



Billionaire Robert Mercer did Trump a huge favor. Will he get a payback?

Scott Christianson and Greg Gordon

May 1, 2017

The Internal Revenue Service is demanding a whopping \$7 billion or more in back taxes from the world's most profitable hedge fund, whose boss's wealth and cyber savvy helped Donald Trump pole-vault into the White House.

Suddenly, the government's seven-year pursuit of Renaissance Technologies LLC is blanketed in political intrigue, now that the hedge fund's reclusive, anti-establishment co-chief executive, Robert Mercer, has morphed into a political force who might be owed a big presidential favor.

With Trump in the Oval Office, Mercer and his daughter Rebekah, who has become his public voice, seem armed with political firepower every which way you look – and that's even though presidential adviser Stephen Bannon, their former senior executive and political strategist, appears to have recently lost influence.

Since the IRS found in 2010 that a complicated banking method used by Renaissance and about 10 other hedge funds was a tax-avoidance scheme, Mercer has gotten increasingly active in politics. According to data from the Center for Responsive Politics, he doled out more than \$22 million to outside conservative groups seeking to influence last year's elections, while advocating the abolition of the IRS and much of the federal government.

The Mercer Family Foundation, run by Rebekah Mercer, also has donated millions of dollars to conservative nonprofit groups that have called for the firing of IRS Commissioner John Koskinen, an Obama administration holdover whose five-year term expires in November.

One of them, the Heritage Foundation, received \$1.5 million from the Mercer foundation from 2013 through 2015, according to its most recent public tax filings.

IRS leader Koskinen has said publicly that he intends to finish his term. On his watch, the agency hasn't been cowed by the Mercers.

The IRS recently released a little-noticed advisory stating that its top targets in future business audits will include so-called "basket options," the instruments that Renaissance and some other

hedge funds have used to convert short-term capital gains to long-term profits that have lower tax rates.

But Renaissance, with assets estimated at \$97 billion on Dec. 31, 2016, has shown no signs of buckling to the IRS's demands.

Nor has there been a hint as to whether Trump, a real estate developer who has refused to make his tax returns public, will intercede. The White House declined to respond to questions about the matter.

Richard Painter, chief White House ethics adviser under President George W. Bush, said the optics surrounding the Mercers' political connections and the IRS case "are terrible."

"The guy's got a big case in front of the IRS," said Painter, now a University of Minnesota law professor who is also vice chairman of Citizens for Responsibility and Ethics in Washington. "He's trying to put someone in there who's going to drop the case. Is the president of the United States going to succumb to that or is he not?"

"Are we going to have a commissioner of the IRS who aggressively enforces the law and takes good cases to Tax Court or (somebody who) just throws away tax cases so billionaires don't have to pay their taxes and the rest of us can pay more taxes?"

The case against Renaissance was initiated before Koskinen became commissioner.

It's illegal for the IRS to discuss ongoing tax cases, and the agency declines to comment about Renaissance. But in 2014, the Senate Permanent Subcommittee on Investigations issued a blistering report detailing Renaissance's use of so-called "basket options" trades by its employees-only Medallion Fund to slash taxes on \$34 billion in profits. The panel estimated that Renaissance's back tax bill dating to the earliest IRS audit would be at least \$6.8 billion.

Jonathan Gasthalter, a spokesman for the Mercers, declined to comment on the case.

He pointed McClatchy to a Renaissance statement issued in 2014 in response to the Senate findings. Renaissance said then that its tax calculations were "appropriate under current law" and that it had "cooperated fully" with the IRS inquiry.

Robert Martin, a lawyer in the IRS's chief counsel's office who co-authored the agency's legal notices on the issue in 2010 and 2014, said the law covering reporting of the options profits had held up for more than 75 years.

Trump has the legal authority to replace Koskinen and the IRS's chief counsel, the other agency position requiring Senate confirmation. The latter post is occupied by an acting chief counsel.

John Coffee, a law professor at Columbia University who monitors the behavior of Wall Street firms, said the Mercers might win Koskinen's ouster, but he doubts they could undermine the case.

“I don’t know they’re going to get their candidate in,” he said, “and I’m not sure many candidates are going to try to reverse the staff on something that’s already deeply advanced in either litigation or negotiation.”

Dennis Ventry, an expert in tax law policy from the University of California at Davis School of Law, said he was unaware of any instance in which a president had intervened to stop a tax audit or prosecution. So far, he said, Trump “has been remarkably restrained regarding the IRS.”

A former IBM computer scientist, Mercer has forged a web of relationships reaching high into the new administration.

At the top is Bannon, a former senior executive of Cambridge Analytica, a data analysis firm in which Mercer owns the largest stake. The firm, a U.S. subsidiary of a British company, is credited with playing a key role in Trump’s victory by providing his campaign with electronic dossiers shedding light on the views of 220 million Americans.

Mercer funded Bannon to produce hard-edged political films and a book attacking Hillary Clinton, Trump’s opponent in the presidential race. Mercer also invested millions of dollars to become majority owner of far-right Breitbart News with Bannon at the helm. The Mercers and Bannon helped to fuel conservatives’ anger over the IRS’s 2013 investigations challenging the tax-exempt status of right-leaning nonprofit groups, and Mercer funded a number of efforts calling for Koskinen’s impeachment.

On March 29, at least 30 conservative leaders, including a Heritage Foundation representative, converged on the White House for an off-the-record meeting with Trump aides. The groups pressed a range of agendas, especially urging Koskinen’s firing, said one attendee, President Tom Fitton of the nonprofit group Judicial Watch.

In a phone interview, Fitton said “the conservative movement is united in its belief there need to be changes at the IRS,” but he voiced frustration “that the Trump administration seems to be of two minds on whether or not to replace” Koskinen before his term expires.

Fitton declined to identify other attendees, and the Trump White House has abandoned a longtime practice of publicly releasing visitor logs.

The meeting was organized by White House aide Paul Teller, who worked with Rebekah Mercer on Texas Sen. Ted Cruz’s failed Republican presidential campaign – an effort that Robert Mercer backed with \$13.5 million in donations to an independent, pro-Cruz super PAC freed of the usual contribution limits. Mercer gave millions of dollars more to the committee after Cruz bowed out and the super PAC threw its financial allegiance to Trump.

Other groups that have joined the anti-IRS and anti-Koskinen choruses also got money from the Mercer foundation – \$600,000 to the Cato Institute in 2014 and 2015 and \$250,000 to Citizens for Self-Governance in 2014.

Perhaps the biggest Mercer foundation beneficiary has been the Citizens United Foundation, which received \$3.8 million from 2011 through 2015. The foundation’s advocacy arm, Citizens United, wants Koskinen to be impeached. It also spearheaded attacks on Clinton last year over

her use of a personal email account to conduct official business during eight years as secretary of state. David Bossie, who is president of both Citizens United entities, and Rebekah Mercer collaborated on the super PAC that backed Trump and later as members of Trump's transition team.

“Bob (Mercer) has always been very good at leveraging his money” in both business and politics, said Nick Patterson, a Renaissance co-founder and former intelligence code-breaker who recruited Mercer to the hedge fund in 1993. “Bob's been very dissatisfied with U.S. politics for many years.”

Spokespeople for the Heritage Foundation, Cato, Citizens for Self-Governance and Citizens United did not respond to requests for comment.

Robert Mercer became co-CEO at Renaissance, or RenTech, in November 2009 as the federal government was cracking down on abuses that had contributed to the nation's worst financial crisis since the Depression.

As a high-volume, high-frequency trader, RenTech's role in the crisis attracted scrutiny from the Securities and Exchange Commission and the IRS. Federal agents were alarmed by what they found.

In 2010, the IRS issued a public memorandum warning hedge funds and banks about using “basket options,” structures in which banks loaned funds for the traders to purchase derivatives, which they held in “baskets.” It didn't mention RenTech by name.

The IRS memo said that hedge funds – not their partner banks – controlled the underlying assets and thus should pay taxes at a higher capital gains rate.

Some hedge funds and banks stopped using basket options, but RenTech persisted.

Then, in July 2014, Democratic Chairman Carl Levin of the Senate Investigations Subcommittee and its ranking Republican, Arizona Sen. John McCain, issued the report accusing Renaissance of a giant tax dodge on hundreds of millions of options trades dating to 1999.

The panel said basket-trading also had enabled RenTech to dramatically increase its leverage, meaning it could borrow up to 10 times more money against its securities portfolio.

Following the Senate investigation, the IRS issued a notice in 2015 that left no doubt basket-option contracts were taxable as ordinary income.

Without identifying the affected party, IRS attorney Martin confirmed in a phone interview that one ongoing IRS enforcement case stems from basket trades. He said such options cases came down to ensuring that financial instruments were defined for what they really were.

“If you are going to call it a derivative . . . it has to function like a derivative,” he said. “And if it functions like a brokerage account, that's how it has to be treated.”

The Renaissance case is not yet in tax court.

In the years since the case began, the father-daughter Mercer team has set an agenda that amounts to a full-fledged assault on the established order.

Besides the IRS, targets have included former President Barack Obama, the Securities and Exchange Commission, the Federal Reserve, the Department of Justice, various Democratic and moderate Republican members of Congress, Democratic presidential candidate Hillary Clinton, and burdensome regulations and agencies that hinder Mercer's energy investments.

Mercer has called the Civil Rights Act of 1964 a mistake and has voiced disdain for other federal measures to protect the rights of African-Americans and other minorities.

The Mercers' foundation gave nearly \$11 million from 2011 to 2014 to the Media Research Center, an advocacy group whose "sole mission," according to its website, "is to expose and neutralize the propaganda arm of the Left: the national news media."

In a rare public statement weeks before Trump's upset victory, the Mercers said they believe that "America is finally fed up and disgusted with its political elite."

"Trump is channeling this disgust," they said, "and those among the political elite who quake before the boom-box of media blather do not appreciate the apocalyptic choice that America faces."

In 2010, the same year the IRS issued its memo, the Supreme Court handed down a landmark ruling lifting restraints on how much money wealthy donors such as the Mercers may spend to influence election outcomes.

RenTech soon tripled its lobbying expenditures. Last year, it paid \$300,000 to a Washington lobbyist and tax strategist, James Miller, a former high-ranking attorney in the IRS's office of chief counsel. Miller's public disclosures say his lobbying topics included taxes on derivatives.

And by 2014 the Mercer Family Foundation had distributed \$70 million in donations, mainly to conservative nonprofit groups.

By 2016, Renaissance's founder and chairman, Jim Simons, was one of the Democratic Party's top backers, and Mercer was a leading Republican donor, making RenTech a leading player in national politics.

Some of Mercer's projects sought to unseat his Republican adversaries, such as McCain, who became the target of negative ad campaigns during a primary race.

Meanwhile, Rebekah Mercer accumulated so much clout she has been credited with influencing Trump's choices of several top appointees, including Bannon, Attorney General Jeff Sessions, presidential counselor Kellyanne Conway and former National Security Adviser Michael Flynn. Flynn, a retired Army lieutenant general, resigned in February after revelations that he had misled the White House about post-election discussions with Russia's ambassador.

In January, Rebekah Mercer attended a private meeting in which she had "substantive communications" with Jay Clayton, Trump's likely nominee to chair the SEC, Clayton later

revealed in response to questions from the Senate Banking Committee in advance of his confirmation hearings. The SEC regulates hedge funds.

The Mercers' struggle didn't end with Trump's election.

Bannon, the former Mercer political strategist who now speaks for the White House, seemed to capsule it in a speech to conservative activists in February.

The goal, he said, amounts to nothing less than unfettered American capitalism and the "deconstruction of the administrative state."