

Testimony of
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Chairman Pascrell, Chairman Thompson, Ranking Member Kelly, Ranking Member Smith, and members of the Committee: Thank you for inviting me to share these views on how to improve the fairness of our tax enforcement.

In my testimony today, I will explain why a race-blind approach to tax enforcement produces bad tax policy. I will use three very different examples to show why leaving race out of the equation fails to prevent bias and how destructive that bias can be for everyone. [Ignoring race](#) doesn't solve problems, it creates them. You have already heard from ProPublica that the ten most heavily audited counties in the United States are [Black and poor](#). I will tell you how we can do better.

In 1986, Sam Gilliam was denied tax deductions that others enjoyed in similar situations. In 2000, [Liberia was threatened with sanctions](#) for being a tax haven but Switzerland was not. And in 2014, Eric Garner died in police custody after being suspected of evading a tax. In each instance anti-Blackness played a role in ways the tax law simply ignores.

We don't yet have a tax law equivalent of body cameras, so we must rely on these stories to understand how to improve our approach to tax enforcement. They can help us produce tax laws and policies that account for the role race plays in our society. Even today, tax law continues to ignore the lessons these problematic incidents could teach us.

Gilliam

Sam Gilliam is an abstract impressionist painter. To most of the world, Gilliam is known as a [path-breaking abstract artist](#), "one of the great innovators in postwar American painting." But for students in an introductory Federal Income Tax class, Gilliam is simply a man who was arrested on a business trip after reacting badly to medication his doctor prescribed.

The textbook I long used makes no mention of the fact that Gilliam is Black. The Tax Court case does not reveal his race. It does detail mental health treatment he received, where and when he was born (Tupelo, Mississippi in 1933), where he received his Masters of Arts in painting (University of Louisville) and where he had exhibited his paintings ("numerous art galleries throughout the United States and Europe"). The textbook follows up with four separate notes (two with subparts) to encourage students to grapple with legal issues raised by the case. None mention Gilliam's race.

I learned that Gilliam was Black by accident, in a museum. From then on, I encouraged my students to consider how Gilliam's race might have influenced his tax outcome. I hope they also considered why

neither the case nor the textbook acknowledges the role that Gilliam's being Black may have played in shaping his treatment on the flight, his arrest and prosecution or the successful government challenge to his deduction of the costs arising from his business trip that added insult to injury. Unlike the legal expenses prior court decisions had allowed businesspeople to deduct ("caused an accident which resulted in injuries to a child"; "unsuccessful criminal defense to securities fraud charges"; "assault with intent to rape") Gilliam's legal expenses were found not to be "ordinary" and therefore not deductible under the law's ambiguous standard for business expenses.

Gilliam's case and its fastidiously color-blind treatment in countless law school classes highlights the challenge of addressing the role his race may or may not have played in causing him to receive less favorable treatment than others. Law school aims to teach students to think critically and creatively. But without adequate context, future generations of lawyers have no opportunity to question the tax law's treatment of individuals that may more be likely to be arrested, prosecuted, or denied deductions.

Liberia

In 2000, when fears that flaws in the corporate and individual income taxes [threatened the existence of the welfare state in North America and Europe](#), the Organization for Economic Cooperation and Development acted. It developed a list of states it labeled tax havens and [pledged to enforce sanctions](#) against them unless they agreed to cooperate with its members. It is easy to look back decades later and note the many mistakes the OECD made and to wonder how much better off we would all be had they taken a more productive, less divisive approach. Far more important is understanding the serendipitous role that U.S. legislators played in preventing a far greater catastrophe.

The OECD's list included an unlikely jurisdiction, the U.S. Virgin Islands, that proved to be a surprisingly capable adversary. The list excluded another, Switzerland, that would soon find itself embroiled in a banking scandal that left little doubt that it too should have been included. A threat of sanctions against dozens of small, mostly majority-Black jurisdictions did not provoke the widespread outrage one might expect. But it did attract the attention of one Member of Congress.

Delegate Donna Christensen was elected to the House by the U.S. Virgin Islands. Quite rightly, she found the possibility of her constituents being subject to sanctions at the behest of what is often described as [a club of rich countries](#) alarming. She wrote a [compelling letter](#) to the Treasury Secretary detailing her concerns. And she did not stop there.

Delegate Christensen may not have had the power to vote in Congress, but as a member of the Congressional Black Caucus, she had the ear of influential legislators. She joined with many—but not all—of the members of the Caucus to write a second letter to Secretary O'Neill. That second letter proved effective, persuading O'Neill and newly elected President George W. Bush to [withdraw support](#) from the OECD's misguided—some would say monstrous—effort.

Thanks to the intervention of Representatives Charles Rangel, Maxine Waters, Secretary O'Neill, President Bush and others, an array of developing countries escaped sanctions that would have cost lives and imposed hardships. But countries like Liberia never should have been targeted in the first place. I knew, again by chance, that Liberia and its President, Charles Taylor, had an ironclad alibi.

While preparing to represent a pro Bono asylum client from Liberia, I learned from first-hand accounts how absurd it was to imagine wealthy Americans or Europeans hiding assets in Liberia. Our client was

granted asylum by the United States after detailing the brutal violence Taylor's regime meted out to him and so many others. In 2000, Liberia was not—unlike Switzerland—a place the 1% would ever put anything they hoped to see again.

Ten years later, Representative Rangel, as Chairman of the House Ways and Means Committee, would collaborate with others to create the Foreign Account Tax Compliance Act that would spare Liberia while targeting Swiss banks reeling from bombshell revelations about their role in tax evasion. Still, a totally unnecessary clash between the OECD and the Congressional Black Caucus over racial profiling caused a lost decade in the fight against tax evasion and could easily have done even more harm.

The tax law's insistence on ignoring race—burying it—does not make it go away. It simply creates land mines that at any moment could hurt individual taxpayers or even powerful organizations like the OECD. The final example—a now painfully familiar story—shows how dangerous tax law's racial blind spot can be for all of us.

Garner

As a law professor, I have had far more opportunities than most to discuss what are known as Pigouvian, or sin, taxes. Such taxes can be deployed to dissuade individuals from engaging in socially harmful behavior, such as [using plastic shopping bags](#), or simply to force them to pay their fair share of the costs when they do. Never in all those conversations with colleagues and students debating the merits of Pigouvian taxes has the name of Eric Garner—or even the possibility of someone like him—come up.

Eric Garner died after a police officer put him in an illegal chokehold. The arrest during which the death occurred was prompted by a suspicion, which Garner denied, of his selling cigarettes without legally mandated tax stamps. Without this Pigouvian tax, Garner would likely be alive today.

In time, Garner's death and his final words (“I can't breathe”) became important symbols in the ongoing debate over policing. It would be foolish to say that without Pigouvian taxes the Black Lives Matter movement would not have happened. It would be equally disingenuous to suggest that Garner's death should now dominate discussions of sin taxes. But the available anecdotal evidence about tax enforcement—with Black people and places attracting disproportionate attention time and again—makes a compelling case for not completely ignoring the role of race in tax law.

Body cameras for the IRS?

However helpful they have proven in the context of policing, body cameras will not solve the problems of race in tax enforcement. Fortunately, we have another powerful tool that can shed much-needed light on the way race affects tax enforcement and to understand how to make tax enforcement fair: data.

Experts have honed the craft of using tax data in concert with other sources of information. They use it to tell incredibly rich stories about our lives. As [one economist](#) described his work using information the IRS already collects to determine which colleges provide the most opportunity: “the best data that we have in this country on student's outcomes, student backgrounds, and even where you go to college is collected as part of the tax system.”

We don't need more information (although more transparency would certainly be helpful). We need to use what we have already stored away more creatively. The tax law should not be creating more Sam Gilliams or Eric Garners. It is up to all of us here today to make sure that it does not.