

**ADOPTED BY THE COMMITTEE ON ETHICS ON SEPTEMBER 10, 2013**

**113TH CONGRESS, 1st SESSION  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO  
REPRESENTATIVE JOHN TIERNEY**

**SEPTEMBER 11, 2013**

Mr. CONAWAY from the Committee on Ethics submitted the following

**REPORT**

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ONE HUNDRED THIRTEENTH CONGRESS

## U.S. House of Representatives

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COMMITTEE ON ETHICS

September 11, 2013

The Honorable Karen L. Haas  
Clerk, U.S. House of Representatives  
Washington, DC 20515

Dear Ms. Haas:

Pursuant to clauses 3(a)(2) and 3(b) of Rule XI of the Rules of the House of Representatives, we herewith transmit the attached report, "In the Matter of Allegations Relating to Representative John Tierney."

Sincerely,

  
K. Michael Conaway  
Chairman

  
Linda T. Sánchez  
Ranking Member



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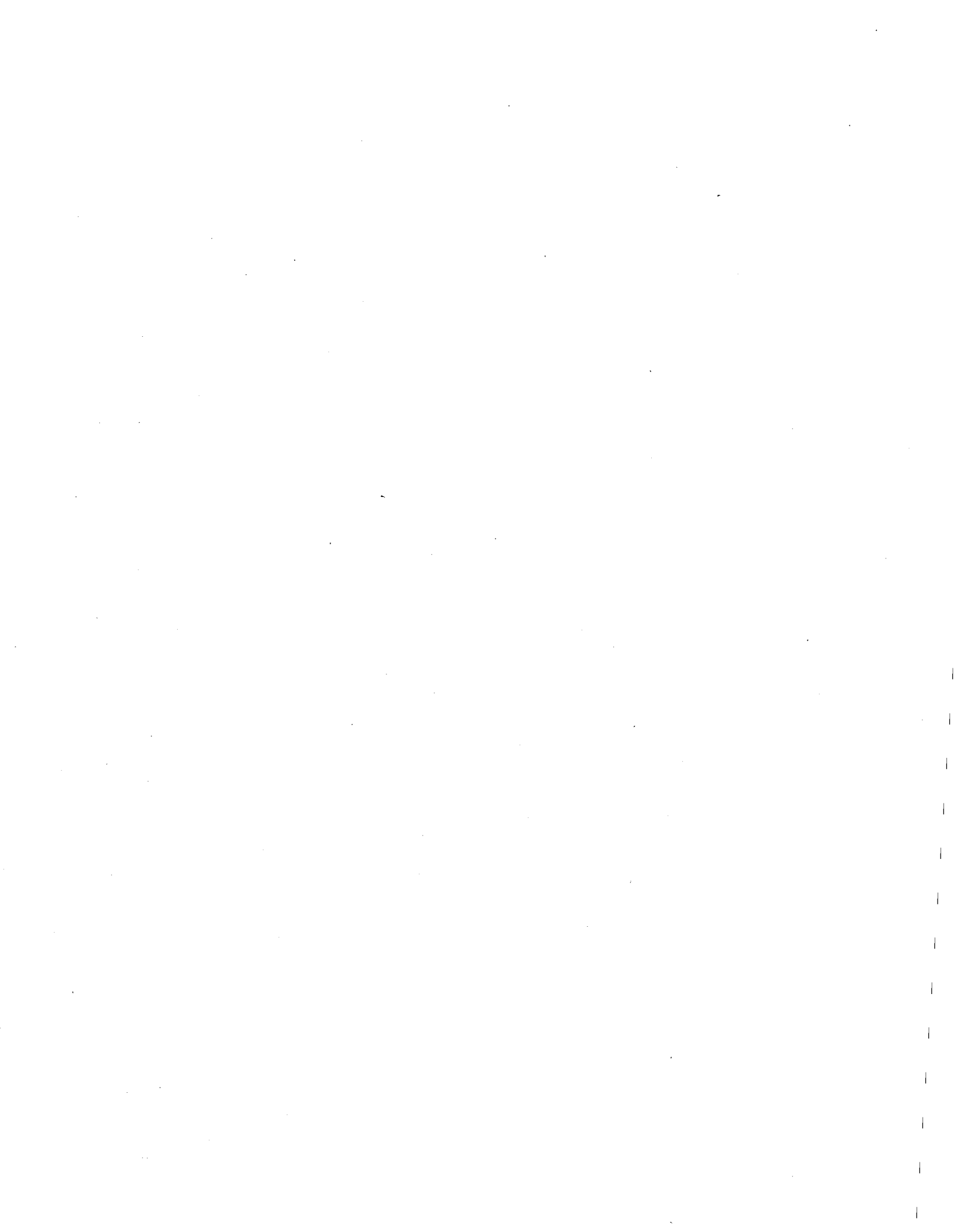
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**113TH CONGRESS, 1ST SESSION  
U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**IN THE MATTER OF ALLEGATIONS RELATING TO  
REPRESENTATIVE JOHN TIERNEY**

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**September 11, 2013**

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Mr. CONAWAY from the Committee on Ethics submitted the following

**R E P O R T**

**I. INTRODUCTION**

On June 13, 2013, the Office of Congressional Ethics (OCE) sent a referral to the Committee in which it recommended further review of the allegations that certain payments Representative John Tierney's wife received from her brother and their mother were income that should have been reported as such to the Internal Revenue Service (IRS) and disclosed on Representative Tierney's annual Financial Disclosure Statements. Representative Tierney and his wife treated the payments as gifts among family members and therefore did not report the payments to the IRS or disclose them on Representative Tierney's Financial Disclosure Statements. The legal determination of whether a transfer is treated as income or a gift is a highly fact-specific inquiry. In particular, courts put heavy emphasis on the donor's intent. This inquiry is further complicated in matters involving transfers between family members.

The Committee reviewed the allegations, conducted additional investigation as necessary, and unanimously concluded that the presently-available evidence was inconclusive as to whether the payments to Mrs. Tierney were income or gifts and does not warrant a finding that Representative Tierney intentionally mischaracterized the nature of the payments for financial disclosure or tax purposes. Therefore, after careful consideration, the Committee has unanimously voted to close the matter referred by the OCE, determined that no further action is required at this time, and agreed to end its review of this matter with the publication of this Report, which includes the materials referred to the Committee by the OCE.

**II. HOUSE RULES, LAWS, REGULATIONS, OR OTHER  
STANDARDS OF CONDUCT**

The Code of Ethics for Government Service, clause 2, provides that any person in government service should "[u]phold the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion." One

such law is the Internal Revenue Code (IRC), which imposes a tax on individual income.<sup>1</sup> Gifts are not included in gross income for tax purposes,<sup>2</sup> but are separately taxable to the donor.<sup>3</sup> The IRS defines a gift as “[a]ny transfer to an individual, either directly or indirectly, where full consideration (measured in money or money’s worth) is not received in return.”<sup>4</sup>

House Rule XXVI, clause 2, provides that Title I of the Ethics in Government Act (EIGA) of 1978 “shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.” The EIGA, codified at 5 U.S.C. app. 4 §§ 101 *et seq.*, provides that Members, officers, and certain staff of the House are required to file an annual Financial Disclosure Statement. The EIGA also requires candidates for federal office to file a Financial Disclosure Statement while they are a candidate. The EIGA, at Section 102(a), describes the information that must be included in a Financial Disclosure Statement. Section 102(e)(1)(A) requires a filer to include “[t]he source of items of earned income earned by a spouse from any person which exceed \$1,000 . . . .” Under Section 102(a)(2)(A), a filer must disclose “the value of all gifts aggregating more” than a set amount “received from any source other than a relative of the reporting individual . . . .” However, under Section 102(e)(1), a filer does not need to include gifts to a spouse that are wholly independent of the filer. Section 104 of the EIGA makes the failure to file such information a misdemeanor punishable by a fine under Title 18 of the United States Code.

### III. BACKGROUND

#### A. Transfers to Representative Tierney’s Wife

Representative Tierney is married to Mrs. Patrice Tierney. Mrs. Tierney’s brothers, Robert and Daniel Eremian, allegedly ran an illegal betting website that they moved to Antigua and Barbuda around 1996.<sup>5</sup> Robert Eremian moved from Massachusetts to Antigua around this same time.<sup>6</sup> Beginning around 2002 and continuing through 2009, Mrs. Tierney assisted Robert Eremian in many ways, including paying his personal bills, filing his tax returns, managing his baseball season tickets, and helping with his minor children who continued to reside in Massachusetts.<sup>7</sup> During a portion of this time, Mrs. Tierney also cared for their mother, Mary Eremian, who had cancer.<sup>8</sup>

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<sup>1</sup> 26 U.S.C. § 1.

<sup>2</sup> 26 U.S.C. § 102(a).

<sup>3</sup> 26 U.S.C. § 2501.

<sup>4</sup> Frequently Asked Questions on Gift Taxes, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes> (last visited Sept. 6, 2013).

<sup>5</sup> Information at 2, *United States v. Tierney*, Crim. No. 1:10-CR-10315-WGY (D. Mass. Oct. 4, 2010).

<sup>6</sup> *Id.*

<sup>7</sup> Testimony of Mrs. Tierney at 44-53, *United States v. Lyons and Eremian*, Crim. No. 1:10-CR-10159-WGY (D. Mass. Nov. 21, 2011).

<sup>8</sup> *Id.* at 52.



As part of these activities, Mrs. Tierney had access to and control over Robert Eremian's checking account. Mrs. Tierney used money from Robert Eremian's checking account to pay for expenses related to the care of Robert Eremian's children and their mother. After a few years, Mrs. Tierney began writing checks from Robert Eremian's checking account to herself, in the amount of approximately \$1,000 per month. From 2004 to 2010, the total amount of checks from Robert Eremian to Mrs. Tierney, including both the monthly payments and funds to assist with Robert Eremian's children, was \$173,047.75. Beginning in 2006, Mrs. Tierney also wrote checks from her brother to their mother, which their mother, in turn, endorsed to Mrs. Tierney.<sup>9</sup> From 2006 to 2010, the total amount of checks from Mrs. Tierney's mother to Mrs. Tierney was \$50,000.

Representative Tierney and his wife filed joint tax returns from 2008 to 2010 on which they did not report any payments from Robert Eremian or Mrs. Tierney's mother as income. Representative Tierney also never disclosed Robert Eremian or Mrs. Tierney's mother as a source of earned income for Mrs. Tierney on his annual Financial Disclosure Statements.

On September 20, 2010, Mrs. Tierney entered into a plea agreement with the United States Attorney for the District of Massachusetts. Through that agreement, Mrs. Tierney agreed to waive indictment and plead guilty to four counts of Aiding and Abetting the Filing of False Tax Returns for her brother Robert Eremian. A little more than a year later, Mrs. Tierney testified in the related trial of her other brother, Daniel Eremian who was indicted along with their brother Robert Eremian on August 5, 2010, for charges related to an illegal gambling operation. Robert Eremian currently resides in Antigua and has refused to return to the United States.

During Daniel Eremian's trial, the prosecution asked Mrs. Tierney about the payments she received from Robert Eremian and their mother. The questions probed whether the payments were income or gifts. Mrs. Tierney characterized the payments from her brother as "gifts from [Robert] for helping him."<sup>10</sup> Mrs. Tierney testified that she issued checks to herself from Robert Eremian's account for \$1,000 a month. She also testified that she issued checks to their mother (also for \$1,000 a month) from Robert Eremian's account which their mother, in turn, endorsed to her. Mrs. Tierney denied that checks were endorsed to her from their mother in order to assure that payments from Robert Eremian's account remained within the threshold of tax-free gifts received from family members. Instead, Mrs. Tierney described the payments from her brother to their mother that were signed over to Mrs. Tierney as "a way for [their mother] to compensate me for all I did for her."<sup>11</sup> Mrs. Tierney denied that these payments were salary paid to her for services performed. Instead, she said that she "was being appreciated."<sup>12</sup>

During a sidebar, Mrs. Tierney's lawyer asked the court for a curative instruction to the jury related to tax terms. The lawyer stated, "You might want to say there is no tax

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<sup>9</sup> Ms. Tierney's mother, Mary Eremian, passed away on May 27, 2011.

<sup>10</sup> *Supra*, note 7, p. 51.

<sup>11</sup> *Id.* at 47.

<sup>12</sup> *Id.* at 52.

consequences to a recipient, a donee of a gift that exceeds the limits.”<sup>13</sup> The judge replied, “If you believe it’s a gift. I mean, I’m not getting into that one.”<sup>14</sup>

Representative Tierney’s opponent in the 2012 election made a campaign issue of whether the payments from Robert Eremian and Mrs. Tierney’s mother were income or gifts.<sup>15</sup> Representative Tierney’s campaign hired a tax lawyer to submit an opinion letter to a news outlet that was reporting on this issue.<sup>16</sup> The tax lawyer reviewed the transcripts from Mrs. Tierney’s sentencing, Daniel Eremian’s trial, and a related trial. The tax lawyer’s opinion was that the payments to Mrs. Tierney were gifts, not income. The tax lawyer cited a legal treatise, *Federal Taxation of Income, Estates & Gifts*, stating that the traditional gift versus income “analysis is not applied literally to family transfer situations.”<sup>17</sup> The tax lawyer further cited a line of U.S. Tax Court cases holding that transfers between family members are presumed to be gifts.<sup>18</sup>

## **B. OCE Referral**

On June 13, 2013, the OCE referred to the Committee for further review allegations that Representative Tierney should have disclosed Robert Eremian as a source of earned income for Mrs. Tierney on Representative Tierney’s annual Financial Disclosure Statements and that the payments from Robert Eremian to Mrs. Tierney were income and should have been reported as such to the IRS.<sup>19</sup> On July 26, 2013, the Committee announced that it was extending its review of the matter for an additional 45 days.

According to the OCE, during its review, Representative Tierney produced documents to the OCE but declined to be interviewed. Mrs. Tierney did not cooperate with the OCE review, saying, through her attorney, that on “October 23, 2012, [she] was involved in a serious automobile accident and suffered head and neck injuries, with resulting memory loss.” Robert Eremian, who remains a fugitive, refused to provide information subject to the provisions of 18 U.S.C. § 1001. And Daniel Eremian’s counsel did not respond to the OCE’s request for information.

The OCE reviewed the opinion letter issued by the tax attorney hired by Representative Tierney’s campaign. The OCE noted “that the legal opinion of the counsel for the campaign committee conflicts with U.S. Supreme Court precedent.”<sup>20</sup>

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<sup>13</sup> *Id.* at 58.

<sup>14</sup> *Id.*

<sup>15</sup> Mooney and Rezendes, *On eve of debate, Tierney releases tax returns*, THE BOSTON GLOBE (Sept. 27, 2012), <http://www.bostonglobe.com/metro/2012/09/26/eve-debate-rep-john-tierney-releases-tax-returns/yGWIRw32TLmvqYUTMPZuMN/story.html>.

<sup>16</sup> The campaign’s tax lawyer is a former Senior Attorney with the IRS Office of Chief Counsel. The tax lawyer has no obvious partisan background.

<sup>17</sup> Letter from D. Sean McMahon to Michael Rezendes (Sept. 24, 2012), p. 2 (citing Boris Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates & Gifts*, par. 10.2.6 (2012)).

<sup>18</sup> *Id.* (citing *Dallas v. Commissioner*, 92 T.C.M. (CCH) 313 (2006); *Estate of Stone v. Commissioner*, 86 T.C.M. (CCH) 551 (2003); *Harwood v. Commissioner*, 82 T.C. No. 239, 258 (1984)).

<sup>19</sup> OCE Review No. 13-1064.

<sup>20</sup> *Id.*, p. 16 n. 92.

The OCE further stated that “although the opinion from the counsel for the campaign committee explains that determining whether such payments are gifts or income is a fact specific question, the opinion is not based on any facts from interviews with the relevant parties.”<sup>21</sup>

### C. Committee Review

Pursuant to Committee Rule 17A(a), the Committee reviews the reports and findings transmitted by the OCE without prejudice or presumptions as to the merit of the allegations. The Committee has reviewed the materials provided by the OCE, including the sworn testimony of Mrs. Tierney.<sup>22</sup> The Committee also asked numerous questions of Representative Tierney who cooperated with the Committee’s requests. Representative Tierney maintained that he was never aware of any intent for the payments in question to be treated as earned income. Representative Tierney affirmed to the Committee that there was no instance of Robert Eremian or Mrs. Tierney’s mother ever expressing any intent that the payment to Mrs. Tierney should be treated as compensation for services rendered. Representative Tierney further affirmed that there was never any agreement, written or otherwise, between Mrs. Tierney and Robert Eremian or Mrs. Tierney’s mother regarding the transfer of funds to Mrs. Tierney, and that when Mrs. Tierney helped her brother and his family, and when she cared for their mother, she did so voluntarily. Finally, Representative Tierney affirmed that he is not aware of any instance in which Robert Eremian or Mrs. Tierney’s mother withheld or otherwise paid taxes, or filed any forms with the IRS, with respect to the transfer of funds to Mrs. Tierney.

In addition, the Committee conducted a telephone interview of Robert Eremian, who, as noted above, is currently under indictment by U.S. authorities and is living in Antigua. Mr. Eremian corroborated the statements of Representative Tierney and Mrs. Tierney that the payments to his sister were never intended to be treated as salary in exchange for services rendered. Mr. Eremian stated that during a trying time in his life Mrs. Tierney took over for Mr. Eremian’s wife in overseeing certain basic household responsibilities for Mr. Eremian such as taking care of his children and paying his personal bills. In addition, Ms. Tierney cared for her and Mr. Eremian’s ailing mother. Mr. Eremian said that he wanted to “compensate” his sister for her assistance. However, he emphasized that he was unsure that the term “compensate” was properly applied in this scenario, and that the most important thing to him was to assure that Mrs. Tierney did not suffer any losses as a result of her assistance to him. Furthermore, Mr. Eremian stated that he did not have any documentary evidence regarding these questions.

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<sup>21</sup> *Id.*

<sup>22</sup> The Committee also reviewed the OCE’s Memorandum of Interview of Robert Eremian’s Tax Attorney. See Report and Findings of the Office of Congressional Ethics in the Matter of Representative John Tierney (Review No. 13-1064), Exhibit 7. That interview indicates that Robert Eremian’s Tax Attorney gave advice on how to structure the transfers to Mrs. Tierney to avoid gift tax liability. However, he did not have additional information relevant to the question of whether the transfers were income or gifts.

#### IV. ANALYSIS

The IRC imposes a tax on individual income.<sup>23</sup> If the payments to Mrs. Tierney were income, Representative Tierney and his wife would have owed taxes on the payments. Conversely, the IRC excludes gifts from gross income for tax purposes.<sup>24</sup> Gifts are, instead, separately taxable to the donor.<sup>25</sup> Thus, if the payments were gifts, Representative Tierney and his wife would not owe taxes on the payments. The determination of what constitutes a gift versus income is highly fact-specific and can be difficult to make in instances where both indicia of consideration and donative intent are present. This analysis is further complicated in instances involving transfers between family members.

The seminal case on determining whether transfers of money are income or gifts is *Commissioner v. Duberstein*.<sup>26</sup> In *Duberstein*, the Supreme Court set forth a number of principles to take into account in making this determination. The Court stated that a payment will be recognized as a gift when it “proceeds from a ‘detached and disinterested generosity’”<sup>27</sup> or “out of affection, respect, admiration, charity or like impulses.”<sup>28</sup> However, “the mere absence of a legal or moral obligation to make . . . a payment does not establish that it is a gift.”<sup>29</sup> “[I]f the payment proceeds primarily from ‘the constraining force of any moral or legal duty,’ or from ‘the incentive of anticipated benefit’ of an economic nature, it is not a gift.”<sup>30</sup> “And, conversely, ‘(w)here the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.’”<sup>31</sup> In making these assessments, the Court stated that the most critical consideration is the transferor’s intent.<sup>32</sup> Each of these factors should be decided on a case-by-case basis.<sup>33</sup>

In its analysis, the OCE relied almost entirely on *Duberstein*. In applying the *Duberstein* line of cases there are several factors that would suggest the regular monthly payments directly to Mrs. Tierney and those endorsed over from her mother drawn on Robert Eremian’s account were taken in exchange for services rendered, and that it would be reasonable to characterize them as earned income. However, the OCE did not address the additional legal analysis applied to intrafamily transfers.

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<sup>23</sup> 26 U.S.C. § 1.

<sup>24</sup> 26 U.S.C. § 102(a).

<sup>25</sup> 26 U.S.C. § 2501.

<sup>26</sup> 363 U.S. 278 (1960).

<sup>27</sup> *Id.* at 285 (quoting *Commissioner of Internal Revenue v. LoBue*, 351 U.S. 243, 246 (1956)).

<sup>28</sup> *Id.* (quoting *Robertson v. United States*, 343 U.S. 711, 714 (1952)).

<sup>29</sup> *Id.* (citing *Old Colony Trust Co. v. Commissioner*, 279 U.S. 716, 730 (1929)).

<sup>30</sup> *Id.* (quoting *Bogardus v. Commissioner*, 302 U.S. 34, 41 (1937)).

<sup>31</sup> *Id.* (quoting *Robertson v. United States*, *supra* note 28).

<sup>32</sup> *Id.* at 285-286 (quoting *Bogardus v. United States*, *supra* note 30, at 45).

<sup>33</sup> *Id.* at 290.

Indeed, there is very little legal authority applying *Duberstein* to intrafamily transfers.<sup>34</sup> Instead, as noted in the legal opinion for Representative Tierney's campaign, intrafamily transfers are subject to a presumption that they are gifts.

The treatise cited by the tax opinion includes a chapter entitled "Intrafamily Transfers."<sup>35</sup> Amongst other things, the treatise notes that some transfers of assets between family members are regularly treated as tax-free "even though their excludability under the *Duberstein* criteria is arguable."<sup>36</sup> This analysis hinges, in large part, on the presumption that certain services performed by family members to the benefit of other family members are done for free, thereby rendering moot even explicit agreements for money in exchange for those services.<sup>37</sup> To illustrate this point, the treatise cites a Maryland state court case holding that a promise of compensation for services may be rebutted by a close relationship of parties, and a U.S. Tax Court case holding that even when a husband agreed to pay his wife for health care services the money she received from him could be treated as a gift.<sup>38</sup> The treatise does caution, however, that some agreements that are "stimulated by affection" can nevertheless be legally enforceable, and "to the extent that such obligations are paid pursuant to legal compulsion, these amounts would not qualify as gifts if the *Duberstein* criteria were pushed to their logical extreme."<sup>39</sup>

While courts have rarely addressed the question of whether an intrafamily transfer is a gift or income, they have addressed the question of whether an intrafamily transfer is a gift or an arm's-length transaction in the context of sales of assets between family members.<sup>40</sup> Those cases generally hold that there is a presumption that intrafamily transfers are gifts and not bona fide sales in the ordinary course of business.<sup>41</sup>

For example, *Harwood v. Commissioner*<sup>42</sup> involved the transfer of a company's partnership interest from a mother to her sons in exchange for a note. The U.S. Tax Court held that, to the extent that the fair market value of the partnership interest was less than the value of the note, the transfer was a gift. The court explained the transfer was not an "arm's-length" transaction, to wit, the transfer was structured solely by the family

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<sup>34</sup> The limited precedent applying *Duberstein* to intrafamily transfers is easily distinguishable from this matter. For example, in *Altman v. C.I.R.*, 475 F.2d 876 (2d Cir. 1973), the court held that a transfer of cash and stock from a mother to a son was income, not a gift. However, the court found evidence that the transfer "was prompted by something less than maternal affection" because the son had "threatened to throw the family business into bankruptcy and report [the mother] to the Internal Revenue Service for alleged violations" if she did not complete the transfer.

<sup>35</sup> Boris Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates & Gifts*, par. 10.2.6 (2012).

<sup>36</sup> *Id.* (citing Restatement of Restitution § 107 cmt. (1937)).

<sup>37</sup> *Id.* (citing *Loveland's Est. v. CIR*, 13 TC 5 (1949)).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Transfers from an estate are subject to yet another taxation scheme. 26 U.S.C. §§ 2001 *et seq.*

<sup>41</sup> *Harwood v. Commissioner*, 82 T.C. No. 239, 258 (1984) (citing *Estate of Reynolds*, 55 T.C. 172, 201 (1970)).

<sup>42</sup> *Id.*

accountant with no bargaining.<sup>43</sup> In its decision, the court noted the Gift Tax Regulations' provision that transfers "made in the ordinary course of business" will be considered to be exchanges made for full consideration<sup>44</sup> and that "[t]ransactions between a family group are subject to special scrutiny."<sup>45</sup>

It is possible, however, to rebut the presumption that intrafamily transfers are gifts. For example, in *Estate of Stone v. Commissioner*,<sup>46</sup> the U.S. Tax Court held that a transfer of various assets from parents to their children was not a gift because the transfer was an arm's-length transaction. The court explained that each party negotiated the terms of the agreement (instead of one party recommending a deal structure and the other simply acquiescing to that structure), that the parties used independent counsels in those negotiations, and that the transfers were motivated primarily by investment and business concerns and the avoidance of litigation by the children after the parents' death.<sup>47</sup>

There is even less guidance in the EIGA as to the distinction between income and gifts from family members, and the Committee has never directly addressed the distinction. However, the Committee would consider similar factors as in the tax context for their informative value.

The Committee has recommended to the House that Members be sanctioned for failure to report and pay taxes.<sup>48</sup> Most recently, in the matter of Representative Charles Rangel, the Committee recommended to the House that it censure Representative Rangel for, among other things, his failure to report and pay taxes on a property he owned in the Dominican Republic.<sup>49</sup> The House further ordered Representative Rangel to make payments to the U.S. Treasury for the amount of back taxes owed, even though the taxes were outside the statute of limitations. However, there was no dispute that Representative Rangel owed the taxes in question. Indeed, the amount he needed to repay was determined by a tax opinion that Representative Rangel himself commissioned.<sup>50</sup> Unlike in the matter of Representative Rangel, the record before the Committee in this matter is unclear as to whether Representative Tierney and his wife owe taxes on the payments in question.

As noted earlier, there are factors present that would advise treatment of the payments as income in circumstances not involving family members, subject to the *Duberstein* case and its progeny alone. For instance, the payments were regular monthly

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<sup>43</sup> *Id.* at 259. See also *Dallas v. Commissioner*, 92 T.C.M. (CCH) 313 (2006) (finding a gift, in part, because the transaction was designed by donor's counsel to serve donor's estate planning goals and recipients were not represented by their own counsel).

<sup>44</sup> *Id.* at 257 (quoting 26 CFR § 25.2512-8).

<sup>45</sup> *Id.* at 259.

<sup>46</sup> 86 T.C.M. (CCH) 551 (2003).

<sup>47</sup> *Id.* at 43-44.

<sup>48</sup> See e.g., House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rpt. 107-594, 107<sup>th</sup> Cong., 2d Sess. at 1 (2002).

<sup>49</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles B. Rangel*, H. Rpt. 111-661, 111<sup>th</sup> Cong., 2d Sess. at 2 (2010).

<sup>50</sup> *Id.* at 922-931. Indeed, Representative Rangel attempted to pay all the taxes before the Committee concluded its investigation, but the IRS would not accept payments outside the statute of limitations.

payments in the same amount which were recognized to be “compensation” (even if Mrs. Tierney and Robert Eremian believe that “compensation” is consistent with describing something as a gift, and not a salary). Furthermore, for Mrs. Tierney to regularly write monthly checks to her mother with the knowledge and intent that they would be immediately and entirely endorsed back to Mrs. Tierney may, though Mrs. Tierney appears to have denied this suggestion at the trial of Daniel Eremian, evidence an intent that the “gifting” nature of the two step transfer is a mere pretext (though it is possible that the pretext is merely to disguise the full amount of the gift from Robert Eremian, in which case the Tierney’s tax and financial disclosure obligations would not change).

Based on these factors, if the Committee were asked for informal guidance or a formal opinion regarding how to report similar payments outside of an intrafamily transfer on a filer’s Financial Disclosure Statements, the Committee might advise that the most cautious approach would be to report the regular monthly payments (not the clear reimbursements for expenses) as income. However, where there is a significant question of tax law, the Committee regularly advises filers to consult with outside tax attorneys and treat the uncertain amounts in good faith upon such advice for both tax reporting and financial disclosure purposes.

However, even these factors are not conclusive and their persuasive character is diminished further in the context of intrafamily transfers. Furthermore, just as the courts have almost never addressed circumstances clearly analogous to these, the Committee has issued no guidance in the past which would clearly instruct a filer how to interpret these facts for purposes of financial disclosure. Finally, based on the unavailability of Mrs. Tierney’s mother and Robert Eremian’s statement that he had no documentary evidence regarding this issue, it appears that any additional fact-gathering would be incomplete, at best, and insufficient to overcome the clear testimony of Mrs. Tierney regarding her understanding and intent, and Representative’s Tierney’s affirmation that he was and is not aware of any intent or indicia of intent for the payments to be the equivalent of salary or earned income.

## V. CONCLUSION

As explained above, a determination of whether earned income accrued to Representative Tierney’s wife relies on a variety of factors and has very little precedent in analogous factual circumstances. To date, Representative Tierney and Mrs. Tierney have both sworn or affirmed that they believe the intent of the regular monthly payments were as gifts, and not as arm’s-length salary for services. The only other surviving witness who could verify or contradict that understanding, Robert Eremian, has further corroborated their statements. Beyond such direct testimony or documentary evidence related to the intent of the parties to the transfer, the few factors discussed above concerning the nature of the payments which might be persuasive in the non-family context, are far less persuasive in the intrafamily transfer context. In either context, whether or not the factors are persuasive of how the payments should best be treated, these factors certainly are not sufficient to warrant a finding that Representative Tierney intentionally mischaracterized the nature of the payments for financial disclosure and tax purposes.

In addition, Representative Tierney's constituents are well aware of the facts surrounding the relevant payments and their reporting at this time. Therefore, the interests of reporting on Financial Disclosure Statements have been served, and would not be furthered even if additional evidence led the Committee to require an amendment of Representative Tierney's previously filed Financial Disclosure Statements. Finally, there is no reason for the Committee to consider referral to the IRS or the Department of Justice as these payments and questions about them were explored in the Government's prosecution of Daniel Eremian and were apparently known to both agencies at the time the Department of Justice negotiated a guilty plea from Mrs. Tierney for aiding and abetting the false tax filings of Robert Eremian.

For all these reasons, and after careful consideration, the Committee has unanimously voted to close the matter referred by the OCE, determined that no further action is required, and agreed to end its review of this matter with the publication of this Report.

Pursuant to House Rule XI, clause 3(b)(8)(A), and Committee Rules 17A(c)(2), the Committee hereby publishes the OCE's Report and Findings related to the allegations that Representative Tierney failed to report income to the IRS and disclose said income on his Financial Disclosure Statements.

The Chair is directed, upon providing the notices required pursuant to House Rule XI, clause 3(b)(8)(A), and Committee Rule 17A(b)(2), to file this Report with the House, together with copies of the OCE's Report and Findings in this matter.<sup>51</sup> The filing of this Report, along with its publication on the Committee's Web site, shall serve as publication of the OCE's Report and Findings in this matter, pursuant to House Rule XI, clause 3(b)(8)(A), and Committee Rules 17A(b)(3) and 17A(c)(2).

## **VI. STATEMENT UNDER RULE XIII, CLAUSE 3(c) OF THE RULES OF THE HOUSE OF REPRESENTATIVES**

The Committee made no special oversight findings in this Report. No budget statement is submitted. No funding is authorized by any measure in this Report.

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<sup>51</sup> House Rule XI, clauses 3(a)(2) and 3(b).