson's creditors pursued him relentlessly, even having him jailed briefly while he was a Supreme Court justice.

Wilson continued to serve as an associate justice until he died in 1798, his creditors hounding him to his last breath. Wilson's tragedy helped prompt Congress to use its power under Article I, section 8 of the Constitution to establish a bankruptcy law, the first to put us on a road toward relieving debtors so that they can get on with their lives and businesses. Commerce has grown and the whole nation has prospered because we forgive our debtors in some circumstances.

Our republic survived a sitting Supreme Court justice being jailed, and we can live with a Treasury secretary who paid his taxes in full only because he was up for a Cabinet post.

Geithner can apply his experience to better the nation by taking these actions:

First, since his own testimony asserts that the TurboTax software system failed to flag his mistakes, then Treasury should ask Intuit and its competitors in tax software to review their systems to ensure that no matter how taxpayers prepare their taxes, obligations like payroll taxes get flagged and require cheats to override the system. Fixing any possible weaknesses in tax software would help protect the fisc, which is a crucial part of the Treasury secretary's duty.

If the software vendors reply that their systems have no such flaws, the Treasury secretary will have to live with the humiliation, but at least he will have done his duty and acted honorably.

Second, if our tax law is really so complex that a well-educated financial expert can repeatedly fail to fully pay his taxes, then the new Treasury secretary should start serious work on simplification immediately.

Geithner can publicly declare that he has ordered his policy staff to start a white-paper examination of the tax code. He can solicit proposals from tax professionals and academics. He can post everything that is submitted on the Internet, in line with President Obama's pledge of openness. Publishing papers, urging debate about them, sponsoring conferences, and other actions would begin to refocus some of the intellectual firepower now used to escape taxes toward making the system simpler, which would be a great public service. It would also reduce costs of compliance and could make evasion more difficult, proper duties of a Treasury secretary.

Third, Geithner should direct TIGTA and the IRS to find out why, as the IRS revealed in January, half of Americans working at the IMF and similar international organizations fail to pay their payroll taxes properly. That is an astonishing failure rate since their salaries are grossed up to cover those taxes and each of them must sign documentation acknowledging that they know they owe those taxes.

This inquiry should include finding out whether the IMF has, or has had, an adviser who teaches employees how to defeat the payroll tax laws, as is being whispered around Washington. If such a person is found — and it should be easy work for even minimally experienced investigators — the Justice Department should prosecute.

Fourth, Geithner should insist that IRS employees be treated the same way that he was, which is to say with dignity and deference for the presumption of innocence, even in personnel proceedings. Two standards of justice should be anathema to all Americans. In particular, Geithner should learn about the now resolved case of an IRS clerk in Brooklyn who was almost fired for not reporting \$638 of interest on a back pay award. Her union says that the IRS failed to issue a Form 1099 for the interest award and that the government never produced one. While she escaped firing, this clerk was punished with the loss of a day's pay over no more than \$96 of taxes.

Ordering TIGTA to dial back on the zealous pursuit of IRS employees and treat them with respect while still pursuing suspected cheats would go a long way toward improving morale and productivity. To further increase morale, Geithner could also invite National Treasury Employees Union President Colleen Kelly, and a handful

of chapter presidents to lunch. They can explain to Geithner, with compelling examples, just how lucky he was not to be on the IRS payroll.

Americans want a government that works and works for all people, a government that imposes a single

standard of justice, and a tax system that collects the necessary amount of revenue in the simplest way practicable.

Now we'll watch to see what, if anything, Geithner does and how quickly he does it.

Your thoughts? E-mail me at JohnstonsTake@tax.org.

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