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EARLY IMPRESSIONS OF THE NEW TAX LAW

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BEFORE THE

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EARLY IMPRESSIONS OF THE NEW TAX LAW

TUESDAY, APRIL 24, 2018

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:33 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Thune, Portman, Toomey, Scott, Wyden, Cantwell, Nelson, Menendez, Cardin, Brown, Bennet, McCaskill, and Whitehouse.

Also present: Republican staff: Jay Khosla, Staff Director; Jennifer Acuna, Tax Counsel; Chris Allen, Senior Advisor for Benefits and Exempt Organizations; Chris Armstrong, Chief Oversight Counsel; Tony Coughlan, Tax Counsel; Alex Monie, Professional Staff Member; Eric Oman, Senior Policy Advisor for Tax and Accounting; and Jeff Wrase, Chief Economist. Democratic staff: Joshua Sheinkman, Staff Director; Ryan Abraham, Senior Tax and Energy Counsel; Adam Carasso, Senior Tax and Economic Advisor; Michael Evans, General Counsel; Sarah Schaefer, Tax Policy Advisor for Small Business and Pass-throughs; and Tiffany Smith, Chief Tax Counsel.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order.

Good afternoon and welcome to today's hearing. Before we get into the meat of today's hearing, I would like to thank Senator Wyden and Senator Scott for suggesting this meeting. I look forward to having a conversation about the important changes we made in our tax reform bill and what kinds of technical corrections we might make to ensure the law is implemented as Congress intended.

As we gather to discuss ways to make tax reform even better, let us remind ourselves every member who actively participated in drafting the bill should be proud of this new tax law. We were proud when we passed it, and we are even prouder now as, all across the Nation, evidence affirms that the new law is tangibly benefiting millions of Americans.

More than 500 companies have announced wage hikes, increased benefits, more jobs, and increased investment or expansion in the United States thanks to the new law. For example, in the past month, Kroger announced it will spend $500 million on employee compensation. Verizon is doubling its commitment to STEM education, helping hundreds of schools and millions of students. And a new study by the National Association of Manufacturers shows that 93 percent of manufacturers are enthusiastic and optimistic about the future in large part thanks to a tax code that works for American innovators and manufacturers. Numerous other studies show increasing optimism among American business leaders rising right along with wages and employment numbers.

American individuals too are becoming more supportive of the law as they witness the benefits it brings to businesses and households. Though only 37 percent approved of the law when it was passed in December, more than 50 percent expressed support in February, according to a *New York Times* poll. Among Democrats, support rose by more than 10 percent in the same time period. It is hard to deny a truth that expands your pocketbook.

Now I will be the first to admit that, good as it is, there are things we could have done to make the bill even better. Unfortunately, that is largely because Democrats refused to positively participate in writing the bill. In fact, the only efforts I saw coming from the other side were to undercut our efforts, put on political theater, and prevent us from even adopting their own ideas from the very beginning. For anyone out of touch enough to think that I would just throw my good friends under the bus for no reason, let me give you a quick history.

Last July, 45 of our Democratic colleagues wrote us what can only be called a legislative ransom note. That letter included a list of, quote, “prerequisites,” unquote, including a requirement that we agree up front to never use the reconciliation process used to pass numerous bipartisan tax bills over the last few decades.

Now, I tend to think that while such bellicose political tactics certainly do not help getting good bipartisan legislation, they should not preclude both sides from at least talking to each other afterward. Unfortunately, it seems that my expectations after more than 40 years of senatorial service were proven wrong once again.

As we continued to work on our draft bill, I was saddened and rather stunned at the lack of meaningful interaction from the Democrats on this committee. In fact, I did not hear anything of substance until we had already spent months writing a draft bill that we introduced in committee. Once we got there, we were glad to finally hear some of the thoughts my Democratic colleagues had. In the end, we happily included six amendments supported by eight different Democrats on this committee.

Now, if you are listening to this and thinking that this is just a bit of political theater, I would understand. Truly, I think you had to be there to believe it. And the craziest part is, it did not end there. Just as we began to negotiate the final bill before we got to the floor, I was stunned by the base partisanship that had grabbed hold of my longtime friends on the other side.

In fact, as just one example of this, Democrats slashed their own provision to fund the Volunteer Income Tax Assistance program which helps low-income, disabled, and non-English-speaking taxpayers with their filings for free. No one on principle disliked this provision; Democrats just did not want a good thing in the tax law, so they used a parliamentary procedure to gut their own amendment from the bill behind closed doors. And their partisan charade did not end there. In fact, they used the Byrd Rule to excise the title and the table of contents.

If someone thinks that tax reform is too complicated, that is in large part because there is not a table of contents, something most readers like when thumbing through more than 100 pages of legislative text. But that is what the other side insisted upon. Honestly, I cannot recall ever seeing something like that in my more than 40 years here in the United States Senate. And all of that was just a sign of how desperate the other side was. They did not care what they cut, nor did they care about any sense of earnest review.

Now, I am not a Senator with a flare for the dramatic. That is why I did not bring this up at the time, nor did any of my colleagues that I know of, because, frankly, we were too busy trying to help get this thing done, trying to help the rest of America get a tax code that actually works.

That is why when the bill did pass, it came with plenty of provisions so good that all Americans can be pleased with them, no matter what their political party. For example, Opportunity Zones, established in a measure proposed by Senator Scott, draw investment to Americans in impoverished regions of the country.

Additionally, across the board, tax rates have tumbled down. Individuals of all income levels will see tax cuts, with a typical family of four making the median family income of $75,000 a year seeing their taxes cut by more than half. And the corporate tax rate has been cut from 35 percent to 21 percent, which will keep America competitive in the global economy. Not only is this a big boon for American businesses, but it helps their employees too, in the form of higher wages, more jobs, and increased retirement savings and benefits.

These are real dollars that give middle-class Americans more money in their pockets every month, money they work for and deserve more than the bloated and overgrown government does.

We made sure the law creates proper incentives. We made our international tax system a territorial one, ensuring that American companies are more competitive overseas and encouraging them to bring earnings and investments back home. Again, that was a bipartisan proposal that we have discussed for years, and I am glad we were finally able to enact it into law.

We doubled the Child Tax Credit and expanded its refundability—again, another bipartisan proposal my colleagues could never seem to get passed into law. We also doubled the standard deduction. Taken altogether, provisions like these are the reason the Joint Committee on Taxation found that the overall distribution of the new tax bill is directed toward the middle class.*

And since I am on that topic, I would like to mention briefly a response to some concerns I have heard about section 199A. It is true that many small-business owners are going to have their taxes cut. We did that very much intentionally. And even CBO has explicitly stated that these cuts will help grow small businesses. In

*For more information, *see also*, "Overview of the Federal Tax System as in Effect for 2018," Joint Committee on Taxation staff report, February 7, 2018 (JCX–3–18), *https://www.jct.gov/publications.html?func=startdown&id=5060;* and "Tables Related to the Federal Tax System as in Effect 2017 Through 2026," Joint Committee on Taxation staff report, April 23, 2018 (JCX–32R–18), *https://www.jct.gov/publications.html?func=startdown&id=5093*.

fact, they recently said because small businesses "will increase after-tax returns on investment, they are also anticipated to boost investment by pass-through businesses." That increased investment means that their businesses grow, hiring new employees, growing the communities around them, and generally benefiting the American economy, all worthy goals none of us would be ashamed of. And these businesses are a major part of our economy, I might add.

According to the Small Business Administration, our most recent numbers indicate there are 29.6 million small businesses in the United States. They make up 99.9 percent of firms with paid employees. From 1993 to 2016, small businesses accounted for 61.8 percent of new jobs. And the majority of these small-employer businesses are pass-through businesses.

So let me pose a question back to my colleagues: why would we not want to get more money back to these business owners so that they can grow their businesses, hire more employees, and improve our economy? I honestly cannot think of a reason.

As much as we have done, though, the work is not over. And that is reason for optimism. As we make technical corrections to the bill—par for the course for any major tax bill—we will be able to enhance what the law already does well, ensuring that Americans get tax relief, more jobs, and better wages. We will also look ahead to implementation. After all, Americans are just starting to see some of the many benefits of this law.

Besides the wage boosts, bonuses, and other benefits they have started to receive, Americans will see yet more benefits next year when they file their taxes at lower rates and with larger credits and deductions.

In order to continue seeing all of those benefits, though, we need to ensure that the law is implemented as intended by Congress. That means having the proper people at Treasury and the IRS who can ensure a fulsome and thoughtful process. Confirming our nominees in short order will be a critical part of ensuring all of the right people are on duty for this critical endeavor. That includes Mr. Charles Rettig, who has been nominated to serve as IRS Commissioner. I look forward to processing his nomination in short order, though with the thoroughness this committee is known for. And I also look forward to getting Mr. David Kautter back to Treasury, where he can start implementing the new law.

For all of these reasons, I truly believe there is reason for optimism. And now that our political theater is moot, I am anxious to get back to our bipartisan tradition in this committee. Surely, we can work on all this in a bipartisan manner, reaching across the aisle to ensure fairness in our tax code and in its implememtation.

Before I finish, I want to point out that the tax law is, in one sense, already a bipartisan bill. True, one party refused to participate and did everything it could to make the bill too poor to pass, but many Democratic priorities were included in the bill, such as Senator Menendez's sexual harassment proposal, and lowering the bottom tax brackets. Senator Wyden himself has long supported lowering of the corporate tax rate, as did President Obama, and we were finally able to do so.

Now, I am pleased with my history of bipartisanship in the Senate. And now, perhaps more than we have had for years, we have a chance to move forward together. So I look forward to working across the aisle to enhance the new tax law to be the best it can be. And I am very grateful for my colleagues on the other side.

And with that, I will turn it over to Senator Wyden.

[The prepared statement of Chairman Hatch appears in the appendix.]

OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

Senator WYDEN. Thank you very much, Mr. Chairman.

Mr. Chairman, respectfully, I have to disagree strongly with your characterization that, on this side of the aisle, our work was a charade, theater—I think you may have had some stronger words with respect to taxes.

On this side of the aisle, we repeatedly called for this committee to use the process that we used for the CHIP bill, where we extended it for 10 years. Family First, our historic transformation of the foster care system, the CHRONIC Care bill—those were major pieces of legislation. And at every step along the way, there was bipartisanship.

The CHAIRMAN. There was.

Senator WYDEN. There was not, respectfully, Mr. Chairman, an ounce of that on this tax bill.

And I see my friend Senator McCaskill here. Time after time after time Senator McCaskill said, "The tax code is broken, folks; we have to have a bipartisan change." She and a number of our colleagues led an effort where at least 15 Senate Democrats—and I was proud to join them—came together and said, "Let us do this like we did when Democrats and Republicans got together with President Reagan." There was not any effort like that.

And, Mr. Chairman, as you know, I wrote two full bipartisan tax reform bills—they are the only bipartisan tax reform bills to this day—with a member of the President's Cabinet, former Senator Dan Coats, who sat down at the end of the dais.

So you know of my fondness for you, Mr. Chairman.

The CHAIRMAN. I do.

Senator WYDEN. I just have to respectfully say that the idea that on this side of the aisle there was nobody interested in bipartisanship—my two colleagues—Senator Whitehouse was not on the committee at the time—but my two colleagues who are here repeatedly said, "Let us try to find a way to come together."

And I cannot put it any more specifically than this, Mr. Chairman: the process used for tax reform was light years away from what we did for CHIP, from what we did for CHRONIC Care, from what we did for Family First. And I think our country will regret it.

My view is that this tax law is shaping up to be one of history's most expensive broken promises. It will probably go right up there with the quote, "We will be greeted as liberators."

The ink on the new law is barely dry, but there are already calls for a second round of tax cuts. Colleagues, in my view, lawmakers ought to think twice about big, new promises if they have not delivered on the ones they have already made.

So let us take stock of the early returns on the new tax law. One of the biggest selling points, maybe the biggest, was the promise from the administration that workers would get, on average, a $4,000 wage increase. The reality is the new law has done little for folks who work so hard to earn a wage and cover the bills. That is the overwhelming majority of individual taxpayers. It has barely registered with them at all. If the law really was delivering huge benefits to working families, you would never hear the end of it on the airwaves.

When you are talking about legislation that is going to cost nearly $2 trillion when it is all said and done, it is not easy to fail at your stated goal so spectacularly. And that is why it is not exactly surprising this has not cranked up a whole lot of excitement among working families. It has not gone unnoticed by everybody.

Just yesterday, the nonpartisan scorekeepers at the Joint Committee on Taxation released a new analysis of the pass-through tax break. Back when I was coming up, the pass-throughs were for small businesses. They were for the corner neighborhood shop. For those who do not spend their days poring over all the finer points of the tax debate, that is what everybody thought was a small business. In fact, in some ways some people talked about it, you would think it only applied to corner-store owners whose names were literally "Mom and Pop."

Well, according to the new figures from the Joint Committee on Taxation, nearly half of the benefit of the new pass-through break is going to go to taxpayers with incomes of a million dollars or more. That is not the kind of garage and diner and community pharmacy the phrase "small business" brings to mind.

Once again, the fortunate few are reaping the benefits.

New data out last week showed that in just the first 3 months of this year, the biggest Wall Street banks pocketed $3.6 billion as a result of the new tax law, more than a billion dollars going to the banks each month. But millions of families are looking around and wondering when they are going to see those wage hikes that they were promised.

Finally, a few weeks ago, the committee held our annual hearing on tax filing season. There was a lot of discussion about what the new tax law means for small business, which is a topic we are going to focus on again today.

I understand one of our witnesses will testify to one of the challenges a whole lot of small businesses are facing: they owe estimated tax payments. But they are in the dark about what they are going to owe this year under the new rules. In our witness's case, I am told there was some back-of-the-envelope math used to figure this out.

What I hear at home is that there are a whole lot of businesses that cannot make an estimate of their estimated payments. For them, the new rules pertaining to pass-through status are the definition of complexity.

So here is what this all means. The facts do not resemble the promises when it comes to this tax law. Bottom line for most Americans, particularly hardworking people who do not have accountants and lawyers scouring the code to exploit loopholes: the new tax law has turned out to be an awfully expensive dud. The big promises they heard about wage increases and a new era of simpler tax rules have not come to pass.

So in my view, lawmakers ought to keep their promises when it comes to tax cuts before rushing ahead with a second bill.

So let me close where I began, Mr. Chairman.

Mr. Chairman and colleagues, I do not think the tax debate had to end the way it did. I have noted what my colleagues here have done. I have noted my involvement, years and years of involvement, Mr. Chairman, of bipartisanship, real bipartisanship like we saw when Democrats and President Reagan got together.

And certainly, this process turned into a one-sided exercise which does not resemble the way the committee worked on those breakthrough bills this year, and it certainly is light years away from the great tradition of bipartisanship that this committee has always been all about.

So I close by saying, Mr. Chairman, I hope this committee reverts to tradition on taxes. I hope we revert to our tradition of spending the time in meetings together—we did not have a single such meeting in this instance—to try to deal with the complexity of tax reform and to ensure that it is built around what the American people were promised, which is helping the middle class and giving everybody in America the opportunity to get ahead.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. I just wanted the bipartisanship myself. But in July, 45 Democratic Senators sent us a letter effectively saying that they would not participate in tax reform, which is pretty amazing to me. All I can say is that we have differing viewpoints here, but I am glad we got tax reform done, and the economy is much better off because of it.

Senator WYDEN. Mr. Chairman, can I just respond to that?

The CHAIRMAN. Sure.

Senator WYDEN. And I will be very brief.

The CHAIRMAN. Sure.

Senator WYDEN. The first sentence of the letter that you are citing, and I would like to read it, is, "We are writing to express our interest in working with you on bipartisan tax reform." That was the first sentence of the letter, and it was repeated by these Senators again and again and again. And it happens to be what we believe now. And that is why I hope we revert to tradition.

The CHAIRMAN. Well, I hope we can resolve these problems and work together in the future, that is for sure.

I would like to extend a warm welcome to each of our four witnesses today. I want to thank you all for coming. I will briefly introduce each of you in the order you are set to testify.

First, we will hear from Mr. David Cranston, Jr., a business owner in western Pennsylvania. Because he is from his home State, Senator Toomey has asked that he be able to introduce Mr. Cranston.

Senator Toomey, please proceed.

Senator TOOMEY. Thank you very much, Mr. Chairman.

It is my pleasure to be able to welcome one of my constituents, David Cranston, to the committee.

David Cranston is the president of Cranston Material Handling Equipment Corp. This is a third-generation small business in Robinson Township, PA, in western Pennsylvania, founded in 1957 by Mr. Cranston's grandfather. Mr. Cranston has worked at the company since 1983, and he now leads a team of seven full-time and two part-time employees.

Cranston Material sells and installs material handling and storage equipment to manufacturing companies to help them store and lift the products that they make.

So thank you, Mr. Cranston, for coming today to share how tax reform is helping your business and workers. This is consistent with the story I have heard from small businesses across the commonwealth over the last 4 months, that tax reform is working. And, Mr. Cranston, the fact is, businesses like yours are really the backbone of our economy, but they are also the backbone of our community.

So I look forward to hearing your testimony. And thank you for joining us today. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

We are happy to welcome you here.

The second witness on our panel is Mr. David Kamin, a professor of law at New York University School of Law. Professor Kamin has written on a range of areas, including retirement security, taxation of capital, tax planning, and budget sustainability. Prior to joining NYU, Professor Kamin worked in President Obama's administration as Special Assistant to the President for Economic Policy. Before that, Professor Kamin served as Special Assistant and later Adviser to the Director of the U.S. Office of Management and Budget.

Professor Kamin earned a B.A. in economics and political science from Swarthmore College and later his J.D. from the NYU School of Law.

Next to speak will be Ms. Rebecca Kysar, a professor of law. She is at the Brooklyn Law School, where she teaches and researches in the areas of Federal income tax, international tax, and the Federal budget and legislative process. Professor Kysar's articles have appeared in the *Cornell Law Review,* the *Iowa Law Review,* the *Notre Dame Law Review,* and several others. Prior to joining Brooklyn Law School, Professor Kysar practiced at Cravath, Swaine, and Moore, one of our more prestigious law firms.

Professor Kysar received her B.A. from Indiana University and graduated from law at Yale University, where she was a senior editor of the *Yale Law Journal* and a Coker teaching fellow.

Finally, we have Dr. Douglas Holtz-Eakin, the current president of the American Action Forum. We are really happy to see you again and to have you here.

During 2001 and 2002, Dr. Holtz-Eakin served as the Chief Economist of the President's Council of Economic Advisers, where he helped craft policies addressing the recession and aftermath of the terrorist attacks of September 11, 2001. From 2003 to 2005, he acted as the sixth Director of the nonpartisan Congressional Budget Office, where he addressed numerous policies, including the 2003 tax cuts, the Medicare prescription drug bill, and Social Security reform. Dr. Holtz-Eakin has built an international reputation as a scholar of applied economic policy, econometric methods, and entrepreneurship.

He began his career at Columbia University in 1985 and moved to Syracuse University from 1990 to 2001. At Syracuse, he became Trustee Professor of Economics at the Maxwell School, chairman of the Department of Economics, and associate director of the Center for Policy Research.

Dr. Holtz-Eakin received his B.A. from Denison University and his Ph.D. from Princeton University.

I want to thank you all for coming and testifying today.

Mr. Cranston, we will begin with your opening remarks.

STATEMENT OF DAVID K. CRANSTON, JR., PRESIDENT, CRANSTON MATERIAL HANDLING EQUIPMENT CORPORATION, McKEES ROCKS, PA

Mr. CRANSTON. Good afternoon, Chairman Hatch, Ranking Member Wyden, and members of the Senate Finance Committee.

My name is David Cranston, and I am the president of Cranston Material Handling Equipment Corporation, a small business located in western Pennsylvania just outside of Pittsburgh. And I appreciate the opportunity to represent my company and the National Federation of Independent Business at this hearing today.

NFIB is the Nation's leading small-business advocacy organization. Founded in 1943, its mission is to promote and protect the rights of members to own and operate and grow their businesses. NFIB represents roughly 300,000 independent business owners located throughout the United States, including over 13,000 in my home State of Pennsylvania.

My company is truly a small business, with seven full-time and two part-time employees. We are an S corp that sells equipment to manufacturing companies to help them store and lift the products that they are making. I am here today to share with you how the Tax Cuts and Jobs Act is having a positive impact on businesses as small as mine.

One of the biggest challenges facing small business is growing the amount of capital that is needed to operate and expand. To a small-business owner, capital, the cash that we have available to us, is the lifeblood of the business. We use it to purchase equipment, buy inventory, meet loan obligations, buy new products, hire and train employees, finance receivables, and simply create enough liquidity for the business to operate day to day.

When you think of all the purposes it is used for, you would not think it should be so hard to come by. But I can tell you it is unbelievably hard to accumulate. It is particularly hard to have enough excess capital available in your business to take advantage of new growth opportunities. The good news is that, for many small passthrough businesses like mine, the Tax Cuts and Jobs Act provides us with substantial help in accumulating capital in order to grow.

Like many business owners, I pay estimated taxes quarterly. In order to pay those taxes, I take cash out of my company each quarter. Those payments suck my working capital right out of my business quarter after quarter.

Under the Tax Cuts and Jobs Act's new section 199A, I now qualify for a 20-percent deduction on my pass-through income. In real terms, this means I will be able to keep between $1,200 and $2,500 a quarter in my business that I otherwise would have to have paid in taxes. The ability to keep $5,000 to $10,000 a year in my company is a big deal to a small-business owner like myself.

Moreover, and probably more importantly, the cumulative effect over several years will be substantial. These savings will allow me and the millions of small businesses like mine to be in a better position to take advantage of opportunities to grow or improve our operations. In fact, since the first of the year, I have decided to expand into a new product line. To launch this new product, I need to purchase new equipment, invest in training, and build a new website. The tax savings put me in a better financial position to self-fund this new product.

My experience is not unique. Recent NFIB research has tracked record numbers of small businesses across the country saying that now is a good time to expand.

The vast majority of businesses throughout the country are small businesses like mine with a handful of hardworking employees serving their customers to the best of their abilities. Business owners are always looking at new ideas and wanting to take advantage of new opportunities, but often we cannot do so if we do not have the cash to reinvest in our businesses.

Another effect the Tax Cuts and Jobs Act has had on me is to increase my optimism for the future. We, like many small businesses, sell our products and services primarily to larger corporations. I can tell you that my optimism that the economy has a real opportunity to continue improving was dramatically increased.

In January of this year, I read numerous articles in *The Pittsburgh Post-Gazette* and our local business paper about one corporation after another announcing that they are increasing capital spending because their taxes are being reduced.

It is often stated, and in my experience it is true, that the products and services large businesses purchase every day greatly impact the community or the region in which they find themselves.

Again, my personal experience is reflected in NFIB survey data showing some of the highest levels of small-business optimism since NFIB began conducting a survey 45 years ago. When business owners are optimistic, they are much more inclined to invest in growing their businesses.

The Tax Cuts and Jobs Act has not only reduced taxes for businesses like mine, it has created an environment where more business owners feel confident to take cash from the tax savings and invest it back into their businesses. For these reasons, I believe the Tax Cuts and Jobs Act is spurring business investment and, therefore, has set the stage for increased economic growth for years to come.

I feel so strongly about the benefits of this law that I was willing to take 2 days away from my own company to come down and share with you what I am seeing and how my business is being positively impacted. My testimony is not theoretical presentation of data, but it is actually what I am experiencing and hearing from other business owners who are making decisions based on the changes brought about by this legislation.

Thank you for giving me this opportunity to testify.

The CHAIRMAN. Well, thank you; we appreciate your testimony.

[The prepared statement of Mr. Cranston appears in the appendix.]

The CHAIRMAN. And we will turn to you, Mr. Kamin.

STATEMENT OF DAVID KAMIN, PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. KAMIN. Thank you, Chairman Hatch, Ranking Member Wyden, and members of the committee, for the opportunity to come here to discuss the recent tax bill. My name is David Kamin, and I am a professor of law at NYU, where my work focuses on Federal budget and tax policy.

The 2017 tax act is a lost opportunity to overhaul the tax code for the better. Our tax system had a number of significant flaws before this bill, and while the legislation makes some worthwhile targeted improvements, its overall thrust is to go in the wrong direction along some of the most important dimensions.

First, the legislation is expected to add $1.9 trillion to the deficit over the next decade, according to the latest estimate from the Congressional Budget Office, and that includes the effects of the tax cuts on the economy. Those who say this legislation will pay for itself or come anywhere close to doing that are speaking contrary to all credible evidence. This bill will not leave us with enough revenue to run a 21st-century government and adequately care for an aging population. As a result, it puts at risk commitments, investments, and services that are important for low- and middle-income Americans.

Second, the legislation provides the largest benefits to the highest-income Americans and seems likely to leave typical families worse off in the end. As a share of income in 2018, the bill gives an average tax cut to the top 5 percent that is over twice as large as for a typical family in the middle class and over nine times as large as for a typical low-income family. That does not even count the negative effects of millions of low- and middle-income Americans no longer having health insurance as a result of the bill's repeal of the individual mandate.

And unfortunately, the picture I just painted, where all income groups get a tax cut but the top wins more, is too optimistic when we look out over time. Eventually, this tax cut will have to get paid for, and there is real risk that, when that happens, it will be low- to middle-income Americans who will be the ones bearing much of the burden of the tax cuts as in the budget plans put forward by the current administration, as well as this Congress.

Third, the legislation is a bonanza for tax planning, by preferentially taxing certain kinds of income and drawing complex, arbitrary, and unfair lines. In the reformed system, corporations can be used as tax shelters to avoid the top individual rate. Alternatively, people in the right sectors or with good-enough tax counsel can take advantage of the new deduction for certain kinds of pass-through businesses, but only very certain kinds.

This pass-through deduction for people earning business income that is taxed at the individual level represents the very worst kind of tax policy: regressive, complex, picking winners and losers in different sectors haphazardly, and then generating significant incentives for people to rearrange their businesses to try to become eligible. For those who say this is necessary to help America's small businesses, I say there are much better ways than a provision this flawed and this skewed to the highest-income Americans.

These kinds of tax-planning opportunities throughout the bill mean the legislation seems likely to lose even more revenue and give even more benefits to the best-off than initial estimates suggest.

Fourth, supporters of the tax legislation will often justify the bill in terms of a rise in economic growth, but that effect is very small, could be better achieved in other superior ways, and does not change the core conclusions that the legislation is fiscally unsustainable and disproportionately helps those at the top, likely at the expense of low- and middle-income workers.

In discussing the growth effects of this tax bill, it is important to focus not on what theoretical tax reforms might do, but on what this one did. And credible independent estimators from CBO to JCT to the IMF to Penn Wharton find an effect on annual growth that is 0.1 percentage point per year or less over the next decade. That is well short of the 0.35 percentage point per year that the administration claimed would result from the corporate tax reform alone to help offset the costs of this bill.

To give one other comparison, Robert Barro and Jason Furman recently found that simply extending bonus depreciation at one-sixth of the cost of this bill would have had a similar growth effect.

We can and must do better. Tax reform should raise more revenue, not less. It should ask more, especially from the top, not less. It should reduce arbitrariness and complexity to create an even playing field across people and businesses, rather than the opposite. And it should reduce unnecessary distortions and preferences that hold back the economy.

The 2017 law made some targeted changes that went in the right direction, such as limiting the corporate preference for debt financing, but the plan overall fails to meet the most important goals we should have for our tax system. This means true tax reform should continue to be on the agenda, a reform that undoes the damage of this bill and takes our system in the right direction.

[The prepared statement of Mr. Kamin appears in the appendix.]

STATEMENT OF REBECCA M. KYSAR, PROFESSOR OF LAW, BROOKLYN LAW SCHOOL, NEW YORK, NY

Ms. KYSAR. Good afternoon, Mr. Chairman, Ranking Member Wyden, and members of the committee. My name is Rebecca Kysar, and I thank you for the opportunity to testify on the recent tax legislation.

My primary topic today is international tax, but before addressing international, I would like to make a few comments about the legislation generally.

One of the most unfortunate aspects of the legislation is its immense cost. By adding to the deficit over the next decade by $1.9

trillion, the legislation leaves the country with fewer government resources just as social needs and demographic shifts begin to demand much more of them. This figure, however, is likely to be a low estimate of the legislation's long-term effects. Many of the revenues are front-loaded into the 10-year budget window. Moreover, the estimate assumes that several far-off tax increases will go into effect, a perhaps unlikely event.

The costs will also likely be much greater if the law's expiring provisions or a portion of them are made permanent. Numerous tax-planning opportunities that have been created by the new legislation will lose vast amounts of revenue. Finally, if the new U.S. taxing environment spurs other countries to engage in tax competition, as one would expect, this might reduce the anticipated growth effects of the legislation.

Additionally, the need for international tax reform was the impetus for the legislation, but became the proverbial tail wagging the dog. In an attempt to deal with base erosion and profit-shifting strategies of multinationals, we have instead created new ones on the domestic side. For instance, the new pass-through deduction, which was aimed at creating parity with the new lower rate available on corporate income, punishes workers in certain industries, substituting congressional judgment for market discipline and allowing for significant tax-planning and revenue-losing opportunities.

Given the enormous loss of government resources and gamesmanship the legislation will generate, I think it is fair to ask a lot of the new international regime. Yet the international provisions fall short, mostly due to avoidable policy choices.

Let me say at the outset that the baseline against which I am assessing the international provisions in the new law is not the old, deeply flawed system, because that bar is simply too low. Judged against possible alternative policies that could have been enacted, however, the new international provisions look more problematic.

In my testimony, I concentrate on four serious problems created or left unaddressed by the regime. First, the new international rules aimed at intangible income incentivize offshoring. GILTI is not a sufficient deterrent to profit-shifting, because the minimum tax rate is, at most, half that of the 21-percent corporate rate. Also, the manner in which the foreign tax credits are calculated under the new minimum tax regime encourages profit-shifting.

Furthermore, the GILTI and FDII regimes together encourage firms to move real assets and accompanying jobs offshore, because of the unfortunate way they define intangible income. Also, the instability of the legislation overall, due to the partisan manner in which it was passed and the fact that it is deficit-financed, means companies may be also unwilling to rely on some of the law's incentives to keep investment here.

Second, the new patent box regime will likely not increase innovation, it causes WTO problems, and can be easily gamed. The economic evidence on even better-designed patent box regimes than this one is mixed. Moreover, because the FDII reduction is granted to exports, it likely qualifies as an impermissible export subsidy under our trade treaties. Firms may also be able to take advantage of the FDII deduction by disguising domestic sales as tax-preferred export sales.

Third, the new inbound regime has too-generous thresholds. This allows multinationals with significant revenues and assets to engage in a great deal of profit-shifting. Also, firms can avoid the regime entirely by packing intellectual property with cost of goods sold.

Finally, and most importantly, the new regime falls short of true international tax reform. The regime unwisely retains the place of a corporation as the sole determinant of corporate residency and subscribes to the fiction that the production of income can be sourced to a specific locale. These concepts should be updated and revisited, and new supplemental sources of revenue, like consumption taxes, should be seriously explored to make up for a shrinking corporate income tax base.

A longer-term objective should be to reach international consensus on how to tax businesses selling to a customer base from abroad. This should include serious reexamination of our double-taxed treaty regime which reinforces ancient conceptions of how income should be allocated among nations.

Together, these problems underscore the necessity of continuing to improve the tax rules governing cross-border activity. It would be a serious mistake for the United States to become complacent in this area. With the benefit of clear-eyed analysis, I am hopeful that the new legislation will serve as a bridge to true reform in the international tax area, rather than a squandered opportunity.

Thank you again. I am happy to answer any questions.

Senator WYDEN [presiding]. Ms. Kysar, I know we will have questions.

[The prepared statement of Ms. Kysar appears in the appendix.]

Senator WYDEN. At the chairman's desire, we are going to have you, Dr. Holtz-Eakin, testify, and then the chairman would like us to take a brief recess. And he ought to be back fairly shortly after he votes and after the recess.

Dr. Holtz-Eakin, welcome.

STATEMENT OF DOUGLAS HOLTZ-EAKIN, Ph.D., PRESIDENT, AMERICAN ACTION FORUM, WASHINGTON, DC

Dr. HOLTZ-EAKIN. Ranking Member Wyden, members of the committee, thank you for the privilege of being here today.

The United States arrived in 2017 with a serious growth problem. The consensus forecast of 2-percent growth implied that the standard of living would double roughly every 70 years, in sharp contrast to the experience from the post-war up to 2007, where the standard of living doubled every 35 years on average—one working career. And indeed, in 2016, it was not even that good. For those households that worked full time for the full year, they saw exactly zero increase in their real income.

Now, taxes are not everything to do with economic growth, but better tax policy can improve performance and be part of a pro-growth strategy. And some of the key elements of the Tax Cuts and Jobs Act indeed do this. Central to the reforms are the corporate provisions which moved the U.S. from a worldwide to a more territorial system, cut the corporate rate to an internationally competitive 21 percent, instituted a patent box to diminish incentives to have valuable intellectual property offshore, and provided expensing for the first 5 years for shorter-lived equipment investment.

These incentives stand in strong contrast to what was then the existing law. U.S. corporate law at the time sent a very simple message to our most successful companies. It said, if you have valuable IP, park it offshore, maybe take your production with it. If you make any money, by all means, keep it offshore. And should you be involved in a cross-border merger and acquisition, move the headquarters offshore.

The Tax Cuts and Jobs Act reversed all of that, sending the message that you want to invest, innovate, hire, and raise real wages in the United States. Those provisions, the ones that will lead to capital deepening, higher productivity, and higher compensation, are the most important distributional aspects of this law, not the ones that are actually in the tax brackets or rates, and offer the greatest hope to the middle class that has suffered for so long.

If you are going to do that kind of a reform for the corporate sector, you need to try to make comparable reforms for pass-through entities; that is more than one-half of business income. That requires, first of all, demonstrating that you have some investment in your pass-through. And there is a set of tests for whether you have enough employees, or assets and employees, to show evidence of having made substantial investment in that company. If so, you get a comparable preferential treatment of a return to capital to balance the tax scales.

And there are also important improvements made on the individual side, most notably lower rates and a larger standard deduction. All of these offer the prospect of improved economic performance and a better-functioning tax code.

Now, the topic of this hearing is early assessment of the success, and I just want to emphasize at the outset some caveats that come with trying to do that. First and foremost, the law is literally a work in progress with a lot of work necessary by the U.S. Treasury to provide the rulemaking so that firms and individuals understand how the new law will affect them in great detail.

The second is that it comes with these huge uncertainties. Never before and never again will the largest, most successful market economy on the globe move from a more worldwide to a more territorial tax system. It is quite literally uncertain how fast those impacts will happen, how large they will be. And anyone who forecasts with great certainty in this environment, I think ought to take a grain of salt there.

But we can see some things, right? There are some mileposts that one would expect, and we can look at them.

The first thing you would expect to see would be responses in the form of confidence, and we have seen sharp increases in household confidence, in small-business confidence, as was mentioned by our first witness, and also in CEO confidence surveys. So immediately in the aftermath to the tax law, we saw improved confidence.

We should also see changes in plans. And we saw sharp changes in the CapEx plans of U.S. corporations. For example, the NFIB index shows more interesting CapEx. A Morgan Stanley index of capital plans by firms is at its all-time high. And those early signs are quite promising.

Further down the road, those early signs have to turn into actual improvements: improvements on the household side in their capacity to spend with higher real wages, their labor force participation due to better incentives, and, as a result, household spending. And on the business side, those plans have to turn into orders for durable goods. Those durable goods have to turn into improved investment in the U.S. economy and, ultimately, higher productivity.

That is the task, and we shall see if it comes to fruition. And I thank you for the chance to be here today and look forward to your questions.

Senator SCOTT [presiding]. Thank you very much for being here this afternoon.

[The prepared statement of Dr. Holtz-Eakin appears in the appendix.]

Senator SCOTT. Our goals on tax reform last year were many. One was to spur economic growth. We did that; the last couple of quarters we were significantly higher than we saw in the last decade. Restore American competitiveness—moving from 35 percent to 21 percent provides our companies with a greater opportunity to succeed in a global economy. Create jobs—since the passage of the tax reform act, we have seen over 600,000 jobs created put upward pressure on wages. We have also seen wages increase.

However, one of the criticisms of the benefits for pass-through businesses like yours, Mr. Cranston, is that it is hard to quantify the tangible benefits that you are receiving.

Is it truly hard to quantify the benefits? Or is it simply a straightforward process for an S corporation like yours?

Mr. CRANSTON. I found it to be a straightforward process. Most business owners are astute individuals. We buy and sell things. We mark them up, we discount them. And so when I learned that section 199A was going to allow me to deduct 20 percent of the income that flows to me on my K–1, it was very easy for me to look back at the K–1 that I had just received in the last 60 days and say, okay, if I take off 20 percent of that income and I know my approximate marginal tax break, I can very quickly ascertain what my tax savings are going to be; *i.e.,* how much money I can retain in my business and invest in my business this year.

Senator SCOTT. Excellent. One of the parts of the tax cuts bill that everyone seemed to celebrate was the doubling of the Child Tax Credit from $1,000 to $2,000 and making more of the Child Tax Credit refundable, up to $1,400.

Have you, Mr. Cranston, benefited from that?

Mr. CRANSTON. Yes, I will benefit from that as I still have a teenager at home, and I am looking forward to taking that increased deduction.

Senator SCOTT. Excellent. Another part that came from a bipartisan coalition of Senators—from Senator Coons to Senator Booker to myself, all supportive of the Investing in Opportunity Act, which was a part of the tax package—provided Opportunity Zones to be created to attract more private-sector capital back into some of the distressed communities.

More than 50 million Americans live in distressed communities throughout the country.

Using the New Markets Tax Credit as the definition of distressed communities, we were able to figure out where to target the resources for further development in distressed communities. In other words, we provide a deferral of your capital gains tax up to 10 years if you will make a long-term investment in some of these distressed communities as a way to spur economic activity and hopefully create jobs and opportunities in these communities.

Dr. Holtz-Eakin, would you talk about the benefits that could happen as we bring more capital back into some of the distressed communities throughout this country and how that could provide more parity for folks who are desperately looking for hope?

Dr. HOLTZ-EAKIN. Well, Senator, I think that is a really important provision. One of the striking features of the recovery was not just the fact that it was so slow by historic standards, but it was so uneven geographically.

And indeed, over longer periods, we have seen sort of social mobility in the U.S. stay roughly the same, on average, as it was 50 years ago, but sharp differences across geography in access to that social mobility.

So again, when you have problems, no single policy is a magic solution, but you need to point all the policy levers in the direction of solving those problems, and this is an important provision to do that.

Senator SCOTT. Thank you.

Senator Wyden?

Senator WYDEN. Thank you.

Mr. Chairman, good to see you in that seat.

And let me, if I might, start with this new finding of the Joint Committee on Taxation. And I want to do this because I know that Doug Holtz-Eakin has always talked about respecting the views of the independent scorekeepers. We have two of them: the Congressional Budget Office and the Joint Committee on Taxation.

I think, to your credit, you said that again this week you need to respect the views of these independent scorekeepers.

So according to one of the independent scorekeepers, the Joint Committee on Taxation just found that 52 percent of the benefit from the pass-through deduction—this is the one that is supposed to go to small businesses—accrues to Americans earning a million dollars or more per year, the top 0.3 percent of Americans.

Now, I am going to be spending a big part of next week going to town hall meetings in rural Oregon, in eastern Oregon. And I can tell you, in those small communities on Main Street in eastern Oregon, when you think Main Street, you do not think of millionaires.

So I would like the panelists' views on that. Maybe we start with you, Mr. Kamin, you Ms. Kysar, bring you in, Dr. Holtz-Eakin; all of you are welcome to do it.

But I wanted to start there because of Dr. Holtz-Eakin's view that around here, at some point, you have to respect the independent scorekeeper.

So why don't we go to you two first, Mr. Kamin, Ms. Kysar, and then you, Dr. Holtz-Eakin, and, Mr. Cranston, you are welcome to come in at any point. Because I think this is a pretty significant finding. And in my part of the world, people do not think that millionaires are the regular, garden-variety small business on Main Streets in eastern Oregon.

Mr. Kamin, Ms. Kysar.

Mr. KAMIN. Sure. So I think that is reflective of the lack of wisdom in the 199A, the 20-percent deduction for pass-through income.

So the JCT finding—which shows that a little under half of the benefit this year will go to the .3 percent of Americans making over a million dollars—demonstrates both the regressivity of the provision, that the benefit is going to be highly concentrated to the very, very top, but does not even capture the full lack of wisdom in what this provision does. It draws a bunch of very, very haphazard lines in the sand as to who gets it and who does not.

So if you, for instance, are a real estate developer, an owner of an oil and gas firm, a retailer, you probably get the deduction. If you are a doctor, a lawyer, a consultant, you apparently do not.

And those are the exact kinds of lines that tax lawyers and accountants are meant to try to game, which I expect to occur, and there are already reports that people are spending a lot of time trying to do it. So it is both regressive and complex and will lead to a lot of tax planning. And there are far better ways to help America's small businesses.

Senator WYDEN. Ms. Kysar, I am going to use up my first round on my first question. We will get Ms. Kysar and then give our other witnesses a chance.

Ms. KYSAR. Yes, I think that the regressivity of the provision is very unfortunate. You could have done a lot of other things with that money. You could have expanded the Earned Income Tax Credit, for instance.

The horizontal equity problems are also quite apparent, as David mentioned. There is lots of line-drawing, punishing certain industries over others and also punishing workers. Workers do not get the benefit of this provision, for the most part.

And so, therefore, I think it is overall a terrible tax policy.

Senator WYDEN. Dr. Holtz-Eakin?

Dr. HOLTZ-EAKIN. So this is the foundation of the economics of the bill, which improved incentives to save, invest, and work, which the CBO credits in its writeup on the bill.

There on the corporate side, it would be incomplete to stop with just a cut to the corporation and not follow through the economics. It is incomplete to stop and identify just the owner of a corporation and not look at, what are the ultimate impacts on their investment plans and on the wages of the people they hire and pay?

So we do not know who those people are, we do not know what tax bracket they fall in, and we cannot ultimately judge the regressivity in the way the Joint Committee did.

Senator WYDEN. I want to let you go on, Mr. Cranston.

Dr. Holtz-Eakin, as you know, these are the people whom you said we ought to put in charge. So you say we cannot really judge anything, but those are the people you said last week we ought to put in charge and we ought to respect.

So I want to let Mr. Cranston have the last word, and we are going to move on. But that was the reason I brought it up.

Mr. Cranston, last word for you.

Mr. CRANSTON. Sure. As I look at this report, what I see is 17 million small-business owners who are going to be able to see their taxes reduced because of the pass-through.

And to me, if you have 17 million business owners who have more capital to invest, it cannot help but grow the economy.

Senator WYDEN. And I will just close this round by saying we have a tax cut here that the independent scorekeepers have said disproportionately goes to the people at the top. It will involve charging $415 billion to the national credit card just to have the majority go into the pockets of the most fortunate.

Now, in the bipartisan bill that I wrote, we also targeted a lot of relief to small-business people, but nothing resembling giving most of it to the fortunate few.

Thank you, Mr. Chairman.

Senator PORTMAN [presiding]. Senator Grassley?

Senator GRASSLEY. Yes. I am going to put a statement in the record. I wish I had time to read all the examples I have from Iowa employees, because their employers are giving them pay raises and increasing their benefits and things like that as a result of the tax bill, so we know that the working men and women of America are benefiting from it.

My first question is to Mr. Cranston.

I appreciate your being here to share your perspective on the tax bill. I have heard many similar stories from businesses in Iowa. In talking with small-business owners in Iowa, I get the sense that they often grow really close to their employees.

Given the investments you are planning to make as a result of the Tax Cuts and Jobs Act, a question: how do you see that benefiting your employees, not just today, but over the long term?

Mr. CRANSTON. Anytime you invest in your business, you are essentially upgrading, you are creating new opportunities. And as we know, the business world is changing very quickly. And if you do not have the capital to invest, then you are going to get left behind, either in new technology or outdated products.

So I see it as not only the ability to grow the business, but to simply do the upgrades that are necessary to keep us competitive so that our employees can continue to thrive and be as productive as possible.

Senator GRASSLEY. Okay.

Dr. Holtz-Eakin, an important aspect of tax reform was fixing our broken corporate tax system. As a result of that tax reform, at least one company, Assurant, has announced that it will no longer invert and will remain a U.S. company.

Several recent Canadian news articles also highlight how U.S. tax reform will make inversion transactions, such as the 2014 transaction involving Burger King and Tim Horton, less likely. One recent article went so far as to say, quote, "The U.S. tax reform will end new corporation inversions in Canada."

Can you speak, sir, to the importance of reducing corporate rates and a shift to a more competitive international tax system in preventing what we consider was a terrible sin by a lot of corporations, which was the inversion transaction?

Dr. HOLTZ-EAKIN. I think we saw every year, you know, the pressure over the inversion transactions. People characterized it as a sin, but it was indeed these companies simply following the incentives of the tax code. There was no way around it.

The New York Stock Exchange, the iconic symbol of American capitalism, is headquartered in the Netherlands because of the tax code. And we needed to change that.

Every other country with which we compete has a territorial system. Every other country with which we compete has a rate somewhere closer to 21 percent. The Tax Cuts and Jobs Act, I believe, has put the inversion planners out of business, and now we are going to make decisions on an economic basis, and that is much better.

Senator GRASSLEY. Okay. And also, a significant reform included in this act was capping State and local tax deductions. So would you speak to how this affected the progressivity of the tax code?

And then before you answer that, I saw one analysis by the Tax Policy Center that said 96 percent of the additional tax from the SALT limitations is borne by the top 20 percent of the taxpayers and 57 percent by the top 1 percent. Does that sound about right?

Dr. HOLTZ-EAKIN. It sounds about right. The States that are more affected by this are high-income States. The people who are affected have to be high-income individuals who are itemizing their deductions and taking advantage of this.

And it is viewed, in narrow isolation, as a very progressive reform.

Senator GRASSLEY. Also to you, Doctor. Since the passage of tax reform and all the positive news that has followed, many who are against the tax bill have been searching for a talking point that they can use to criticize our historic tax reform efforts. The latest talking point has been that the recent stock buybacks are evidence tax reform was all about corporate fat cats.

Of course, what they fail to mention is that millions of middle-class Americans own stocks either directly or through 401(k)s or other retirement plans. In fact, according to the Tax Policy Center, 37 percent of the stock is held by retirement accounts.

Moreover, I feel that critics fail to realize that when a company repurchases stock, that money is not stuffed in the mattress. It frees up dollars that can be reinvested. This, in turn, promotes a type of business expansion and capital investment necessary to help the economy, boost productivity, et cetera, et cetera.

So what are your thoughts on the criticism leveled against stock buybacks? Are they necessarily bad for middle-class Americans?

Dr. HOLTZ-EAKIN. I think the economics of this are very poorly understood. The stock buyback tells you essentially nothing about the impact of the tax reform. That is the first transaction; it is the final transaction that matters. You want those monies ultimately to be invested in valuable tangible and intangible capital that raises productivity and real wages. And you can tell nothing about that from a stock buyback.

Indeed, there is a good case to be made that you want a firm that does not have good investment opportunities to repurchase stock, get the money out of the bad investment opportunities and out into markets where greater opportunities exist.

So I think people should put aside the rhetoric around stock buybacks, let the act work, and judge the final results.

Senator GRASSLEY. Thank you very much, Mr. Chairman.

Senator PORTMAN. Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman.

Let me thank all of our witnesses.

Ms. Kysar, I noticed in your presentation you talked about the need for real reform of particularly our business tax code by talking about consumption taxes. If we want to harmonize with our competitors, the easiest way is to harmonize with other countries in regards to consumption taxes. And as the members of this committee are aware, I have filed a progressive consumption tax that deals also with the progressive nature that a consumption tax can have.

And I would just point out, it would also deal with a lot of the tax treaties and trade issues that you talked about, as well as base erosion. So if we really were serious about reform and harmonizing with the international community for competition, we would have explored that option.

I want to follow up on Senator Wyden's point.

Dr. Holtz-Eakin, I understand why we have the pass-through provisions. You are absolutely right: if you are going to lower the C rate, then the majority of businesses, the overwhelming majority of businesses—you said half the income—but the overwhelming majority of businesses do not pay the C rate.

So to maintain that parity, there was a desire to do something in regards to the pass-through entities. And I fully understand that. What I want to concentrate on and get some view of is how it affects small businesses in our country.

Next week is Small Business Week. I have the opportunity of being the ranking Democrat on the Small Business and Entrepreneurship Committee. I have talked to many accountants who tell me that the pass-through issues and how they can be utilized are a lot easier for companies that have some capacity than for small companies that do not have the tax advisers, do not have the tax planners.

There are ways of dividing your company now into separate entities in an effort to get the pass-through. You did not have that before. If you are truly a small company, you cannot do that. And if you do not qualify for the 20 percent, you will never be able to qualify for the 20 percent.

There are the additional complexities here, uncertainties, et cetera, which small-business owners have a very difficult time dealing with—uncertainty in dealing with the cost of administration.

So I think my question is—in Maryland, the median income, small business income, which is a little bit higher than small businesses generally, according to the SBA, is $52,000.

And Senator Wyden mentioned the Joint Tax Committee report, where 44 percent of the benefits are going to those companies in excess of a million dollars. So it tells me that the overwhelming majority of small businesses in Maryland are not going to be able to take advantage of this pass-through or that the complexities, et cetera, are going to eat up any of the advantages and this is really just an extension of relief going to bigger companies.

And if I can, I think I would like to start with Mr. Kamin, if you would, and get your views on it. And then I have a second question I want to ask.

Mr. KAMIN. Sure. So I think you are entirely right, Senator, that this provision is unduly complex and is likely to burden those especially who have smaller operations and do not have easy access to sophisticated tax counsel.

The very things you are describing—given the way the provision is set up, first, if you are an employee, you do not get it, but on the other hand, for many people, if they become self-employed, independent contractors, they do get it. If you are over a certain income threshold, you then need to begin worrying about lines of business restrictions and what kinds of business you have within your entity. And you might want to split up your entities, you may want to combine them together to try to get access to the provision.

All of this suggests that it is a highly complex provision that was ill-thought through. There were other ways to do this.

First, there did not necessarily have to be a preference for C corps over the individuals. There could have been a better integration between the systems.

Second, you could have allowed businesses to elect to be C corps, which they can do under the current system.

There were a whole set of options which would have been superior to this and would have provided a simpler tax system.

Senator CARDIN. I want to just ask the second question, since the chair is one of our leaders on pension issues.

So let me ask about what I think is one of the unintended consequences of the tax reform. When we have lower rates now, the deferral of income being put into pensions is not quite as great an incentive as it was before this tax bill was passed. And we have found study after study that says for lower-income families particularly, even tax deferral was not enough to get low-income families to save. And that is why we have employer-sponsored plans and we have the Savers Credit.

I am concerned about what impact this tax reform is going to have on retirement savings. And we did not really deal with that in this legislation. I know there are bipartisan efforts, including the efforts of Senator Portman, to deal with this. It seems to me that this tax bill makes it more urgent for us to deal with retirement security, particularly for lower-income families.

Mr. KAMIN. So I agree that there is real need to reform the way that we currently try to help people save for their retirement. The current system is upside-down, providing large incentives to people at the highest incomes who already save enough.

It is far too complicated, with many different accounts that different people can put in, that are available to people, so that it is hard to decide between. So we need a system where you could reform it so that more of the incentive is given to people with lower to middle incomes and also where accounts are simpler, universal, and transferable among employees.

I think it is a major challenge that is very, very worthwhile of Congress taking up.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Senator PORTMAN. Senator Bennet?

Senator BENNET. Thank you, Mr. Chairman. I appreciate it. You look good there. [Laughter.]

And thank you to the panel for your testimony.

Mr. Cranston observed how important it is to have capital when you are a small business, to invest, to upgrade in a way that is necessary to keep pace in the competitive climate that we are in. And I have no doubt that is true for small businesses.

It is also true for countries. And we are today investing 35 percent less, Mr. Cranston, in domestic discretionary spending than we were in 1980. There is a reason why everybody's kid who is going to college now is drowning in debt, because we have not seen fit to make the investment in their education that our parents and grandparents were willing to make for us.

So I have a few questions I want to ask. And I would love it, if I say anything false, Doug, please tell me.

When Bill Clinton was President, I think that was the last time we ran a surplus. Is that correct? And when he left office, it was about $5 trillion over the decade. That was the projected surplus that he had.

I have never lied to you before; I am not today.

Dr. HOLTZ-EAKIN. It was actually projected to be larger. I had to live with——

Senator BENNET. Larger, thank you. Thank you for your candor. It was larger than that when Bill Clinton was in office.

Then George Bush passed two tax cuts in 2001 and 2003, both of which he said would pay for themselves. One of those—he went to fight two wars, one in Afghanistan, one in Iraq, did not ask anybody to pay for those wars. The second tax cut was actually passed after we had invaded Iraq. Is that not correct?

So not only did we not ask people to pay for it, we sent 1 percent of America's kids to fight it and we put it on our credit card. And then just before he left, President Bush, a Republican, passed Medicare Part D through the Congress and did not pay for it. Is that not correct?

Dr. HOLTZ-EAKIN. It was earlier than that, but he did it.

Senator BENNET. All of which adds up to the fact that when you combine that with the economy that tanked during the Bush administration, Barack Obama inherited a $1.2-trillion deficit. He did not inherit a surplus.

In fact, in January before he was sworn in as President, the deficit was $1.2 trillion, was it not? And at its worst, in the worst recession since the Great Depression, when we had 10-percent unemployment, the deficit got to $1.5 trillion, right? That is where we were. Surplus with Clinton, Obama inherited a deficit——

Senator MCCASKILL. Be sure the witness says his answer aloud.

Senator BENNET. Okay.

Senator MCCASKILL. The record cannot read a nod.

Senator BENNET. Okay. That is correct?

Dr. HOLTZ-EAKIN. I nodded "yes."

Senator BENNET. Thank you. So a surplus under Clinton, a $1.2-trillion deficit handed to President Obama. Before he was sworn in, that went to $1.5 trillion in the worst recession since the Great Depression.

These guys did not lift a finger. They called the President a Bolshevik and a socialist, and they said his plan was to take over America. The Tea Party was saying things like $1 trillion and climbing, now, that is a lot of change; DC, find another country to pillage and plunder; save the children, stop spending their money; give us liberty, not debt. This is what they were saying, and that is what these guys were responding to.

And then when Barack Obama left, he left with about a $540-billion deficit. Is that not correct?

Dr. HOLTZ-EAKIN. Yes.

Senator BENNET. Yes. Thank you. And now the projected deficit for next year is what?

Dr. HOLTZ-EAKIN. Eight hundred forty billion dollars for 2018.

Senator BENNET. About a trillion dollars.

Dr. HOLTZ-EAKIN. Two years from now, it will reach a trillion.

Senator BENNET. It will be a trillion dollars at full employment. That is what a Republican President has delivered to the Tea Party. That is what a Republican Senate has delivered to the Tea Party. And that is what a Republican House of Representatives has delivered to America: a trillion-dollar debt.

None of these tax cuts was paid for; virtually none of them was paid for. It is all debt that is put on the shoulders of the next generation. They will go home and claim to be fiscally responsible. I do not know how. I do not know how that narrative continues to be made. But the facts are very clear here.

And I wonder whether the panel, Mr. Kamin or Ms. Kysar, whether you have any reaction to anything I just said, in particular, what sense there is in our being the only industrialized country in the world that is actually projected to have its deficit go up next year rather than down.

Ms. KYSAR. I think it is unfortunate we passed these tax cuts right when the economy was at full or near full employment. We have the tax cuts being deficit-financed. We have all of these distortions and games that we have been talking about that taxpayers can play to take advantage of them.

And so all of these factors I think are going to reduce the growth from the tax cuts, not to mention the fact that the legislation itself will be unstable because of the partisan manner in which it was passed.

So I think it is a big concern. I think that the deficit effects are going to impact how we can expect the tax cuts to perform as an economic matter.

Senator BENNET. Mr. Kamin?

Senator PORTMAN. You can answer this one more time.

Mr. KAMIN. Okay; sure.

Senator BENNET. No, that is okay. I will wait for a second round.

Senator PORTMAN. Senator Menendez?

Senator MENENDEZ. Thank you. Thank you all.

Look, the rising costs of health care, prescription drugs in particular, have squeezed middle-class families, forcing many to choose between their mortgage and their medicine. But despite seeing their corporate tax rate drop nearly 40 percent and getting an even lower rate on their foreign earnings, the drug companies have done nothing to lower the costs of prescription drugs. In fact, many have actually gone about increasing prices for some of their most profitable drugs, with one study identifying 1,300 drug price hikes this January.

Pharmaceutical giant AbbVie announced it would increase the price of Humira by nearly 10 percent. Celgene hiked up the price of two of its cancer drugs by 9 percent each.

Indeed, rather than investing their multi-billion-dollar windfall back to their customers and workers, the top five pharmaceutical companies have announced $45 billion in stock buybacks that disproportionately benefit corporate CEOs and very wealthy shareholders. Pfizer announced a $10-billion stock buyback late last year. Celgene gave their CEO and shareholders a $5-billion Valentine's Day gift this February 14th. And AbbVie doubled that amount a day later.

So, Professor Kamin, do you see any indication that this trend will change? Do you believe that the $1.5-trillion corporate tax break will considerably reduce prescription drug prices?

Mr. KAMIN. Given what was in this bill, I do not see any reason to think that this would have an effect on prescription drug prices to try to reduce them. I think there are other reforms that might, but that was not in this bill.

Senator MENENDEZ. But they could have used some of the benefits that they have received to do exactly that, could they not?

Mr. KAMIN. I suppose a corporation could. Given the incentives created by this bill, I do not know any reason to expect that they would.

Senator MENENDEZ. Yes. And the incentives were basically to go to the bottom line.

Mr. KAMIN. So I think the immediate effect—and I think most economists would agree—the immediate effect of a corporate rate reduction is to most benefit the owners of the company. And that seems to be what we are seeing here.

Senator MENENDEZ. So I want to follow up on my colleague, who is normally very mild-mannered in the way in which he approaches things. But if there is one thing that gets him really upset with young children is the future of what it means in terms of the debt we are having hanging over the next generation. So I appreciate his passion in this regard.

You know, the nonpartisan Congressional Budget Office came out with an updated projection showing that the Trump tax bill will add nearly $2 trillion to the national debt over 10 years. This is contrary to what our Republican colleagues promised the American people, that the corporate tax cuts would pay for themselves.

Now, Dr. Holtz-Eakin, I appreciated your brutal honesty on this topic when you acknowledged that it would add to the debt. And the debt, as a general issue, is a big problem we have to tackle. And I appreciated the remarks you made.

But when you were asked about how we should address our deficits, you did not suggest closing tax loopholes or asking the very wealthy to pay their fair share. Instead, you called for cuts to Medicare and Social Security. You said, quote, "If you want to solve the budget problem, and you must, you have to look at those programs: Medicare and Social Security."

So could you give us an estimate of how much we would have to cut benefits for Medicare and Social Security to get out of this fiscal mess?

Dr. HOLTZ-EAKIN. I would be happy to get back to you. I will not do it off the top of my head. I mean, the——

Senator MENENDEZ. But it would be significant.

Dr. HOLTZ-EAKIN. We are in a significant hole. The baseline budget outlook at the start of 2017 had $10 trillion of deficits over the next 10 years prior to the Tax Cuts and Jobs Act. It is now larger; it is $12 trillion.

The ones that were there to begin with were entirely driven, not by tax policy, but by the spending side. And that is why it has to be under consideration.

Senator MENENDEZ. Now finally, Mr. Kamin, your testimony notes that the costs the Trump tax bill made permanent are equal to the Social Security Trust Fund's entire shortfall for the next 75 years. Put another way: if Republicans had simply taken the trillions of dollars this tax bill costs and, instead of giving it away to corporations, used it to fix Social Security, the Social Security Trust Fund would be fully solvent for the next 75 years.

Can you connect the dots and paint a picture of what the bill means for millions of middle-class families who rely on Social Security and Medicare to live out their retirement in dignity?

Mr. KAMIN. So I think it is important to emphasize that our key commitments to programs like Social Security and Medicare can be financed. Social Security is expected to rise in terms of its costs from about 4 percent of the economy a few years ago to about 6 percent and there stabilize.

Assuming we get health-cost growth under control, which is essential, Medicare would actually be expected to do something similar. The question is whether we are willing to raise the revenue enough to pay for those kinds of key commitments.

If we do not and we end up cutting revenues by about 1 percent of GDP, which is about the size of this tax cut—and the 75-year shortfall in Social Security is about 1 percent of GDP over the next 75 years—then we will not be able to keep those kinds of commitments and also provide the services and investments that are so important for low- and middle-income Americans.

So I really think there is a key tradeoff here: how much revenue are we willing to raise, especially from the top, in order to try to preserve these kinds of commitments?

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator PORTMAN. Thank you.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman. And thank all of you for appearing today before the committee. We appreciate your testimony on the initial impressions of the Tax Cuts and Jobs Act.

I think, from my perspective—and I think any objective perspective—the results are already impressive for a law that has only been in effect now for just over 4 months. We have already seen more than 500 companies that have announced investments in their employees through increased wages and benefits, bonuses, and retirement plan contributions. And those benefits affect more than 5.5 million American workers.

And while much of the media attention has been on the response from the Nation's largest companies, we are seeing the positive outcomes in our local businesses, even in places like my State of South Dakota: AaLadin Industries in Elk Point, SD, Great Western Bank Corp in Sioux Falls, SD, which are increasing their base wages for their employees; Black Hills Energy, Rapid City, SD, which is passing benefits from tax reform along to its utility customers. This is welcome news for the hardworking, middle-class families that we set out to benefit through tax reform.

And we are also seeing companies across the country respond to the new tax law with announcements of investments in new project facilities and other ventures. And I suspect this is only the beginning, especially for smaller and medium-sized businesses.

And I am sure that many of these companies are still incorporating the new rules and tax relief into their business plans for this year and beyond. This is particularly true for the new pass-through deduction for small businesses, farmers, and ranchers, which I believe holds enormous potential for growth that we are just starting to see. And I am particularly pleased that we have Mr. Cranston here today to give us the perspective of his small business and that of NFIB's members generally.

Mr. Chairman, last week, the Chairman of the President's Council of Economic Advisers had an opinion piece in *The Wall Street Journal* that reviewed the initial benefits of the Tax Cuts and Jobs Act for American workers and businesses. And I would ask unanimous consent to insert a copy of that article into the record.

Senator PORTMAN. Without objection.

[The article appears in the appendix on p. 97.]

Senator THUNE. Thank you.

Let me, if I might, just turn to a couple of quick questions here. We do not have a lot of time.

But if you listen to our colleagues on the other side and some of the media stories, you would think that every provision in the new tax law is so fundamentally flawed that nobody is going to benefit. And conveniently, they ignore all the initial reactions that demonstrate that American businesses are already factoring the new law into their business plans.

They also ignore the fact that major tax legislation, including the 1986 tax act, had subsequent issues that needed to be addressed and required guidance from the Treasury Department and from the IRS.

Mr. Cranston, are you able to factor into your business plans the effects of the lower individual tax rates and the immediate expensing of property and equipment that you invest for your business?

Mr. CRANSTON. Thank you, Senator. As I had shared earlier in my testimony, yes. At the beginning of the year, as soon as I had an opportunity to understand what the tax law encompassed with section 199A, it was a fairly simple, straightforward calculation for me to understand that, depending upon what my net income this year is, I am going to be able to save $5,000 or $10,000.

And for me, that money is going right back into our business.

Senator THUNE. Okay. And also, the family provisions—increased standard deduction, double Child Tax Credit, relief from the alternative minimum tax—are you also seeing some benefit from those?

Mr. CRANSTON. Absolutely.

Senator THUNE. Okay; good.

One of the key objectives in tax reform was to make sure that we provided tax relief for American businesses, from the largest to the smallest. And for corporations, that was accomplished, of course, by reducing what was the highest tax rate in the world to 21 percent. For pass-through businesses, sole proprietorships, partnerships, LLCs, and S corps, it was more challenging.

The new pass-through deduction was the best approach to provide that relief while maintaining the flexibility of a pass-through business and recognizing that they are not taxed at the entity level and that their taxable income is determined at the owner level.

Dr. Holtz-Eakin, despite the criticism of the delivery mechanism, do you agree that providing tax relief for pass-through businesses to correspond to the corporate tax rate reduction was a good thing, or was it a mistake, as has been alleged by some of our colleagues on the other side?

Dr. HOLTZ-EAKIN. I think it was an absolutely necessary part of the tax reform. You want to have a level tax playing field between the different kinds of entities. And if you are going to have a preferential treatment of a kind of income, whether it is domestic income versus international or capital income versus labor income in a pass-through entity, you are going to have to write rules to do that.

Rules are always complex and people always complain about them, but they are a reality of the tax code.

Senator THUNE. And how many businesses would you say fall under that $157,500 and $315,000 that anybody basically qualifies for?

Dr. HOLTZ-EAKIN. This is going to be the simplest for the vast majority of pass-throughs. They are small; they automatically get it. There are many large pass-throughs, and they have the capability of dealing with the complexities of the tax law.

Senator THUNE. Right. And they have to, though, meet the wage test or the capital test, one or the other, which suggests that they are making investments, which is entirely what we wanted them to do.

Dr. HOLTZ-EAKIN. You do not want to have a reduced tax and savings investment unless you actually have some investment. And these tests are meant to demonstrate that.

Senator THUNE. The numbers I have are that 91 percent of single taxpayers and 85½ percent of married couples filing jointly will fall below the deduction's income thresholds, that $157,500 and $315,000. That is an awful lot of small businesses that are going to benefit from that deduction.

Dr. HOLTZ-EAKIN. Right.

Senator THUNE. Thank you, Mr. Chairman.

Senator PORTMAN. Senator Whitehouse?

Senator WHITEHOUSE. Thank you, Mr. Chairman.

You have to look a little bit to the side to find me here.

Let me ask first Ms. Kysar and Mr. Kamin to respond to, if you wish, Dr. Holtz-Eakin's comments about the stock buybacks.

The information that we have right now is that the tax bill has produced $260 billion in stock buybacks and $6.5 billion in bonuses and raises, which, if my rough math is correct, is about $40 in stock buybacks for every single dollar in bonuses and raises.

Dr. Holtz-Eakin seemed to view that with some equanimity. I wonder what your view is of that ratio and of the value of these stock buybacks.

Ms. KYSAR. I do not think we can judge too much from bonuses or buybacks. I think it is too early to tell what is happening.

I think that the indirect effects of the tax bill on the longer-term horizon, that is how we can judge growth. I think that——

Senator WHITEHOUSE. From a stock buyback point of view, which sector of the economy does best in stock buybacks in terms of income level?

Ms. KYSAR. I think you are giving money to shareholders who then——

Senator WHITEHOUSE. Who tend to be higher-income, kind of higher-wealth folks.

Ms. KYSAR. Right. That may mean, however——

Senator WHITEHOUSE. And how does it roll through to CEO salaries, for instance, and executive compensation?

Ms. KYSAR. Certainly, it might go back to the executives. It is hard to say exactly where the dollars will go.

I will say that right when you are talking about lowering the corporate rate, most mainstream studies put 75 percent of the benefits of that to shareholders.

Senator WHITEHOUSE. Mr. Kamin?

Mr. KAMIN. So I would first agree with both Professor Kysar and also Dr. Holtz-Eakin that we are early on, and right now the best evidence that we have about the likely effects of this bill are the comprehensive analyses that have been done.

Senator WHITEHOUSE. So just focus on who is likely to benefit, where that benefit goes.

Mr. KAMIN. Right. And I think that the evidence from those comprehensive analyses says that the disproportionate benefits from this tax bill will go to the top.

In terms of the buybacks specifically, it is——

Senator WHITEHOUSE. Let me jump in then, because my time is short here.

There is also a table in the Senate Committee on Finance JCT April 24th report, Table 3, that shows that the tax benefit of the pass-through deduction under section 199A in the year 2018 goes across all taxpayers in the amount of $40.2 billion, but to people earning over a million dollars, $17.8 billion. And, if you go out to 2024, the total benefit is $60.3 billion—or the total cost, depending on how you look at it—and more than half of that, $31.6 billion, goes to people earning a million dollars and over. Do you have any dispute with those numbers that JCT has put together for us that are in this Table 3?

Anyone? Okay. So that looks like about at least a two-to-one benefit for people earning over a million dollars a year.

We also have a recent letter from the Congressional Budget Office that says that the share, I am quoting it here, "The share of the additional real income accruing to foreigners from this tax bill averages 43 percent from 2018 to 2028." And it has a table here that shows that it varies between 31 percent and 71 percent in those individual years, averaging to 43 percent.

The conclusion here is that in 2028, of the additional real income that year resulting from the increased economic activity engendered by the tax act, 71 percent will accrue to foreign investors.

How much of what we borrowed—let me pause on that.

Some people have said we have borrowed $1.5 trillion to fund this tax cut. Some people have said we borrowed $2 trillion to fund the tax cut.

Mr. Kamin, what is the difference between those numbers?

Mr. KAMIN. The $1.9 trillion or $2 trillion is the most recent estimate from the Congressional Budget Office.

Senator WHITEHOUSE. And it adds interest?

Mr. KAMIN. It adds interest as well as economic effects.

Senator WHITEHOUSE. Okay. Does that mean that a significant portion of what we have borrowed is actually going to the benefit of foreign investors, if you read the CBO letter?

Mr. KAMIN. I think the CBO letter reflects the fact that a significant portion of income over the next 10 years will be paid back to people whom we borrowed from.

Senator WHITEHOUSE. Should we be thrilled that we borrowed this much money and put that all on our credit card so that this much money could go to foreign investors?

Mr. KAMIN. I think that it reflects the fact that some of the gains from this bill are a lot less than advertised, and even those gains were small.

Senator WHITEHOUSE. Well, not if you are a foreign investor. That is way bigger than advertised.

Thank you.

Senator PORTMAN. Senator McCaskill?

Senator MCCASKILL. I think Senator Brown is on the list before me.

Senator BROWN. I can go after Senator McCaskill.

Senator PORTMAN. Thank you, Sherrod.

Senator MCCASKILL. I want to follow up on Senator Menendez's line of questioning. I want to ask the chairman to put in the record a report that my staff on the Homeland Security and Governmental Affairs Committee did on the manufactured crisis, which is the devastating drug price increases that have occurred in this country.

Could this report go into the record, Mr. Chairman?

Senator PORTMAN. Without objection.

[The report appears in the appendix on p. 87.]

Senator MCCASKILL. And the results of this report are pretty stunning. Price increases for the 20 most-prescribed brand-name drugs in Medicare Part D have gone up 12 percent every year for the last 5 years, approximately 10 times higher than the average rate of inflation, which is really unbelievable if you think about it, that those kinds of price increases are going on in the Medicare Part D program, where this body has not even had the guts to stand up to the pharmaceutical industry and say we are going to negotiate for volume discounts.

I mean, you talk about a vise grip; pharma has a vise grip on Congress—the notion that we cannot negotiate for volume discounts. That is pretty all-American. I think even you would agree with that, the businessman from Pennsylvania, that volume discount is very important in terms of good business decisions.

So $45 billion, it is estimated, that they have gotten in terms of a windfall just since this tax bill was put into place—$45 billion—that all went to the owners of their companies. And guess what? There has not been one announcement that the price of any of those highly prescribed drugs—by the way, this tax bill continues to allow them to deduct the cost of advertising prescription drugs. I think we are the only country in the world besides New Zealand that allows the pharmaceutical industry to advertise prescription drugs and deduct the cost of it. We kept that in place for them.

But there is absolutely no relief for Missourians in terms of drug prices. That is why I think this tax bill ultimately will not be a popular thing, because I think people are going to see the kind of windfalls that are going to occur in places like health insurance and pharmaceutical drugs, with no relief to the consumers, absolutely none. Whatever extra they are getting in their paychecks is going to be eaten up by the extra they are paying for Nexium and Nitrostat and Restasis and Spiriva, all of those drugs that we looked at in the report.

And the other thing is that I was lectured a lot during the Obama years by the Republicans about fiscal conservatism and being careful about the deficit and the debt. In the last 6 months, this country, led by a Republican President, Republican majorities in the House and the Senate, has added over $2 trillion to our debt—in 6 months, between the tax bill and the omnibus bill. That was another $300 billion in the omnibus bill.

It is stunning. It is truly stunning, this kind of fiscal irresponsibility.

And now we get to pass-throughs. My colleagues have already talked about the pass-throughs. Fifty percent of them are going to go to people over a million dollars.

And I would like to put in the record this cartoon, which it is hard to believe is true, but it is from *Bloomberg Business Week.* I would ask for this to go in the record, the cartoon about explaining the pass-through tax break.

Senator PORTMAN. I cannot see it, but without objection.

[The cartoon appears in the appendix on p. 97.]

Senator MCCASKILL. Well, I will explain it to you. This is how confusing this is.

No tax break, doctors. Maybe tax break, massage therapists. Maybe tax break, veterinarians. Tax break, health club owners. No tax breaks, management consultants. Maybe tax break for tattoo artists. Maybe tax break for interior designers? No, but if you are an architect, you get the tax break. Celebrity chefs? Celebrity chefs, no tax break. Café owners, maybe, maybe you will get a tax break. Contractors, maybe. But landscapers? You get the tax break.

And I have been lectured that certainty is so important in business. I would not be surprised if I heard you testify to that, Dr.

Holtz-Eakin, that certainty is so important for businesses in terms of business planning. Every business plans around the tax code.

Ninety-five percent of the businesses in this country have no idea what the rules are going to be on pass-throughs. This is the most complicated thing that has been added to the tax code, I would say in generations.

And let me ask the two professors about that, the two academicians. Would you say that the complexity around this pass-through is maybe in the top five most complex areas of the tax code, in the tax bill that was supposed to simplify everything?

Remember the hearings when I had the seven books lined up and everybody admitted this was going to add another book? Is there anything that has been added to the tax code that is more complex than the rules around this pass-through?

Senator PORTMAN. We are over time, guys, so you will have to submit it for the record unless you are really quick.

Senator MCCASKILL. I bet they will say "yes."

Mr. KAMIN. Well, what I would say is, it is one of the worst provisions that has been added into the tax code in the last several decades.

Ms. KYSAR. I would agree with that.

Senator MCCASKILL. That is what I wanted to hear.

Senator PORTMAN. Senator Brown?

Senator BROWN. Thank you, Mr. Chairman.

My question is for Mr. Kamin.

This law allows, as you know, for immediate and full expensing of capital investments over the next 5 years. I have a couple of "'yes" or "no" questions. It supports the whole idea, obviously, of investing. It supports investment in capital-intensive sectors of the economy like manufacturing.

A couple, a handful of "yes" or "no" questions. Is it your understanding the capital expensing provision within this law was designed to encourage companies to invest in new factories and equipment as well as retooling existing facilities?

Mr. KAMIN. Yes.

Senator BROWN. And is there anything in the law that would prevent auto manufacturers from taking advantage of this provision?

Mr. KAMIN. Not that I know of.

Senator BROWN. That is interesting, considering that less than 2 weeks ago General Motors in Senator Portman's and my State announced its plan to lay off 1,500 workers at the Chevy Cruze plant in Lordstown, OH near Youngstown.

Last week, I wrote to GM outlining the devastating consequences of this decision for families and communities in the northeast corner of the State. This is a company that is doing well by all metrics. Last year, GM claimed all-time "record," quote, unquote, revenues of $160 billion and an "all-time record," again their words, free cash flow of $6.9 billion. In addition, this year, as you may know, they will bring back almost $7 billion in overseas cash at a major discount, yet they are laying off these 1,500 workers.

I sat in the White House with the President and a handful of Senators from this committee as the President promised us this bill would create more jobs, it would mean a $4,500 raise for every worker.

So today, we hear a lot about the impact of the law. We will hear it is bringing back jobs or helping businesses invest in their workers. The Lordstown layoffs are a good example of how this just is not true. In fact, some companies are moving forward with layoffs. Millions of households are going to see their taxes increased as a result of this new law.

This law simply was not middle-class tax reform. It was a major giveaway, as Senator McCaskill said, Senator Whitehouse has said; it is a major giveaway to corporations and executives. We need to make sure we hold them accountable to the middle-class workers.

As GM is showered with cash in this tax-cut giveaway, they simply are not investing in their workers, and they are sure not investing in communities.

Now, to further illustrate, Dr. Holtz-Eakin, a supporter of the law, wrote at the American Action Forum about the ongoing strategy for additional tax reform. He called it tax reform 2.0. He wrote these words, and, Dr. Holtz-Eakin, I am going to ask you about these: "The Congressional Budget Office projects $12 trillion in deficits over the next decade and dangerously high accumulation of debt. If left untouched, this will inevitably produce pressures for much more revenue, a reversal of tax reform 1.0." He continues, "In the end, the most important part of tax reform 2.0 will be entitlement reform 1.0."

Those are correct; those are your words?

Dr. HOLTZ-EAKIN. Yes.

Senator BROWN. Okay. Here is what is just amazing about that. Some of you remember when Gary Cohn and the Secretary of the Treasury issued their one- or two-page tax reform proposal, about exactly a year ago. And the day they did that, there was an op-ed in *The Wall Street Journal* by Martin Feldstein, who was sort of the intellectual guru for the Laffer Curve and for the early Reagan years on tax reform.

He said in his op-ed, he said, do not really believe that this tax reform that we are proposing—we as right-wing Republicans—do not believe the tax reform will entirely pay for itself, not by a long shot. That is why we need to go after Social Security and Medicare. So they warned us 8 months before the tax reform passed.

Now, in case we did not get the message, Dr. Holtz-Eakin is saying the next round is entitlement reform.

So how do you justify—if each of you would just speak to this—how do you justify cutting taxes on the wealthiest people in this country, giving major tax breaks to corporations, and then coming back and paying for the tax reform by raising the retirement age or raising the eligibility age for Medicare and Social Security?

Start on the left. How do you square that with the great majority of Americans whom you have claimed that the tax reform benefits?

Mr. CRANSTON. Again, I am here to speak on behalf of small business. And I believe that one of America's strengths is its small-business community. And so if you unleash the small-business community by giving us tax breaks, you will see growth occur. And growth, though, has to be tempered on the Federal side, just as on the business side, with spending.

Senator BROWN. So apparently it is okay to take it—okay.

Mr. Kamin, your comments?

Mr. KAMIN. So, Senator, I think you are right: this tax bill is going to lead to a 70-percent larger rise in the debt-to-GDP ratio through 2025 than would have otherwise occurred. And I think the fact that we have put this onto the national debt and the fact that it will eventually have to be paid for means that for low- and middle-income Americans, they are likely to end up losing, since this tax cut was disproportionately focused at the very top.

And it is the very programs you are talking about—Social Security, Medicare, and key investments—that are likely to be vulnerable going forward because of it.

Senator BROWN. Professor Kysar?

Ms. KYSAR. Especially those in the low- and middle-income classes. And I would just also say that I think that $2-trillion figure is likely to be greater once all is said and done, once we look at some of the other effects of the bill and also take into account the fact that perhaps some of these provisions are going to be made permanent.

Senator BROWN. Dr. Holtz-Eakin, they were your words.

Dr. HOLTZ-EAKIN. Yes. The observation is simply that if you go back to 2017, prior to the bill, there was a $10-trillion deficit over the next 10 years, and it was driven by the entitlement programs. It was going to be inevitable that we took a look at them independently of tax reform.

Had we done a revenue-neutral tax reform, my first choice, my fear is, that would have been unwound due to the pressures on the deficit that come from that. And my experience is, the tax reform of 1986 unwound remarkably quickly because we ran what we thought at the time were large deficits. We had Gramm-Rudman-Hollings. We went to Andrews Air Force Base in 1990 and raised taxes. The integrity of the reform fell apart quite quickly.

And so my view has always been that it is hard to do good tax reform, and it is harder to keep it. And if you do not control the spending side of the budget, you will not keep it.

Senator BROWN. Well, as Senator Bennet pointed out in his comments a few minutes ago——

Senator PORTMAN. We are way over.

Senator BROWN. Okay, okay, okay, Mr. Chairman.

Senator PORTMAN. I gave you the Ohio 1 minute beyond everybody else, but I cannot go beyond that.

Listen, I have been here this afternoon and listened to my colleagues, and I appreciate all their input.

And it is concerning to me that this is such a partisan exercise of tax reform, because everybody knows we had to reform our tax code. In fact, every witness here has said, on the international side, it was absolutely essential that we became competitive again.

And even for small businesses, I have to tell you, my experience is very different than what I have been hearing from my friends on the other side of the aisle, which is that all over Ohio, small businesses are benefiting from this. Mr. Cranston talked about it.

But you know, PNC Bank does this survey every year. They have done one for 9 years in Ohio. They have never seen the levels of optimism as high among small and medium-sized businesses.

NFIB, which represents the smaller businesses we talked about earlier, they have never seen more interest in investing in the history of their survey than they see now. In terms of this issue of optimism, again, they are seeing it off the charts. Now, that is because small businesses are taking advantage of this.

And to the comments earlier about how complicated this is, I think Senator Cardin got it right. You had to do something. We knew the corporate rate had to come down to be competitive—highest in the world, in the international system. And you would have had this huge disparity between the C corporation rate, which employs about half of American workers but is only about 10 percent of the companies, and the pass-through rate, which is the subchapter S, the pass-throughs and sole proprietors and all of them, which is the vast majority of businesses. So you had to do something.

And it is tough to make these decisions. But 1202 is what they used, to Senator McCaskill's point, which was part of the law for a long time, the Internal Revenue Code. And 1202 says that, yes, if you are providing a professional service, then you are not going to get the same benefit under section 199, which is really what the 20 percent was meant to deal with.

Also, for smaller businesses—we talked about this earlier—people said, well, these businesses average in my State, they only make 50,000 bucks a year. Well, if you are under $315,000 a year, you are not subject to any of that complexity.

So I would just tell the small businesses out there that are truly small, you know, you are not subject to a lot of what we heard about here today in terms of the complexity.

Finally, this notion that if you make a million bucks a year, that means you must be really rich—if you are a small business, you may not be, because it is a pass-through. In other words, if your business is making a million bucks a year and you are the sole shareholder, you are making a million bucks a year.

Even though I would say, Mr. Cranston, in your case—I am not a good lawyer, because I should not be asking a question I do not know the answer to. But I would guess that you used your dividend from your company to pay your taxes, and the rest of it got reinvested in the business. Is that right?

Mr. CRANSTON. That is correct.

Senator PORTMAN. Did you hear what he said? I did not know what his answer was going to be. In other words, I do not know what your earnings were. Maybe they were a million dollars last year on your business. So you are a millionaire, congratulations. What did you get out of it? Whatever your salary was. You got nothing else out of it, because you used it to pay your taxes; the rest you reinvest in the business.

And you know, I grew up in a small business like that. It was also a material handling business like yours. My dad started with five people. My mom was the bookkeeper. We lost money the first few years; we struggled. But you know what? We finally found our niche. But that is what we did: we put the money back in the business. So my dad might look like a millionaire to some, but he surely did not feel like it, because the million dollars was just a reflection of what the business made that year, not what he was making.

And that is the way our tax system works. So I just hope that, as we look at this, we try to be fair and look at what is really happening out there.

I have done 15 visits now with small businesses around Ohio. We have had another half-dozen roundtables with small businesses. I cannot find a one who is not saying this is good for them. I cannot find one.

So I guess I would ask a question to Dr. Holtz-Eakin, because he has been on the spot here today about, you know, how does this pay for itself or not. If you have better economic growth because of these tax cuts and the tax reforms—and the reforms are, I think, equally important, not more important for investment—how much new growth would you have to have to be able to pay for, in essence, the trillion dollars that was in this tax cut? How much more growth over 10 years?

Dr. HOLTZ-EAKIN. If you were to get a half a percentage point, probably four-tenths, you could——

Senator PORTMAN. Four-tenths or a half percentage point. What did we just learn for this year? What did CBO just say for this year?

Dr. HOLTZ-EAKIN. They marked it up by a full 1.3 percent.

Senator PORTMAN. One-point-three percent, from 2 percent to 3.3 percent.

Dr. HOLTZ-EAKIN. Yes, 1.3 percent.

Senator PORTMAN. Not .4, not .5. Now, I am not saying it is going to continue for the next 10 years for sure. Nobody can tell you that, even though CBO has projections—they have to make them.

But I really do believe in my heart that if this thing works the way it was intended to, which I see happening over in my State, the .4 percent or .5 percent even is absolutely within the realm of possibilities. In fact, I think it is much more likely to happen. I know there is a difference in the economic growth; there is going to be at least that much.

So you know, I have just got to tell you, if you look at the CBO report recently—a lot of people have talked about it today—you did not hear that full expensing, they said, will increase tangible investment in the United States. They said tax reform alone is going to result in 1.1 million new jobs over the next 10 years. And they also said the growth rate for the last 2 quarters last year went up, I think largely because of expectation of some of these pro-growth policies, including, I think, reg reform too. But .4 percent to 2.6 percent, and this year they just increased it from 2 percent to 3.3 percent.

All right. I am getting close to ending my time, so I am going to follow the edict that I am asking other people to do and come back for the second round.

But I do think we need to be sure that we are looking at this in terms of the real-world impact and what is happening, certainly in my State, among small businesses.

Senator Nelson?

Senator NELSON. I would say to my friend from Ohio that I think that the pass-through, getting the rate down to an effective rate of 29 percent, is a very good thing. What I would have liked to have seen is a more balanced approach to the rest of the tax code, especially cutting the corporate rate, as large as it was, giving certain goodies of tax breaks to folks, particularly on Wall Street, all of which added up to where, over 10 years, this tax bill is costing us a trillion dollars and that is added to the national debt.

So as we look at modifying this, it seems to me that, as we desperately need infrastructure investment—and I am saying this out of my heart, I say to the Senator from Ohio—in infrastructure, obviously, we have extraordinary needs.

How about investment in affordable housing? Or how about job loss because of automation, and education in order to deal with the changes of globalization? Now, all of that is going to cost money, and we just added a trillion dollars to the national debt.

So I want to ask the two witnesses, Mr. Kamin and Ms. Kysar, do you think that it would have been worth the effort to make progress on some of these issues that I just mentioned—infrastructure, investment in affordable housing, and so forth—by moderating the influence of the drastic corporate tax cuts and those others, such as carried interest, going into Wall Street? Give me your opinion on that.

I take no issue with the gentleman representing small business. Please.

Mr. KAMIN. So I think the answer is "yes." We have to make progress in this country along a number of dimensions to help low- and middle-income Americans get ahead. That includes some of the key investments that you are talking about that, unfortunately, we have not been putting enough money into, whether it is infrastructure and research that helps innovation and helps growth, as well as making sure that we keep our commitments in programs like Social Security and Medicare.

A bill that cuts revenue and leads to higher deficits to the tune of $2 trillion over the next decade—according to the CBO—and that ends up giving a benefit to the top 5 percent, that as a share of their income is double that for a middle-class family and around nine times that relative to a low-income family, is not the right priority and will end up meaning that we will not have enough resources to put into those kinds of key investments and commitments that can really help growth and also low- and middle-income families.

Senator NELSON. That is what I am worried about. And we have such desperate needs. In my State, a growth State—Mr. Chairman, I want you to hear this—in my State, it is a growth State. We are growing at a thousand people a week. You can imagine the strain on the roads, the bridges, the structurally deficient bridges. You can imagine the sewer plants, the water plants, the airports, the seaports, not even to speak of broadband expansion into the rural areas.

And where in the world are we going to get the money if we did not do it in a balanced approach with the tax bill instead of adding another trillion dollars to the national debt?

Ms. Kysar, I would like to hear from you.

Ms. KYSAR. Yes. I mean, I think those priorities—infrastructure, transition to automation, education—those all have to be at the forefront going forward, and they should have been in the last bill.

Bringing the rate all the way down to 21 percent, you know, without sufficient revenue offsets, that is going to shortchange those priorities.

Yes, the rate needed to come down. Did it need to come down that far, especially without being paid for? That is another story.

Senator NELSON. I might say in closing that I—as you, the Senator from Ohio, my friend—talked to a lot of CEOs before the tax bill. Now, we were cut out of the process and were not allowed in on the drafting of the bill. But leading up to that point, I had talked to a lot of CEOs, and a lot of CEOs of big corporations would have been extremely happy to go from a 35-percent corporate tax rate to 25 percent. And that would have moderated this effect of a huge—even to a rate of 28 percent. That is a substantial tax cut.

And then if we had balanced it, we would have been able to start doing some of these other things. And I thank the gentleman from Ohio.

Senator PORTMAN. I thank my colleague.

We are now officially in the second round.

And I will call on Senator Wyden first.

Senator WYDEN. Thank you, Mr. Chairman.

Ms. Kysar, let me start with you. One of the lines that is popular in every town hall in America is you are going to take away the tax breaks for doing business overseas and you are going to keep American jobs at home. We all heard President Trump say it again and again, but it surely looks to me that, despite the President's claims to put America first, he squarely put American factory jobs second.

And you stated in your prepared testimony, and I will quote here, that the international tax provisions, which are certainly complicated, in your words, quote, "encouraged firms to move real assets and accompanying jobs offshore."

Do you think you could describe briefly and in English what you are talking about there so that people can really understand what is going on? And again, in our bipartisan bill, we sought again to make us competitive in tough global markets with a focus on American companies and American jobs.

So, what did you mean by that comment?

Ms. KYSAR. Sure. So first, the law shifts to a territorial system, right? You have a 21-percent rate in the U.S. and a rate of half of that outside the U.S. on what is so-called GILTI type of income that is subject to a minimum tax of 10.5 percent. So that is a wide differential that is going to retain some motivation, right, to profit-shift abroad.

Second, the rules that are designed to impose a minimum tax on foreign earnings and to encourage investment have the opposite effect, in some respects, so they encourage foreign investment, particularly in real estate, like factories. That is because low-margin companies in low-tax countries can potentially avoid any U.S. tax because of the design of the qualified business asset provision, which essentially exempts a 10-percent rate of return on tangible, depreciable investments abroad.

And so, if you have tangible factories and assets abroad, then this allows some of your income to be exempt from that minimum tax. So your incentive is to put assets abroad.

Also, when you are talking about the preferred FDII rate, which is a rate that is supposed to be incentivizing keeping intangibles here, you get that preferred FDII rate by keeping investment assets out of the United States. And that is just because of the way that those provisions define intangible income.

Senator WYDEN. Okay.

Ms. KYSAR. There are also problems with foreign tax credits, where a company can blend high-tax earnings, to reduce U.S. tax owed, in a tax haven or low-tax jurisdiction, and that is because the foreign minimum is a global instead of a country-by-country tax.

Senator WYDEN. Thank you. Certainly, for everybody in English, it sure does not sound like putting America first.

So I am just going to close with this. I do want to put into the record a comment made by Dr. Holtz-Eakin about the pass-through deduction, which raises the question again of another broken promise to small businesses who were told the bill would simplify their taxes.

He stated with respect to the pass-through deduction, quote, "Republicans did not do nearly as good of a job. This is a place where there is unfinished business."

I would like that to go into the record at this point.

Senator PORTMAN. Without objection.

Senator WYDEN. Let me close with this. Over 2 hours ago, I started by saying the President's top economic adviser said their tax bill would, on average, give workers a $4,000 pay raise. And I said that I looked at this promise from the administration, and I said workers are not seeing it. That promise to the middle-class worker that, on average, they were going to get a $4,000 pay raise, has not been kept.

And I just want to wrap up by way of saying, over the last 2 hours, no Republican has come in here and said that that $4,000 wage increase promise has been kept.

So my hope is—and hope springs eternal here on the Senate Finance Committee, because we have a rich tradition of finding common ground—that we can go back, as former Senator Bill Bradley has talked to me about, working together, find common ground in an area that is so complicated. If you want to make it sustainable, folks, you have to work together.

The only thing that has been guaranteed about this tax bill is that there is going to be a lack of certainty, because it was not bipartisan.

Thank you, Mr. Chairman.

Senator PORTMAN. Senator Bennet?

Senator BENNET. Thank you, Mr. Chairman. I appreciate it. And thank you to the panel again for sitting through this.

Is there anybody on the panel who is willing to testify that this tax bill did not exacerbate the income inequality that we have in this country when it was passed?

Dr. HOLTZ-EAKIN. That would be me.

Senator BENNET. Great. Go ahead.

Dr. HOLTZ-EAKIN. So, I mean, what has been discussed is the Joint Committee's calculations of taxes. But what has not been discussed is the $6 trillion in additional GDP that CBO has in its baseline this year versus last year.

People benefit from that. And the people whom I believe this tax bill was most designed to benefit are the American middle class, who have experienced the consequences of zero productivity growth for 5 years, zero growth in real wages, and that is intolerable.

Senator BENNET. And, Mr. Kamin, do you have a view?

Mr. KAMIN. Yes. I think that the distributional analysis done by independent and credible sources has shown again and again that this bill disproportionately benefits the very, very best-off.

And when it comes to additional economic growth, CBO indicates that across the decade, on average, it would increase GDP by about .06 of a percentage point per year in terms of the annual growth rate. Its actual effect on people's living standards, especially once you look towards national income and the amounts that are being paid to foreigners, is even less than that.

So I think, fundamentally, the fundamental conclusions of those distributional analyses, which do distribute, by the way, the corporate tax cuts down to both owners and workers, is that this disproportionately benefits the very, very best-off in this country.

Senator BENNET. Anybody else?

We will know, which is the good news. And I do think my view is that we have seen in the past how trickle-down economics worked out for most people in this country. And we should be attacking that problem somehow, it seems to me.

There certainly was the basis for bipartisan tax policy in this committee. And tragically, we did not take that opportunity.

Mr. Kamin, I wanted to give you the rest of my time actually, because I was trying to get to you in the last round.

I mentioned that I had seen a chart recently from the IMF that said that we are going to be the only country in the industrialized world to add to our deficit next year.

By the way, what was the size of the recovery package under President Obama in the depths of the worst recession since the Great Depression, when we had 10-percent unemployment?

Mr. KAMIN. As I remember, it was around $700 billion.

Senator BENNET. That is about right. And what was that in relation to the fiscal effect of this on the Federal Government, this tax bill?

Mr. KAMIN. Well, especially since most of that was intended to be temporary and focused during a period of economic weakness, this bill has the potential to have a considerably larger effect on the long-term fiscal situation.

Senator BENNET. Does it make any sense to you that you would, on the one hand, take the position that you should not invest at a zero-percent interest rate at the depths of a recession, but that you should deficit-spend when the economy is essentially at full employment?

Mr. KAMIN. No. And in fact, I mean, I think that we have now committed potentially two errors in fiscal policy. The first error was austerity that was forced, that was too soon, in a period of time where increased spending and deficits would potentially have led to lower unemployment and a lot less pain in the economy. We had austerity that was too soon.

And right now, we have a bill that is going to add $1.9 trillion in deficits over the coming decade, assuming the economy continues to grow, and at a point in time in which the Federal Reserve is raising interest rates.

And so I think both of those indicate that we have moved in the wrong direction at the wrong time.

Senator BENNET. Again, I will ask the whole panel, just for fairness, does anybody want to make the case that it is better to do a larger expenditure at this unemployment rate than at a 10-percent unemployment rate? That is, you were going to make a decision, all things being equal, that you would do it now instead of at the depths of a recession?

That is what we have just done.

Do you think, Professor Kamin, reducing child poverty in this country would have any effect on economic growth in the United States?

Mr. KAMIN. I think it would have a significant effect on people's lives and also the future living standards of those children. I think there is a lot of evidence that providing additional support to very-low-income families leads to much better outcomes for the children.

Senator BENNET. And less expense for the government.

Mr. KAMIN. Sure, over the long term, that would be the case that you would expect.

Senator BENNET. And do you think that investments in infrastructure could generate economic growth?

Mr. KAMIN. Yes. And I think there are many high-return investments in infrastructure that this country could be making.

Senator BENNET. And as I mentioned earlier, Mr. Chairman—I will finish. We are now investing our domestic discretionary spending, which is the stuff that is the money we invest in the next generation, we are investing 35 percent less today than we were in 1980. And I think that is going to affect our competitiveness. I think it is going to affect where kids are going to be.

And I would argue this. You know, when I was in my town halls during the depths of the recession and there were people who came to some of them and said, "You know, you are a socialist and you are a Bolshevik and the President was not born in the United States," I would say, "I do not know about any of that. You might be right about some of that; I do not know."

But here is what I do know. Because of something that has gone wrong with our politics in Washington, DC, we do not have the decency to maintain, to even maintain the assets and infrastructure, the roads and bridges that our parents and grandparents had the decency to build for us, much less build the infrastructure our kids are going to need to compete in the 21st century.

We are spending the money on ourselves, and we are stealing it from our children. And what we have seen over the last 15 years punctuated by this terrible bill is a fiscal strategy that, frankly, I would expect only from a Bolshevik country, not from the United States of America.

I yield back.

Senator PORTMAN. Thank you.

And I have one last speaker for the second round, and that is me, unless the chairman or Senator Wyden would like to go.

Senator WYDEN. Mr. Chairman, I certainly am not going to say anything else.

Senator PORTMAN. Is there something you want to put in the record?

Senator WYDEN. I just do have to put something into the record regarding some of our process concerns on this side.

Senator PORTMAN. Yes.

[The information appears in the appendix on p. 100.]

Senator PORTMAN. So I am, again, feeling like I am looking at an entirely different tax bill than we talked about here.

Let me just be clear. The Congressional Budget Office says we are going to have 1.9-percent growth over the next 10 years. That is the number we have to deal with.

Under that scenario, there is about a trillion dollars when you take out the current policy base numbers, which I think is fair to do. So that is why Senator McCaskill and others were talking about the importance of economic growth. And I get that.

If you have 1-percent increase in GDP economic growth, you have $2.7 trillion more in revenue coming in over the next 10 years. Is that correct, Dr. Holtz-Eakin?

Dr. HOLTZ-EAKIN. Yes.

Senator PORTMAN. Yes, $2.7 trillion. So that is why, if you have only .4 or .5 percent more economic growth over that time period compared to what you would have had, then this thing actually does not add to the deficit. And that is what I think is going to happen, I really do. I may be wrong, because nobody knows, because there could be a recession coming up, you know, in the next couple of years or there could not be. But relative to what would have happened, I think that is very, very likely.

And again, I look at what has happened right now, this year. CBO just 2 weeks ago said, no, it is not going to be 2-percent growth this year, it is going to be 3.3 percent. We have lived with 1.5- to 2-percent growth for the past 10 years, with wages being flat.

And what is exciting is, we are not only seeing growth, we are seeing wages going up. We should be celebrating that in this committee. I mean, for the first time really in a decade and a half, we are seeing real wages increase. And that is incredibly important to getting people out of the shadows and into the workforce.

I will say, this notion of full employment, I just do not agree with it. I do not think we are at full employment right now. And you know, some of my Republican colleagues may disagree with me, but we are not at 4.1 percent.

We have the highest rates probably in history of men being outside of the labor force participation. Among women and men together, it has to go back to the 1970s. In other words, there are millions of Americans who are not even showing up on these data points because they are not even looking for work: 9 million men, they say, between the ages of 25 and 55, able-bodied men, who are not working and not looking for work.

So we do need these higher wages and we do need this stronger economy to bring them into the workforce. There are other things we need to do as well to give them the skills they need and to deal with some of the issues that keep them out of the workforce, like the opioid crisis.

But this is why the economic growth is so important and higher wages are so important. And it is happening. I mean, as we sit here, it is happening.

And I really believe that our tax code was so broken, particularly on the international side, but even for the small businesses, that this increased investment that is happening, these numbers I am talking about, the PNC thing from Ohio, that is real; that is a survey that says small and midsized businesses are more optimistic than ever.

NFIB—people are planning to invest more than ever because they see this tax cut and the tax reforms, which I think are equally important, and I think also the regulatory relief is part of this, that they can take a risk and get a benefit out of it. And we should all be for that, because that will help grow the economy.

So we just have a fundamental disagreement here, I guess, in terms of how this is going to come out. But to the point that this only helps the wealthy, I would just ask you to look at the Joint Committee on Taxation tables. You know, they told us that at least 3 million Americans who currently pay Federal income tax who are at the lower end of the economic scale are not going to pay income tax at all under this new code; 3 million people were knocked off the rolls.

Why? Because it does benefit those at the low end. You doubled the standard deduction. You doubled the child credit. You lowered the rate.

The top 1 percent and top 10 percent are both going to pay a higher percentage of the tax burden based on the Joint Tax numbers. So yes, I mean, it is tax cuts for everybody for sure, but it is still a progressive tax code, as it should be, in my view, and in fact it has been made more progressive through these changes as you look at these numbers that the Joint Committee on Taxation is giving us.

So I appreciate everybody being here. We will see what happens. As Senator Bennet said rightly, we will know the answer to this over time.

I am sure rooting for another 3.3-percent growth year, if that is what it is going to be this year. I am sure rooting for higher wages. And I think we had to do something to get this economy moving. And now we have to bring some of these people out of the shadows, back into the workforce.

So I thank you all for being here today.

Thanks to my colleagues for their coming and talking about this. A lot of this is, again, difficult to project. But I am optimistic from what we have seen so far. And I am optimistic that that investment in the end is going to be the single-biggest thing, both small businesses, international companies—yes, foreign investment. We want all that investment here, because that is going to stimulate more productivity, which all the economists say leads to higher economic growth, which leads to higher wages.

Thank you all. And with that, this hearing is adjourned.

Thanks for your attendance and participation.

I ask that any member who wishes to submit questions for the record do so by the close of business on Thursday, May 3rd.

With that, this hearing is adjourned.

[Whereupon, at 4:48 p.m., the hearing was concluded.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of David K. Cranston, Jr., President, Cranston Material Handling Equipment Corporation

Good afternoon, Chairman Hatch, Ranking Member Wyden, and members of the Senate Finance Committee.

My name is David Cranston, and I am the president of Cranston Material Handling Equipment Corporation, a small business located in western Pennsylvania just outside of Pittsburgh. I appreciate the opportunity to represent my company and the National Federation of Independent Business (NFIB) at this hearing.

NFIB is the Nation's leading small business advocacy organization. Founded in 1943, its mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents roughly 300,000 independent business owners located throughout the United States, including over 13,000 in my home State.

My company is truly a small business with seven full-time and two part-time employees. We are an "S corp" that sells equipment to manufacturing companies to help them store and lift the products they are making. I am here today to share with you how the Tax Cuts and Jobs Act is having a positive impact on businesses as small as mine.

One of the biggest challenges facing small business is growing the amount of capital that is needed to operate and expand. To a small business owner, capital, the cash that we have available to us, is the lifeblood of the business. We use it to purchase equipment, buy inventory, meet loan obligations, develop new products, hire or train employees, finance receivables, and simply create enough liquidity for the business to operate day to day. You would think with all the purposes it is used for it would not be so hard to come by, but I can tell you, it is unbelievably hard to accumulate. It is particularly hard to have enough "excess" cash available in your business to take advantage of new growth opportunities. The good news is that for many small pass-through businesses like mine, the Tax Cuts and Jobs Act provides us with substantial help in accumulating capital in order to grow.

Like many business owners, I pay quarterly estimated taxes. In order to pay those taxes, I take cash from my company each quarter. Those payments suck my working capital right out of my business quarter after quarter. Under the Tax Cuts and Jobs Act's new section 199A, I now qualify for a 20-percent deduction on my pass-through income. In real terms, this means I will be able to keep between $1,200 and $2,500 a quarter in my business that I would otherwise have paid in taxes. The ability to keep $5,000 to $10,000 a year in my company is a big deal to a small business owner like me.

Moreover, the cumulative effect over several years will be substantial. These savings will allow me, and the millions of other American small businesses like mine, to be in a better position to take advantage of opportunities to grow or improve our operations. In fact, since the first of the year, I have decided to expand into a new product line. To launch this product line, I need to purchase new equipment, invest in training, and build a new website. The tax savings has put me in a better financial position to self-fund this new product.

My experience is not unique. Recent NFIB research has tracked record numbers of small businesses across the country saying that "now is a good time to expand." The vast majority of businesses throughout the country are small businesses like mine with a handful of hardworking employees serving their customers to the best of their abilities. Business owners are always looking at new ideas and wanting to take advantage of new opportunities. But often we cannot do so if we don't have the cash to reinvest into our businesses.

Another effect the Tax Cuts and Job Act has had on me is to increase my optimism for the future. We, like many small businesses, sell our products and services primarily to larger corporations. I can tell you that my optimism that the economy has a real opportunity to continue improving has dramatically increased. In January of this year, I read numerous articles in the *Pittsburgh Post-Gazette* and our local business paper about one corporation after another announcing that they are increasing capital spending because their taxes are being reduced.

It is often stated—and in my experience, it is true—that the products and services large businesses purchase every day greatly impact the community or region in which they find themselves. Again, my personal experience is reflected in NFIB survey data showing some of the highest levels of small business optimism since NFIB began conducting the survey 45 years ago. When business owners are optimistic, they are then much more inclined to invest in growing their businesses.

The Tax Cuts and Job Act has not only reduced taxes for businesses like mine; it has created an environment where more business owners feel confident to take the cash from the tax savings and invest it back into their businesses. For these reasons, I believe the Tax Cuts and Job Act is spurring business investment and therefore has set the stage for increased economic growth for years to come.

I feel so strongly about the benefits of this law that I was willing to take 2 days away from my own company to come down and share with you what I am seeing and how my business has been positively impacted.

Thank you for giving me this opportunity to testify.

QUESTION SUBMITTED FOR THE RECORD TO DAVID K. CRANSTON, JR.

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

Question. Some of my Democratic colleagues have resorted to calling the tax benefits that will accrue to many Americans as a result of the tax reform bill we passed last year as "crumbs." They point to share buybacks as an example of significant corporate giveaways that won't benefit working Americans at all. They also point to bonuses, hourly wage increases, increased 401(k) matching contributions, increased training and education, and the like for working Americans, as inconsequential results of this tax reform bill.

Would you describe how the tax benefits that you are receiving under the tax reform bill are anything but "crumbs?"

Answer. I do not think that is representative of the value working families place on the money the tax cuts allow them to keep. I will share a personal story as an example. In March, my 7th grade son's school announced that his class was going on a trip to Washington, DC. When he shared the good news with us, he also shared that the cost was more than $400 per student. While his mother and I were both happy for him, we wondered where the money for this unexpected expense would come from. Fortunately, the school also said there would be some fundraising events to help fund the trip. One of those events was a fundraiser where the students could earn $3 for every hoagie they sold. After completion of this fundraiser, it was announced that about a quarter of the trip's expenses had been raised by the sale of hoagies. However, to me the interesting fact was that every 7th grade family had participated in the fundraiser. That said to me that every family valued the $3 that they could use per hoagie to offset the cost of the trip. If families are willing to work to receive a benefit of $3 by selling a hoagie, I would hardly call the additional $1,000 per child they will be receiving from the increased tax credit "crumbs." Then, add to this the hundreds or thousands of additional dollars many will be keeping due to the lower tax rates, higher bracket thresholds, and the doubling of the standard deduction. I believe it is fair to say the average family is receiving a substantial benefit by the lowering of their federal income taxes. For small businesses like mine that are organized as pass-through's, the new section 199A deduction delivers on the Tax Cuts and Jobs Act's promise of bringing real relief to Main Street. This provision will save my company between $5,000 and $10,000 per year. That's real money I intend to reinvest in the form of a new product offering.

PREPARED STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA

Mr. Chairman, positive economic news continues to mount in the months since the passage of the Tax Cuts and Jobs Act. More than 500 employers and counting throughout the country have announced they are reinvesting their tax cut savings into employees through increased wages, benefits and bonuses.

In addition to lower tax rates and increased wages in paychecks every month for the vast majority of Americans, millions of American workers are benefiting from the recent tax cuts. Many of them are in my home State of Iowa.

Media reports have detailed stories of Iowa-based companies investing resources back in their businesses and employees after the passage of the Tax Cuts and Jobs Act. Dyersville Die Cast, which dedicated a total of $150,000 in bonuses for its employees, is one such company, as is Anfinson Farm Store in Cushing, which gave $1,000 bonuses and raised wages by 5 percent for all of its full-time employees. Ohnward Bancshares in Maquoketa gave $1,000 bonuses for all of its 260 employees, and Pattison Sand Company in Clayton gave its employees $600 cash bonuses and raised their base pays.

Several Iowa utility companies are delivering millions of dollars in customer savings as well. Alliant Energy estimated its customer savings to be between $18.6 million to $19.6 million for electric and $500,000 to $3.7 million for gas. MidAmerican Energy estimated between $90.8 million and $112.3 million in customer savings and Iowa American Water Co. estimates customer savings of between $1.5 and $1.8 million.

From big cities to small towns, workers are receiving higher wages and better benefits, and families are once again able to save and invest in their futures. The Tax Cuts and Jobs Act has spurred economic growth and optimism in Iowa and throughout the country. I'm encouraged by the progress made, and I'm confident that the benefits of this commonsense law will continue to grow and improve the lives of Iowans and all Americans.

PREPARED STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R–Utah) today delivered the following opening statement at a Senate Finance Committee hearing to discuss the status and implementation of the new tax law.

Before we get into the meat of today's hearing, I'd like to thank Senator Wyden and Senator Scott for suggesting this meeting.

I look forward to having a conversation about the important changes we made in our tax reform bill and what kinds of technical corrections we might make to ensure the law is implemented as Congress intended.

As we gather to discuss ways to make tax reform even better, let's remind ourselves: every member who actively participated in drafting the bill should be proud of the new tax law. We were proud when we passed it, and we are even prouder now as all across the Nation, evidence affirms that the new law is tangibly benefiting millions of Americans.

More than 500 companies have announced wage hikes, increased benefits, more jobs, and increased investment or expansion in the United States thanks to the new law.

For example, in the past month, Kroger announced it will spend $500 million on employee compensation; Verizon is doubling its commitment to STEM education—helping hundreds of schools and millions of students; and a new study by the National Association of Manufacturers shows that 93 percent of manufacturers are optimistic about the future—in large part thanks to a tax code that works for American innovators and manufacturers.

Numerous other studies show increasing optimism among American business leaders—rising right along with wages and employment numbers. American individuals, too, are becoming more supportive of the law as they witness the benefits it brings to businesses and households.

Though only 37 percent approved of the law when it was passed in December, more than 50 percent expressed support in February, according to a *New York*

Times poll. Among Democrats, support rose by more than 10 percent in the same time period. It's hard to deny a truth that expands your pocketbook.

Now I'll be the first to admit that, good as it is, there are things we could have done to make the bill even better.

Unfortunately, that's largely because Democrats refused to positively participate in writing the bill.

In fact, the only efforts I saw coming from the other side were to undercut our efforts, put on political theater, and prevent us from even adopting their own ideas from the very beginning. For anyone out of touch enough to think that I would just throw my good friends under the bus for no reason, let me give you a quick history.

Last July, 45 of our Democratic colleagues wrote us what can only be called a legislative ransom note. That letter included a list of "prerequisites"—including a requirement that we agree, up-front, to never use the reconciliation process used to pass numerous bipartisan tax bills over the last few decades.

Now, I tend to think that while such bellicose political tactics certainly don't help getting good bipartisan legislation, they should not preclude both sides from at least talking to each other afterward.

Unfortunately, it seems that my expectations after more than 40 years of senatorial service were proven wrong, once again.

As we continued to work on our draft bill, I was saddened, and rather stunned, at the lack of meaningful interaction from the Democrats on this committee.

In fact, I did not hear anything of substance until we had already spent months writing a draft bill that we introduced in committee. Once we got there, we were glad to finally hear some of the thoughts my Democratic colleagues had. In the end, we happily included six amendments supported by eight different Democrats on this committee.

Now, if you're listening to this and thinking that this is just a bit of political theater, I would understand. Truly, I think you had to be there to believe it, and the craziest part is, it didn't end there.

Just as we began to negotiate the final bill before we got to the floor, I was stunned by the base partisanship that had grabbed hold of my long-time friends on the other side.

In fact, as just one example of this, Democrats slashed their own provision to fund the Volunteer Income Tax Assistance program, which helps low-income, disabled, and non-English speaking taxpayers with their filings for free. No one, on principle, disliked this provision. Democrats just didn't want a good thing in the tax law. So they used a parliamentary procedure to gut their own amendment from the bill behind closed doors.

And their partisan charade didn't end there. In fact, they used the Byrd Rule to excise the title and the table of contents. If someone thinks the tax reform is too complicated, that's in large part because there is not a table of contents—something most readers like when thumbing through more than 100 pages of legislative text—but that's what the other side insisted upon. Honestly, I cannot recall ever seeing something like that in my more than 40 years here in the Senate.

And all of that was just a sign of how desperate the other side was. They didn't care what they cut nor did they care about any sense of earnest review.

Now, I'm not a Senator with a flare for the dramatic. That's why I didn't bring this up at the time. Nor did any of my colleagues that I know of. Because, frankly, we were too busy trying to help the rest of America get a tax code that actually works.

That's why, when the bill did pass, it came with plenty of provisions so good that all Americans can be pleased with them, no matter their political party.

For example, Opportunity Zones, established in a measure proposed by Senator Scott, draw investment to Americans in impoverished regions of the country.

Additionally, across the board, tax rates have tumbled down. Individuals of all income levels will see tax cuts, with the typical family of four making the median family income of $75,000 a year seeing their taxes cut by more than half. And the corporate tax rate has been cut from 35 percent to 21 percent, which will keep America competitive in the global economy.

Not only is this a big boon for American businesses, but it helps their employees too, in the form of higher wages, more jobs, and increased retirement savings and benefits. These are real dollars that give middle-class Americans more money in their pockets every month. Money they worked for and deserve more than the bloated and overgrown government does.

We made sure the law creates proper incentives. We made our international tax system a territorial one, ensuring that American companies are more competitive overseas and encouraging them to bring earnings and investment back home. Again, that was a bipartisan proposal that we've discussed for years, and I'm glad we were finally able to enact it into law.

We doubled the Child Tax Credit and expanded its refundability. Again, another bipartisan proposal my colleagues could never seem to get passed into law. We also doubled the standard deduction. Taken all together, provisions like these are the reason JCT found that the overall distribution of the new tax bill is directed toward the middle class. Since I'm on that topic, I'd like to mention briefly a response to some concerns I've heard about section 199A. It is true that many small business owners are going to have their taxes cut. We did that very much intentionally. And even CBO has explicitly stated that these cuts will help grow small businesses.

In fact, they recently said that tax reductions for small businesses will increase after-tax returns on investment and boost investment by pass-through businesses. That increased investment means that their businesses grow—hiring new employees, growing the communities around them, and generally benefitting the American economy. All worthy goals none of us should be ashamed of.

And these businesses are a major part of our economy, I might add. According to the Small Business Administration, our most recent numbers indicate there are 29.6 million small businesses in the United States. They make up 99.9 percent of all firms and 99.7 percent of firms with paid employees. From 1993 to 2016, small businesses accounted for 61.8 percent of net new jobs. And the majority of those small employer businesses are pass-through businesses.

So let me pose a question back to my colleagues, why would we not want to get more money back to these business owners so that they can grow their businesses, hire more employees, and improve our economy? I honestly can't think of a reason.

As much as we've done, though, the work isn't over. And that's reason for optimism. As we make technical corrections to the bill—par for the course for any major tax bill—we'll be able to enhance what the law already does well, ensuring that Americans get tax relief, more jobs, and better wages.

We'll also look ahead to implementation. After all, Americans are just starting to see some of the many benefits of this law. Besides the wage boosts, bonuses, and other benefits they've started to receive, Americans will see yet more benefits next year when they file their taxes at lower rates and with larger credits and deductions.

In order to continue seeing all of those benefits, though, we need to ensure that the law is implemented as intended by Congress. That means having the proper people at Treasury and the IRS who can ensure a fulsome and thoughtful process.

Confirming our nominees in short order will be a critical part of ensuring all of the right people are on duty for this critical endeavor. That includes Mr. Charles Rettig, who has been nominated to serve as IRS commissioner. I look forward to processing his nomination in short order, though with the thoroughness this committee is known for, and I also look forward to getting Mr. David Kautter back to Treasury, where he can start implementing the new law.

For all of these reasons, I truly believe there is reason for optimism. And now that our political theater is moot, I am anxious to get back to our bipartisan tradition in this committee. Surely we can work on all this in a bipartisan manner—reaching across the aisle to ensure fairness in our tax code and in its implementation.

Before I finish, I want to point out that the tax law is, in one sense, already a bipartisan bill. True, one party refused to participate and did everything it could to make the bill too poor to pass. But many Democratic priorities were included in the bill, such as Senator Menendez's sexual harassment proposal, and lowering the bottom tax brackets. Senator Wyden himself has long supported lowering of the corporate tax rate, as did President Obama, and we were finally able to do so.

I'm proud of my history of bipartisanship in the Senate. And now, perhaps more than we have had for years, we have a chance to move forward together. I look forward to working across the aisle to enhance the new tax law to be the best it can be.

PREPARED STATEMENT OF DOUGLAS HOLTZ-EAKIN, PH.D.,
PRESIDENT, AMERICAN ACTION FORUM*

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to offer my early perspective on the Tax Cuts and Jobs Act (TCJA) now that it has been law for just over 4 months. To assess the immediate and prospective effects of the TCJA, it is important to frame the evaluation relative to the reason for tax reform in the first place: the weak U.S. economic outlook. Having identified the "problem," we should consider whether the major provision of the TCJA addressed the deficiencies of the tax code that weighed on economic growth. Last, we can discuss how best to evaluate the TCJA going forward as well as what evidence there may be of the effects of the TCJA on U.S. economic activity. As part of this assessment, I would like to make three points:

- The overriding rationale for the TCJA was the need for better incentives for long-term economic growth, improving disappointing wage growth, and raising the growth of the standard of living for American families.
- The TCJA, while imperfect, addressed many of the most anti-growth elements of the old tax code.
- It is much too early to judge the degree to which the TCJA is improving investment, productivity, and ultimately economic growth as intended. It is also essential to measure this effect properly going forward.

Let me discuss these in turn.

RECENT ECONOMIC PERFORMANCE AND THE GROWTH CHALLENGE

Supporting more rapid-trend economic growth is the preeminent policy challenge. The Nation has experienced a disappointing recovery from the most recent recession and confronts a projected future defined by weak long-term economic growth. Left unaddressed, this trajectory will consign to the next generation a less secure and less prosperous Nation.

Figure 1 shows quarterly, year-over-year growth rates for real gross domestic product (GDP) since the official end of the Great Recession in June of 2009. As displayed, real GDP growth has been stubbornly weak, averaging 1.9 percent annually (the dotted line). While recoveries from recessions precipitated by financial crises tend to be weaker, the persistence of the Nation's weak economy should not be considered inevitable, but rather as an encouragement to implement better economic policy.

Household income, a metric that more working Americans can appreciate, underscores the tepid economic recovery. According to the most recent comprehensive income survey conducted by the U.S. Census Bureau, earnings growth of men and women who worked full-time and year-round was essentially zero in 2016.[1] Stagnant earnings growth reflects poor productivity growth that lags behind the rate seen in other recoveries or the prevailing historical trends (see Figure 2).[2]

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*The views expressed here are my own and not those of the American Action Forum. I thank Gordon Gray for his assistance.

[1] *https://www.census.gov/library/publications/2017/demo/p60-259.html.*

[2] *https://www.americanactionforum.org/research/does-compensation-lag-behind-productivity/; also see https://www.bls.gov/opub/btn/volume-6/below-trend-the-us-productivity-slowdown-since-the-great-recession.htm,* on which Figure 2 is based.

Figure 1: Disappointing Economic Growth

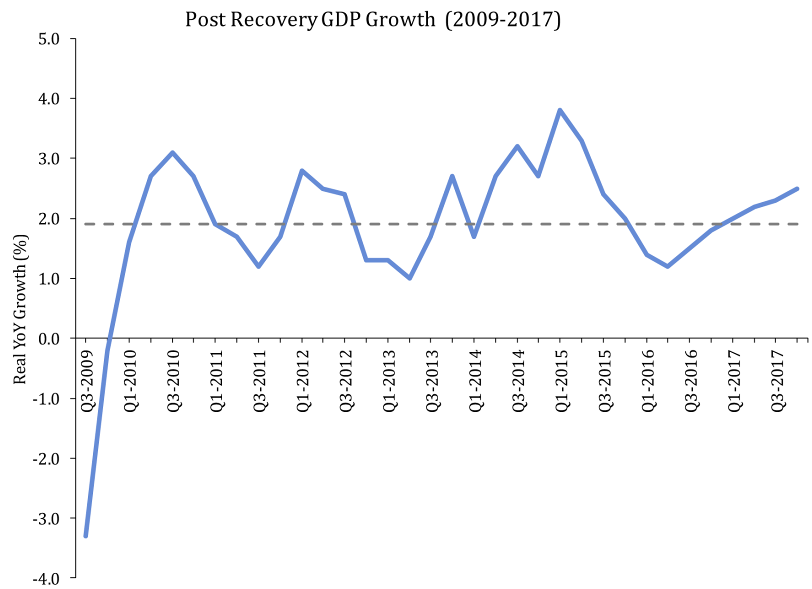
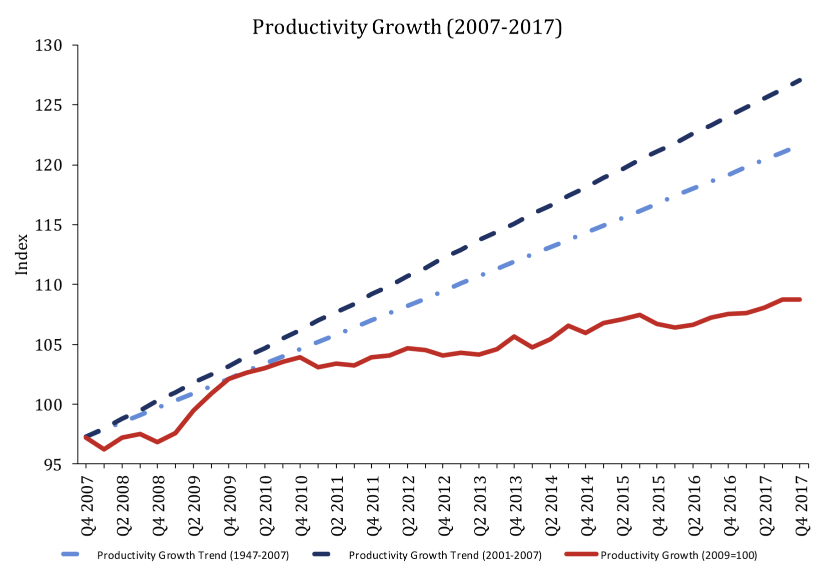
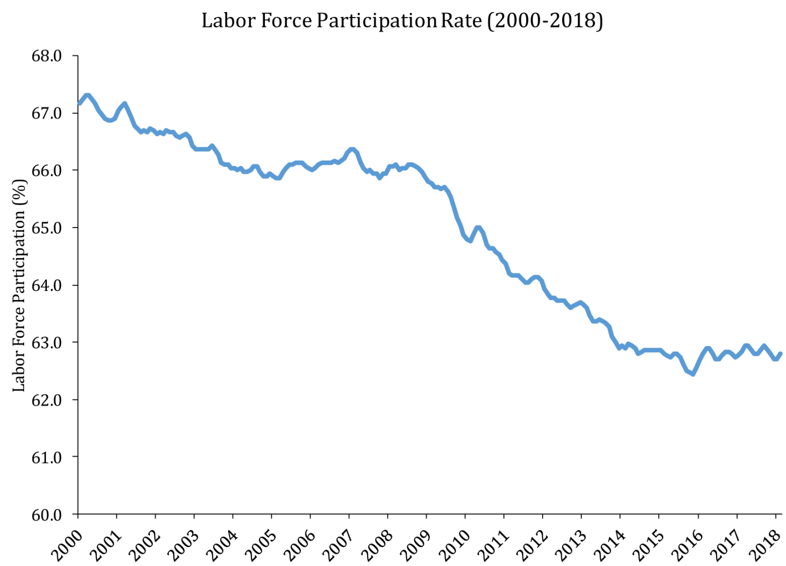


Figure 2: Productivity Growth Is Lagging Past Performance



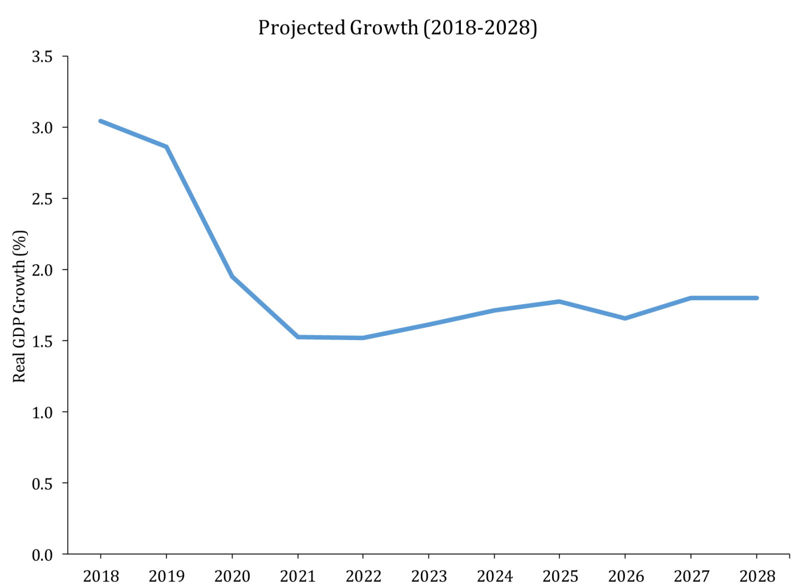
Source: BLS

Figure 3: Labor Force Participation



The other essential building block for stronger trend economic growth is growth in the labor force—the population willing and able to work. As a share of the population, the labor force has declined from historical highs in 2000, but this decline has accelerated since the Great Recession (Figure 3).

Figure 4: CBO April 2018 Baseline



Even more troubling than the recent economic past is the economic outlook. The Congressional Budget Office (CBO) projected in its April *Budget and Economic Outlook* that U.S. economic growth will average 1.9 percent over the period 2018–2028. While it reflects near-term improvement in the pace of growth, and credits the TCJA for improved incentives for work, saving, investment, and growth, CBO projects that these improvements will dissipate over the budget window.

The rate of growth projected in the current economic baseline is certainly below that needed to improve the standard of living at the pace typically enjoyed in postwar America. During the early postwar period, from 1947 to 1969, trend economic growth rates were quite rapid. GDP and GDP per capita grew at rates of 4.0 percent and 2.4 percent, respectively. Over the subsequent 25 years, however, these rates fell to 2.9 percent and 1.9 percent, respectively. During the years 1986 to 2007, trend growth in GDP recovered to 3.2 percent, while trend GDP per capita growth rose to 2.0 percent.

These rates were quite close to the overall historic performance for the period. The lesson of these distinct periods is that the trend growth rate is far from a fixed, immutable economic law that dictates the pace of expansion, but rather is subject to outside influences—including public policy.

Table 1: The Importance of Trend Growth to Advancing the Standard of Living

Trend Growth Rate Per Capita (%)	Years for Income to Double
0.50	139
0.75	93
1.00	70
1.25	56
1.50	47
1.75	40
2.00	35
2.25	31
2.50	28
2.75	26
3.00	23

The trend growth rate of postwar GDP per capita (a rough measure of the standard of living) has been about 2.1 percent. As Table 1 indicates, at this pace of expansion an individual could expect the standard of living to double in 30 to 35 years. Put differently, during the course of one's working career, the overall ability to support a family and pursue retirement would become twice as large.

In contrast, the long-term growth rate of GDP in the most recent CBO projection is 1.9 percent. When combined with population growth of 0.8 percent, this implies the trend growth in GDP per capita will average about 1.0 percent. At that pace of expansion, it will take 70 years to double income per person. The American Dream is disappearing over the horizon.

More rapid growth is not an abstract goal; faster growth is essential to the well-being of American families.

THE NEED FOR TAX REFORM

Prior to the enactment of the TCJA, the U.S. tax code was broadly viewed as broken and in need of repair, and for good reason. Whereas the previous administration and past Congresses made the tax system worse—adding higher rates and new taxes, including on the middle class—the Trump administration and Congress embarked on an effort to overhaul the fundamentals of the Nation's tax system. A sound reform of the U.S. tax code was an essential element of a pro-growth strategy, and this reform promises to support increased long-run economic growth.[3]

The deficiencies in the tax system prior to the enactment of the TCJA have been well documented but are worth reviewing and will fix this discussion in the proper

[3] *http://americanactionforum.org/research/economic-and-budgetary-consequences-of-pro-growth-tax-modernization.*

context—the counterfactual to the TCJA is of profound importance for evaluating its efficacy in improving the growth outlook.

International Competitiveness and Headquarter Decisions [4]

Prior to the enactment of the TCJA, the U.S. corporate tax code remained largely unchanged for decades, with the last major rate reduction passed by Congress in 1986.[5] During the interim, competitor nations made significant changes to their business tax systems by reducing tax rates and moving away from the taxation of worldwide income. Relative to other major economies, the United States went from being roughly on par with major trading partners to imposing the highest statutory rate of tax on corporation income. While less stark than the U.S.'s high statutory rate, the United States also imposed large *effective* rates. According to a study by PricewaterhouseCoopers, "companies headquartered in the United States faced an average effective tax rate of 27.7 percent compared to a rate of 19.5 percent for their foreign-headquartered counterparts. By country, U.S.-headquartered companies faced a higher worldwide effective tax rate than their counterparts headquartered in 53 of the 58 foreign countries." [6]

The United States failed another competitiveness test in the design of its international tax system. The U.S. corporation income tax applied to the worldwide earnings of U.S. headquartered firms. U.S. companies paid U.S. income taxes on income earned both domestically and abroad, although the United States allow a foreign tax credit up to the U.S. tax liability for taxes paid to foreign governments. Active income earned in foreign countries was generally only subject to U.S. income tax once it was repatriated, giving an incentive for companies to reinvest earnings anywhere but in the United States. This system distorted the international behavior of U.S. firms and essentially trapped foreign earnings that might otherwise be repatriated back to the United States.

While the United States maintained an international tax system that disadvantaged U.S. firms competing abroad, many U.S. trading partners shifted toward territorial systems that exempt entirely, or to a large degree, foreign source income. Of the 34 economies in the Organisation for Economic Co-operation and Development (OECD), for example, 29 have adopted systems with some form of exemption or deduction for dividend income.[7]

One manifestation of the competitive disadvantage faced by U.S. corporations was decisions on the location of headquarters. The issue of so-called "inversions" remained at the forefront of tax policy and politics. Originally, tax inversions involved a single company flipping the roles of U.S. headquarters and a foreign subsidiary—*i.e.,* "inverting." Tax changes in the early 2000s largely ended this practice. Next, whenever a U.S. firm sought to acquire or merge with a foreign firm, the tax advantages of being subjected to a lower rate and a territorial base made it inevitable that the combined firm would be headquartered outside the United States. In these cases, inversions took place in the context of these otherwise strategic and valued business opportunities. Most recently, foreign firms have recognized that freeing U.S. companies of their tax disadvantage allows foreign acquirers to use the same capital, technologies, and workers more effectively. Inversions were occurring because foreign firms were acquiring U.S. firms.

A macroeconomic analysis of former House Ways and Means Chairman Camp's tax reform proposal is instructive on the incentives inherent in the old tax code for capital flight. John Diamond and George Zodrow examined how reform similar to that proposed by former Chairman Camp would affect capital flows compared to pre-TCJA law.[8] In the long-run, the authors estimated that a reform that lowered corporate rates and moved to an internationally competitive divided-exemption system would *increase* U.S. holdings of firm-specific capital by 23.5 percent, while the net change in domestic ordinary capital would be a 5 percent increase. It is important to note that these are relative measurements—they were relative to current law at the time. If the spate of announcements of inversions in the years leading up to the enactment of the TCJA is any indication, the old tax code was inducing capital flight. Accordingly, the 23.5-percent and 5-percent *increases* in firm-specific

[4] *See https://waysandmeans.house.gov/wp-content/uploads/2016/05/20160525TP-Testimony-Holtz-Eakin.pdf.*

[5] *http://americanactionforum.org/research/economic-and-budgetary-consequences-of-pro-growth-tax-modernization.*

[6] PricewaterhouseCoopers (2011), *Global Effective Tax Rates,* Washington, DC.

[7] *https://taxfoundation.org/territorial-tax-system-oecd-review/.*

[8] *http://businessroundtable.org/sites/default/files/reports/Diamond-Zodrow%20Analysis%20for%20Business%20Roundtable_Final%20for%20Release.pdf.*

and ordinary stock, respectively, may be interpreted in part as the effect of precluding future tax inversions.

Placing a value of this potential equity flight is uncertain, but based on these estimates, roughly 15 percent, or $876 billion in U.S.-based capital was estimated to be at risk of moving overseas under the old code.[9]

Finally, it is an important reminder that the burden of the corporate tax is borne by everyone. Corporations are not walled off from the broader economy, and neither are the taxes imposed on corporate income. Taxes on corporations fall on stockholders, employees, and consumers alike. The incidence of the corporate tax continues to be debated, but it is clear that the burden on labor must be acknowledged. A recent survey compiled by the President's Council of Economic Advisers aptly summarizes the economics literature, and finds that while differing greatly, empirical estimates have been trending upwards over time, reflecting the dynamism of global capital flows that characterize the modern economy.[10] One study by economists at the American Enterprise Institute, for example, concluded that for every 1-percent increase in corporate tax rates, wages decrease by 1 percent.[11]

Flaws in the Individual Tax Code

As taxpayers rediscover every April, the U.S. code has been complex, confusing, costly to operate and comply with, and leaves taxpayers distrustful that everyone is paying the share Congress intended. In 2016, over 150 million individual tax returns were filed, covering over $10.2 trillion in income.[12] These returns also include millions of businesses that do not file as C corporations. As of 2012, there were 31.1 million non-farm businesses filing tax returns: 23.6 million sole-proprietors, 4.2 million S corporations, and 3.4 million partnerships (including limited liability companies). The Internal Revenue Service (IRS) also recognized 1.6 million C corporations.[13] The tax system is often the most direct interface between individuals and businesses and the Federal Government.

Unfortunately, that experience is often deeply unsatisfactory. The IRS has 1,186 forms with which taxpayers must contend and requires an average of 11.8 hours per paperwork submission. The overall burden on taxpayers is 8.1 billion hours in paperwork burden imposed by the tax collection system on taxpayers.[14]

As many Americans have experienced, the tax filing process is extremely time intensive and often requires the help of outside expertise. Tax compliance is so onerous for individual taxpayers, over 90 percent of individual taxpayers used a preparer or tax software to prepare their returns. The Taxpayer Advocate Service (TAS), the watchdog office within the IRS, has stated that complexity is the single most serious problem with the tax code. Fichtner and Feldman assessed the costs that the U.S. tax code extracts taxpayers through complexity and inefficiency. The study finds that, in addition to time and money expended in compliance, foregone economic growth, and lobbying expenditures amount to hidden costs are estimated to range from $215 billion to $987 billion.[15]

EVALUATING THE TCJA

Prior to the enactment of the TCJA, the last time the United States undertook a fundamental tax reform was with the Tax Reform Act of 1986 (TRA). A robust literature demonstrates negative relationships between higher marginal rates and taxable income, hours worked, and overall economic growth.[16] Highly respected

[9] *http://www.americanactionforum.org/research/economic-risks-proposed-anti-inversion-policy-update/.*

[10] *https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/Tax%20Reform%20and%20Wages.pdf.*

[11] Kevin A. Hassett and Aparna Mathur, "Taxes and Wages," American Enterprise Institute Working Paper No. 128, June 2006.

[12] *https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report#_ptl.*

[13] *https://www.jct.gov/publications.html?func=startdown&id=4903.*

[14] *https://www.americanactionforum.org/research/tax-day-2018-compliance-costs-approach-200-billion/.*

[15] Fichtner, Jason J., and Feldman, Jacob M., "The Hidden Costs of Tax Compliance," Mercatus Center, 2015 *http://mercatus.org/sites/default/files/Fichtner-Hidden-Cost-ch1-web.pdf.*

[16] *See* Feldstein, Martin, "The Effect of Marginal Tax Rates on Taxable Income: A Panel Study of the 1986 Tax Reform Act," *Journal of Political Economy,* June 1995, (103:3), pp. 551–72; Carroll, Robert, Holtz-Eakin, Douglas, Rider, Mark, and Rosen, Harvey S., "Income taxes and entre-

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economists David Altig, Alan Auerbach, Laurence Kotlikoff, Kent A. Smetters, and Jan Walliser simulated multiple tax reforms and found GDP could increase by as much as 9.4 percent because of tax reform.[17] The highest growth rate was associated with a consumption-based tax system that avoided double-taxing the return to saving and investment. The study also simulated a "clean," revenue-neutral income tax that would eliminate all deductions, loopholes, etc., and lower the rate to a single low rate. According to their study, this reform raised GDP by 4.4 percent over 10 years—a growth effect that roughly translates into about 0.4 percent higher-trend growth, resulting in faster employment and income growth. This theoretical work essentially staked out the upper bound for the growth potential from tax reform.

The TCJA addressed some of the most glaring flaws in the business tax code: It lowered the corporation income tax rate to a more globally competitive 21 percent, enhanced incentives to investment in equipment, addressed some of the disparate tax treatment between debt and equity, and refashioned the Nation's international tax regime. Primarily for these reasons, the TCJA will enhance the Nation's growth prospects. The likely growth effects over the long-term will fall short of the theoretical ideal but will ultimately be positive. The long-run contribution to GDP from the TCJA could be as much as 3 percent, though there are a range of credible estimates and myriad factors that could alter the ultimate impact of the TCJA on the economy.[18]

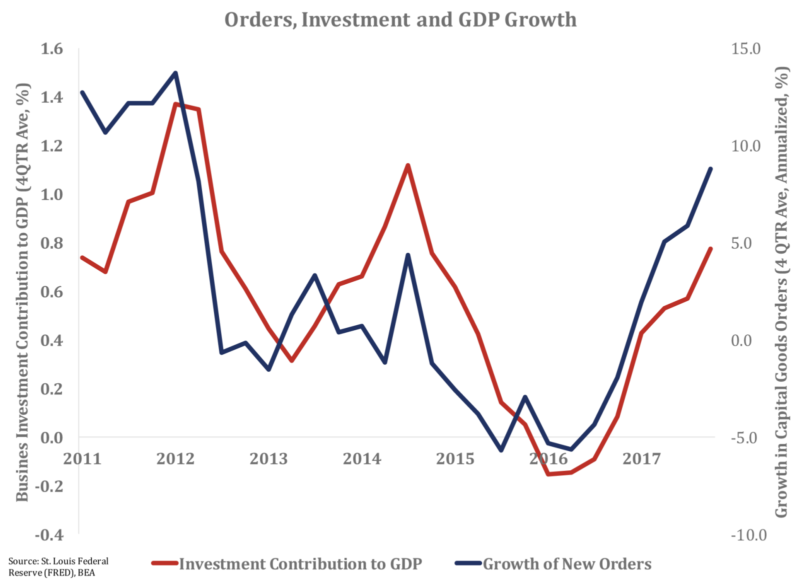
The primary channel by which the TCJA will contribute to more rapid economic growth will be through investment. A simple way to measure this effect is shown in the chart below. The red line shows the contribution (in percentage points) of business investment to growth in GDP, as measured by a 4-quarter moving average. The clear need is for investment to surge and push up both the growth rate of the economy and investment's contribution to that growth.

How can we see if that is coming? The blue line shows a 4-quarter moving average of new orders for capital goods, which fairly closely tracks the investment. During 2018 it will be interesting to watch the growth rate of new orders for an upturn in response to the policy change.

preneurs' use of labor," *Journal of Labor Economics* 18(2) (2000):324–351; Prescott, Edward C., "Why Do Americans Work So Much More Than Europeans?", Federal Reserve Bank of Minneapolis, July 2004; Skinner, Jonathan, and Engen, Eric, "Taxation and Economic Growth," *National Tax Journal* 49.4 (1996): 617–42; Romer, Christina D., and Romer, David H., "The Macroeconomic Effects of Tax Changes: Estimates Based on a New Measure of Fiscal Shocks," National Bureau of Economic Research, NBER Working Paper No. 13264, July 2007, *http://www.nber.org/papers/w13264.*

[17] Altig, David, Auerbach, Alan J., Kotlikoff, Laurence J., Smetters, Kent A., and Walliser, Jan, "Simulating Fundamental Tax Reform in the United States," *American Economic Review,* Vol. 91, No. 3 (2001), pp. 574–595.

[18] *https://www.wsj.com/article_email/how-tax-reform-will-lift-the-economy-1511729894-IMyQjAxMTl3Mjl1NzlyMTc4Wj/.*



It remains too early to evaluate the degree to which the TCJA is boosting investment, but there are some promising indicators.

According to a research report compiled by Morgan Stanley and Co., plans for future capital expenditures reached "an all-time high" in March 2018.[19] This index was ticking up prior to the TCJA enactment, so its implications should not be overstated, but this is an indicator to monitor for trends in investment behavior subsequent to the TCJA's enactment.

What is *not* a meaningful indicator for the TCJA's effect on investment are stock buybacks. The news is filled with reports that the TCJA has spawned "share buybacks"—corporations purchasing their own stock—and opponents of the law have characterized this as evidence of failed policy. A little reflection, however, indicates that share buybacks tell you essentially nothing about the success of the TCJA.

As noted above, investment is the channel through which the TCJA will most meaningfully improve the U.S. economic growth outlook and standards of living. Critics argue that share buybacks are not investment in new inventions, new business models, or new equipment.

Similarly, they are not higher wages for workers. Taken to its logical conclusion, this view regards share buybacks as a reflection of policy failure.

This reasoning is incomplete. When firms repurchase their stock, the dollars they pay do not disappear into a black hole. The sellers could easily turn around and invest themselves. Indeed, only about a fifth of corporate-source earnings are distributed to taxable entities, which means the vast majority of those earnings are going to things like pension funds, whose incentive is to channel the dollars to the place with the highest return—those firms doing the best investment in inventions, business models, and equipment. This is precisely how markets should channel capital for productive investment.

In fact, there could be many more intermediaries and many, many links in the investment chain. The bottom line is that success or failure is measured by the final transaction in that chain, not the first. As long as investment in the economy as a whole rises, the TCJA will have done its job.

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[19] *http://www.taxanalysts.org/content/economic-report-gives-white-house-support-tax-cut-prediction.*

As an aside, it is probably a good thing when there are share buybacks. They suggest that the firm has little in the way of high-return investments to make. It is far better to avoid having the dollars trapped in a low-return firm and instead have them flow through financial markets to the best investment opportunities.

CONCLUSION

Prior to the enactment of the TCJA, the U.S. tax code hadn't been overhauled in over 30 years. The tax code was widely viewed as broken—a conspicuous drag on the economy that chased U.S. firms overseas while suppressing investment here at home. Major elements of the TCJA, particularly the lower corporate tax rate, expensing of qualified equipment, and the broad architecture of the international reforms, should improve the investment climate in the United States. While it remains too early to assert with any degree of certainty what the TCJA's contribution to the economy will be, some indicators suggest a salutary response in investment, consistent with the economic theory underpinning the design of the business reforms.

QUESTIONS SUBMITTED FOR THE RECORD TO DOUGLAS HOLTZ-EAKIN, PH.D.

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. Some of my Democratic colleagues have resorted to calling the tax benefits that will accrue to many Americans as a result of the tax reform bill we passed last year as "crumbs." They point to share buybacks as an example of significant corporate giveaways that won't benefit working Americans at all. They also point to bonuses, hourly wage increases, increased 401(k) matching contributions, increased training and education, and the like for working Americans, as inconsequential results of this tax reform bill.

Would you explain how out of touch with mainstream America those views are and the extent to which tax benefits actually are accruing to low- and middle-income Americans under this tax reform bill?

Answer. It is important to put magnitudes in perspective. In the first quarter of 2018 the Bureau of Labor Statistics reports that 50th percentile (or median) weekly earnings was $881, while the 75th percentile was $1,399. So a $1,000 bonus represents a free week's pay for between half and three-quarters of all workers. I don't believe workers will sneer at getting a free week of pay.

More generally, the distribution tables prepared by the Joint Committee on Taxation (JCT) show $17.3 billion in reduced 2019 taxes for those making under $50,000. But the greatest promise of the TCJA for workers are the business tax reforms and their incentives to innovate, invest, raise productivity, and pay better in the United States. Those impacts will not happen overnight, but they are far more important good news than the specific provisions in the bill.

Question. In your testimony, you state that AEI economists concluded that for every 1-percent increase in corporate tax rates, wages decrease by 1 percent. That's a remarkable statistic. All other things equal, is it reasonable to think that decreasing the corporate tax rate from 35 percent to 21 percent, as the tax reform did, can lead to increased wages for our fellow Americans, including those in the lower and middle classes?

Answer. The research findings by Hassett and Mathur document a statistical regularity between lower taxes and higher wages. The examination of historical data is perhaps the best guide to the future impact of tax policy, so it is sensible to expect wages to rise. However, the empirical work is silent on the specific mechanisms producing the higher wages and the pace at which they will materialize. Thus, I anticipate wages to rise, but am simply monitoring the data to see the pace of improvement.

Question. There's a lot of rhetoric around the issue of stock buybacks. That supposedly the proof that the tax reform is bad is that there are more stock buybacks. Can you please tell the committee, are stock buybacks bad? How should we think about that?

Answer. The repurchase of shares, more commonly known as stock buybacks, are poorly understood. In particular, they do not represent "enriching" the already affluent. Consider three points:

1. *Stock buybacks do not enrich shareholders.* The TCJA impacts the value of corporate equity investments in complicated ways. The rate cut increases the value of equity. The move to a territorial system with a tax on deemed repatriation modestly cuts this increase in value for those with large accumulated overseas earnings (other things being equal). The imposition of expensing increases the value of growing firms with new investments (again, other things equal). But stock buybacks do *not* make shareholders richer. A stock buyback is simply the exchange of valuable stock for the same value in cash. It has no impact *per se* on anyone's wealth.

2. *Relatively few shareholders are rich people.* According to authors from the Tax Policy Center, less than one quarter of corporate stocks are held by taxable accounts (and people are not the only taxable accounts, so the number of individuals is even smaller). The largest share (37 percent) is held by retirement plans, as well as insurance companies and non-profits. Stock buybacks do not create riches and are not targeted at the affluent.

3. *The economic impact depends on the final transaction; the buyback is the first.* When the shareholder receives the cash, he or she can plow it back into the financial system in the form of another stock, bond, or the like. Those funds become available to entrepreneurs, small businesses, and companies to make investments. As they do, the quality and quantity of tangible and intangible capital rises and new business models are formed. These are the foundation of higher productivity, which will translate to higher wages. I will be the first to acknowledge that it is too early to judge the ultimate success of the TCJA in this regard. But I am dead sure that one learns *nothing* about this success or failure from stock buybacks.

Stock buybacks are an empty critique of the tax reform. It is a critique devoid of understanding of what creates value, who directly benefits from wealth creation, and how the pursuit of better value generates widespread prosperity.

Question. You wrote in your testimony about how disparities between a high rate domestically, and a low rate overseas, can lead to pressures to offshore investments. It seems like something you were suggesting in your written testimony is that just simply reducing the corporate tax rate could reduce this pressure. Is that right? That reducing the corporate rate, all other things being equal, would lead to increased on-shoring of investment in the United States?

Answer. The TCJA unambiguously improves the incentives to locate investments in the United States. The reduced corporate tax rate is the most obvious improvement in the investment climate, but the reduced tax on worldwide earnings from intellectual property located in the United States should be considered as well.

The most misunderstood impact is the move to a more territorial tax system and its associated base erosion regime. Professor Kysar, for example, notes that the GILTI and FDII regimes encourage firms to move real assets offshore. This misses the point that under the previous tax code any firm that was sensitive to such tax incentives would have already located the assets offshore and not repatriated the earnings—essentially "self-help" territoriality. The incentives to offshore were already present; the only *change* to incentives is to make the United States more attractive.

Question. Professor Kamin talks about the problem of increased government debt in his written testimony. That's a concern to me too. Could you please help us think about that?

Answer. This is an important issue as the Federal Government faces a daunting, unsustainable budgetary future. This has been true for many years now, as successive editions of the Congressional Budget Office's (CBO's) *Long-Term Budget Outlook* has documented. As a matter of the facts, this problem pre-dates the Tax Cuts and Jobs Act (TCJA). The TCJA does contribute to higher deficits in the CBO baseline in the near term. Other things equal, this is not desirable. But other things are not equal—revenues rise back to the previous baseline levels within the 10-year budget window, growth is improved, and wage earnings rise.

The core problem is the one that produced $10 trillion in deficits over the 10-year budget window prior to the TCJA in January 2017: rapid growth in mandatory spending. Social Security, Medicare, Medicaid, and the Affordable Care Act are projected to grow at rates from 5.5 percent to 8.0 percent—faster than any plausible revenue growth—and are the source of the red ink. Reform of these mandatory spending programs is an imperative.

Question. Professor Kysar, in his written testimony, advocates eliminating the exempt return on foreign tangible assets. As another point, he suggests increasing the tax rate on GILTI income, if the FDII special rate is repealed, which he seems to think it should be. So, I infer from this that he thinks a pure worldwide regime, with no deferral, would be a very good reform.

I invite you to briefly answer as to the wisdom of enacting a pure worldwide regime, with no deferral.

Answer. I think this would be unwise in the extreme, exacerbating the offshoring of production, intellectual property, and headquarters. The past decade and a half have seen a steady switch from worldwide to territorial regimes among OECD countries; the United States should learn something from the empirical record.

PREPARED STATEMENT OF DAVID KAMIN, PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW

Chairman Hatch, Ranking Member Wyden, and members of the committee, I thank you the opportunity to come here to discuss the recent tax bill.

The 2017 tax act is a lost opportunity to overhaul the tax code for the better. A flawed framework and rushed process produced a law that is likely to leave typical Americans worse off in the end. Our tax system had a number of significant flaws before this bill, but, while the legislation makes some worthwhile targeted improvements, its overall thrust is to go in the wrong direction along some of the most important dimensions.

- **The legislation is expected to add $1.9 trillion to the deficit over the next decade.** With the Federal budget already on an unsustainable fiscal course, this legislation makes the situation significantly worse. The law adds $1.9 trillion to the deficit through 2028 according to the latest Congressional Budget Office (CBO) estimate—and at a time when the economy does not need such fiscal stimulus.[1] To put this in perspective, these tax cuts are expected to result in a 70-percent larger rise in Federal debt as a share of the economy than we would have otherwise had through 2025 (the point at which the individual income tax cuts in the bill expire). We simply cannot run a 21st-century government and care for an aging population when revenue in the next few years is expected to be below the historical average of the last several decades, as is the case because of this bill.
- **The legislation provides the largest benefits to the highest-income Americans and likely leaves typical families worse off in the end.** The tax cuts concentrate their benefits among those who are doing the very best in this economy. As a share of income in 2018, this bill gives an average tax cut to the top 5 percent that is over twice as large as for a typical middle-class family and over nine times as large as for a typical low-income family.[2] That doesn't even count the negative effects of millions of low- and middle-income Americans no longer having health insurance as a result of the bill's repeal of the individual mandate—which is used to help partially finance these tax cuts disproportionately for the top. Further, the legislation is likely to look even worse once it is fully paid for, as it eventually must be. As a result, this bill is likely to leave a typical American family worse off in the end, as key programs and investments are threatened to pay for tax cuts which we know give outsized benefits to those with high incomes.
- **The legislation is a bonanza for tax planning by preferentially taxing certain kinds of income and drawing complex, arbitrary, and unfair lines.** The new reform fundamentally undermines the integrity of the income tax by expanding preferential taxation of income earned in certain ways but not others.[3] Corporations can now be used as tax shelters to avoid the top individual rate. Alternatively, people in the right sectors or with good enough

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[1] Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028,* at 129 tbl.B–3 (2018).

[2] Author's calculations based on Tax Policy Center, Table T18–0025 (2018), available at *http://www.taxpolicycenter.org/model-estimates/individual-income-tax-provisions-tax-cuts-and-jobs-act-tcja-february-2018/t18-0025.*

[3] For a more complete discussion of the kinds of tax planning opportunities created by the act, see a report released by 13 tax scholars, including me, in the immediate lead-up to passage of the bill. *See* Avi-Yonah et al., "The Games They Will Play: An Update on the Conference Committee Bill" (draft, December 2017), available at ***https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423.***

tax counsel can take advantage of the new deduction for certain kinds of "pass-through" businesses—but only very certain kinds. This pass-through deduction represents the very worst kind of tax policy, picking winners and losers haphazardly in a complex tax provision, and then generating significant incentives for people to rearrange their businesses to try to get on the right side of the line. And these kinds of tax-planning opportunities throughout the bill mean the legislation seems likely to lose even more revenue—and give even more benefits to the best off—than initial estimates suggest.

- **We can and must do better.** Tax reform should raise more revenue, not less; ask more especially from the top, not less; reduce arbitrariness and complexity to create an even playing field across people and businesses, rather than adding a maze of rules that haphazardly pick winners and losers; and reduce unnecessary distortions and preferences that hold back the economy. The 2017 law made some targeted changes that went in the right direction, such as limiting the corporate preference for debt financing, limiting business deductions for entertainment expenses, and attacking ways that certain U.S. and foreign corporations strip profits out of the United States that should be taxable here. But, the plan overall fails to meet the most important goals we should have for our tax system. It means true tax reform should continue be on the agenda—a reform that undoes the damage of this bill and takes our tax system in the right direction.

REVENUE TO FINANCE OUR COUNTRY'S COMMITMENTS, INVESTMENTS, AND PUBLIC SERVICES

The Federal Government needs more revenue to meet the country's commitments, make worthwhile investments, and provide needed services. We have long known that, with the retirement of the baby boomers, spending would rise in Social Security and Medicare, and that is happening now. Containing health care cost growth, building on the accomplishments of recent years, is of key importance. If that is done, then the costs for Social Security and Medicare are eventually expected to level out as a share of the economy—at a new, somewhat higher level.[4] We can successfully finance the increase in costs from the aging of the population, and also the many other investments and services that our government should provide. But, we need more revenue to do that, and certainly cannot do it when tax cuts are driving revenue below the historical average of the last several decades—as will be the case in the next few years.[5]

An unsustainable fiscal trajectory has been made significantly worse by these tax cuts. In dollar terms, these tax cuts will add $1.9 trillion to the deficit through 2028, according to CBO's latest projections.[6] This is a significant blow to the country's fiscal trajectory. To give a sense for the magnitude:

- *A 70-percent larger rise in debt through 2025 as a share of the economy.* The debt-to-GDP ratio should generally be stable or falling when the economy is strong. Even absent these tax cuts, the Federal Government's debt-to-GDP ratio would have been on an unsustainable upward trajectory, expected to rise by 9 percentage points from the end of 2017 through 2025—going from about 76 percent of GDP to 85 percent based on the latest data from CBO. But, as shown in Figure 1, with the tax cuts in place and fully taking into account potential macroeconomic feedback, that increase is now expected to be about 70 percent larger through 2025 according to CBO (at which point

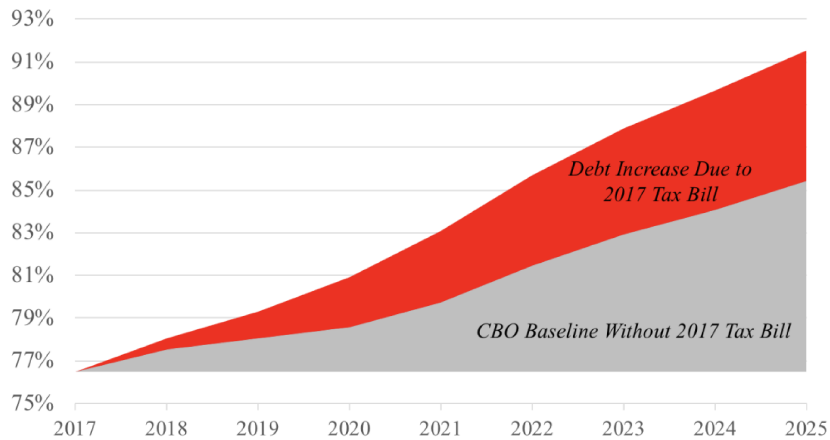
[4] For instance, the Social Security Trustees project Social Security costs rising from about 4 percent of GDP as of the early 2000s to around 6 percent of GDP as of 2030—with costs then stabilizing at that level. *See* Social Security Trustees, *2017 OASDI Trustees Report,* Table VI.G4 Single Year Table, available at *https://www.ssa.gov/oact/tr/2017/lr6g4.html.* For a projection following a broadly similar pattern, *see* Congressional Budget Office, *The 2017 Long-Term Budget Outlook, Supplemental Information,* tbl.1 (2017), available at *https://www.cbo.gov/sites/default/files/recurringdata/51119-2017-03-ltbo_1.xlsx.* For Medicare, the trajectory depends on health-care costs and whether we can build on the reforms in recent years that have helped to contain cost growth. If there is zero "excess cost growth" (spending per capita in Medicare rises with GDP), then Medicare spending, like Social Security spending, would increase as the baby boomers retire but then stabilize as a share of the economy. If excess cost growth is positive, then the program would continue to grow as a share of income—a trend that would eventually have to end. *Id.* at tbl.4.

[5] Through 2025 (when the individual income tax cuts expire), revenues are projected to average 16.9 percent of GDP assuming continued growth. Congressional Budget Office, *supra* note 1, at 67 tbl.3–1. That's as compared to an average of 17.4 percent over the last 40 years (including recessions) and a high in that period of 20.0 percent in 2000.

[6] *Id.* at 129 tbl.B–3.

all of the individual income tax cuts are scheduled expire). In other words, as a result of the tax cuts as enacted, the debt-to-GDP ratio is projected to rise around 15 percentage points rather than 8 percentage points, and reach 92 percent of GDP as of 2025.[7]

Figure 1
Projected Increase in U.S. Debt-to-GDP Ratio Relative to 2017 (Including Macroeconomic Feedback Effects)



Source: Author's calculations based on CBO data.

- *When fully in effect, a deficit of roughly similar magnitude as the long-term shortfall in the entire Social Security system.* People often cite to the long-term shortfall in Social Security as a key fiscal challenge, and it is—though one that can be addressed readily if there were political will, especially to raise revenue. Notably, these tax cuts are of about the same magnitude as the entire shortfall in the Social Security system. In the years that they are fully in effect, the tax cuts amount to about 1 percent of GDP. The Social Security Trustees estimate that the Social Security shortfall is also about 1 percent of GDP over the next 75 years.[8] CBO puts the Social Security gap as somewhat larger than that, about 1.5 percent of GDP.[9] So, these tax cuts alone, when fully in effect, are between two-thirds and 100-percent as large as the 75-year Social Security shortfall, depending on which estimates are used. Of course, if many of the tax cuts expire as scheduled as of 2025, then they would not have a long-term deficit effect; this illustrates how big they are if they remain in place.

Put simply, this tax bill fails a very basic test. Does it give us a tax system that generates enough revenue? The answer is "no." Either the tax cuts must be reversed and then some, or key commitments, investments, and services will have to give.

To be sure, there are times that deficit financing can be wise—in fact, urgently needed. That is particularly the case when the economy is weak, with high unemployment, and especially if the Federal Reserve has cut interest rates to the "zero bound" and so has limited ability to stimulate the economy. In those times, deficits can save jobs and raise living standards. We are not now in that environment, since the Federal Reserve is in fact moving to raise interest rates. There were serious mistakes made in fiscal policy several years ago, when Congress insisted on aus-

[7] Author's calculations based on CBO data.
[8] Social Security Trustees, *supra* note 4, at Table VI.G4, *https://www.ssa.gov/oact/tr/2017/VI_G2_OASDHI_GDP.html#200732.*
[9] Congressional Budget Office, *Changes to CBO's Long-Term Social Security Projections Since 2016,* at 2 tbl.1 (2017), available at *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53209-ltbossprojections.pdf.*

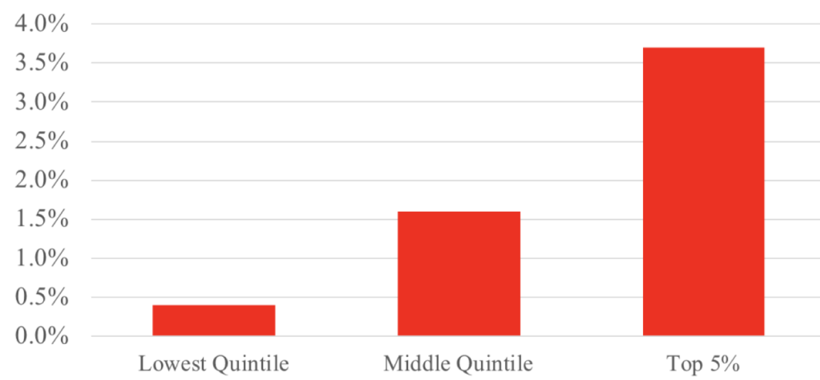
terity that was premature. Congress is now engaged in a mistake of the opposite kind—deficit-financing unsustainably and without the justification of serious economic weakness.

CONCENTRATING THE BENEFITS AT THE TOP, WITH TYPICAL FAMILIES LIKELY LEFT WORSE OFF

Who wins from these tax cuts? Disproportionately, it is those who have done best in this economy, aggravating the already wide gap between the living standards of those at the top and everyone else. In 2018 and based on Tax Policy Center data: [10]

- Top 5 percent: An average family in the top 5 percent gets a tax cut of about 3.7 percent of after-tax income (or $20,890).
- Middle quintile: An average family in the middle quintile gets a tax cut of 1.6 percent of after-tax income (or $930).
- Bottom quintile: An average family in the bottom quintile gets a tax cut of 0.4 percent of after-tax income (or $60).

<u>Figure 2</u>
Distribution of Bill in 2018
(% Change in After-Tax Income)



Source: Tax Policy Center, Table T18-0025.

In other words, the average tax cut for the top 5 percent is more than double that for a typical middle-income family as a share of income and nine times that for a low-income family. This distribution comes as a result of a series of policy choices. That includes expanding the Child Tax Credit but then failing to enhance it in such a way that the tax cut would give anything but a symbolic benefit to millions of low-income working families and not expanding the Earned Income Tax Credit at all. It also includes a series of large tax cuts disproportionately benefiting the top and which are significantly larger than the base-broadening measures that the bill enacts. That includes the large corporate rate cut, the new deduction for pass-through businesses, the cuts to the top individual income tax rates, further reductions in the estate tax, and so on.

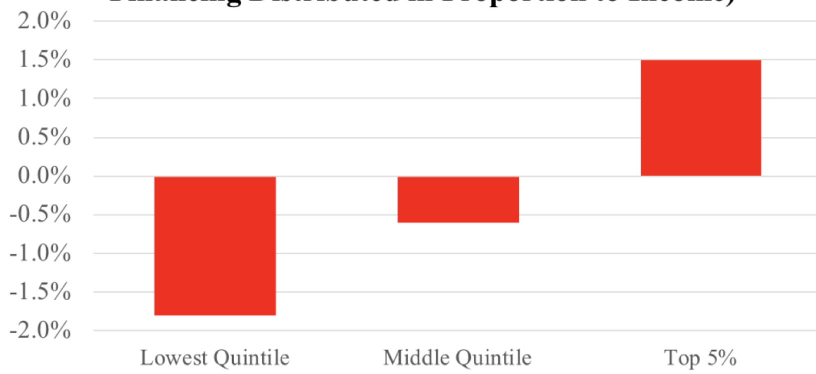
In fact, this distributional estimate is misleadingly optimistic. First, that's because it doesn't include the losses to low- and middle-income Americans coming from health insurance increasing and millions dropping health insurance as a result of the repeal of the individual mandate. Second, because these tax cuts are deficit financed, there will come a day when they do get paid for, as services are cut (or taxes increased) to finance them.

Who will be the winners and losers then? Well, of course, we don't know until it happens. That is part of the problem with deficit-financing a tax cut like this. It hides who actually pays for the tax cuts.

[10] Author's calculations based on Tax Policy Center, *supra* note 2.

If one were to perhaps optimistically assume that the eventual financing for these tax cuts is distributed in proportion to income (that is, households across the income distribution see spending cuts and/or tax increases that reduce their income by the same percent), the picture becomes one of tax cuts that leave the top ahead and everyone else worse off. In short, these tax cuts come with the very real risk, and I'd argue likelihood, that a typical family will be left worse off as a result. This is shown in Figure 3.

Figure 3
Distribution of Bill in 2018 with Financing (% Change in After-Tax Income with Financing Distributed in Proportion to Income)



Source: Author's calculations based on Tax Policy Center, Table T18-0025.

And, that distribution of financing may well be too optimistic, certainly if the budget choices advocated by many tax cut supporters were pursued. Some indication can perhaps be taken from budgets like those from the Trump administration and congressional Republicans. These budgets aim to slash the kinds of benefits, investments, and services that are especially important for many lower- to middle-income families in order to help finance tax cuts like these. For instance, the Center on Budget and Policy Priorities has found that about 50 percent of the non-defense cuts in last year's congressional budget framework would come from programs particularly benefiting low-income Americans.[11]

Another indication of what the future might hold can be taken from what Congress chose to make permanent and what it did not in this very legislation. In order to meet the constraints set by the budget rules, the writers of this legislation chose to allow all of the individual tax cuts expire after 2025. The corporate rate reduction continues but in significant part financed through provisions affecting low- and middle-income Americans—a slowdown in inflation adjustments that gradually increases taxes over time and, also, the repeal of the individual mandate likely leading to millions more uninsured. Thus, after 2025 and even putting to the side the effects of getting rid of the mandate, this tax bill would, if nothing changes, produce modest tax cuts for the top and tax *increases* for the rest.[12]

Those expirations may or may not happen as scheduled. But, we do live in a world of constraints. Choices will have to be made, and these expirations apparently re-

[11] Isaac Shapiro et al., Center on Budget and Policy Priorities, "House GOP Budget Cuts Programs Aiding Low- and Moderate-Income People by $2.9 Trillion Over Decade" (2017), available at *https://www.cbpp.org/research/federal-budget/house-gop-budget-cuts-programs-aiding-low-and-moderate-income-people-by-29.*

[12] *See* Tax Policy Center, Table 17–0136 (2017), available at *http://www.taxpolicycenter.org/model-estimates/conference-agreement-tax-cuts-and-jobs-act-dec-2017/t17-0316-conference-agreement.*

flect the priorities of the writers of this legislation when faced with constraints, even if the constraints now might be the budget rules.

The trade-offs they made show the danger that this tax bill poses to low- to middle- income Americans when it is eventually paid for.

A TAX-PLANNING BONANZA AND COMPLEXITY GALORE

Unfortunately, this tax bill's flaws are not fully captured by these revenue and distributional estimates. These measures do not show the harm that comes from the wasteful and unfair tax planning that this bill will prompt. Moreover, these tax-planning games could well lead to even more revenue loss and bigger wins for the top than official estimates suggest; I believe that is in fact the likelihood.

Tax planning, complexity, and unfairness often go hand-in-hand. This bill increases all of those by allowing certain kinds of income—if earned in the right forms or in the right sectors—to be preferentially taxed in ways they hadn't been before. These preferential rates are given for income earned through corporations and for certain kinds of pass-through businesses. The result is a system in which many of the most sophisticated and highest income Americans will be able to avoid the new (reduced) top individual income tax rate on substantial shares of their income if they do enough planning, even as those in some lines of business will win more than others for no particularly good reason.

To the degree there is a logic behind this mess, it might be that "business income" deserves a special break as compared to income earned from "work." [13] I would question that choice from the start. Why should someone working as an independent contractor or business owner get a tax break that someone doing the same work as an employee does not? That is apparently the position of the writers of this legislation. And, the administrative mess that this bill creates in trying to draw such a distinction helps demonstrate the profound lack of wisdom in this policy approach.

A number of tax scholars and practitioners pointed out some of the deep flaws in the legislation in the lead up to its enactment, but the flaws still remained and they are already being exploited according to news reports.[14]

Corporations as Tax Shelters

One of the central elements of the 2017 reform is a large cut in the corporate tax rate. The corporate rate falls from 35 percent to 21 percent. However, the legislation does nothing effective to address the problem that this creates for the individual income tax system and the kind of avoidance this will generate.

In particular, with this large cut in the corporate rate, high-income individuals can avoid the progressive individual income tax. They can do so by stuffing income into the corporation. Taking into account self-employment and surtaxes, the top individual rate is around 40 percent—now, a far cry from the top corporate rate of 21 percent. That generates a potentially powerful incentive to earn income through the corporation rather than any form that would be subject to the 40-percent rate. (Also, for corporations, State and local income taxes remain fully deductible whereas, for individuals, the deduction is subject to a low cap, adding to the preference for earning income through a corporation.)

Corporate income is potentially subject to a second layer of tax, which can reduce this incentive. Qualified dividends and capital gains are taxed at up to a rate of 23.8 percent. However, the second level of tax can be deferred and potentially even eliminated. Owners of corporations can choose not to distribute funds from the corpora-

[13] There is greater logic to applying different tax rates to normal returns to capital versus other returns (such as returns to labor). For instance, consumption tax approaches, which can be progressive depending how they're structured, involve not taxing normal returns to capital but then taxing all other returns (including extraordinary returns to capital and returns to labor). I tend to support taxing all of these returns (including the normal return to capital), but there are reasonable disagreements among tax policy experts on that score. The new tax rates on business income, however, do not represent any kind of defensible quasi-consumption tax style model. Under this new system, top income earners can now manage to characterize all kinds of returns—including returns to their own labor—as "business income" and effectively get special, low tax rates.

[14] *See, e.g.,* Ruth Simon and Richard Rubin, "Crack and Pack: How Companies Are Mastering the New Tax Code," *Wall Street Journal,* April 3, 2018, available at *https://www.wsj.com/articles/crack-and-pack-how-companies-are-mastering-the-new-tax-code-1522768287;* Ben Steverman and Patrick Clark, "Here's the Trump Tax Loophole Your Accountant Can Blow Right Open," *Bloomberg,* February 5, 2018, available at *https://www.bloomberg.com/news/articles/2018-02-05/here-s-the-trump-tax-loophole-your-accountant-can-blow-wide-open.*

tions, and, while there are existing provisions meant to limit such build ups, those limits are widely understood to have been ineffective in decades past when the tax code created similar incentives—and are unlikely to be effective now.[15] The deferral of the second level of tax effectively reduces its value, and, if deferred until the corporate shares are given to heirs at death, the second level of tax can be entirely eliminated via step-up-in-basis at death.

Further, there are ways for owners of such corporations to essentially use the income in the corporation for other means and without triggering the second layer of tax. They can do so by borrowing and even potentially using the corporate stock to secure such loans, and, again, without triggering that tax.

Prior to the 1986 tax reform, there were somewhat similar incentives to stuff income into corporations. However, one notable difference between that environment and the current one is that, unlike anytime before this in the post World War II-era, someone can now earn income in the corporation, have it subject to the top corporate rate, distribute the income and immediately subject it to the second layer of tax, and still come out ahead as compared to earning that income as an individual. Thus, if the current rate structure holds, using a corporation to earn income as opposed to earning it as an individual subject to the top rate will, for many types of income, be superior irrespective of whether the second level of tax is deferred—with the question only being how much better.

A Deduction for Certain Pass-Throughs That Is Tax Policy at Its Worst

Perhaps in response to this preference for income earned through corporations, the designers of the legislation decided to also create a special deduction for certain kinds of pass-through income. This applies to income earned through non-corporate businesses that are taxed at the individual level ("passed through" to the individual). The 20-percent deduction essentially reduces the individual income tax rates applied to this income by 20 percent.

However, in trying to avoid a substantial shift into corporations, the designers of this tax legislation set up something even worse than simply allowing that shift to happen—or, better yet, not allowing corporations to be used so easily as tax shelters. The deduction is a provision of substantial complexity, real unfairness, and subject to significant gaming.[16] Further, it will tend to most benefit those with the higher incomes—since such pass-through income is concentrated at the top and a deduction like this most benefits those being taxed at the highest rates. For those who say the provision is needed to help true small businesses, I say there are much better ways.

To briefly summarize the bevy of rules that apply here:

- *Not to employees.* The one group that cannot get the deduction at all are employees. Irrespective of income level, employees are barred from enjoying the deduction's benefits.
- *Yes, to independent contractors and other business owners, sometimes.* For those who aren't employees, such as independent contractors and other business owners, much turns on whether other restrictions—on those with higher incomes—apply. For those with taxable income below $315,000 for a married couple (and half that for a single individual), what matters is whether one is an employee or not. If someone is an independent contractor, for instance,

[15] On some of the history of corporations serving as tax shelters, the restrictions that apply, and those restrictions' ineffectiveness, *see generally* Steven A. Bank, "From Sword to Shield: The Transformation of the Corporate Income Tax, 1861 to Present" (2010); Edward Kleinbard, "Corporate Capital and Labor Stuffing in the New Tax Rate Environment" (March 21, 2013), *https://ssrn.com/abstract=2239360.* A number of other tax experts have also described how corporations will now act as tax shelters with the new, much lower corporate rate. *See, e.g.,* Shawn Bayern, "An Unintended Consequence of Reducing the Corporate Tax Rate," 157 *Tax Notes* 1137 (November 20, 2017); Michael L. Schler, "Reflections on the Pending Tax Cut and Jobs Act," 157 *Tax Notes* 1731 (December 18, 2017); Adam Looney, Brookings Institution, "The Next Tax Shelter for Wealthy Americans: C-Corporations," Up Front Blog, (November 30, 2017), available at *https://www.brookings.edu/blog/up-front/2017/11/30/the-next-tax-shelter-for-wealthy-americans-c-corporations/*.

[16] Daniel Shaviro has a particularly incisive discussion of how the pass-through deduction came to be and its deep flaws. In his words, "[It] function[s] as incoherent and unrationalised industrial policy, directing economic activity away from some market sectors and towards others, for no good reason and scarcely even an articulated bad one." *See generally* Daniel Shaviro, "Evaluating the New U.S. Pass-Through Rules," *British Tax Review* (2018).

that person apparently gets the deduction, based on guidance so far.[17] This is true even if the person were doing similar work as an employee—just without employee benefits and somewhat less supervision, for instance (some of the criteria that differentiate employees from independent contractors). There is no good reason to preference independent contractor status—but that is the result of this provision. And it sets up a complicated trade-off for workers to assess: weighing the now larger tax savings from being an independent contractor to the detriments of leaving behind employee benefits.

- *Cracking, packing, and the many games to be played.* Above that $315,000 threshold, a set of other restrictions are meant to apply (phasing in over a $100,000 income range above the threshold), but they are haphazard and create the kinds of lines that tax lawyers and accountants get paid to manipulate. Certain lines of work—such as providing legal, medical, or consulting services, or any business in which the employer's or employees' reputation or services is the principal asset—are not supposed to get the deduction. (And, architects and engineers got a last-minute reprieve removing them from the list of barred service providers, further illustrating the haphazard nature of this line drawing exercise. Why architects but not doctors and so on?) Also, a business owner must either pay enough in wages to employees or have enough tangible property (or some combination) in order to fully qualify. So, some business owners—such as real estate developers, owners of oil and gas firms, and retailers—seem to squarely fall within the benefits of the provision. For everyone else, it is a question of trying to squeeze within the lines and to identify themselves as a "winner" (under the provision) to the extent they can.

  For some businesses trying to take advantage of the deduction, it might mean "cracking" apart lines of business to try to remove as much activity from the prohibited service businesses as possible and maximize what would be eligible. A law office might, for instance, try to crack apart its real estate and some support staff into a separate entity—potentially eligible for the 20-percent deduction—and then rent it back to the "law office" at the maximum possible amount that they can get away with.

  For other businesses, it might mean "packing" businesses together to achieve eligibility. That is the case if a business would otherwise not have enough tangible property or employee wages to fully take advantage of the deduction. It might also be a way to avoid the restriction on businesses in which the owners' or employees' services or reputation would otherwise be the principal asset; they should try to pack in some other big asset, such as intellectual property or real estate or anything else.[18]

  This is not to mention that the IRS will surely find itself challenged defining what exactly it means to provide a legal, medical, consulting, or other prohibited service—and fighting off aggressive maneuvers by taxpayers to avoid those categories.

[17] Section 199A—the provision creating the 20-percent deduction—does impose a potential restriction on independent contractors and others irrespective of income level. Specifically, three types of payments in exchange for services are not eligible for the 20-percent deduction: (1) reasonable compensation, (2) guaranteed payments, and (3) payments to partners not acting in their capacity as partners. The last two restrictions are specific to partnerships (and, as it happens, are easy for partners working at a partnership to avoid). The first—the restriction making "reasonable compensation" ineligible for the deduction—is potentially broader and could apply across the board. However, the concept of "reasonable compensation" has, up until now, only been used to attack tax avoidance among S corporation owners, and statements from then-Deputy Assistant Secretary Dana Trier suggest that Treasury does not plan to use the "reasonable compensation" standard to restrict deductibility for other forms of businesses, including independent contractors. *See* Matthew R. Madara, "ABA Section of Taxation Meeting: No Plans to Apply Reasonable Compensation Beyond S Corps," *Tax Notes,* February 19, 2018, available at *https://www.taxnotes.com/tax-notes/partnerships/aba-section-taxation-meeting-no-plans-apply-reasonable-compensation-beyond-s-corps/2018/02/19/26wcl.* In that case, an independent contractor—below the income threshold—would be able to take full advantage of the deduction, even as an employee doing very similar work could not.

[18] Writing before the 2017 law was even passed by Congress, a number of us borrowed the "cracking" and "packing" terminology from gerrymandering jurisprudence to describe the kinds of games that would be played under this provision. *See* Avi-Yonah et al., *supra* note 3. Unfortunately, reports suggest our theories are becoming reality, and the "crack" and "pack" terminology has now entered the lexicon of tax planning maneuvers. Simon and Rubin, *supra* note 14.

I'd urge the IRS to try to reduce such gaming to the degree it can by, among other things, limiting ways businesses can choose what is counted as part of the business and what isn't for purposes of this provision, whether via an economic substance test or some other approach. But, this will be an uphill battle for the IRS, and make no mistake—this provision is fundamentally flawed from the start.

Pick Your Own Adventure—With Lots of Advice From Tax Lawyers and Accountants

The point is that, for some, it will make sense to stuff income into a corporation. For others, it will make sense to be a pass-through business with planning to fit into the complex lines of the 20-percent deduction. Which route is better and how to achieve it will be the province of tax lawyers and accountants. And, using either route, the top individual income tax rate can be avoided.

That planning is in itself wasteful, and the disparate effects are unfair. I also strongly suspect that the official estimates of the 2017 legislation under-estimated the amount of such planning and, thus, both the cost and regressivity of these tax cuts. I believe that is also the case when it comes to other forms of planning as well that I and others have discussed. To take one other example: one of the largest revenue raisers in the legislation is the limitation on the deductibility of State and local income taxes. However, as was clear even before the legislation was signed into law, States could potentially make changes that would effectively preserve deductibility and limit the revenue raised by this provision,[19] and a number of States are now enacting or considering just such steps.[20] This should have been more seriously considered as the law was designed, but it wasn't—and official estimates do not seem to reflect this likely outcome.

SMALL, ADDITIONAL ECONOMIC GROWTH DOES NOT JUSTIFY THIS LEGISLATION

Supporters of the tax legislation will often justify the bill in terms of a rise in economic growth. But, that effect is very small, could be better achieved other ways, and does not change the core conclusions: that the legislation is fiscally unsustainable and disproportionately helps those at the top, likely at the expense of low- and middle-income workers.

Credible estimators find only very modest growth effects from this legislation:

- **0.1 percentage points per year or under.** Credible estimators find an annualized increase in GDP growth across the decade of 0.1 percentage point per year or under—with most estimates well under that.[21] *See* Figure 4. The growth effect as estimated by CBO is in fact already taken into account in the deficit figures cited earlier, with the tax legislation projected to add $1.9 trillion to the deficit in the coming decade including the macroeconomic feedback. This overview of estimates leaves aside the Tax Foundation, whose model has serious shortcomings including not incorporating any negative effects from deficit-financing.[22]
- **Trump administration's out-sized claims.** All of these estimates can be contrasted with the Trump administration's claim of a 0.7 percentage point annual increase in the growth rate from the totality of its policies in the coming decade and its claim of a 0.35 percentage point increase from corporate tax reform alone and which it said would generate $1 trillion of additional

[19] *See* Avi-Yonah et al., *supra* note 3.

[20] New York State, for instance, enacted two measures in its recent budget deal that are aimed at reducing the effects of the 2017 tax bill's limitation on deductibility of income taxes.

[21] The Congressional Budget Office helpfully compiled estimates of the macroeconomic effects of the tax legislation. *See* Congressional Budget Office, *supra* note 1, at 117 tbl.B–2. For the figures here, I have used the annualized growth rate based on how much higher (or lower) GDP is as a result of the tax changes in the tenth year. An alternative is to look at the average level effect of the tax legislation across the period (figures CBO also provides). The benefit of the latter is that it captures gains in GDP in the interim years, some of which dissipate over time; on the other hand, looking at average level effects—as opposed to annualized growth—doesn't convey the degree to which those effects are temporary. Looking at it either way, effects are small, and I have chosen to focus on the annualized growth rates since those have frequently been used in the debate over the tax bill including by the administration to which I compare.

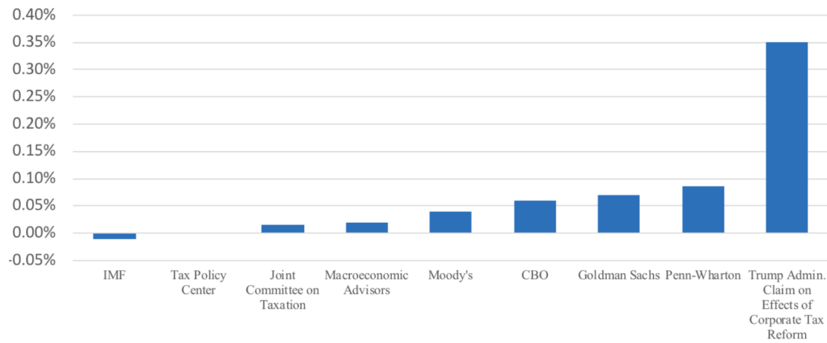
[22] *See, e.g.,* Matt O'Brien, "Republicans Are Looking for Proof Their Tax Cuts Will Pay for Themselves. They Won't Find It," *Washington Post* Wonkblog, December 1, 2017, available at *https://www.washingtonpost.com/news/wonk/wp/2017/12/01/republicans-are-looking-for-proof-their-tax-cuts-will-pay-for-themselves-they-wont-find-it/?utm—term=.6065fa73ff12.* Greg Leiserson, Center for Equitable Growth, "Measuring the Cost of Capital and Estate Tax in the Taxes and Growth Model," November 21, 2017, available at *https://taxfoundation.org/measuring-the-cost-of-capital-and-estate-tax-in-the-taxes-and-growth-model/.*

revenue to offset the cost of the tax cuts[23]—which all credible estimators agree is highly unlikely to happen.

Figure 4

Estimates of Effect on Annual Growth

(Annualized Growth Across Decade Based on Effect in 10th Year)



Source: As compiled by CBO. Note that Penn-Wharton gives a "high" and "low" estimate. The high is an increase of 0.1 percentage points per year, and the low is an increase of 0.06 percentage points per year. This figure shows the average.

Further, there are other, far less costly ways to achieve this kind of increase in growth via tax reform. For instance, an analysis by Robert Barro and Jason Furman suggests that simply making "bonus depreciation" permanent, at *one-sixth* the cost of this tax bill, would have had the roughly same growth effect as the 2017 tax legislation.[24]

Finally, these growth rates are not only modest; they are often misunderstood as implying that the legislation is significantly better for Americans than shown in the traditional distributional tables cited earlier. That's wrong for several reasons. First, these GDP estimates measure the effects on "domestic" product rather than "national" product. It is "national" product that matters more for the living standards of Americans since that subtracts payments to foreigners like interest payments on debt (from which Americans don't benefit). CBO has found the effect on "national product" to be 40 percent smaller than that on "domestic product," on average, across the coming decade.[25] Second, both GDP and GNP measure increases in production rather than people's actual welfare—as in how much better people's lives really are—and effects on welfare are likely even smaller. Put simply, the modest, estimated growth effects don't change the fundamental conclusions described earlier—this is a bill that does little for low- and middle-income Americans now and seems likely to leave them worse off in the long-run.[26]

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[23] Department of the Treasury, "Analysis of Growth and Revenue Estimates Based on the U.S. Senate Committee on Finance Tax Reform Plan, December 11, 2017," available at *https://www.treasury.gov/press-center/press-releases/Documents/TreasuryGrowthMemo12-11-17.pdf.*

[24] Barrow and Furman find that, under the assumption that all tax cuts are paid for via cuts elsewhere, the enacted bill has a slightly larger growth effect than simply making bonus depreciation permanent; however, if they are not paid for and instead deficit-financed, the opposite is the case. *See* Robert J. Barro and Jason Furman, "The Macroeconomic Effects of the 2017 Tax Reform," Brookings Papers on Economic Activity 41 tbl.11, 42 tbl.12, 48 (2018), available at *https://www.brookings.edu/wp-content/uploads/2018/03/4_barrofurman.pdf.* Barro and Furman also find overall growth effects for the legislation as enacted that is in the range of other credible, independent estimates—they find between 0.02 percentage points and 0.04 percentage points higher annualized growth across the decade as a result. *Id.* at 41 tbl. 11 and 49 tbl.14.

[25] Congressional Budget Office, letter to the Honorable Chris Van Hollen, April 18, 2018, available at *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53772-2017taxacteffectsonincome.pdf.*

[26] I am grateful to Greg Leiserson for sharing his views on the issue of the relationship between growth effects, distributional tables, and welfare.

REFORM TO FIX A NEWLY BROKEN SYSTEM

To be sure, the 2017 tax bill took some discrete steps in the right direction. The tax system has long generated a preference for debt over equity in the corporate sector that misaligned incentives and caused corporations to leverage more than they would otherwise; that has been ameliorated to some degree in the new legislation. The legislation cracks down on business deductions for entertainment and food in ways that I think are wise. It tries to take on problems with stripping of the U.S. tax base by both U.S. and foreign corporations, and this is an area very much deserving of attention and reform.

But in terms of overall thrust, the tax system has ended up more broken than it was before because of this tax bill. Tax reform should remain on the agenda. But it should now be tax reform that addresses the key problems created by this bill and beyond. That means generating significantly more revenue and in a progressive way; eliminating provisions like the 20-percent deduction that are complicated, unfair, and arbitrary; taking steps to prevent, or at least reduce, people using corporate form to avoid individual income taxation, for instance, by ending step-up in basis at death or taxing using a mark-to-market system; working toward a system that doesn't pick winners and losers in the economy like this latest legislation does too often; and building on the reforms in this bill while working with other countries to more effectively tax capital income that has too often escaped to tax havens.

There is much work to be done in overhauling the U.S. tax system, and this recent bill made the project much greater and more urgent.

QUESTIONS SUBMITTED FOR THE RECORD TO DAVID KAMIN

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. On page 8 of your testimony, you wrote: "Someone can now earn income in the corporation, have it subject to the top corporate rate, distribute the income and immediately subject it to the second layer of tax, and still come out ahead as compared to earning that income as an individual."

Could you please work through a specific example of that?

Answer. Yes. Here is an example.

Assume there is $1,000 of interest income that could either be earned through a corporation or directly as an individual, with the individual subject to the top rate of tax.

THE CORPORATION

If earned through the corporation and then distributed to the individual, the $1,000 of interest income would first be subject to the 21-percent corporate tax rate. That would generate a tax liability of $210 at the corporate level and leave $790 remaining for distribution.

The $790 distributed (and assuming it is a qualifying dividend) would then be subject to a top tax rate of 23.8%—combining the top dividends tax rate of 20 percent and the net investment income tax of 3.8 percent. That would generate a liability of $188 and leave $602 after Federal taxes.

The effective tax rate on that income is 39.8 percent, which could also be calculated using the following equation: $1 - ((1 - 0.21) \times (1 - 0.238))$.

THE INDIVIDUAL

Alternatively, let's assume that the interest income is earned directly by the individual and that section 199A (the 20-percent deduction for certain pass throughs) doesn't apply. In that case, the income is subject to the top individual income tax rate of 37 percent plus the 3.8-percent net investment income tax. As a result, the tax liability is $408 leaving $592 after tax, which is less than the $602 that would be left after tax if it had been earned via the corporation.

The effective tax rate in this case is 40.8 percent—which is 1 percentage point more than the 39.8-percent effective tax rate applying to the income earned via the corporation.

The advantage of earning via the corporation would grow if this calculation took into account State income taxes. That's because such taxes remain deductible without limit by corporations but are now limited when it comes to individuals.

A similar set of calculations would apply to income earned from labor services, although the Medicare self-employment taxes and surtax work a bit differently than the Net Investment Income Tax.

Importantly, the advantage of earning via the corporation would be greater if there weren't an immediate distribution and the second level of tax were deferred. In fact, it is possible to entirely eliminate the second layer of tax if the earnings are retained at the corporate level until the stock is passed on to heirs—at which point, there would be basis "step up."

Question. You state on page 9 of your testimony that the one group that is barred from getting the pass-through deduction are employees. However, in footnote 13 of your testimony, you state that there is a good argument for taxing normal returns to capital at lower rates. So, once that is taken into account, would that justify not giving this new deduction to labor, but only to capital?

Answer. That argument does not justify the structure of section 199A and the denial of the deduction to employees but not others.

The section 199A deduction can apply to either income capital or labor income if earned in certain ways. Below the $315,000 income limitation (for a married couple and half that for a single individual), section 199A apparently applies for someone who is simply working as an independent contractor rather than an employee. There is no good justification for giving a 20-percent deduction to the independent contractor but not to the employee, who can be providing very similar services—just with less supervision and without the same level of employee benefits.

Above the $315,000 threshold, service providers again can get the deduction so long as they're owners, working in certain kinds of businesses. An owner of a firm working in a real estate firm or a retailer or anything not in the prohibited list of service categories (and meeting the other requirements under section 199A such as having enough tangible property or paying enough in wages) can get the deduction on income coming from their services. But, again, employees working in companies—as opposed to the owners working in those very same companies—cannot get the deduction. That distinction is again unjustified.

Section 199A is not akin to a consumption tax. A consumption tax exempts from taxation the ordinary return to investment and then consistently taxes above market rates of return on investments (sometimes called rents) and returns to labor. I prefer an income tax—a tax that also applies to the ordinary returns to investment—but, as I mention in that footnote, there can be good arguments made for a reduced tax rate on the normal returns to investment, especially if there were offsetting changes to the tax system to maintain progressivity. By contrast, section 199A gives tax cuts to both returns to labor and above market rates of return, if earned in certain ways. In fact, the normal rate of return on investment should *already* be eliminated on many investments under the 2017 law (and before section 199A applies) given the allowance of expensing, which accomplishes that. Thus, section 199A is often giving a tax cut to these other returns, and on a haphazard basis picking winners and losers.

In sum, section 199A represents an incoherent policy that arbitrarily favors certain forms and lines of business over others. The best way forward is to eliminate it.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

Question. The final score for the tax bill was $1.46 trillion according to the Joint Committee on Taxation (JCT).[1] But in March 2018, the Congressional Budget Office (CBO) estimated that this bill will shrink revenues by *$1.9 trillion* over the next decade.[2] And deficits will return to levels not seen since the Great Recession. When

[1] Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement for H.R. 1, 'The Tax Cuts and Jobs Act,'" JCX–67–17, December 18, 2017.
[2] "The Budget and Economic Outlook: 2018 to 2028," p. 106, Congressional Budget Office, April 2018.

Bush took office in 2001, he was handed a *surplus* of *$128.2 billion.*[3] But after two tax cut bills and two unpaid-for wars, we ended up with a *deficit* of *$1.4 trillion.*[4] But when Obama left, he made significant progress cleaning up after the Bush years. We cut the deficit by over half to *$665.4 billion.*[5] But that wasn't easy. And now the CBO estimates that we will return to trillion-dollar deficits starting 2020.[6]

Increasing deficits leave little room to handle any economic crisis in the future and fewer government resources as the baby boom retires. Discuss how this increase in the deficit will overheat the economy in the short run, create significant headwinds for economic growth in the long run, and weaken the tools available for policymakers in the next economic downturn?

Answer. The United States is on an unsustainable fiscal course over the long term, and the tax cuts—if they are continued—would add considerably to that gap. The law adds $1.9 trillion to the deficit through 2028 according to the latest Congressional Budget Office (CBO) estimate—and at a time when the economy does not need such fiscal stimulus. To put this in perspective, these tax cuts are expected to result in a 70-percent larger rise in Federal debt as a share of the economy than we would have otherwise had through 2025 (the point at which the individual income tax cuts in the bill expire).

The result will likely be a combination of somewhat higher interest rates due to the deficit financing and greater indebtedness to rest of the world—both of which will serve as a drag on future living standards. Perhaps more importantly, these tax cuts also place at risk programs that are key to the living standards of many Americans. We need more revenue to meet our commitments in programs like Social Security and Medicare, and to also make important investments and provide key services. And, we certainly cannot do that when tax cuts are driving revenue below the historical average of the last several decades—as will be the case in the next few years.

To be sure, there are times that deficit-financing can be wise—in fact, urgently needed. That is particularly the case when the economy is weak, with high unemployment, and especially if the Federal Reserve has cut interest rates to the "zero bound" and so has limited ability to stimulate the economy. In those times, deficits can save jobs and raise living standards, and that is likely to still be the case going forward, irrespective of our debt levels.[7] We are not now in that environment, since the Federal Reserve is in fact moving to raise interest rates. There were serious mistakes made in fiscal policy several years ago, when Congress insisted on austerity that was premature. Congress is now engaged in a mistake of the opposite kind—deficit financing unsustainably and without the justification of serious economic weakness.

IMPACT ON THE LOW-INCOME HOUSING TAX CREDIT

The Tax Cuts and Jobs Act of 2017 reduced the top marginal corporate rate on C-Corps in the United States to 21 percent from 35 percent.[8] While the top effective rate was 35 percent, the actual average rate paid by companies was 22 percent according to a 2016 U.S. Treasury report.[9]

The effectiveness of Low-Income Housing Tax Credit and the renewable energy tax credits were negatively impacted by the corporate rate reduction. The value of the Low-Income Housing Tax Credit has fallen from $1.05 to about $0.89—a 14-percent drop—because of the changes in the tax law. As a result, less equity capital will be raised to invest in affordable housing.

The combination of lower rates and the "chained CPI" are estimated to reduce the number of affordable rental units built in the U.S. from 1.5 million over the next years to 1.3 million—or a loss of about 232,000 affordable housing units.[10]

[3] CBO, *op. cit.,* p. 144.
[4] *Ibid.*
[5] *Ibid.*
[6] CBO, *op. cit.,* p. 4.
[7] *See* generally Alan J. Auerbach and Yuriy Gorodnichenko, "Fiscal Stimulus and Fiscal Sustainability" (NBER Working Paper No. 23789, September 2017).
[8] Public Law 115–97, section 13001.
[9] "Average Effective Federal Corporate Tax Rates," prepared by the Office of Tax Analysis, U.S. Department of the Treasury, April 1, 2016.
[10] Novogradac and Company Tax Blog, "Final Tax Reform Bill Would Reduce Affordable Rental Housing Production by Nearly 235,000 Homes," *https://www.novoco.com/notes-from-novogradac/final-tax-reform-bill-would-reduce-affordable-rental-housing-production-nearly-235000-homes.*

What steps do you recommend that we take to address this gap in affordable housing production? How can tax policy help address this crisis?

Answer. The 2017 tax legislation likely reduced the value of the Low-Income Housing Tax Credit. Although provisions in the 2018 omnibus spending bill reversed some of this effect, the value of the credit has not been restored to pre-2017 legislation levels. Options to restore the value of the credit could include permanent expansion of the credit, such as has been proposed in the Affordable Housing Tax Credit Improvement Act.

PREPARED STATEMENT OF REBECCA M. KYSAR,[1] PROFESSOR OF LAW, BROOKLYN LAW SCHOOL

JUDGING THE NEW INTERNATIONAL TAX REGIME

Good morning, Mr. Chairman, Ranking Member Wyden, and members of the committee. My name is Rebecca Kysar, and I am a professor of law at Brooklyn Law School and will be joining the full-time faculty of Fordham University School of Law later this year. Before joining Brooklyn Law School, I practiced tax law at Cravath, Swaine, and Moore in New York, which included advising on cross-border mergers, acquisitions, and restructurings. Thank you for the opportunity to testify on the recent tax legislation.

My primary topic today is the new international tax regime. The recent tax law made significant changes to the way the United States taxes multinational corporations on their cross-border income. The new legislation has, however, fundamentally botched general business taxation in order to "fix" the international system. In fact, the new legislation failed to solve old problems of that system and also opened the door to new perversities. Furthermore, the legislation will deplete government resources and exacerbate growing inequality. To be sure, the title of this hearing is "Early Impressions of the New Tax Law," and, it would be brazen to describe my views as anything but preliminary. My genuine concern, however, is that, with the benefit of hindsight, we will look back at this legislation as a series of tragic policy missteps, which hold the United States back in the 20th century rather than propelling it to be a competitive force and source of general well-being for its citizens in the current one.

Before addressing international taxation, I would like to make a few comments about the legislation generally. One of the most unfortunate aspects of the legislation is its immense cost. By shrinking revenues over the next decade by $1.9 trillion,[2] the tax legislation leaves the country with fewer government resources just as social needs and demographic shifts begin to demand much more of them. This figure, however, is likely to be a low estimate of the legislation's long-term effects. Many of the revenues from the international provisions are front-loaded into the 10-year budget window as a result of the transition tax on the deemed repatriation of old earnings. This is a one-time event that will not be generating revenues going forward, and arguably significantly undertaxed those earnings at windfall rates of 8 percent and 15.5 percent given that they were earned in a rate environment of 35 percent. Moreover, the estimate assumes that several far-off tax increases in the international rules will go into effect, a perhaps unlikely event. The $1.9-trillion estimate will also likely be much greater if the law's expiring provisions, or a portion of them, are made permanent.[3] Numerous tax planning opportunities that have

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[1] Professor of Law, Fordham University School of Law (starting Fall 2018); Professor of Law, Brooklyn Law School. I am grateful to Cliff Fleming, Chye-Ching Huang, David Kamin, Ed Kleinbard, Mike Schler, and Steve Shay for helpful comments and suggestions. Thanks to Molly Klinghoffer for excellent research assistance. Much of my testimony here comes from analysis I developed in serving as the primary drafter of the international tax sections of papers discussing the recent tax legislation. *See* Kamin et al., "The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the 2017 Tax Overhaul," 103 *Minn. L. Rev.* (forthcoming 2019); Avi-Yonah et al., "The Games They Will Play: An Update on the Conference Committee Bill" (December 28, 2017) (unpublished manuscript), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3089423;* Avi-Yonah et al., "The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the New Legislation" (December 13, 2017) (unpublished manuscript), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084187.*

[2] Congressional Budget Office, *The Budget and Economic Outlook: 2018–2028,* p. 106 (April 2018), at *https://www.cbo.gov/publication/53651.*

[3] CBO estimates that the permanent extension of all expiring tax provisions would reduce revenues by $1.2 trillion over the next decade. *Id.* at 90. Moreover, Congress tends to contort the

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been created by the new legislation will lose vast amounts of revenue. Finally, if the new U.S. taxing environment spurs other countries to engage in tax competition, as one would expect, this might reduce the anticipated growth effects of the legislation by decreasing the amount of investment flowing into the United States.

As a result of these deliberate choices, the new tax legislation does not engage our most important fiscal and social problems. On this fiscal side, it fails to provide a stable base on which the economy can grow. On the social side, it will not provide funding for resources to address important public needs, like infrastructure, education, social insurance, the opioid epidemic, health care, and military funding. Because of the threat to these programs, low- and middle-income Americans will likely be negatively impacted. Given that the highest income Americans also receive the lion's share of the tax cuts, the legislation not only fails to address the growing inequality in the country, but likely worsens it.

I also believe many features of the new legislation have created a great deal of unnecessary uncertainty. The instability of the new tax landscape comes from the law being enacted through a partisan process, deficit-financing of the cuts, the law's numerous sunset provisions, new gaming opportunities, the privileging of certain industries over others, and the offshoring incentives and other flaws presented by the international rules that I will discuss here.[4] The wobbliness of the new regime will make tax planning challenging. It may also dampen some of the economic growth anticipated by the law's architects.

Finally, the need for international tax reform was the impetus for the legislation but become the proverbial tail wagging the dog. In an attempt to deal with base erosion and profit shifting strategies of multinationals, we have instead created a true mess of business taxation generally. The new "pass-through" deduction, which was aimed at creating parity with the new lower rate available on corporate income, punishes workers and certain industries, substituting congressional judgment for market discipline and allowing for significant tax planning (and revenue-losing) opportunities. Individuals can now also use corporations as tax shelters to avoid the top rate, thereby undermining the individual income tax system.

Given the enormous loss of government resources and gamesmanship the legislation will generate, it is fair to ask a lot of the new international regime. Yet the international provisions fall short, mostly due to avoidable policy choices. Let me say at the outset that the baseline against which I am assessing the international provisions in the new law is not the old, deeply flawed, system because that bar is simply too low.[5] Judged against possible alternative policies that could have been enacted, however, the new international provisions look more problematic. With the benefit of clear-eyed analysis, I am hopeful that the new legislation will serve as a bridge to true reform in the international tax area, rather than a squandered opportunity.

The serious problems created, or left unaddressed, by the new regime, include the following, which I will discuss in more detail along with possible solutions:

- *The new international rules aimed at intangible income incentivize offshoring.* GILTI is not a sufficient deterrent to profit-shifting because the minimum tax rate is, at most, half that of the 21-percent corporate rate. Also, the manner in which foreign tax credits are calculated under the GILTI regime encourages profit shifting. Moreover, the GILTI and FDII regimes encourage firms to move real assets, and accompanying jobs, offshore because of the way they define intangible income.
- *The new patent box regime will likely not increase innovation, causes WTO problems, and can be easily gamed.* Patent box regimes have not been shown

budget process so that temporary legislation is not subject to its usual rules and may attempt to make such tax cuts permanent without paying for them. *See, e.g.,* Consolidated Appropriations Act, § 601 (exempting the costs of making the tax "extenders" permanent from PAYGO); David Kamin and Rebecca Kysar, "Temporary Tax Laws and the Budget Baseline," 157 *Tax Notes* 125 (2017) (discussing this phenomenon in the Bush tax cuts context); Rebecca Kysar, "Lasting Legislation," 159 *U. PA. L. Rev.* 1007, 1030–41 (2011) (critiquing the sunsets of the Bush tax cuts along this axis).

[4] *See* Rebecca M. Kysar and Linda Sugin, "The Built-In Instability of the GOP's Tax Bill," *N.Y. Times* (December 19, 2017), *https://www.nytimes.com/2017/12/19/opinion/republican-tax-bill-unstable.html.* I have elsewhere critiqued the use of the reconciliation process for complex tax reform. Rebecca M. Kysar, "Reconciling Congress to Tax Reform," 88 *Notre Dame L. Rev.* 2121 (2013).

[5] *See, e.g.,* Ed Kleinbard, "Stateless Income," 11 *Fla. Tax Rev.* 699, 700–01 (2011) (discussing the insufficiency of U.S. tax rules in combating aggressive profit shifting by multinationals).

to increase R&D or employment. Because the FDII deduction is granted to exports, it likely qualifies as an impermissible export subsidy under our trade treaties. Firms may also be able to take advantage of the FDII deduction by "round-tripping" transactions, disguising domestic sales as tax-preferred export sales.

- *The new inbound regime has too generous thresholds and can be readily circumvented.* Although strengthening taxation at source is a worthy goal, the new BEAT regime has too high thresholds, allowing multinationals with significant revenues and assets to engage in a great deal of profit shifting. Also, firms can avoid the regime entirely by packaging intellectual property with cost of goods sold, which is exempt from BEAT.
- *The new regime falls short of true international tax reform.* Rather than aligning taxation with U.S. economic needs and social objectives, the new regime doubles down on archaic concepts that have become malleable and disconnected from economic reality. The regime unwisely retains the place of incorporation as the sole determinant of corporate residency and subscribes to the fiction that the production of income can be sourced to a specific locale. These concepts should be updated, and new supplemental sources of revenue should be seriously explored. A longer-term objective should be to reach international consensus on how to tax businesses selling into a customer base from abroad.

Together, these problems underscore the necessity of continuing to improve the tax rules governing cross-border activity. It would be a grave mistake for the United States to become complacent in this area; in addition to the issues I discuss here, the challenges of the modern global economy will continue to demand dramatic revisions to the system.

Background

By way of background, the former U.S. international tax system has been described as a worldwide system of taxation because it subjected foreign earnings to U.S. taxation (whereas a territorial system of taxation exempts such earnings altogether). In reality, active earnings of foreign subsidiaries could be deferred, even indefinitely. The disparate treatment between foreign and domestic earnings meant that the old system was somewhere between worldwide and territorial.

The new regime has been described as a territorial system because a basic feature is that a broad swath of foreign profits are effectively exempt from U.S. corporate tax since 10 percent corporate shareholders can deduct the foreign-source portion of dividends from foreign subsidiaries.[6] Here again, however, we see the difficulty of deploying such labels since smaller corporate shareholders and individuals are still subject to taxation on their foreign income. Furthermore, the new minimum tax regime, along with the older subpart F rules, also means that the foreign income of 10 percent shareholders in certain foreign corporations (controlled foreign corporations or CFCs) is possibly subject to some U.S. taxation, depending on foreign responses.[7]

The new system retained worldwide-type features because Republicans recognized that a move to a pure territorial system would worsen profit shifting incentives by exempting foreign-source income altogether (rather than just allowing it to be deferred, as under the old system). The hybrid nature of both the old and new systems represents an attempt to balance investment location concerns, on the one hand, with concerns over the protection of the revenue base, on the other.[8]

As a general overview, the basic plan of the new tax legislation's international reforms is to: (1) exempt foreign income of certain U.S. corporations from taxation in

[6] 26 U.S.C. § 245A.

[7] *See* Mark P. Keightley and Jeffrey M. Stupak, Congressional Research Service, R44013, "Corporate Tax Base Erosion and Profit Shifting (BEPS): An Examination of the Data," 17 (2015) (discussing the futility of the worldwide and territorial labels); Daniel Shaviro, "The New Non-Territorial U.S. International Tax System" (March 7, 2018) (draft on file with author) (same).

[8] Michael Graetz has described the new system as follows: "Congress confronted daunting challenges when deciding what rules would replace our failed foreign-tax-credit-with-deferral regime. There were essentially two options: (1) strengthen the source-based taxation of U.S. business activities and allow foreign business earnings of U.S. multinationals to go untaxed, or (2) tax the worldwide business income of U.S. multinationals on a current basis when earned with a credit for all or part of the foreign income taxes imposed on that income. . . . Faced with the choice between these two very different regimes for taxing the foreign income of the U.S. multinationals, Congress chose both." Michael J. Graetz, "The 2017 Tax Cuts: How Polarized Politics Produced Precarious Policy," *Yale L.J. Forum* (forthcoming 2018), draft available at *https://papers.ssrn.com/sol3/Data_Integrity_Notice.cfm?abid=3157638.*

the United States (the quasi-territorial or participation exemption system); (2) backstop this new participation exemption system with a 10.5-percent "minimum tax" on certain foreign-source income (the GILTI regime); (3) provide a special low rate on export income (the FDII regime); and (4) target profit-stripping by foreign firms operating in the United States (the BEAT regime). In the remainder of my testimony, I will discuss problems presented by the latter three of these new regimes.

GILTI: New Offshoring and Shifting Incentives

1. New Offshoring and Shifting Incentives

Generally speaking, the existence of a partial territorial system coupled with a minimum tax could be an improvement over the prior system, which often resulted in a zero rate of taxation on foreign earnings because of deferral and other tax planning maneuvers. It is also preferable to a pure territorial system because of the protections it places on the revenue base. Nonetheless, although a minimum tax can work conceptually, its current GILTI incarnation problematically incentivizes firms to offshore assets and profit shift, as I pointed out early in the legislative process.[9]

First, the minimum tax regime allows a 50-percent deduction of GILTI. At the 21-percent corporate rate, this amounts to a 10.5-percent rate on GILTI.[10] Given the wide differential between the domestic rate and the minimum tax rate,[11] there remains substantial motivation to shift profits. Moreover, expenses that support the production of GILTI, like research and development, general and administrative, and some interest, will be deductible at the 21-percent rate even though the income inclusion occurs at a 10.5-percent rate.[12] This amounts to a type of tax arbitrage and further incentivizes shifting income abroad.

The new tax legislation also presents more subtle incentives to locate investment and assets abroad. There is an exemption from the GILTI tax in the form of a deemed 10-percent return on tangible assets held by the CFC, as measured by tax basis. If U.S. firms have or locate tangible assets overseas,[13] then they can reduce their GILTI tax commensurately. This is because the more a U.S. shareholder increases tangible assets held by the CFC, the smaller the income subject to the GILTI regime.[14]

Take for instance, a firm that invests $100 million in a plant abroad through a CFC that will generate $10 million of income. None of that $10 million of income will be subject to U.S. tax because the firm gets to reduce its GILTI by the deemed 10-percent return on the CFC's assets.[15] In effect, the $10 million of income is reduced by 10 percent of 100 million, or $10 million, so that it is all tax-free. To compare, consider the tax consequences of the same firm investing in a $100-million

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[9] Rebecca M. Kysar, "The GOP's 20th-Century Tax Plan," *N.Y. Times* (November 15, 2017), *https://www.nytimes.com/2017/11/15/opinion/republican-tax-plan-economy.html.* Others have discussed the offshoring incentives created by the legislation. *See* Gene B. Sperling, "How the Tax Plan will Send Jobs Overseas," *The Atlantic* (December 8, 2017), *https://www.theatlantic.com/business/archive/2017/12/tax-jobs-overseas/547916/;* Steven M. Rosenthal, "Current Tax Reform Bills Could Encourage U.S. Jobs, Factories, and Profits to Shift Overseas," *TaxVox* (November 28, 2017), *http://www.taxpolicycenter.org/taxvox/current-tax-reform-bills-could-encourage-us-jobs-factories-and-profits-shift-overseas;* Kimberly Clausing, "How the GOP's Tax Plan Puts Other Countries Before America," *Fortune* (November 20, 2017), *http://fortune.com/2017/11/20/gop-tax-plan-donald-trump-america-first/*.

[10] 26 U.S.C. § 250(a)(1). For tax years beginning after 2025, the 50-percent deduction is reduced to 37.5 percent, and thus the effective rate on GILTI goes up to 13.125 percent in those years, 26 U.S.C. § 250(a)(3).

[11] The rate gap with regard to exports is smaller since export income gets the benefit of a 37.5-percent deduction (producing a tax rate of 13.125 percent), as I discuss with regard to the FDII regime below.

[12] Thanks to Steve Shay for this point.

[13] The CFC could in theory invest in tangible assets in the United States and have these count for the deemed return, but this investment would be subject to current U.S. tax under 26 U.S.C. § 956.

[14] Note that I am not claiming that the offshoring incentives of the new tax law are worse overall than under the prior regime, which due to the high corporate tax rate created a large disparity between investing here versus abroad. This disparity has been minimized through the lowering of the corporate rate to 21 percent. *See* Martin A. Sullivan, "Economic Analysis: Where Will the Factories Go? A Preliminary Assessment," 158 *Tax Notes* 570 (2018). Instead, I am pointing out the unfortunate offshoring incentives created by GILTI that could have been avoided through alternative policies, which I discuss below.

[15] In addition to the GILTI exemption, the firm will get depreciation deductions on the assets under § 168(g).

plant in the United States that will generate $10 million of income. It would pay U.S. tax of $2,100,000 (21 percent of $10 million).[16]

Where there happens to be non-exempt return to tangible assets (return in excess of 10 percent), this is taxed by the minimum tax regime but at a lower rate than the rate on domestic income.[17] To build on the above example, assume that the $100 million foreign plant generates not $10 million, but $20 million of income. The firm will still get to exempt $10 million of the income through the deemed 10-percent return, but the other $10 million will be subject to the GILTI regime and given a 50-percent deduction (*i.e.,* taxed at a 10.5-percent effective rate). This would produce U.S. tax of $1,050,000 (10.5 percent of $10 million), as compared to U.S. tax of $4,200,000 (21 percent of $20 million) on a similar U.S.-based investment.[18]

Investors will, of course, take into account local foreign taxes, and higher taxes abroad will likely sway the decision of where to locate investment. The offshoring incentives of GILTI might then primarily be a problem when low-tax countries are a viable alternative. Although many tax havens have limitations regarding labor supply, legal, and other factors, some low-tax countries, like Ireland and Singapore, are hospitable options for investment.

The structure of GILTI is even more problematic when considering foreign tax credits. The new legislation allows foreign taxes to be blended between low-tax and high-tax countries before offsetting GILTI from those countries (thus constituting a "global" minimum tax), rather than allowing foreign taxes to offset only the GILTI from the country in which they are paid (a "per-country" minimum tax). This structure encourages firms to locate investment in low-tax countries and combine them with income and taxes from high-tax countries, possibly to avoid GILTI liability altogether.[19]

For instance, say a corporation earns $1,000,000 of income in Country A, which imposes a 21-percent rate of taxation. For simplicity's sake, let's ignore the deemed return by assuming there are no assets abroad. And now let's say the corporation is choosing where to locate an additional $2,000,000 in profits (and any associated activity), with the choice being between the United States and a tax haven.

There would be a $210,000 Country A tax and a tentative U.S. GILTI tax on this Country A income of $105,000 ($1,000,000 × 10.5 percent). But the 80-percent U.S. credit for the $210,000 Country A tax would reduce the U.S. tax to zero and $63,000 of excess credit would remain ($105,000 − [$210,000 × .8] = −$63,000).

If an additional $2,000,000 were earned in the United States, the 21-percent U.S. tax thereon would be $420,000 and the $63,000 of excess credit for Country A tax

[16] Note that the rate on the income from the U.S. plant would be lower if such income exceeded a hurdle of a 10-percent return on the tangible assets and was export income, which is effectively taxed at a 13.125-percent rate in the new tax legislation. This is the FDII regime, which I discuss below, 26 U.S.C. § 250.

[17] Note that the non-exempt return amount will vary depending on tangible asset intensity. We can thus expect certain industries, like services and technology, to be harmed from this aspect of the formula, whereas other sectors, like non-U.S. manufacturing, to benefit.

[18] If this was export income, the U.S. tax on the U.S.-based investment would be $3,412,500 ($1,312,500 on the $10 million exceeding the exempt return, and $2,100,000 on the other $10 million). Again, I discuss the FDII regime in more detail below.

[19] This example does not take into account the possible allocation of expenses under the pre-existing regulations for § 961, which could reduce allowable foreign tax credits, perhaps contrary to congressional intent. Martin A. Sullivan, "More GILTI Than You Thought," 158 *Tax Notes* 845 (2018). The expense allocation could have a large effect on the amount of tax owed under GILTI. A host of other taxpayer-unfriendly problems exist in the GILTI regime, which others have explored. For no apparent policy reason, assets in CFCs that generate losses are disregarded for purposes of calculating the deemed return on tangible property. *Id.* Additionally, non-C corporation shareholders may be unable to take foreign tax credits against liability for GILTI (unless they make an election under § 962). *See* Sandra P. McGill et al., "GILTI Rules Particularly Onerous for Non-C Corporation CFC Shareholders," McDermott, Will, and Emery (January 30, 2018), *https://www.mwe.com/en/thought-leadership/publications/2018/01/gilti-rules-particularly-onerous-nonc-corporation.* Under current law, GILTI deductions in excess of income are permanently disallowed and cannot create NOLs. Similarly, multinationals cannot carry over excess credits within the GILTI basket to future years. Both of these provisions burden businesses with volatile earnings, and may, like other loss limitations in the code, distort investment away from risky assets. These limitations are undesirable as a policy matter, separate and apart from the appropriate level of minimum taxation of foreign source income; Shaviro, *supra* note 7. Accordingly, they should be eliminated, or, at least, relaxed. These, together with other issues, such as the uncertainty over whether the foreign tax credit gross-up goes into the GILTI basket and questions over whether GILTI should be a separate basket from branch income, will continue to challenge tax planners.

could not be used to reduce this liability. Thus, the corporation's total tax liability (both U.S. and foreign) would be $630,000 ($210,000 Country A tax + zero post-credit U.S. tax on the first $1,000,000 of Country A income + $420,000 U.S. tax on the additional $2,000,000 of U.S. income).

Suppose instead that the corporation earned the additional $2,000,000 in a tax haven, Country B, which imposes no local taxes. In that case, the total foreign taxes imposed would be $210,000 (those from Country A), 80 percent of which ($168,000) are creditable against the 10.5-percent tax on GILTI. The GILTI regime produces a U.S. tax liability of $147,000 [(10.5 percent × $3,000,000) − 168,000)] (in contrast to $630,000 if the additional investment was located in the United States). This brings down the total tax liability (both U.S. and foreign) to $357,000 (as opposed to $630,000 if the investment was made in the United States).

Note that, through this blending technique, a firm can also shield profits in tax havens by choosing to invest in high-tax countries.[20] A firm may even prefer to invest in countries with *higher* tax rates than the United States since income and taxes from such countries can be used to blend down the U.S. minimum tax to zero. If a firm has profits in tax havens, then the effective tax rate of investing in a high-tax country, say Sweden, which has a 22-percent statutory corporate rate, might only be 4.4 percent (20 percent of 22 percent) since 80 percent of those taxes can be used to blend down GILTI completely. This puts the United States at a competitive disadvantage, making it more likely that jobs and investment go to countries like Sweden.

Finally, as a general matter, the structure of the minimum tax allows multinationals to blend their high profits from intangibles with their low profits from tangibles, thereby falling below the deemed 10-percent rate of return on tangible investments, and escaping the GILTI regime. This ability to blend high return with low return income will further encourage offshoring and profit shifting.[21]

In summary, the deemed rate of return and global minimum features of the GILTI regime run contrary to Congress's pronounced intention to keep investment in the United States.

2. Reform Possibilities

There are several options to remove or reduce GILTI's offshoring incentives, all of which would require legislation. First, the deduction for GILTI income should be reduced so that the gap between the domestic corporate rate and the minimum tax rate is not so large. Decreasing the rate differential will lessen the motivation to earn income abroad. It is true that too high of a tax burden on foreign income will cause corporations to simply locate their residence abroad, thereby escaping outbound base erosion rules. With the new lower 21-percent corporate rate and inbound base erosion regime, however, this is now much less of a concern. Additionally, the inbound rules can be strengthened, as I discuss below. Congress should also explore the haircutting of deductions that are allocable to GILTI to equalize the treatment between foreign and domestic income further.

Congress should also eliminate the exempt return on foreign tangible assets, and instead apply the minimum tax to all foreign source (non-subpart F) income. This would seek to address one of the GILTI regime's conceptual flaws: only seeking to reduce the incentive to offshore intangible assets while doing nothing to reduce the incentive to offshore operations.

If policymakers are wedded to the idea that a minimum tax should only target multinationals' intangible assets, an option would be to rethink the deemed rate of return. The 10-percent rate is arbitrary, does not necessarily correlate to the market

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[20] In front of this committee, Kim Clausing explained this dynamic in the following manner: "If you earn income in Bermuda, say, where the tax rate is zero, that per-country minimum tax would tax the Bermuda income right away. . . . If you have a global minimum tax, you could use taxes paid in Germany to offset the Bermuda income" and then you have an incentive to move income to both Bermuda and Germany," International Tax Reform, before the Senate Committee on Finance, 115th Cong. (2017) (testimony of Kim Clausing); "Senate Convenes International Tax Hearing," Deloitte (October 6, 2017), *https://www.taxathand.com/article/7596/United-States/2017/Senate-convenes-international-tax-reform-hearing.* Ed Kleinbard has similarly warned, "[c]ompanies will double down on tax-planning technologies to create a stream of zero-tax income that brings their average down to that minimum rate." Lynnley Browning, "One Sentence in the GOP Tax Plan Has Multibillion-Dollar Implications," *Bloomberg* (October 2, 2018), *https://www.bloomberg.com/news/articles/2017-10-02/trump-plan-aims-new-foreign-tax-at-apple-other-multinationals.*

[21] Sperling, *supra* note 9.

return on tangibles, and seems quite high, given that the average rate of return on low-risk or risk-free assets has been much lower, especially in recent years.[22] Instead, the rate could be pegged to a dynamically adjusting market interest rate[23] or something closer to the risk-free return on Treasury yields.[24] Finally, another way to close the gap between foreign income and domestic income would be to keep the 10-percent exempt return but subject the excess to the normal corporate rate of 21 percent (rather than the 10.5-percent rate).[25]

The problem of blending foreign tax credits could be addressed by moving to a per-country minimum tax rather than one done on a global basis.[26] Critics of a per-country approach argue that it would be too complex administratively, but that is disputed. The primary targets of GILTI are sophisticated multinational corporations that can effectively deal with the challenge of computational complexity. Moreover, the blending technique itself requires significant resources and complex tax planning, and a global minimum tax would eliminate the need for such inefficient maneuvering. Additionally, a per-country approach is even more necessary if the other offshoring incentives in the GILTI regime are maintained.[27]

FDII: New Offshoring Incentives, WTO Issues, and Gaming Opportunities

1. New Offshoring and Shifting Incentives

If GILTI is the stick for earning income from intangibles abroad, then FDII is the carrot for earning such income here. To this end, FDII provides a 37.5-percent deduction on so-called foreign-derived intangible income, which amounts to a 13.125-percent effective tax.[28] A domestic corporation's FDII represents its intangible income that is derived from foreign markets. Although this income slice is defined as "intangible income," as is the case with the GILTI regime, the intangible aspect, as is also the case with GILTI, comes only from the excess over the deemed return on tangible investment, rather than from intellectual property in the traditional sense of the word. This also distinguishes FDII from other patent box regimes, which apply to patents and copyright software, because it instead includes branding and other market-based intangibles.[29]

Like GILTI, the intangible slice of income is calculated by deeming a 10-percent return on tangible assets (but those of the domestic corporation as opposed to the CFC). Unlike GILTI, a taxpayer wants to *reduce* this deemed return amount because doing so increases the amount available for the FDII reduction. In contrast, in the GILTI regime, the taxpayer wants to increase their deemed return amount

[22] Center on Budget and Policy Priorities, "New Tax Law Is Fundamentally Flawed and Will Require Basic Restructuring," 17 (April 9, 2018), at *https://www.cbpp.org/research/federal-tax/new-tax-law-is-fundamentally-flawed-and-will-require-basic-restructuring.* In April 2018, a 10-year Treasury bond yielded about 2.8 percent interest. The average yield on 10-year Treasury bonds over the past 20 years is approximately 3.69 percent. Over 30 years, the average is approximately 4.87 percent, and over 10 years it is approximately 2.57 percent. I constructed these averages from data on the Fred Economic Data site. *See* Federal Reserve Bank of St. Louis, "10-Year Treasury Constant Maturity Rate," at *https://fred.stlouisfed.org/series/WGS10YR.*

[23] Shaviro, *supra* note 7; *see also* Rebecca M. Kysar, "Dynamic Legislation," 167 *U. Penn. L. Rev.*—(forthcoming 2019) (discussing dynamically adjusting fiscal legislation).

[24] Kamin et al., *supra* note 1. Conceptually, the exempt return should be the "normal" return on investment, but that is firm-specific and nearly impossible to design as a matter of tax policy.

[25] Reuven S. Avi-Yonah, "How Terrible Is the New Tax Law? Reflections on TRA17," 5 n. 4 (February 12, 2018 draft), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095830; see also* J. Clifton Fleming et al., "Incorporating a Minimum Tax in a Territorial System," 157 *Tax Notes* 76, 78 (2017).

[26] *Id.* at 77; Keightly and Stupak, *supra* note 7, at 17–18. In the above example on blending, for instance, under a per-country GILTI tax, if the corporation made the additional investment in Country B, this investment would be subject to the full U.S. minimum tax of $210,000 [(10.5 percent × 2,000,000)], with no offset for the local taxes paid in Country A. Those taxes would only be able to offset Country A income, which would result in a U.S. tax liability of zero on that investment [(10.5 percent × 1,000,000) − 168,000]. The per-country approach thus yields U.S. taxes of $210,000, as opposed to only $147,000 under the current global minimum tax.

[27] Proponents of the global approach might argue that the per-country approach punishes multinationals that naturally conduct integrated production in high- and low-tax countries for non-tax reasons. I believe that the national welfare objective implicated in cross-crediting for non-tax purposes likely outweighs this concern. An alternative to the per-country approach, however, would be to raise the rate on GILTI.

[28] For tax years beginning after 2025, the 37.5-percent deduction is reduced to 21.875 percent, and thus the effective rate on FDII goes up to 16.406 percent in those years, 26 U.S.C. § 250(a)(3).

[29] Stephanie Soong Johnson, "EU Finance Minister Fires Warning Shot on U.S. Tax Reform," *Tax Analysis* (December 12, 2017), *http://www.taxanalysts.org/content/eu-finance-ministers-fire-warning-shot-us-tax-reform.*

because this reduces the amount of income subject to the minimum tax. Unfortunately, this again creates perverse incentives. Because we are dealing with domestic assets, the FDII regime pushes taxpayers towards minimizing their investment in such assets.

For instance, assume a U.S. corporation has income of $3,000,000, $2,500,000 of which is derived from sales abroad. Further assume the corporation has a basis in tangible assets of $30,000,000. To calculate FDII, the taxpayer would calculate the ratio that the corporation's exports bears to its income ($2,500,000/$3,000,000), or 83.33 percent. FDII is that percentage times the income after the deemed 10-percent return. Here since 10-percent return on $30,000,000 is $3,000,000, the taxpayer would take 83.33 percent of 0 ($3,000,000 − $3,000,000). In this case, none of the income gets the benefit of the FDII reduction.

If the corporation instead had zero basis in tangible assets in the United States, it would have a higher FDII deduction. The taxpayer would calculate the above export ratio (83.33 percent). FDII is that percentage times the $3,000,0000 income less the deemed 10-percent return ($0 since there are no assets), or $2,500,000 (83.33 percent of $3,000,000). The taxpayer then gets to deduct 37.5 percent of FDII ($937,500), which, with the 21-percent corporate rate, amounts to a tax savings of $196,875 over our base case with U.S. tangible assets. As always, add as many zeroes as you would like.

Also note that the FDII regime essentially applies effective rates between 21 percent if there is no income above the exempt return, and 13.125 percent if there is. The GILTI regime applies effective rates between 0 percent if there is no income above the exempt return, and 10.5 percent if there is. These rate disparities privilege GILTI in comparison to FDII and incentivize U.S. corporations to produce abroad for foreign markets instead of producing exports in the United States.[30]

2. WTO Issues

One significant problem with the FDII regime is that it threatens to reignite a 3-decades long trade controversy between the United States and the European Union that was thought to have been resolved in 2004.[31] As I pointed out immediately after the release of the Senate bill, which originated FDII, the regime likely violates WTO obligations because it is an export subsidy.[32] This is because the more the U.S. taxpayer's income comes from exports, the more of its income gets taxed at the FDII 13.125-percent effective rate (after taking into account the 37.5-percent deduction), which is a subsidy in comparison to the normal 21-percent corporate rate.

Because the FDII regime benefits exports, it likely violates Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM), which prohibits (a) subsidies that are contingent, in law or fact, upon export performance and (b) subsidies that are contingent upon the use of domestic over imported goods.[33] Article 1 of the Agreement on Subsidies and Countervailing Measures defines a subsidy as a financial contribution by a government, including the non-collection or forgiveness of taxes otherwise due.[34]

Although the United States may contend that intangible income lies outside the scope of the WTO agreements,[35] the intangible income in the legislation is simply an arbitrary slice (determined through the 10-percent deemed return) of the income

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[30] The conference report states the lower minimum tax rate under GILTI is justified because only 80 percent of the foreign tax credits are allowed to offset the minimum tax rate (13.125 percent equals the effective GILTI rate of 10.5 percent divided by 80 percent.) This justification, however, does not hold if no or low foreign taxes are paid.

[31] It is worthwhile to note that the history of the export subsidy controversy is tortured, beginning in 1971 with the Domestic Sales Corporation or "DISC" provisions. After a GATT panel ruled against DISC, the United States replaced that system with the Foreign Sales Corporation ("FSC") rules in 1984. The WTO would later rule against the FSC system. In 2000, Congress enacted the Extraterritorial Income ("ETI") exclusion, which was also held to be an illegal export subsidy by the WTO. Congress finally repealed the last of the export subsidy measures—the ETI—in the American Job Creation Act of 2004. David L. Brumbaugh, Cong. Research Serv., RL31660, "A History of the Extraterritorial Income (ETI) and Foreign Sales Corporation (FSC) Export Tax-Benefit Controversy" (2004).

[32] Rebecca Kysar, "The Senate Tax Plan Has a WTO Problem," *Medium* (November 12, 2017), *https://medium.com/whatever-source-derived/the-senate-tax-plan-has-a-wto-problem-guest-post-by-rebecca-kysar-31deee86eb99.*

[33] Agreement on Subsidies and Countervailing Measures, Art. 3.1.

[34] *Id.* at Art. 1.1(a)(1)(ii).

[35] This argument was briefly raised by GOP Senators in markup.

from the sale of tangible goods. Exports of tangible goods fall within the scope of the agreements, and likely so will the FDII regime since it amounts to the non-collection or forgiveness of taxes otherwise due on an export. Accordingly, our trading partners may seek to impose sanctions, either unilaterally or after consent from the WTO's Dispute Resolution Body.[36] The U.S. will then have to choose between abandoning the FDII regime or continuing it and paying the sanctions.

To summarize, the low rate on FDII is intended to encourage firms to keep and develop intangible property in the United States. Given its serious legal uncertainty, however, firms may be unwilling to rely upon it in making their decisions of where to place IP. It is therefore doubtful that the FDII regime will accomplish its stated purpose.

3. Gaming Opportunities

The FDII regime also presents new gaming opportunities. Under some interpretations of the statute, the taxpayer may be able to get the FDII deduction by "round-tripping" transactions—that is, selling to independent foreign distributors, who then resell back into the United States. In this manner, domestic sales can masquerade as tax-advantaged export sales. The new legislation requires that taxpayers must establish to the satisfaction of the Treasury Secretary that the goods are sold for use abroad. Some taxpayers, however, will likely take the position that the intent of an initial sale to a foreign business is sufficient (like in a VAT regime). Ultimately, it will be difficult for the IRS to meaningfully patrol round-tripping transactions given the legal and factual ambiguity inherent in determining the meaning of "foreign use."

4. Reform Possibilities

In light of the troubling incentives for offshoring, the likely incompatibility with WTO rules, and the potential for round-tripping strategies, the best course of action is to repeal FDII entirely. This is more emphatically the case considering the mixed evidence as to whether even better designed patent boxes increase R&D or employment and the inefficiencies resulting from privileging exports.[37] Note however, that with the repeal of FDII, there would be a wider differential between the domestic rate on exports (which would then be 21 percent) and GILTI (10.5 percent), which could increase incentives for profit shifting. If FDII is repealed, Congress should strongly consider raising the rate on GILTI, which I am in favor of for other reasons previously discussed.

If FDII is maintained, new legislation or regulation should tighten limitations on round-tripping. Treasury could turn to the foreign base company sales rules that determine the destination of a sale. Problems with those rules, however, illustrate just how difficult it is to police the line between foreign and domestic use.[38]

[36] Reuven S. Avi-Yonah, "The Elephant Always Forgets: Tax Reform and the WTO" (Univ. of Mich. Law and Econs. Working Paper No. 151, 2018), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3095349.*

[37] Michael J. Graetz and Rachael Doud, "Technological Innovation, International Competition, and the Challenges of International Income Taxation," 113 113 *Colum. L. Rev.* 347, 375 (2013) (reviewing the literature to conclude that the effectiveness of patent boxes is mixed, only affecting the location of IP ownership and income rather than R&D in some countries); Shay, Fleming, and Peroni, "R&D Tax Incentives—Growth Panacea or Budget Trojan Horse?", 69 *Tax Law Rev.* 501 (2016) (critiquing patent boxes). *See also* Pierre Mohnen et al., "Evaluating the Innovation Box Tax Policy Instrument in the Netherlands, 2007–13," 33 *Oxford Rev. of Econ. Pol'y* 141 (2017) (finding that the patent box in the Netherlands has a positive effect on R&D but that the average firm only uses a portion of the tax advantage for extra R&D investment); Annette Alstadsaeter et al., "Patent Boxes Design, Patents Location, and Local R&D" (IPTS Working Papers on Corp. R&D and Innovation, No 6/2015, 2015), *https://ec.europa.eu/jrc/sites/jrcsh/files/JRC96080_Patent_boxes.pdf* (finding that patent boxes tend to deter local innovation activities unless such regimes impose local R&D conditions). Note also that, as an export subsidy, FDII provides an inefficient incentive to sell to foreign rather than domestic customers. Moreover, if it succeeds, the U.S. dollar will appreciate and undermine its purported benefits.

[38] These regulations allow the corporation to determine the country of use "if at the time of a sale of personal property to an unrelated person the controlled foreign corporation knew, or should have known from the facts and circumstances surrounding the transaction, that the property probably would not be used, consumed, or disposed of in the country of destination." *See* Treas. Reg. 1.954–3(a)(3)(ii). This leaves firms with flexibility to make this determination. Treasury should use its authority to impose an interpretation of the FDII statute that requires U.S. taxpayers to do a true inquiry into whether the foreign recipient will sell the product back into the United States. The adequacy of any such approach, however, is uncertain given the fact-intensive nature of the inquiry.

BEAT: Matters of Threshold and Gaming Opportunities

1. Matters of Threshold

One of the more interesting provisions in the new legislation is the base erosion and anti-abuse tax (BEAT), which significantly strengthens U.S. source-based taxation. The BEAT applies to certain U.S. corporations that excessively reduce their U.S. tax liability by making deductible payments, such as interest or royalties, to a 25-percent owned foreign affiliate ("base erosion payments"). Importantly, the BEAT applies to all multinationals with U.S. affiliates, whether a U.S. or foreign parent owns them. Accordingly, it is a step towards equalizing the treatment between U.S. and foreign multinationals, the latter of which could reduce their U.S. tax liability through earnings stripping in a way that was unavailable to U.S. multinationals.

Problematically, the scope of BEAT allows many multinationals with significant base shifting activity to avoid it. This is because the regime only applies to corporations that have average annual gross receipts in excess of $500 million over 3 years. BEAT is also not triggered until there are base erosion payments over a specified threshold, where deductions related to base erosion payments exceed 3 percent (2 percent for financial groups) of the overall deductions taken by the corporation (with some enumerated exceptions).[39]

Assume for instance, a U.S. corporation makes base erosion payments to its foreign affiliate producing deductions in the amount of $300,000. Further assume other deductions amount to $9,700,000 (so total deductions are $10,000,000). In this case, the corporation would be subject to the BEAT since it meets the 3-percent threshold. But if it were to reduce its base erosion deductions by just $1, or increase its other deductions by the same amount, it would entirely escape BEAT.

Both of these features have the unfortunate consequence of creating a cliff effect. Multinationals with $499 million in average annual gross receipts avoid BEAT altogether, as do such companies with a base erosion percentage of 2.99 percent. This has implications for horizontal equity, since two similarly situated taxpayers will be taxed very differently.[40] It also produces efficiency losses since cliff effects push the marginal tax rate on the activity in question very high.[41]

Another problem with cliff effects is that they reward taxpayers who are resourceful enough to create structures so that they fall just on the right side of the line. For instance, taxpayers may check the box with regard to foreign affiliates so that they become disregarded entities and payments to them are disregarded. Although the taxpayer would lose out on deductibility for purposes of their regular tax liability, the cliff effect in the BEAT may mean such a tax increase is outweighed by the avoidance of BEAT liability.[42]

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[39] 26 U.S.C. § 59A(c)(4). In other respects, BEAT is arguably over-inclusive. For instance, BEAT captures routine transactions such as repurchase agreements and posted collateral, as well as certain debt instruments required by regulators. Davis Polk, "The New 'Not Quite Territorial' International Tax Regime," 13 (December 20, 2017), *https://www.davispolk.com/files/2017-12-20_gop_tax_cuts_jobs_act_preview_new_tax_regime.pdf.* As a result, non-abusive transactions may fall within BEAT's ambit. There is also the question as to whether Congress intended that GILTI be included in the BEAT tax base but without regard for foreign tax credits. There are numerous other technical problems and unanswered questions left open by BEAT, particularly with regard to services, as others have explored. *See, e.g.,* Laura Davison, "Most Wanted: Tax Pros' Technical Corrections Wish List," *Bloomberg* (April 13, 2018) (discussing ambiguity regarding which payments are included and how to aggregate income); Martin A. Sullivan, "Marked-Up Services and the BEAT, Part II," 158 *Tax Notes* 1169 (2018); Manal Corwin et al., "A Response to an Off-BEAT Analysis," 158 *Tax Notes* 933 (2018); Martin A. Sullivan, "Can Marked-Up Services Skip the BEAT?", 158 *Tax Notes* 705 (2018). More generally, as Ed Kleinbard has noted, "[BEAT's] application to services . . . is just plain perverse. Example: SAP America lands a contract on behalf of the SAP group with Ford to manage some global IT databases. Ford wants one SAP contact, pays SAP America, which 'hires' local SAP affiliates around the world to perform services in their jurisdictions. Big BEAT problem. If, instead, SAP Germany enters into the [worldwide] contract and hires SAP America to do the U.S. part, then no BEAT issue at all." Email from Ed Kleinbard, Robert C. Packard trustee chair in law, USC Gould School of Law, to the author (April 16, 2018) (draft on file with author).

[40] *See* Manoj Viswanathan, "The Hidden Costs of Cliff Effects in the Internal Revenue Code," 164 *U. PA. L. Rev.* 931, 955–56 (2016) (discussing equity concerns of income-based cliff effects). *See also* Lily L. Batchelder et al., "Efficiency and Tax Incentives: The Case for Refundable Tax Credits," 59 *Stan. L. Rev.* 23, 30–31, 50 (2006) (discussing cliff effects in the context of nonrefundable credits and other tax incentives).

[41] *See* Viswanathan, *supra* note 35, at 958–59.

[42] Shaviro, *supra* note 7.

2. Gaming Opportunities With Cost of Goods Sold

Importantly, base erosion payments generally do not include payments for costs of goods sold (unless the company inverted). If a foreign affiliate incorporates the foreign intellectual property into a product and then sells the product back to a U.S. affiliate, the cost of the goods sold does not fall within BEAT. Even if the U.S. subsidiary pays a royalty to the foreign parent for the right to use a trademark on goods purchased by the subsidiary from the parent, the royalty must be capitalized into the costs of goods sold under pre-existing regulations, and therefore the royalty payments skip the BEAT entirely.[43] This gap in the law creates significant planning opportunities, allowing a large amount of base shifting to escape BEAT liability.[44]

3. Reform Possibilities

The BEAT thresholds established by the legislation should be revisited. It may be reasonable to exempt some smaller corporations from its scope since such companies may not be able to profit shift as effectively and BEAT poses a greater challenge for them as an administrative matter. Instead of a cliff effect, however, the BEAT could be phased in at different income levels. This would reduce the loss in social welfare by lowering the marginal tax rate below 100 percent.[45]

Separate and apart from the cliff effect, however, a separate criticism of the $500 million threshold is that it is simply too high. In the section 385 regulations, which also focus on base erosion, large multinationals are defined as having either $50 million in annual revenues or assets exceeding $100 million. These levels are much more appropriate for identifying multinationals with sufficient base shifting activity, and the BEAT threshold should be lowered to similar amounts.[46]

The 3-percent threshold for the base erosion percentage should simply be eliminated since it is unclear why a certain degree of base erosion is tolerated. If administrative concerns are the motivation, then the efficiency and equity costs of the cliff effect likely outweigh them.

Even if the 3-percent base erosion percentage is maintained for administrative reasons, it should be restructured to use a threshold of base erosion payments as a percentage of taxable income rather than total deductions. A small percentage of total deductions could be a large percentage of taxable income, thereby representing a significant degree of base erosion in relation to the company's overall operations.

Solving the cost of goods sold issue is not so easy. This is because there is no proven method of separating out the intangible component of a tangible sale.[47] Additionally, the inclusion of cross-border sales of inventory would present trade and tax treaty issues, similar to those presented by the originally proposed House excise tax.[48] Indeed, the inherent difficulties in designing an inbound regime like BEAT raises the argument about whether more fundamental changes to business taxation may be necessary. I discuss this in the following section.

Going Forward: True International Tax Reform

Going forward, it is not only necessary to deal with the flaws in the recent tax legislation that I have raised, but also to manage larger challenges. Taxing corporate income will continue to be formidable given the global nature of today's economy, the mobility of capital and intellectual property, and strategic responses from other nations. Because of these pressures, corporate income tax revenues are likely to shrink. In fact, if one ignores the one time repatriation tax, the new international tax provisions lose revenue going forward.[49]

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[43] 26 CFR 1.263A–1(e)(3)(ii)(u). There is a question as to whether Congress intended such royalties to escape BEAT. One government official has indicated that this was not the intent of Congress and that the outcome may be changed through a technical correction. Jasper L. Cummings, "Selective Analysis: The BEAT," *Tax Notes Today* 69–10 (April 10, 2018).

[44] Kamin et al., *supra* note 1.

[45] Cliff effects based on income impose a marginal tax rate exceeding 100 percent. This will induce taxpayers to reduce their income so that they fall under the cliff, thereby discouraging socially desirable work. Viswanathan, *supra* note 40, at 959–60.

[46] *See* Bret Wells, "Get With the BEAT," 158 *Tax Notes* 1023 (2018).

[47] Itai Grinberg, "The BEAT is a Pragmatic and Geopolitically Savvy Inbound Base Erosion Rule," 7 (draft December 6, 2017), at *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3069770.*

[48] *See* Reuven Avi-Yonah and Nir Fishbien, "Once More, With Feeling: The 'Tax Cuts and Jobs Act' and the Original Intent of Subpart F," 12 n. 32 (Univ. of Mich. Law & Econs., Working Paper No. 143, 2017), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3074647* (discussing the WTO problems presented by the House excise tax).

[49] Joint Committee on Taxation, *supra* note 2.

A badly needed reform is to strengthen rules governing corporate residence. Rather than follow the place of incorporation as the sole determinant of corporate residency, a notoriously artificial and gameable definition, corporate residency could account for factors such as the location of a company's headquarters or be linked to the residency of its shareholders.[50] Our source rules also fall far short in reflecting modern economic reality, and should be thoroughly reexamined. For instance, the rules might be revised to reflect a more destination-based approach, perhaps assigning income to the jurisdiction of the customer base.[51]

Given the Nation's bleak fiscal outlook and tax competition from other countries,[52] it may also be necessary to explore other sources of revenue. Destination-based taxes, which tax where goods are consumed are of particular interest given the relative immobility of the customer base. Origin-based taxes, like our current corporate income tax, instead levy taxes based on where income is produced or earned, an artificial, manipulable, and mobile construct.

Other developed nations have increasingly relied on consumption taxes, like value-added taxes (VATs), as supplements to traditional business income taxes. A VAT would not only raise badly needed revenues, but it could apply to the sale of inventory without causing trade or tax treaty issues, therefore helping with inbound base erosion.[53] We typically dismiss a VAT as a political non-starter in the United States, but the destination-based cash flow tax proposal of the House, which operates very similarly to a VAT, went surprisingly far in the reform process.

Finally, the international system of taxation is predicated on divisions of taxing jurisdiction that have no bearing in the modern global economy. A longer-term objective should be to work with other nations, developing a consensus as to how to tax remote businesses selling into markets from abroad. This should include serious re-examination of our double tax treaty regime, which reinforces archaic conceptions of how income should be allocated among nations.

Conclusion

Although there are reasons to like some aspects of the new international tax regime, it also has several serious flaws, as I have discussed. Moreover, the international tax regime will continue to be challenged by base erosion and tax competition. If the U.S. rules on international tax remain stagnant, then the recent legislation will have been a wasted chance to tackle serious problems posed by the modern global economy. If instead the new provisions are an incremental step on the path to true reform, the international provisions in the act can be judged more leniently. Only time will tell.

I welcome any questions from the committee.

QUESTIONS SUBMITTED FOR THE RECORD TO REBECCA M. KYSAR

QUESTIONS SUBMITTED BY HON. ORRIN G. HATCH

Question. You wrote in your testimony about how disparities between a high rate domestically, and a low rate overseas, can lead to pressures to offshore investments. It seems like something you were suggesting in your written testimony is that just simply reducing the corporate tax rate could reduce this pressure. Is that right? That reducing the corporate rate, all other things being equal, would lead to increased on-shoring of investment in the United States?

Answer. Reducing the disparity between the minimum tax and the regular domestic rate could reduce the offshoring and profit shifting incentives in the bill. Given

[50] For discussion of a shareholder-based approach, *see* J. Clifton Fleming et al., "Defending Worldwide Taxation With a Shareholder-Based Definition of Corporate Residence," 1016 *BYU L. rev.* 1681, 1702–09 (2017).

[51] Paul Oosterhuis and Amanda Parsons, "Destination-Based Income Taxation: Neither Principled Nor Practical?" (October 27, 2017) (unpublished manuscript) (draft on file with author).

[52] There is already evidence that other countries are considering lowering their tax rates in response to recent tax legislation. Laura Davison, "U.S. Tax Overhaul Spurs Others to Re-Evaluate Rates: Tax Counsel," *Bloomberg* (February 22, 2018) (quoting a key drafter of the tax legislation, who has met with representatives from other countries who are pursuing such changes).

[53] *See* Michael J. Graetz, "100 Million Unnecessary Returns: A Simple, Fair, and Competitive Tax Plan for the United States" (2011) for a compelling justification of the VAT.

the enormous cost of reducing the corporate tax rate further, it would be more prudent to raise the minimum tax instead.

Proponents of the bill have emphasized that other developed countries have territorial systems and low corporate rates. What is less mentioned is that these countries predominantly have VATs to fund their governments. Until the United States adopts a VAT or other significant sources of revenue, I would recommend against dropping the corporate rate further.

Question. In your written testimony, you advocate eliminating the exempt return on foreign tangible assets. As another point, you suggest increasing the tax-rate on GILTI income, if the FDII special rate is repealed, which you seem to think it should be.

So, can I infer from this that you think a pure worldwide regime, with no deferral, would be a very good reform?

Answer. Theoretically, the existence of a partial territorial system coupled with a minimum tax could be an improvement over the prior system. It is also preferable to a pure territorial system because of the protections it places on the revenue base. Nonetheless, although a minimum tax can work in concept, its current incarnation problematically incentivizes firms to offshore assets and profit shift. I think it is possible to design a minimum tax that, in many ways, would be preferable to a pure worldwide system without deferral. This would, however, first include lowering (closer to the risk-free rate) or eliminating the exempt return on foreign tangible assets. Second, it would also include raising the minimum tax rate somewhat so there is not as much discrepancy with the domestic rate. Third, and most importantly, the minimum tax would be applied on a per-country basis. At minimum, Congress should implement this last option, which would reduce the profit shifting and offshoring incentives addressed by the prior two. Finally, if the United States enacted a VAT, it could afford to lean more towards territoriality in its corporate income tax regime.

Question. In arguing for a per-country limitation on claiming credits against the GILTI, you note that there will be certain cross-crediting capabilities under the GILTI regime.

Please tell me—were there cross-crediting opportunities under the old pre-Tax Cuts and Jobs Act international regime?

Answer. Although there were cross-crediting opportunities under the old regime, these involved the circumvention of the 904 limitation in the foreign tax credit regime. The minimum tax is the primary mechanism that prevents profit shifting under a territorial regime. Therefore, the revenue implications of cross-crediting are likely much greater.

Question. In your written testimony, you stated that, "For no apparent policy reason, assets in CFCs that generate losses are disregarded for purposes of calculating the deemed return on tangible property."

So, would you think it better to include assets of CFCs with tested losses for purposes of calculating the deemed return on tangible property?

Answer. In general, many of the GILTI rules treat businesses with volatile earnings too harshly, distorting investment away from risky assets. The treatment of CFCs with tested losses fits into this category and should be revisited. In the meantime, taxpayers will engage in a variety of tax-motivated transactions "to distribute tested income among CFCs in a manner so as to minimize the likelihood that CFCs with meaningful QBAI and/or FTCs will have tested losses."

Question. In footnote 39, you quote Professor Kleinbard in saying that BEAT's application to services is not ideal. But in the Ford/SAP example, could you have these sort of BEAT problems in other contexts, other than just services?

Answer. BEAT will cause many companies to rethink their supply chains, although I would expect services to be a large problem in this regard since the restructuring of services can easily be accomplished through contracting. Additionally, there is a question as to what portion of marked-up services fall within BEAT, and, as my testimony indicates, firms can avoid BEAT liability on otherwise-deductible royalty payments by incorporating them into costs of goods sold. These dynamics will likely put significant pressure on firms to reduce their BEAT liability on services through mechanisms like those suggested by Professor Kleinbard.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

DEBT AND DEFICITS

Question. The final score for the tax bill was $1.46 trillion according to the Joint Committee on Taxation (JCT).[1] But in March 2018, the Congressional Budget Office (CBO) estimated that this bill will shrink revenues by *$1.9 trillion* over the next decade.[2] And deficits will return to levels not seen since the Great Recession. When Bush took office in 2001, he was handed a *surplus* of *$128.2 billion.*[3] But after two tax cut bills and two unpaid-for wars, we ended up with a *deficit* of *$1.4 trillion.*[4] But when Obama left, he made significant progress cleaning up after the Bush years. We cut the deficit by over half to *$665.4 billion.*[5] But that wasn't easy. And now the CBO estimates that we will return to trillion-dollar deficits starting 2020.[6]

In order to be more competitive and to prepare for the future, what steps would you recommend to pull our international tax system into the 21st century? What impact will deficit financing have on the United States in the long run?

Answer. In order to modernize our international tax system, I would recommend removing the offshoring and profit shifting incentives in the GILTI and FDII rules. First and foremost, GILTI should be applied on a per-country basis, rather than globally. This will limit profit shifting. To remove offshoring incentives, the deemed return on tangible assets, in both regimes, should be eliminated or lowered to a figure closer to the risk-free rate. The GILTI rate could also be raised so as to reduce the disparity between the domestic and foreign rates.

Other reforms should be pursued. Rather than follow the place of incorporation as the sole determinant of corporate residency, corporate residency could account for factors such as the residency of the shareholders. The source rules also should be thoroughly reexamined. For instance, the rules might be revised to reflect a more destination-based approach, perhaps assigning income to the jurisdiction of the customer base.

Finally, the United States should seriously consider implementing a VAT to supplement the income tax, which would raise badly needed revenues and would apply taxation to a less mobile tax base-consumers.

Without significant new sources of revenue, the fiscal outlook of the United States will continue to be bleak. Eventually, the government will be forced to reverse, likely dramatically, its commitments to investment and services. Spreading deficit reduction over time, as opposed to dealing with it only when prompted by a crisis, is likely more efficient and would be less disruptive to the lives of Americans.

RENEWABLE ENERGY TAX CREDITS

Question. The Tax Cuts and Jobs Act of 2017 reduced the top marginal corporate rate on C corps in the United States to 21 percent from 35 percent.[7] While the top effective was 35 percent, the actual average rate paid by companies was 22 percent according to a 2016 U.S. Treasury report.[8] The tax cut bill created the Base Erosion and Anti-abuse Tax (BEAT) which lowers the value of the renewable energy tax credits.[9]

Under current law, the renewable energy tax credits are not fully eligible for offsets under the Base Erosion and Anti-abuse Tax or "BEAT." Senator Grassley and I and many others on this committee have been working to provide a real, forward-looking extension of these credits and hope to make sure these credits can be used in the tax equity market.

Has the expiration of the investment tax credit for certain renewable technologies and not others had an impact on renewable energy investment? Do you believe the

[1] Joint Committee on Taxation, "Estimated Budget Effects of the Conference Agreement for H.R. 1, 'The Tax Cuts and Jobs Act,' " JCX–67–17, December 18, 2017.
[2] "The Budget and Economic Outlook: 2018 to 2028," p. 106, Congressional Budget Office, April 2018.
[3] CBO, *op. cit.,* p. 144.
[4] *Ibid.*
[5] *Ibid.*
[6] CBO, *op. cit.,* p. 4.
[7] Public Law 115–97, section 13001.
[8] "Average Effective Federal Corporate Tax Rates," prepared by the Office of Tax Analysis, U.S. Department of the Treasury, April 1, 2016.
[9] Public Law 115–97, Chapter 3.

renewable energy industry needs certainty to plan for the future and not lurch from one expiration date to the next?

Answer. Businesses cherish predictability, and I have previously supported the view that the temporary nature of certain tax incentives can dampen their economic incentives.[10]

Question. Given that research and development (R&D) is exempted from the BEAT because we prioritize R&D, if renewable energy and reducing our Nation's dependence on foreign oil are priorities, what steps do you recommend that we take to reflect these priorities in our tax code?

Answer. Although renewable energy policy is outside our areas of expertise, a congressional priority could be to carve out 100 percent of the renewable energy tax credits from the BEAT regime and to make this change permanent.

Question. The new international tax regime was intended to prevent shipping U.S. income overseas, yet it is in many cases acting like a tax on investments in the United States, especially for renewable energy and Low-Income Housing Tax Credits. How can this be addressed?

Answer. If Congress wishes to prioritize renewable energy and low-income housing, then permanent expansion of the applicable tax credits and carve-outs from the BEAT rules will further this goal.

SUBMITTED BY HON. CLAIRE MCCASKILL, A U.S. SENATOR FROM MISSOURI

U.S. Senate

Homeland Security and Governmental Affairs Committee
Minority Staff Report

Manufactured Crisis: How Devastating Drug Price Increases Are Harming America's Seniors

Executive Summary

This report examines the history of rising drug prices for the brand-name drugs most commonly prescribed for seniors. Each year, Americans pay more for prescription drugs, and rising drug prices have a disproportionate impact on older Americans.[1, 2] Older individuals, for example, are far more likely to have used at least one prescription drug, as well as a greater number of prescription drugs, in the past 30 days than other Americans.[3] According to the Centers for Disease Control and Prevention, 91% of individuals over the age of 65 reported taking at least one prescription drug, with 67% of all seniors taking at least three prescription drugs, and 41% taking five or more.[4] In 2015 alone, the average retail prices for 768 prescription drugs widely used by older Americans—including 268 brand-name drugs, 399 generic drugs, and 101 specialty drugs—increased 6.4% compared with a general inflation rate of 0.1%.[5] Increases on brand-name drugs were even higher, with retail prices for brand-name drugs widely used by older Americans increasing by an average of 15.5% in 2015—marking the fourth year in a row with a double-digit increase.[6]

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[10] *See* Rebecca M. Kysar, "Lasting Legislation," 159 *U. Penn. L. Rev.* 1007 (2011).

[1] *Modern Healthcare,* "Price Hikes Doubled Average Drug Price Over 7 Years: AARP" (February 28, 2016) *(www.modernhealthcare.com/article/20160228/NEWS/302219999)*.

[2] Center for Retirement Research at Boston College, "Seniors Vulnerable to Drug Price Spikes" (January 21, 2016) *(https://squaredawayblog.bc.edu/squared-away/seniors-vulnerable-to-drug-price-spikes/)*.

[3] Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, "Health, United States, 2016" (DHHS Publication No. 2017–1232) (May 2017) *(www.cdc.gov/nchs/data/hus/hus16.pdf#079)*.

[4] *Id.*

[5] AARP, "Rx Price Watch Report: Trends in Retail Prices of Prescription Drugs Widely Used by Older Americans: 2006 to 2015" (December 2017) *(www.aarp.org/content/dam/aarp/ppi/2017/11/trends-in-retail-prices-of-prescription-drugs-widely-used-by-older-americans-december.pdf)*.

[6] AARP, "Rx Price Watch: Trends in Retail Prices of Brand Name Prescription Drugs Widely Used by Older Americans, 2006 to 2015" (December 2016) *(www.aarp.org/content/dam/aarp/ppi/2016-12/trends-in-retail-prices-dec-2016.pdf)*.

At the request of Ranking Member Claire McCaskill, the minority staff of the Committee on Homeland Security and Governmental Affairs reviewed price increases in the last 5 years across the top 20 most-prescribed brand-name drugs for seniors.

Key Findings

- As a way to approximate the brand-name drugs most commonly prescribed for seniors, the minority staff identified the 20 most-prescribed brand-name drugs in the Medicare Part D program. In 2015, the top 20 most-prescribed brand-name drugs in Medicare Part D were Advair Diskus, Crestor, Januvia, Lantus/Lantus Solostar,[7] Lyrica, Nexium, Nitrostat, Novolog, Premarin, Proair HFA, Restasis, Spiriva Handihaler, Symbicort, Synthroid, Tamiflu, Ventolin HFA, Voltaren Gel, Xarelto, Zetia, and Zostavax.[8]
- Prices increased for each of these drugs in the last 5 years. On average, prices for these drugs increased 12% every year for the last 5 years—approximately 10 times higher than the average annual rate of inflation.[9, 10]
- Twelve of these drugs (60%) had their prices increased by over 50% in the 5-year period. Thirty-five percent—or 6 of the 20—had prices increases of over 100%. In one case, the average wholesale acquisition cost for a single drug increased by 477% over a 5-year period.[11]
- Although 48 million fewer prescriptions were written for the brand-name drugs most commonly prescribed for seniors between 2012 and 2017, total sales revenue resulting from these prescriptions increased by almost $8.5 billion during the same period.[12]

Background and Methodology

Soaring drug prices are driving up health-care costs each year. In 2016, prescription drug spending totaled $328.6 billion.[13] According to the most recent National Heath Expenditure (NHE) data published by the Centers for Medicare and Medicaid Services (CMS), retail prescription drug spending grew at an average pace of 4.8% between 2006 and 2015, with two of the highest-growth years occurring in 2014 and 2015 at 12.4% and 9.0%, respectively.[14]

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[7] Lantus/Lantus Solostar are both insulin glargine drugs used to treat diabetes. Lantus is an injectable drug that is sold as a vial and syringe set. Lantus Solostar is an injectable pen.

[8] Centers for Medicare and Medicaid Services, "Part D Prescriber Data CY 2015: National Summary Table" (May 25, 2017) *(www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PartD2015.html).*

[9] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017. The IQVIA National Prescription Audit reports estimated national prescription activity for all biopharmaceutical products dispensed by retail, mail, and long-term care outlets in the United States. The IQVIA National Sales Perspectives reports estimated national sales activities for all biopharmaceutical products sold to retail and non-retail outlets in the United States. NSP includes pricing information for both average wholesale acquisition cost and average trade sales to retail and non-retail outlets, but does not reflect off-invoice price concessions that reduce the net amount. (IQVIA data reflect proprietary estimates of market activity and are available for use under license from IQVIA. IQVIA expressly reserves all rights, including rights of copying, distribution, and republication.)

[10] Federal Reserve Bank of Minneapolis, "Consumer Price Index, 1913–" *(www.minneapolisfed.org/community/financial-and-economic-education/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913)* (accessed February 28, 2018).

[11] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017.

[12] *Id.* These figures include prescriptions and sales figures nationwide, not just in Medicare Part D.

[13] Centers for Medicare and Medicaid Services, "NHE Fact Sheet" (December 6, 2017) *(www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html).*

[14] Quintiles IMS Institute, "Understanding the Drivers of Drug Expenditure in the U.S." (September 2017) *(www.iqvia.com/institute/reports/understanding-the-drivers-of-drug-expenditure-in-the-us).*

Even with Medicare coverage, many older individuals also face substantial out-of-pocket costs, particularly for specialty and brand-name drugs.[15] In 2013, the latest year for which CMS cost and use data is available, $1 out of every $5 that Medicare beneficiaries spent in out-of-pocket health-care costs (excluding premiums) went towards prescription drugs.[16]

Medicare beneficiaries' average out-of-pocket health-care spending is projected to continue to increase. According to one study, this spending is expected to rise from 41% of beneficiaries' per capita Social Security income in 2013 to 50% in 2030.[17] In 2030, Medicare beneficiaries ages 85 and over are projected to spend a full 87% of their Social Security income—$4,400 more out of pocket for health care on average—while beneficiaries ages 65 to 74 are projected to spend an additional $2,000 on out-of-pocket spending on average.[18]

At the request of Ranking Member Claire McCaskill, the minority staff of the Committee on Homeland Security and Governmental Affairs reviewed the history of price increases across the most-prescribed brand-name drugs for seniors over the last 5 years to better understand the role brand-name drug price increases play in driving health-care costs. As a way to approximate the brand-name drugs most commonly prescribed to seniors, the minority staff collected CMS data for the top 20 most commonly prescribed brand-name drugs to Medicare Part D beneficiaries in 2015, the most recent year for which prescriber data is available. Using data from the IQVIA National Sales Perspectives information service, the minority staff evaluated the annual prescription numbers, sales numbers, and weighted prices for the average wholesale acquisition cost for those 20 brand-name drugs.[19] The annual weighted average wholesale acquisition cost is calculated based on the total number of prescriptions for each particular brand-name drug over the course of the year.[20] Using the annual weighted average price for wholesaler acquisition cost, the minority staff determined the approximate increase in drug prices for the top 20 brands.[21] All references to price increases below refer to the wholesale acquisition cost for each product.

Investigation of Prices for Drugs for Seniors

In 2015, the top 20 most commonly prescribed brand-name drugs for seniors were Advair Diskus, Crestor, Januvia, Lantus/Lantus Solostar, Lyrica, Nexium, Nitro-

[15] Kaiser Family Foundation, "10 Essential Facts About Medicare and Prescription Drug Spending" (November 10, 2017) *(www.kff.org/infographic/10-essential-facts-about-medicare-and-prescription-drug-spending/).*

[16] *Id.*

[17] Kaiser Family Foundation, "Medicare Beneficiaries' Out-of-Pocket Health Care Spending as a Share of Income Now and Projections for the Future" (January 26, 2018) *(www.kff.org/report-section/medicare-beneficiaries-out-of-pocket-health-care-spending-as-a-share-of-income-now-and-projections-for-the-future-report/).*

[18] *Id.*

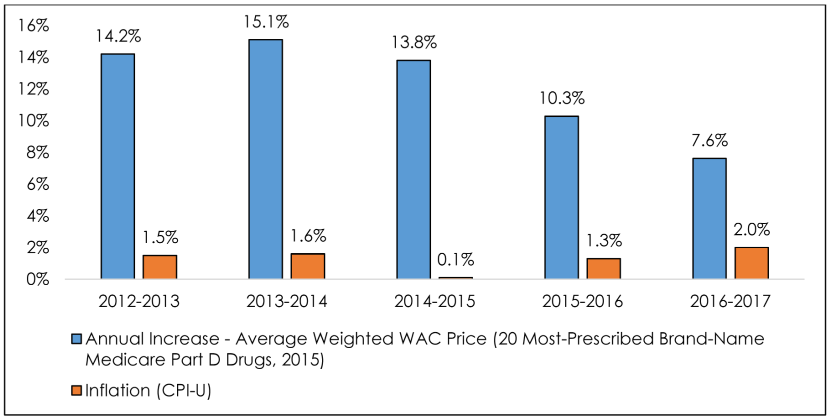
[19] NHE data published by CMS reflects an estimation of net spending for payers (including patients) on prescription drugs using total spending amounts reported by retail and mail order pharmacies. The IQVIA data reflecting the total number of annual prescriptions and annual sales for the brand-name prescription drugs referenced in this report are calculated based on average trade sales to retail and non-retail outlets, including invoiced sales by wholesalers and direct sales by manufacturers to customers. IQVIA data incorporates known discounts and rebates available for sales to pharmacies. However, discount and rebate information is not widely available and the data typically do not capture off-invoice discounts, coupons, or rebates offered by manufacturers to non-pharmacy customers. However, limited research on net prices available from IQVIA shows that net prices of brand-name drugs are also increasing, but at a slower rate than wholesale acquisition costs. The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017.

[20] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017.

[21] Typically, the wholesaler acquisition cost (WAC) price reflects the list price. WAC price generally does not account for any coupons or discounts that manufacturers provide insurers, medical providers, and pharmacy benefit managers (PBMs). The annual weighted average WAC price is based on the total number of prescriptions for each particular brand-name drug over the course of the year. However, because of periodic price changes throughout the year, or changes in supply or form of the prescription, drug pricing trends associated with the weighted average WAC price may not accurately reflect the drug pricing trends for the most popular type of prescription for each brand-name drug (*i.e.,* the most popular dosage, form, or length of supply).

stat, Novolog, Premarin, Proair HFA, Restasis, Spiriva Handihaler, Symbicort, Synthroid, Tamiflu, Ventolin HFA, Voltaren Gel, Xarelto, Zetia, and Zostavax.[22] On average, prices for these drugs increased 12% every year for the last 5 years—approximately 10 times higher than the average annual rate of inflation.[23, 24, 25] *See* Figure 1.

Figure 1: Popular Drug Price Change vs. Inflation[26, 27, 28]



All 20 of these drugs experienced consistent price increases over the last 5 years, with total percentage increases ranging from 31% to 477%. *See* Figure 2.

[22] Centers for Medicare and Medicaid Services, "Part D Prescriber Data CY 2015: National Summary Table" (May 25, 2017) *(www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PartD2015.html).* The manufacturers of the top 20 drugs are GlaxoSmithKline (Advair Diskus, Ventolin HFA); AstraZeneca (Crestor, Nexium, Symbicort); Merck and Co., Inc. (Januvia, Zetia, Zostavax); Sanofi-Aventis (Lantus/Lantus Solostar); Pfizer (Lyrica, Nitrostat, Premarin); Novo Nordisk (Novolog); Teva Pharmaceutical Industries (Proair HFA); Allergan (Restasis); Boehringer Ingelheim Pharmaceuticals, Inc. (Spiriva Handihaler); AbbVie Inc. (Synthroid); Hoffmann-La Roche (Tamiflu); Endo Pharmaceuticals, Inc. (Voltaren Gel); and Janssen Pharmaceutica (Xarelto).

[23] Centers for Medicare and Medicaid Services, "Part D Prescriber Data CY 2015: National Summary Table" (May 25, 2017) *(www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PartD2015.html).*

[24] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012 through December 31, 2017.

[25] Federal Reserve Bank of Minneapolis, "Consumer Price Index, 1913–" *(www.minneapolisfed.org/community/financial-and-economic-education/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913)* (accessed February 28, 2018).

[26] Centers for Medicare and Medicaid Services, "Part D Prescriber Data CY 2015: National Summary Table" (May 25, 2017) *(www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PartD2015.html).*

[27] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017.

[28] Federal Reserve Bank of Minneapolis, "Consumer Price Index, 1913–" *(www.minneapolisfed.org/community/financial-and-economic-education/cpi-calculator-information/consumer-price-index-and-inflation-rates-1913)* (accessed Feb. 28, 2018).

Figure 2: Annual Price Increases of Most Commonly Prescribed Brand-Name Drugs[29]

Product	2012 Annual Weighted Average WAC Price	2017 Annual Weighted Average WAC Price	Average Annual Percent Change (2012–2017)	Percent Change (2012–2017)
Advair Diskus	$227.60	$360.86	10%	59%
Crestor	$349.31	$615.65	12%	76%
Januvia	$306.58	$517.91	11%	69%
Lantus	$121.88	$250.24	15%	105%
Lantus Solostar	$144.15	$354.12	20%	146%
Lyrica	$264.43	$600.35	18%	127%
Nexium	$256.99	$368.85	7%	44%
Nitrostat	$15.91	$91.76	42%	477%
Novolog Flexpen	$131.95	$313.05	19%	137%
Premarin	$255.94	$554.60	17%	117%
Proair Hfa	$39.96	$54.05	6%	35%
Restasis	$167.62	$321.26	14%	92%
Spiriva	$244.77	$348.30	7%	42%
Symbicort	$206.05	$293.46	7%	42%
Synthroid	$96.35	$153.82	10%	60%
Tamiflu	$97.94	$143.18	8%	46%
Ventolin	$34.67	$50.68	8%	46%
Voltaren Gel	$35.86	$50.96	7%	42%
Xarelto	$258.82	$449.51	12%	74%
Zetia	$225.63	$483.71	16%	114%
Zostavax	$1,044.36	$1,363.08	5%	31%

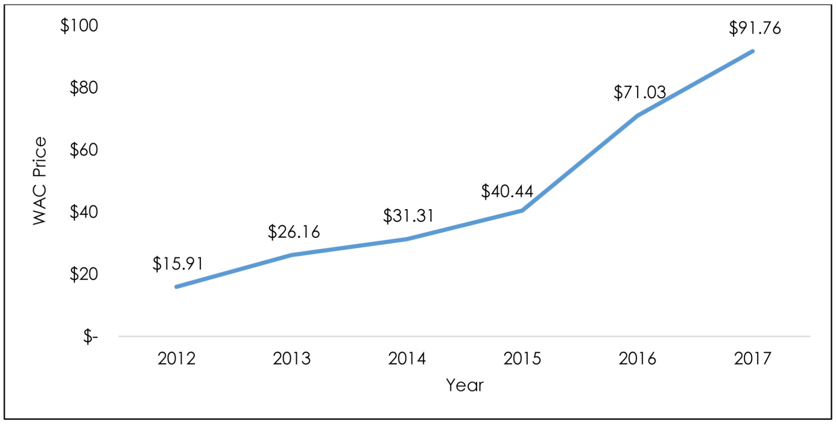
Manufacturers increased prices by over 50% for 12 out of these 20 drugs—or 60% of the drugs—during the 5-year period. Manufacturers increased prices by 100% for 6 of the 20 drugs—or 35%—during this same period. *See* Figure 2. Nitrostat[30] had the most significant price increase of all 20 drugs. According to IQVIA data, the weighted average wholesale acquisition cost for Nitrostat increased 477% between 2012 and 2017.[31] *See* Figures 2 and 3.

[29] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012 through December 31, 2017.

[30] Nitrostat (Nitroglycerin) is used to treat and prevent chest pain. GoodRx, Nitrostat *(www.goodrx.com/nitrostat/what-is)* (accessed February 16, 2017).

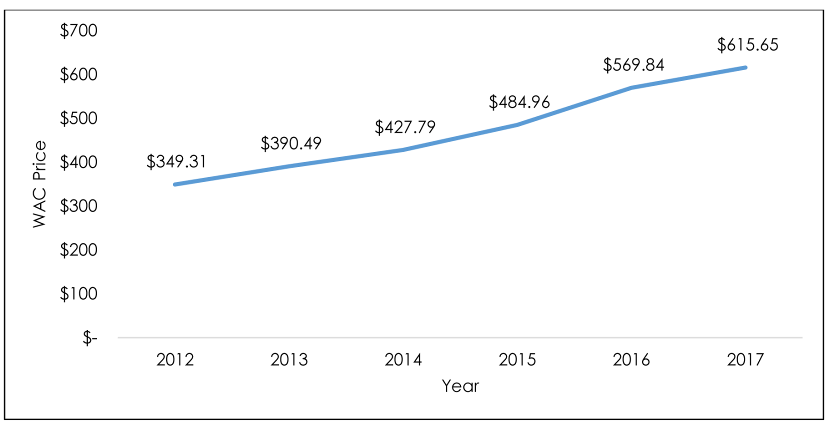
[31] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012, through December 31, 2017.

Figure 3: Price Increase for Nitrostat[32]



Even smaller percentage increases can result in significantly higher prices for expensive and commonly prescribed prescription drugs. For example, the third most commonly prescribed drug, Crestor, experienced what appears to be a common price increase of 12% in weighted average wholesale acquisition cost each year for the past 5 years.[33, 34] These annual price increases resulted in a 76% price increase for Crestor over 5 years, taking the price from $349.31 in 2012 to $615.65 in 2017.[35] *See* Figure 4.

Figure 4: Price Increase for Crestor[36]



[32] *Id.*

[33] Centers for Medicare and Medicaid Services, "Part D Prescriber Data CY 2015: National Summary Table" (May 25, 2017) *(www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Medicare-Provider-Charge-Data/PartD2015.html).*

[34] The information cited above was calculated by minority staff of the committee based on data selected from the following IQVIA information services: IQVIA National Prescription Audit (NPA) for the period from January 1, 2012, through December 31, 2017, and IQVIA National Sales Perspectives (NSP) for the period from January 1, 2012 through December 31, 2017.

[35] *Id.*

[36] *Id.*

Price increases for the top 20 most commonly prescribed brand-name drugs for seniors have driven an astonishing increase in sales revenue for their manufacturers. Despite the fact that total prescriptions written for these drugs decreased by more than 48 million between 2012 and 2017, total sales revenue resulting from these prescriptions increased by almost $8.5 billion.[37] *See* Figure 5.

Figure 5: Total U.S. Prescriptions of Most Commonly Prescribed Brand-Name Drugs[38]

Product	2012 Prescriptions (U.S. total)	2017 Prescriptions (U.S. total)	Prescription Difference (2012–2017)	Percent Change (2012–2017)
Ventolin HFA	17,414,376	27,069,765	9,655,389	55%
Proair HFA	24,873,170	25,977,546	1,104,376	4%
Synthroid	23,073,988	18,411,640	−4,662,348	−20%
Lantus **Lantus Solostar**	18,558,937 (combined figure)	17,004,123 (combined figure)	−1,554,814 (combined figure)	−8% (combined figure)
Advair Diskus	17,018,219	10,700,788	−6,317,431	−37%
Lyrica	9,114,028	10,373,276	1,259,248	14%
Januvia	8,893,922	9,913,198	1,019,276	11%
Symbicort	5,246,325	9,888,532	4,642,207	88%
Xarelto	1,078,207	9,593,823	8,515,616	790%
Spiriva Handihaler	9,625,240	5,759,976	−3,865,264	−40%
Novolog	3,385,303	5,045,237	1,659,934	49%
Restasis	2,818,474	3,037,271	218,797	8%
Nexium	22,021,459	2,246,968	19,774,491	−90%
Tamiflu	3,316,707	2,143,796	−1,172,911	−35%
Premarin	5,223,690	2,046,125	−3,177,565	−61%
Voltaren Gel	2,954,278	1,964,665	−989,613	−33%
Zetia	7,915,532	1,730,633	−6,184,899	−78%
Crestor	25,337,566	1,604,070	−23,733,496	−94%
Zostavax	2,291,538	1,344,617	−946,921	−41%
Nitrostat	4,273,413	309,442	−3,963,971	−93%
TOTAL	**214,434,372**	**166,165,491**	**−48,268,881**	**−33%**

[37] *Id.*
[38] *Id.*

Conclusion

Soaring pharmaceutical drug prices remain a critical concern for patients and policymakers alike. Over the last decade, these significant price increases have emerged as a dominant driver of U.S. health-care costs—a trend experts anticipate will continue at a rapid pace. Even as the total number of prescriptions for the brand-name drugs most commonly prescribed to seniors has decreased over the past 5 years, total annual revenue for these drugs continues to increase each year following significant and consistent price increases. These findings underscore the need for further investigation by the committee and other policymakers into dramatic price spikes and their impact on health-care system costs and financial burdens for the growing U.S. senior population.

APPENDIX

Figure 6: List of 20 Drugs and Price Increases (Weighted Average WAC) [39]

Product	2012 WAC Price	Percent Change 2012–2013	2013 WAC Price	Percent Change 2013–2014	2014 WAC Price	Percent Change 2014–2015	2015 WAC Price	Percent Change 2015–2016	2016 WAC Price	Percent Change 2016–2017	2017 WAC Price	CAGR % 2012–2017	Percent Change 2012–2017	2012 Prescriptions (U.S. total) [40]	2017 Prescriptions (U.S. total) [41]
ADVAIR DISKUS 03/2001 GSK	$227.60	12%	$254.79	8%	$276.03	8%	$297.59	11%	$330.97	9%	$360.86	10%	59%	17,018,219	10,700,788
CRESTOR 08/2003 AZN	$349.31	12%	$390.49	10%	$427.79	13%	$484.96	18%	$569.84	8%	$615.65	12%	76%	25,337,566	1,604,070
JANUVIA 10/2006 MSD	$306.58	8%	$331.93	16%	$385.18	17%	$450.88	8%	$487.94	6%	$517.91	11%	69%	8,893,922	9,913,198
LANTUS 05/2001 S.A.	$121.88	24%	$151.63	41%	$213.71	16%	$248.51	0%	$248.51	1%	$250.24	15%	105%	18,558,937	17,004,123
LANTUS SOLOSTAR 07/2007 S.A.	$144.15	27%	$182.88	40%	$255.53	31%	$333.81	1%	$336.48	5%	$354.12	20%	146%	(combined figure) [42]	(combined figure) [43]
LYRICA 08/2005 PFZ	$264.43	20%	$316.36	21%	$382.22	20%	$457.72	13%	$519.00	16%	$600.35	18%	127%	9,114,028	10,373,276
NEXIUM 03/2001 AZN	$256.99	19%	$305.46	20%	$367.59	12%	$411.61	−4%	$393.39	−6%	$368.85	7%	44%	22,021,459	2,246,968
NITROSTAT 05/1975 PFZ	$15.91	64%	$26.16	20%	$31.31	29%	$40.44	76%	$71.03	29%	$91.76	42%	477%	4,273,413	309,442
NOVOLOG FLEXPEN 02/2003 N–N	$131.95	23%	$162.31	27%	$206.84	30%	$267.94	6%	$283.42	10%	$313.05	19%	137%	3,385,303	5,045,237
PREMARIN 01/1942 PFZ	$255.94	16%	$297.64	17%	$347.98	18%	$408.99	19%	$486.13	14%	$554.60	17%	117%	5,223,690	2,046,125
PROAIR HFA 12/2004 T9V	$39.96	10%	$44.11	7%	$46.99	5%	$49.29	4%	$51.35	5%	$54.05	6%	35%	24,873,170	25,977,546
RESTASIS 03/2003 ALL	$167.62	11%	$185.24	12%	$207.00	18%	$244.50	17%	$285.72	12%	$321.26	14%	92%	2,818,474	3,037,271
SPIRIVA HANDIHALER 05/2004 B.I.	$244.77	9%	$265.89	6%	$283.13	7%	$303.38	6%	$322.09	8%	$348.30	7%	42%	9,625,240	5,759,976
SYMBICORT 06/2007 AZN	$206.05	8%	$222.85	8%	$241.42	8%	$260.93	6%	$276.88	6%	$293.46	7%	42%	5,246,325	9,888,532
SYNTHROID 12/1963 AV1	$96.35	6%	$101.71	16%	$118.35	13%	$133.82	7%	$142.89	8%	$153.82	10%	60%	23,073,988	18,411,640

APPENDIX—Continued

Figure 6: List of 20 Drugs and Price Increases (Weighted Average WAC)[39]

Product	2012 WAC Price	Percent Change 2012–2013	2013 WAC Price	Percent Change 2013–2014	2014 WAC Price	Percent Change 2014–2015	2015 WAC Price	Percent Change 2015–2016	2016 WAC Price	Percent Change 2016–2017	2017 WAC Price	CAGR % 2012–2017	Percent Change 2012–2017	2012 Prescriptions (U.S. total)[40]	2017 Prescriptions (U.S. total)[41]
TAMIFLU 11/1999 ROC	$97.94	6%	$104.08	6%	$110.28	3%	$113.73	15%	$131.27	9%	$143.18	8%	46%	3,316,707	2,143,796
VENTOLIN HFA 02/2002 GSK	$34.67	7%	$37.01	6%	$39.35	7%	$42.26	16%	$48.94	4%	$50.68	8%	46%	17,414,376	27,069,765
VOLTAREN GEL 04/2008 END	$35.86	2%	$36.59	11%	$40.74	11%	$45.36	6%	$48.08	6%	$50.96	7%	42%	2,954,278	1,964,665
XARELTO 07/2011 JAN	$258.82	11%	$287.61	10%	$317.27	14%	$362.56	11%	$401.63	12%	$449.51	12%	74%	1,078,207	9,593,823
ZETIA 11/2002 MSD	$225.63	12%	$253.34	15%	$292.21	15%	$336.60	23%	$414.33	17%	$483.71	16%	114%	7,915,532	1,730,633
ZOSTAVAX 06/2006 MSD	$1,044.36	11%	$1,157.74	−10%	$1,045.09	18%	$1,234.98	9%	$1,343.74	1%	$1,363.08	5%	31%	2,291,538	1,344,617

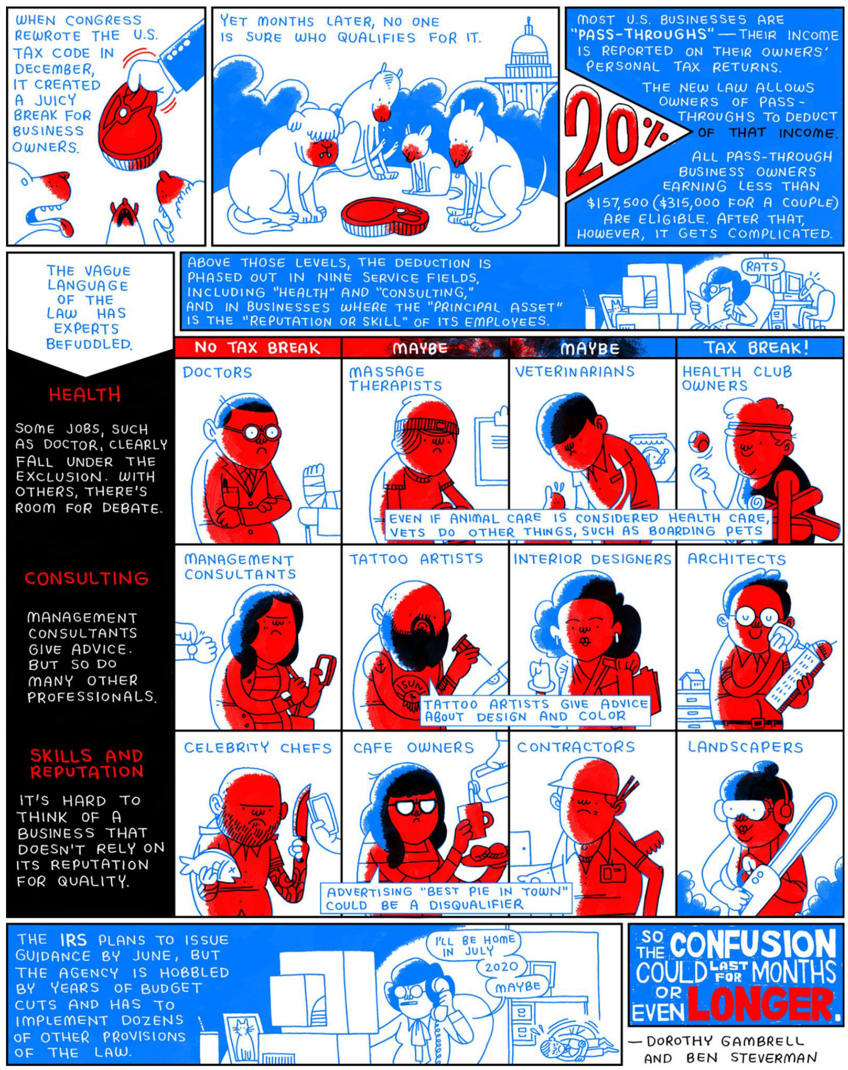
[39] *Id.*

[40] These numbers reflect IQVIA's estimate of all prescriptions dispensed by retail, mail, and long-term care outlets in the United States, including those not covered under Medicare Part D.

[41] These numbers reflect IQVIA's estimate of all prescriptions dispensed by retail, mail, and long term care outlets in the United States, including those not covered under Medicare Part D.

[42] Lantus/Lantus Solostar are both insulin glargine drugs used to treat diabetes. Lantus is an injectable drug that is sold as a vial and syringe set. The Lantus Solostar is an injectable pen. This chart reflects the prescriptions written for both forms of the single Lantus drug.

[43] Lantus/Lantus Solostar are both insulin glargine drugs used to treat diabetes. Lantus is an injectable drug that is sold as a vial and syringe set. The Lantus Solostar is an injectable pen. This chart reflects the prescriptions written for both forms of the single Lantus drug.



SUBMITTED BY HON. JOHN THUNE, A U.S. SENATOR FROM SOUTH DAKOTA

From *The Wall Street Journal,* April 17, 2018

THE WAGES OF TAX REFORM ARE GOING TO AMERICA'S WORKERS

By Kevin Hassett

In a dynamic, competitive economy, what's good for companies is good for their employees.

The Tax Cuts and Jobs Act reduces the Federal corporate tax rate from 35 percent to 21 percent and allows full expensing for business investment in equipment. Opponents, echoing leftists from Marx to Piketty, describe those provisions as giveaways to the wealthy at the expense of the working class. They're wrong.

In a dynamic, competitive economy, the relationship between companies and their employees is symbiotic, not antagonistic. Research by economists Alan Krueger and Lawrence Summers, both of whom served in the Obama administration, shows that more-profitable employers pay higher wages. Any company that attempts to pay a worker less than he is worth will quickly lose that worker to a competitor. Thus, firms that want to thrive must invest in their plants and workers.

When profits go up, capital investment goes up, and wages follow. That's the reason we estimated, based on what has happened around the world, that households will get an average $4,000 wage increase from corporate tax reform, once its changes are fully implemented and swoosh through the Nation's economic engine.

Naysayers have been invested in the law's failure from day one. But the data are already proving them wrong. An increase in the return to investment should drive investment and profits up, increase productivity and wages, and ultimately boost economic growth. Here's what we've seen so far this year:

- *More investment.* The President's promise to lower corporate taxes and reduce red tape has led to a surge in American business investment. Real private nonresidential fixed investment increased 6.3 percent in 2017, according to data from the Bureau of Economic Analysis. Equipment investment rose 8.9 percent, thanks largely to the tax law's allowance for full expensing of equipment investment retroactively to September 2017. In March 2018, the Morgan Stanley Composite Capital Expenditure Plans Index reached its highest level since it began tracking in 2006.
- *Greater productivity.* Capital investment raises capital per worker and thus labor productivity. Here again, the early signs are positive. For perspective, real private nonresidential fixed investment was anemic at the end of the Obama administration: On a year-over-year basis, it fell 0.6 percent in 2016. As a result, during the post-recession expansion under President Obama (2010–2016), the moving 4-year average contribution that capital made to labor productivity growth in the private sector turned negative for the first time in history. But boosted by a strong finish to the year, capital added 0.3 percentage point to productivity growth in 2017—and will add more in 2018 if the Morgan Stanley index is correct.
- *Pay raises.* The average increase in wages from the year-earlier period for January through March 2018 is the highest for any 3-month period since mid-2009. A flurry of corporate announcements provide further evidence of tax reform's positive impact on wages.

  As of April 8, nearly 500 American employers have announced bonuses or pay increases, affecting more than 5.5 million American workers, as a result of the TCJA. Walmart, the largest private employer in the country, has announced a $2-an-hour increase in the starting wage of new workers and $1-an-hour rise in its base wage for employees of more than 6 months. For someone working 40 hours a week, that is up to $3,040 per year in additional pay.

  Other employers have done the same, including BB&T Bank, where full-time workers earning the bank's minimum wage will see a $6,000 increase in their annual income. Companies that have announced new bonus plans have lifted compensation by an average of $1,150. Ten firms have also announced minimum-wage hikes that imply annual income gains of at least $4,000 for full-time workers.
- *Faster growth.* Forecasters around the world are now predicting this growth can be sustained. The Organisation for Economic Co-operation and Development has boosted its forecasts for real U.S. economic growth in 2018 and 2019 to nearly 3 percent to reflect the impact of the TCJA. The Congressional Budget Office also increased its growth projection for this year and next by an average of one percentage point relative to its last forecast before the tax bill was passed.

With the political battle over passage behind us, economists are again focusing on the data. All indications are that the tax bill delivered a much-needed boost to capital-starved American workers, and wages are doing what economics says they should when companies invest aggressively in more and better machines and share profits with workers. Perhaps it is a time to put aside the archaic notion that the conflict between capital and labor is the central story of our society. In a modern competitive economy, workers do well when their employers do.

Mr. Hassett is chairman of the White House Council of Economic Advisers.

PREPARED STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM OREGON

The new Republican tax law is shaping up to be one of history's most expensive broken promises, right up there with "we will be greeted as liberators." The ink on the new tax law is barely dry, but already there are calls for a second round of tax cuts.

Colleagues, in my view, lawmakers ought to think twice about big new promises if they can't deliver on the ones they've already made.

Let's take stock of the early returns on the new tax law. Maybe the biggest selling point of the tax law was a promise from the administration that workers would get, on average, a $4,000 wage increase. But the reality is, the new law has done so little for people who work hard to earn a wage and cover the bills—the overwhelming majority of individual taxpayers—it's barely registered with them at all. If the law was delivering huge benefits to working families, you'd never hear the end of it on the airwaves. And when you're talking about legislation that's going to cost nearly $2 trillion when it's all said and done, it's not easy to fail at your stated goals this spectacularly.

So it's not exactly surprising that the law isn't ginning up a whole lot of excitement among working families. But it hasn't gone unnoticed by everybody. Just yesterday, the nonpartisan scorekeepers at the JCT released a new analysis of the pass-through tax break. For those who don't spend their days pouring over the finer points of the tax debate, this part of the law was supposedly all about small businesses. In fact, the way some people talked about it, you'd think it only applied to corner store owners whose names were literally Mom and Pop. Well, according to the new JCT figures, nearly half of the benefit of the new pass-through rate is going to taxpayers with incomes of $1 million or more. That's not the kind of garages and diners and community pharmacies the phrase "small business" brings to mind for most people. Once again, it's the fortunate few reaping the benefits.

New data out late last week also showed that in just the first 3 months of this year, the biggest Wall Street banks pocketed $3.6 billion as a result of the new tax law. More than a billion dollars going to the banks each month, but millions of families are looking around and wondering when they're going to see those raises they were promised.

Finally, a few weeks ago, this committee held our annual hearing at tax filing season. There was a lot of discussion about what the new tax law means for small businesses, which is a topic we'll focus on again today. I understand one of our witnesses here today will testify to one of the challenges a whole lot of small businesses are facing—they owe estimated tax payments, but they are in the dark about what they're going to owe this year under the new rules. In our witnesses' case, I'm told there was some back-of-the-envelope math to figure it out. What I hear at home is that there are a whole lot of businesses that can't even make an estimate of their estimated payments. For them, those new rules pertaining to passthrough status are the definition of complexity.

So folks, let's get real about what this means. The facts do not resemble the promises when it comes to this tax law.

Bottom line, for most Americans, particularly hard-working people who don't have accountants and lawyers scouring the tax code for ways to exploit loopholes, the new tax law has turned out to be an awfully expensive dud. The big promises they heard about big raises and a new era of simpler tax rules has not come to pass.

So, in my view, lawmakers ought to keep their promises when it comes to tax cuts before rushing ahead with a second bill.

I want to close on one last point. The tax debate did not have to end this way. I've written two bipartisan, comprehensive tax reform bills. Before this process turned into a one-sided exercise, I know there was bipartisan interest on this committee in fixing our tax code in a way that brought the two sides together. Unfortunately that's not how it played out. I hope that in the future, this committee is able to approach these big economic debates in a bipartisan way.

Thank you to our witnesses for being here today. I look forward to asking questions.

The Reckless and Irresponsible Consideration of the 2017 Tax Bill

- The partisan process of writing the 2017 tax bill was reckless and irresponsible from the very beginning.
- As a starting point, Senator Hatch said it best himself, a few years earlier, when he said that using the hyper-partisan reconciliation process would "poison the well" for bipartisan tax reform. Republicans never sought Democratic votes, and they did not receive a single Democratic vote in either the House or Senate.
- There were *no* hearings on the legislative proposal that makes $10 trillion of changes to the tax code (1986 Tax Reform Act: 33 hearings on the President's 489-page proposal).
- There were *no* bipartisan negotiations (ACA: 31 meetings of the bipartisan "Gang of Six," lasting more than 60 hours). Finance Committee Democrats were never invited to participate in any negotiations or drafting sessions.
- Finance Committee Democrats received the Chairman's Mark the Thursday night before the Veteran's Day holiday weekend, and they had to file their amendments by Sunday at 5 p.m.
- The chairman took the unprecedented step of introducing an entirely new, major, issue—repeal of the individual mandate—in the middle of the markup. No amendment had been filed on this issue and the change was made more than two days after the deadline for filing amendments.
- The chairman refused to allow members to file additional amendments in response to his individual mandate repeal provision, and he declared that any health-care amendments would be non-germane, even if they were within the committee's jurisdiction (he ruled three amendments non-germane on this basis).
- The chairman refused to allow the Congressional Budget Office to attend the markup to answer questions about how the individual mandate repeal amendment would affect coverage and premiums.
- No Democratic amendments were accepted during the markup session. Of the 842 votes cast by Republican Senators, not a single vote was cast in favor of an amendment offered by a Democratic Senator.
- Late the last night of the markup, without any input from Democrats, Chairman Hatch released a "Managers' Amendment," which was put to a vote about an hour after it was released. The Managers' Amendment consisted of 19 provisions, most of which modified provisions of the Chairman's Mark/Modification or were drawn from amendments filed by Republican Senators (*e.g.,* special relief for Mississippi Delta floods); at least one was a new proposal. No provisions proposed by Democratic Senators were included in the Managers' Amendment, which was approved by a party-line vote.
- Immediately after the committee voted to report the bill, when Chairman Hatch asked that staff be given drafting authority, including authority "to assure compliance with reconciliation instructions," Senator Wyden objected, arguing that such authority was too broad. Chairman Hatch then purported to put the unanimous consent request to a rollcall vote, without any motion having been made.
- During the drafting process, several provisions were included that did not reflect decisions that had been made by the committee. Senator Wyden sent Senator Hatch a letter describing 17 provisions in the legislative text that, in the view of the Democratic staff, did not reflect the decisions made by committee members based on the materials available to them during our markup session. In his response, Senator Hatch implicitly acknowledged that the Democratic staff criticism was correct in some cases (by indicating that an amendment would be appropriate), and provided insufficient explanations in several other cases (*e.g.,* justifying a substantive change made in the legislative text because it would be within the Treasury Secretary's regulatory discretion).
- On the Senate floor, the final text was not produced until 6 p.m. on Friday night, and it was filled with new provisions, some scrawled in illegibly, providing breaks for special interests, including a special break for a large conservative university and additional relief for large oil and gas partnerships.
- After the House and Senate called for a conference committee, the committee was convened only once. The conference meeting was convened a few hours after press reports indicated that the Republican conferees, meeting privately,

had reached an agreement. The apparent agreement was not described at the conference meeting. Instead, members were allowed only to make opening statements and ask questions of the Chief of Staff of the Joint Tax Committee about the contents of the House and Senate bills. Further, the purported conference committee chairman, Mr. Brady, denied Democratic members the opportunity to make motions or even parliamentary inquiries.

- When the conference agreement was made available for conference committee members to sign, Democratic staff were not allowed to read the conference report or monitor the process (*e.g.,* to assure that the version that was signed was the same as the version that eventually was filed).

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May 3, 2018

The Honorable Orrin G. Hatch
U.S. Senate
104 Hart Senate Office Building
Washington DC 20510

The Honorable Ron Wyden
U.S. Senate
221 Dirksen Senate Office Building
Washington DC 20510

Re: Senate Finance Hearing on April 24, 2018, "Early Impressions of the New Tax Law"

Dear Senators Hatch and Wyden:

On behalf of our members and all Americans age 50 and older, AARP is writing to express our support for the medical expense deduction and urge the extension of its current income threshold of 7.5 percent beyond its sunset date at the end of 2018. We believe that every effort should be made to keep the threshold for the deduction as low as possible to help protect people with high medical costs. AARP, with its more than 38 million members in all 50 states, the District of Columbia, and the U.S. territories, represents individuals seeking financial stability while managing their medical expenses.

AARP appreciates that the Tax Cuts and Jobs Act retained the medical expense deduction and restored the 7.5 percent income threshold for all tax filers for 2 years. The medical expense deduction is an important policy tool to make health care more affordable for middle-income Americans. Nearly three-quarters of tax filers who claimed the medical expense deduction are age 50 or older and live with a chronic condition or illness, and 70 percent of filers who claimed this deduction have income below $75,000. For the approximately 8.8 million Americans who annually take this deduction, it provides important tax relief which helps offset the costs of acute and chronic medical conditions for older Americans, children, and individuals with disabilities, as well as the costs associated with long-term care. Medical expenses that qualify for this deduction can include amounts paid for prevention, diagnosis, treatment, equipment, and qualified long-term care services costs and long-term care insurance premiums.

For older Americans and Americans with disabilities, the medical expense deduction can help offset high out-of-pocket expenses. Even with Medicare, a significant share of beneficiaries spend a considerable amount on out-of-pocket expenses each year.[1] The average Medicare beneficiary spends about $5,680 out-of-pocket on medical care and the medical expense deduction makes health care more affordable for people with significant out-of-pocket expenses. In 2013, roughly 25.8 million beneficiaries in traditional Medicare spent at least 10 percent of their income on out-of-pocket health-care expenses.[2]

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[1] Claire Noel-Miller, "Medicare Beneficiaries Out-of-Pocket Spending for Health Care," Washington, DC, AARP Public Policy Institute Insight on the Issues 108, October 2015, accessed at *https://www.aarp.org/content/dam/aarp/ppi/2015/meidcare-beneficiaries-out-of-pocket-spending-for-health-care.pdf.*

[2] AARP Public Policy Institute analysis of data from the Medicare Current Beneficiary Survey, 2013 Cost and Use File. In 2013, 72 percent of all Medicare beneficiaries were in traditional

Continued

Furthermore, older Americans often face high costs for long-term services and support—which are generally not covered by Medicare—as well as hospitalizations and prescription drugs. The median cost for a private room in a nursing home is over $97,000 annually, while the median cost for even more cost-effective home-based care is still over $30,000 per year for 20 hours of care a week. Tax relief in this area can provide needed resources, especially important to middle-income seniors with high long-term care and medical costs.

Maintenance of this important deduction at the 7.5 percent income threshold is critical financial protection for seniors with high heath-care costs. We urge Congress to work in a bipartisan manner to maintain the medical expense deduction at its current threshold level. If you have any questions or need additional information, please feel free to contact me or contact Jasmine Vasquez at 202–434–3711 or at jvasquez@aarp.org.

Sincerely,

Joyce A. Rogers
Senior Vice President
Government Affairs

LETTER SUBMITTED BY HARVEY AND SURIE ACKERMAN

April 22, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small firm I retain to do my U.S. taxes is having a hard time assisting me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. After being fired from my salaried position at the age of 54 (I was told "we can hire three younger people for what we pay you"), over the past 4 years I have used my skills to build a small business in Israel (which is not a low-tax location; personal taxes are high, and corporate tax here is 24%).

Now, out of the clear blue sky, the U.S. government is demanding that I pay taxes on the retained earnings of my small corporation. There has been no "tax event" to justify this tax. Please note that since we moved abroad we have always filed timely U.S. tax returns and FBARs and have always fulfilled our tax obligations.

Medicare. Spending data for the remaining 28 percent who had a Medicare Advantage (MA) plan were not reliable. *See,* Kaiser Family Foundation (October 2017), "Medicare Advantage," Kaiser Family Foundation Fact Sheet, available at *https://www.kff.org/medicare/factsheet/medicare-advantage/*.

We have tried to make a calculation of how much this transition tax would be (although we aren't certain it's correct), and it comes out to $27,000, which is a huge sum for us. We haven't even tried to wrap our heads around the GILTI regime—no matter how much we read about it, we still can't understand it—but it seems as if the U.S. government is going to try to take its "cut" out of future earnings as well.

Not only will all this be a terrible burden personally, but it may violate the U.S.-Israel tax treaty. There are accountants and lawyers in Israel working with Israeli finance officials to formulate such a claim.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. I was presumably not the target of these taxes and they will be financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Harvey Ackerman. I am an American living in Israel, and I vote in New York State.

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Comments on TCJA

ACA is grateful to the Senate Finance Committee for holding this hearing on early impressions of the recently-enacted Tax Cuts and Jobs Act, which in many important ways rewrote the Internal Revenue Code. What was done and not done in this Act is especially impactful on Americans abroad.

What Was Done

Since Americans abroad are taxed the same as Americans residing in the United States, just about all of the dozens of individual tax reform changes affect them. These include the changes in individuals' tax rates, deductions, credits, estate, gift, and generation-skipping transfers taxes, changes in corporations' tax rates, small business rules, and many other provisions.

What Was Not Done

The big thing that did not change is the taxation of Americans residing—truly residing—in another country. They remain taxable based on their citizenship or citizenship-based taxation (CBT), meaning that regardless of the fact that they reside outside the United States, may have done so all their lives, may seldom if ever be present in the United States, may have little or no U.S. income, in other words have very little connection with the United States, they are fully taxable under U.S. tax principles. They have to file all the returns and related forms. They may actually owe U.S. tax. We say "may" because, as is well-recognized, many of these individuals end up owing no U.S. tax because of the workings of the foreign earned income exclusion and/or the foreign tax credit rules. Many file returns only because they have to in order to claim the exclusion and credits.

Americans abroad had hoped that provisions replacing citizenship-based taxation with residency-based taxation—RBT (sometimes called territoriality for individuals) would have been included in the Act. RBT simply treats Americans abroad, in general, like non-resident individuals and thus does not tax their foreign income. U.S. income remains taxable. RBT is the simplest form of territoriality for individuals. It is the approach followed by all other countries with the exception of Eritrea.

Other Things That Were Not Done

A couple of other things were not done. First, the 3.8% net investment income tax to fund Medicare and The Affordable Care Act, was not changed continues to apply in a way that, for Americans abroad, exposes them to double taxation because they (and others) are not allowed to credit foreign taxes against it. Secondly, a same country exemption from the FATCA rules was not added to the statute. This exemption would give relief for the "lockout" problem causing Americans abroad to be denied financial services by foreign banks who are scared silly by the FATCA due diligence and reporting rules. (This exemption can easily be provided by the Treasury Department dropping it into the FATCA tax regulations, should it decide to do so.)

The Most Serious Problem Areas

For Americans abroad, there are several serious problems with TCJA, and ACA respectfully requests that these be carefully analyzed and steps taken to correct them.

(a) *The new participation exemption system* adversely affects Americans abroad by not providing the dividends received deduction and yet taxing an individual on the deemed distribution. The Act moves the United States from a worldwide tax system to a participation exemption system by giving U.S. (that is, domestic) corporations a 100% dividend received deduction for dividends distributed by a controlled foreign corporation (CFC). (New section 245A of the Internal Revenue Code.) To transition to that new system, the Act imposes a *one-time deemed repatriation tax,* payable, if elected, over 8 years, on unremitted earnings and profits at a rate of 8 percent for illiquid assets and 15.5 percent for cash and cash equivalents. (New sections 78, 904, 907 and 965 of the IRC.) The dividends received deduction, which obviously is a major benefit, is available only to U.S. corporations that are shareholders in the CFC. The deduction is not available to individuals, nor is it available to foreign corporations, which, for example, are owned by U.S. individuals, including individuals living abroad. On the other hand, the repatriation tax would apply to everyone, not merely U.S. corporations. Accordingly, an individual, for example, a U.S. citizen residing abroad, who is a shareholder in a CFC, while not able to benefit from the 100% dividends received deduction, might be subject to the repatriation tax. Note, this individual might not have in hand the actual monies needed to pay this tax.

This change is likely to come as a surprise to many Americans abroad who own foreign companies with accumulated earnings and profits. It is very common for American individuals living and working in a foreign country to own a foreign company. He or she might have a small business that is owned and operated through an entity created under local foreign law but characterized as a corporation for U.S. tax purposes. This might be done to comply with local rules that influence the decision to incorporate. It might be done to protect against all kinds of different liabilities under local rules. Most Americans abroad who are "hit" by these new rules will not have "incorporated" with U.S. taxes in mind. In fact, they will not have thought about all of the detailed rules and nuances governing characterization of entities for U.S. tax purposes.

Lastly, on this point, in TCJA is a new *"downward attribution" rule.* (New section 958(b) of the IRC.) This is a hypertechnical change to hypertechnical existing provisions. But for some Americans abroad it is a disaster. Without wading into the mind-numbing details, an American residing, say, in Norway, owning and operating a restaurant, through a local company, together with a foreign family trust or estate, might suddenly find himself treated as a shareholder in a controlled foreign corporation and subject to the new rules. It will take months to figure out how these rules apply and to calculate the amount of tax owed. There is no *de minimis* rule to save small taxpayers from having to deal with this change. The cost of complying—making the calculations and preparing and submitting the returns—could easily exceed the actual tax liability.

(b) *Special reduced rates for so-called "passthroughs"* inexplicably, ACA thinks, do not benefit Americans abroad that earn foreign income through a passthrough entity.

The TCJA allows a deduction of up to 20% of passthrough income for specified service business owners with income under $157,500 (twice that for married filing jointly). (New section 199A of the IRC.) The rationale is because corporate rates were dropped from a graduated rate structure with the top rate of 35% to a flat 21% rate, unless something was done for unincorporated, so-called passthrough arrangements, such as partnerships and limited liability companies, as the owners of these are taxed at individual rates which rapidly proceed well above 21% to as high as 37%, these businesses would bear a significantly higher burden. Many unincorporated businesses would be driven to incorporate themselves—a step that, setting aside tax considerations, should be completely unnecessary. The passthrough tax break, however, will not be useful for Americans abroad because it only applies with respect to domestic business income, that is, items of income, gain, etc. that are effectively connected with the conduct of the trade or business within the United States.

Ironically, this is a prime example of "upside down" territoriality so far as individuals are concerned. Under a territorial approach, such as, residency-based taxation, the taxpayer is expressly not taxed on foreign income. Here, the taxpayer—say, an American abroad—for sure will be fully taxed on foreign income, whereas his or her cousin in the States who earns domestic business income will enjoy the 20% deduction.

(c) *Foreign real property taxes can no longer be deducted under the Act.* This change came up in the context of proposals to eliminate all State, local, and foreign property taxes and State and local sales taxes, except when paid or accrued in carrying on a trade or business or an activity relating to the production of income. An exception allows a taxpayer to claim an itemized deduction of up to $10,000 ($5,000 for married taxpayers filing a separate return) for the aggregate of State and local property taxes not paid or accrued in carrying on a trade or business or an activity relating to the production of income and State and local income, war profits, and excess profits taxes. However, expressly cut out from this exception are foreign real property taxes. Political considerations attaching to individuals' real property taxes in high-tax States, such as, California and New York, did not come into play with individuals' foreign property taxes. These rules apply to taxable years beginning with 2018 and ending with 2026. Many Americans abroad are hit by this change.

These new rules enacted as part of TCJA generally are effective in 2018.

Taken as a whole, these changes to the Internal Revenue Code, made by TCJA, appear to be a mishmash of actions taken without thinking about their effects on Americans abroad. In the minds of Americans living—truly residing, many of them for all of their lives—outside the United States they are like a forgotten relative, poor uncle Jube, who is always overlooked when it came time to make out the guest list for Thanksgiving or a christening. They don't think Congress acted deliberately out of meanness. It's just that it really didn't pause to think about it.

ACA respectfully ask that Congress now think about all of this carefully.

When the numbers are analyzed, a baseline constructed, which touches upon all the data, and revenue estimates are run, the taxation of Americans abroad is not a big thing so far as the federal fisc is concerned. The time has come, in fact long since passed, when we should switch from citizenship-based taxation to residency-based taxation. This would solve all the problems—hypertechnical and other—created by TCJA. It would solve the problems, including the "lockout problem," created by FATCA. Importantly, and everyone should pay close attention here, this can be done without a loss of revenue. To be done so as to be revenue neutral, tight against abuse and in a fashion that leaves no one worse off than they were before the switch, smart decisions need to be made and close attention must be paid to the details.

In order to advance the ball, ACA and its sister organization, American Citizens Abroad Global Foundation, since late 2016 has developed a set of options, referred to as a "vanilla approach," to changing from CBT to RBT. A side-by-side comparison of current law to "vanilla approach," revised five times and now reflecting the recent TCJA changes, can be found at *https://www.americansabroad.org/files/649/*. ACA, together with District Economics Group, has also worked to develop a highest-quality baseline set of data. As a result, we believe that RBT can be made revenue-neutral if careful choices are made as to its details *(https://www.americansabroad.org/media/files/files/dc1e1c4e/DEG_short_memo_on_RBT_proposal_11.06.2017.pdf).*

ACA urges Congress to revisit these subjects and enact residency-based taxation.

Respectfully submitted,

American Citizens Abroad, Inc.

For additional information about ACA, go to *https://www.americansabroad.org/* or contact Marylouise Serrato at info@americansabroad.org (202)–322–8441.

LETTER SUBMITTED BY JEFF APITZ

April 22, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. . . .

I feel that my wife and my life as now burdened by compliance in both an American and Australian context, with the constant threat of large fines, is very unfair. My wife and I receive a modest income, and all we are trying to do is save for our retirement. Our compliance costs us in excess of $2,000 USD per annum, and a significant amount of our time.

The COMPULSORY Superannuation System in Australia is not considered as retirement savings by the IRS, and the fact that retirement savings interest IS NOT treated by the IRS with the current Australia tax concessions is extremely unfair.

Also now to be forced to contemplate relinquishing our American citizenship, as a consequence of this unfair tax situation, in order for my wife and I to maximize our retirement savings, I'm sure was never an intended outcome of this current U.S. tax regime.

We are proud Americans, but strongly feel this unfair tax situation is impacting our lives directly. *This situation CANNOT continue, as our old age is going to suffer.*

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Jeff Apitz. I am an American living in Australia.

LETTER SUBMITTED BY RON BERDAHL

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Re: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, Senator Enzi, as you are aware the Repatriation Tax and GILTI Tax regime which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group. Americans living abroad who are individual U.S. Shareholders of CFCs (herein Americans Abroad).

On a conceptual level, it may seem pretty clear to me the Americans Abroad were an unintended target of these new laws. Otherwise how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay a GILTI tax of 21% while I pay a tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime I do not; or (iv) my small business counterparts in the USA would never ever be subjected to such draconian taxes or compliance?

On a practical level, while Google and Apple had a continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my taxes (in Chicago) is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on a personal level that these laws are the most harmful to me. Imagine as a small independent prospector (yes, there are still folks out looking for mines) that I AM SUDDENLY CONFRONTED WITH A TAX BILL OF OVER 400,000 DOLLARS! Guys, there are years I do not make $4, seriously. I have spent over 30 years putting everything I have ever made back into my business, all the while paying my U.S. Taxes! I have a small, old, nonproducing goldmine that a lawyer said I should create a corporation for, to mitigate liability, so I did. Since then I have prospected in the Yukon and rolled claims into that corporation. I built a couple shops, small be any standard, I decided to diversify (accountants advice) so bought an abandoned gas station I have been cleaning up, removing buried tanks, contaminated soils, etc. to the tune of $750,000 dollars with the hopes of getting it going to serve U.S. tourists and Armed Service personal on their way to and from Alaska. Like any good American, I am following my ancestors tradition of homesteading, clearing a farm from the wilderness, and like them I am "land rich, but dirt poor" with all this and my claims (which are liabilities until (if ever) sold. I do not have two nickels to rub together. Not because I am poor, but because I am trying to grow an economy, and pat taxes. Eventually this would all be sold and brought back to the USA, Wyoming where I have had a place since I bought it in High School there. My two sons, a Ph.D. professor at the University of Washington and a professor geologist (despite my recommendations) working in Nevada, all pay taxes here and would pay taxes on any inheritance in the states, should I ever make money.

Now I am looking to fire sale anything and everything I have to comply with the unintended consequences of this new law. This will kill me financially, and the stress might kill me personally. Please consider the millions of expats out there who fly the USA flag on a daily basis, without costing the USA State Department a penny.

On behalf of myself, my family and other Americans Abroad, I plead with you to exempt us from these draconian taxes. They will kill me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from Repatriation and GILTI tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC sec 911; and
- The person is an individual U.S. shareholder.

I strongly request, beg even, that Congress act to correct this most painful problem. Thank you for your consideration.

My name is Ron Berdahl. I am an American living in the Yukon Territory (settled by Americans in 1898) Canada, and vote, regularly, in WYOMING.

BOND DEALERS OF AMERICA (BDA)
1909 K Street, NW, #510
Washington, DC 20006

Statement for the Record by Michael Nicholas, Chief Executive Officer

Introduction:

The Bond Dealers of America (BDA) appreciates the opportunity to comment on its early impressions of the new tax law. The BDA is the only Washington, DC-based trade association representing the interests of "main-street" investment firms and banks active predominately in the U.S. fixed income markets.

The BDA applauds the Committee and Congress for passing sweeping tax reform legislation, the Tax Cuts and Jobs Act, which will further stimulate the United States economy, while increasing opportunities for growth in areas such as corporate investment. Specifically, we appreciate that the final bill maintained the tax-exempt status for governmental municipal bonds and private activity bonds ("PABs"), including all bonds for 501(c)(3) organizations, health care, multi and single-family housing, and higher education. We strongly urge the Committee and Congress to expand the eligibility of private activity bonds to provide state and local governments the flexibility needed to provide infrastructure efficiently and effectively, and at low cost for the taxpayer.

However, the BDA and a wide-array of stakeholders were deeply alarmed that the Tax Cuts and Job Act fully repealed tax-exempt advance refunding bonds upon enactment of the legislation into law. The repeal of this provision is working against the stated goal of the Tax Cuts and Jobs Act, to energize the economy and lower the tax burden of middle-class Americans. Moreover, the significant change would restrict the primary tool that is widely and frequently used as part of financing America's infrastructure.

As a result of the quick enactment of the Tax Cuts and Job Act, several critical provisions, including advance refundings, were prohibited by the law without critical public policy considerations. The BDA also recognizes that the Committee and Congress acted to eliminate various tax provisions to minimize the fiscal pressure the federal government is facing. The BDA believes that the projected federal savings from the repeal of advance refundings in the tax bill is lower than the JCT score of $17 billion, in part due to the rush of issuers into the market in the latter part of 2017 and slowly rising interest rates. In addition, the modest increase in federal tax revenue does not outweigh the public benefit of this provision.

A bipartisan bill, To Reinstate Tax-Exempt Advance Refunding Bonds (H.R. 5003), has been recently introduced in the House. According to the bill sponsors, "the legislation would restore advance refundings so that states and local governments can take advantage of favorable interest rates and more efficiently manage their financial obligations." The BDA strongly urges the Senate to introduce a companion bill to H.R. 5003.

Advance Refundings:

State and local governments routinely refinance their outstanding debt obligations, just as corporations and homeowners do. The advance refunding technique allows state and local government issuers to benefit from lower interest rates when the outstanding bonds are not currently callable. It is important to note, that under previous law, tax-exempt bonds could be issued to advance refund an outstanding issuance only once, a significant restriction on these transactions.

According to recent Government Finance Officers Association (GFOA) data, between 2012 and 2017, there were over 9,000 advance refunding issuances nationwide, saving taxpayers over $14 billion in the 5-year period. We note that this represents the "present value" measurement of the savings and the actual savings are substantially greater. The data also works to disprove a myth that only large municipalities benefit from the cost savings. For example, in Montgomery County, TX, there were 6 instances of advance refunding for Conroe primary and secondary education that resulted in a cost savings of over $20 million. In Barrington, IL, the city issued $300,000 in advance refunding bonds for parks and in Eden Prairie, MN a $250,000 issuance of general purpose bonds were advance refunded.

Tax-exempt municipal bonds play an integral role in financing our nation's infrastructure. This safe investment benefits every aspect of American life, from roads and bridges, to public safety and health care. In an age of declining direct federal funding, the municipal bond market drives new construction and maintenance of current infrastructure.

In addition, federal analyses of such tax-exempt bond proposals focus solely on federal tax revenues to be raised by such proposals, ignoring the effect on state and local governments and, thus, state and local residents. Private sector analyses, however, confirm that taxing municipal bonds, in whole or in part, or replacing municipal bonds with some other financing tool will increase state and local financing costs.

Consequences of the Repeal of Advance Refundings:

The repeal of any portion of the tax code has major consequences, intended and unintended, short-term into long-term. The immediate impact of this policy decision to eliminate advance refundings was to provide a portion of the pay-for for a massive tax-code overhaul. While there are a plethora of policies included in the overall bill that are beneficial to the U.S. economy as a whole, the elimination of municipal advance refundings increases the cost and burden on state and local governments nationwide.

An example of this cost savings occurred in the Village of North Barrington, IL. The town advance refunded a debt issuance for sanitary sewer improvements. The refinancing saved residents $310,000 over a 10-year period. The savings was realized in annual property tax collected by Lake County.

The loss of municipal advance refundings will severely impact the financing of core public services and infrastructure in the State of Texas. More than 50 issuers including cities, schools hospitals, and water and public transportation boards in the five largest counties in Texas (Bexar, Dallas, Harris, Tarrant, and Travis) will lose the ability to advance refund an estimated $6.6 billion dollars in bonds over the next 2 years. The repeal of this vital financing tool translates into a loss of millions of dollars that would have been reinvested back into these communities.

Another specific example in Texas is the Port of Galveston, TX, which was planning to advance refund a $11.3 million issuance in bonds that would produce a cost savings of $450,000. As a major transportation and trade hub for the central United States, additional capital was not leveraged to compete and continue to be an economic driver in the western Gulf of Mexico.

The Macomb County Michigan Drainage District is missing an opportunity to advance refund over $20 million in bonds and realize upwards of $1.3 million in savings. As the State of Michigan continues to deal with an ongoing water crisis and an overall budget shortfall, the State and its local governments are feeling the negative effects. The inability to advance refund this issuance makes local officials' jobs more difficult.

It is worth noting that the full impact of the repeal of the ability to advance refund tax-exempt bonds will be somewhat delayed. Due to the low interest rates at the end of 2017 and the pending repeal of the ability to advance refund bonds, many state and local governments refinanced their bonds prior to year-end. As a result, there will be a relatively short period during 2018 before state and local governments feel the real impact of this change in law. However, this delay should not be interpreted to indicate that the repeal will not have significant, long-lasting impacts on state and local governments.

On a long-term basis, State and local governments will be significantly disadvantaged by the loss of the ability to issue tax-exempt advance refunding bonds. Most importantly, they will have lost the most efficient mechanism to take advantage of low interest rates to refinance higher rate debt in advance of when such debt can be called. The inability to lock in lower interest rates when they are available will, simply stated, result in increased costs to these governmental entities. Moreover, both at times of relatively low rates and otherwise, state and local governments have lost an important means of restructuring their outstanding debt to respond to short or long term fiscal issues (which can include both paying off their debt more quickly or restructuring debt to deal with short term financial difficulties).

Given the number of advance refundings completed at year-end, the use of alternatives to advance refundings has been slow to develop in 2018. While there are some alternatives, none are as effective in terms of cost or risk as advance refundings. For example, "forward starting" interest rate swaps can be used to effectively lock in current interest rates, but state and local governments are hesitant to use interest rate swaps. Other alternatives are more costly than advance refundings and, for that reason, were not used to a significant degree in the past. While these structures may mitigate some negative impacts of the recent change in policy, their long-term impact and viability will not be to provide an effective replacement for advance refunding bonds.

Expansion of the Use of Private Activity Bonds:

The BDA strongly supports the expansion of the types of infrastructure facilities that are eligible to use tax-exempt PABs beyond the existing types, lifting the volume caps, and eliminate other restrictions such as the governmental ownership requirement for certain eligible facilities that apply under current law. Tax-exempt PABs permit a greater degree of private-sector involvement in infrastructure projects and programs that provide important public benefits that should be preserved and enhanced. By expanding the use of current infrastructure tools like PABs, rather than creating new financing methods such as a federal infrastructure bank (and the associated bureaucracy), these changes would help propel local communities forward, facilitate the ability of state and local governments to partner with private entities in a variety of projects, finance new infrastructure, and help maintain local control of much needed projects in their communities.

The BDA urges you to oppose federal legislative proposals that would restrict the tax exemption of municipal bonds. Past proposals released or discussed in the last two Congresses have sent tremors through the municipal markets and have increased interest rates on tax-exempt bonds. The perceived risk to the tax exemption led some investors to seek higher yields on municipal bonds and to pull much-needed capital and liquidity out of the municipal markets. This, in turn, forces municipal governments to pay significantly higher borrowing costs—and the continuing domino effect forces some governments to reduce or abandon infrastructure projects they can no longer afford.

Conclusion:

For over 100 years, municipal bonds have served as the primary financing mechanism for public infrastructure. Nearly three-quarters of the nation's core infrastructure is built by state and local governments, and imposing an unprecedented federal tax on municipal bonds, including advance refundings, will make these critical investments more expensive while shifting federal costs onto state and local governments, and the people they serve.

In the Trump Administration's "Legislative Outline for Rebuilding Infrastructure in America," municipal bonds were featured as a central pillar, and the outline included strengthening PABs. While this is a move in the right direction, the BDA recommends the reinstatement of advance refundings to further spur growth. Reinstating advance refundings would be one of the wisest and most cost-effective investments that Congress can make to finance ongoing infrastructure needs for state and local governments and ultimately, the constituents of all Congressional representatives.

The ability to advance refund bond issuances benefits all Americans and creates infrastructure investments that provide high-quality jobs and spurs economic growth nationwide.

As the debate on infrastructure and the financing mechanisms behind the desired increase of funding continues, it should be remembered and recognized that state and local governments are currently under a time of fiscal strain due to the elimination of the state and local tax deduction (SALT). This change in federal tax policy will put downward pressure on state and local governments to lower taxes due to the direct increase in tax burden that their constituencies will face. In addition, a vast number of state and local governments must work under a balanced budget system. The elimination of advance refunding removes a vital cost-savings financing tool and in consequence, state and local governments are forced to raise state and local taxes or reduce public service programs.

In conclusion, the BDA urges the Committee to reincorporate the cost-saving mechanisms of municipal advance refundings back into the U.S. tax code and consider a Senate companion bill to H.R. 5003.

In addition, as the Committee continues its examination of the Tax Cuts and Jobs Act, we strongly urge you to consider the positive issuer, investor, market, and economic implications of expanding the eligibility of private activity bonds to provide state and local governments the flexibility needed to provide services efficiently and effectively, and at low cost for the taxpayer.

LETTER SUBMITTED BY HEATHER BRODIE

April 23, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I have worked very hard over the last 9 years to start and build my consulting practice in Toronto, where I lived most of my life and returned to after my divorce and when my father became ill. Working very long hours, working out of town, sometimes to the detriment of my family—I am an only parent of a small child, and as such have sole responsibility to care and provide for my daughter. The retained earnings in this corporation are used not only to fund ongoing operations/overheads and meet obligations as they arise, but also to plan for my and my daughter's future.

I pay a significant amount of tax in Canada, both on a corporate and personal level, and meet all of my tax obligations in the United States as well. I am not now, nor have I ever, sought to avoid any of my financial obligations. I have a strong connection to the United States, notwithstanding I now live in Canada. I am simply seeking a solution that is fair to people like me.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Heather Brodie. I am an American living in Toronto, Canada, and I vote in Washington State.

CENTER FOR FISCAL EQUITY

Comments for the Record by Michael G. Bindner

Chairman Hatch and Ranking Member Wyden, thank you for the opportunity to comment on the new tax law.

This is not the tax reform bill we had hoped for. Frankly, the path negotiated during the Obama Administration enacted under the American Tax Relief Act and The Budget Control Act were adequate to give us our current economy, which is improving, albeit too slowly for workers.

We are on record predicting that enactment of the Fiscal and Job Cuts Act (not a typo) will restrict wages and cause other labor cost savings so that executives can cash in on the lower tax rates by earning higher bonuses, so that any economic gains (and growth could come faster) would be from deficit spending. While some companies gave very visible bonuses for the holidays, they did not also increase salary levels noticeably. Productivity has made huge gains but wages have not, mostly because employers have a market advantage in the down economy, which is good for CEOs and donors, but bad for the nation.

The tax law was a classic piece of Austrian Economics, where booms are encouraged, busts happen with no bailouts and the strong companies and best workers keep jobs and devil take the hindmost. It is economic Darwinism at its most obvious, but there is a safety valve. When tax cuts pass, Congress loses all fiscal discipline, the Budget Control Act is suspended and deficits grow. Taxpayers don't mind because bond purchasers are sure to pick up the slack, which they will as long as we run trade deficits, unless the President's economic naivete ruins that for us.

The 2-year Omnibus will eat up most of the effect of the tax cut on the economy, which will now have a negative relationship between deficits (net of net interest, which controls for matching injection to the financial markets from federal borrowing) and economic growth, meaning deficits are good. The closest available curve showing that model are the Bush years, so given the current deficit size, the predicted growth rate in about a year (it takes time to obligate money and pay bills) should be around 3.3% or higher.

If you cut entitlements, growth will be reduced, although wealthier Americans will have more money, which will lead to asset inflation and another sizeable recession, akin to 2008. We had been worried about entitlement cuts, we no longer are. The votes are simply not available in the Senate to enact them.

Of course, we still have a tax reform plan and it does alter how we deal with entitlement spending, including Social Security, by shifting payroll and a good bit of income taxation (including pass-throughs) to a subtraction value added tax/net business receipts tax (NBRT), where certain entitlements can be shifted to employers in lieu of paying a portion of the tax, with this encouraging both employment and participation in training programs in order to have access to social services.

These deduction and credits could include everything from the last 2 years of undergraduate and graduate education to a more robust child tax credit to health-care reform that encourages hiring medical staff directly (thus matching the incentive to cut cost to the ability to do so) to retirement savings in lieu of Social Security, although the savings should be in the form of employer voting stock rather than unaccountable index funds run from Wall Street. These reforms can be hammered out next year or in the next Congress, but the right tax to hold them is clearly the NBRT.

We remind the Committee that in the future we face a crisis, not in entitlements, but in net interest on the debt, both from increased rates and growing principal. This growth will only feasible until either China or the European Union develop tradeable debt instruments backed by income taxation, which is the secret to the ability of the United States to be the world's bond issuer. While it is good to run a deficit to balance out tax cuts for the wealthy, both are a sugar high for the economy. At some point we need incentives to pay down the debt.

The national debt is possible because of progressive income taxation. The liability for repayment, therefore, is a function of that tax. The Gross Debt (we have to pay back trust funds too) is $19 trillion. Income Tax revenue is roughly $1.8 trillion per year. That means that for every dollar you pay in taxes, you owe $10.55 in debt (although this will increase). People who pay nothing owe nothing. People who pay tens of thousands of dollars a year owe hundreds of thousands.

The answer is not making the poor pay more or giving them less benefits; either only slows the economy. Rich people must pay more and do it faster. My child is becoming a social worker, although she was going to be an artist. Don't look to her to pay off the debt. Your children and grandchildren and those of your donors are the ones on the hook unless their parents step up and pay more. How's that for incentive?

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

COALITION TO PROMOTE INDEPENDENT ENTREPRENEURS
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Russell A. Hollrah, Executive Director

The Coalition to Promote Independent Entrepreneurs (the "Coalition") respectfully submits this Statement for the Record concerning an April 24, 2018, hearing before the U.S. Senate Committee on Finance on "Early Impressions of the New Tax Law."

The Coalition consists of organizations, companies, and individuals dedicated to informing the public and elected representatives about the importance of an individual's right to work as a self-employed individual, and to defending the right of self-employed individuals and their respective clients to do business with each other. We appreciate the opportunity to submit this statement setting forth our views on how we believe the Tax Cuts and Jobs Act (Pub. L. 115–97) will have a positive impact on individual entrepreneurship and the overall economy.

The Coalition's Statement focuses on only one aspect of the Tax Cuts and Jobs Act, namely the newly enacted section 199A of the Internal Revenue Code of 1986, as amended (the "Code"). We believe this provision encourages independent entrepreneurship, which will lead to increased economic growth and efficiency and a more engaged and satisfied workforce. We applaud the Congress and President Trump for enacting this new provision.

I. New Code Section 199A Will Encourage Independent Entrepreneurship

New Code section 199A creates a new tax deduction—of up to 20 percent—for pass-through entities, which include certain independent contractors. This new tax deduction offers an important new financial incentive for individuals who pursue their entrepreneurial aspirations.

The new tax deduction is available to an individual taxpayer for "qualifying business income" from certain pass-through business activities, including business income from a sole proprietorship. Because independent contractors operate sole proprietorships they are eligible to claim the deduction. The new deduction could provide qualifying independent contractors with significant tax savings.[1]

The deduction, among other things, helps mitigate the financial consequences of the disparate treatment of independent contractors relative to employees for purposes of Social Security and Medicare contributions. Independent contractors are required to pay 100 percent of their Social Security and Medicare contributions, in the form of Self Employment Contributions Act ("SECA")[2] contributions, while employees pay 50 percent, in the form of Federal Insurance Contributions Act ("FICA") contributions[3] (through employer withholding)[4] with the remaining 50 percent being paid by their employer.[5] Since the new Code section 199A deduction is available to independent contractors, but not employees, the deduction can help mitigate the financial consequences of this difference.

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[1] For a typical independent contractor whose taxable income for the tax year does not exceed the threshold amount, currently defined as $157,500 per year or $315,000 if filing a joint tax return, the Code section 199A deduction, subject to certain exceptions, would be the lesser of: (i) 20 percent of the taxpayer's qualified business income amount or (ii) 20 percent of the taxpayer's taxable income. For an analysis of the Code section 199A deduction as it applies to independent contractors *see* Russell A. Hollrah and Patrick A. Hollrah, "New Passthrough Deduction Creates Tax Benefit for Self-Employed," *Tax Notes,* February 2018, at 1051–55.

[2] Code section 1401.

[3] Code section 3101.

[4] Code section 3102.

[5] Code section 3111.

Even when considered without regard to any other tax provision, the new Code section 199A deduction could provide a powerful incentive for individuals to pursue self-employment, as it will encourage individuals to take the risk associated with individual entrepreneurship by permitting self-employed individuals to retain a greater portion of the income they earn.

II. Independent Entrepreneurship Should Be Encouraged Because it Increases Economic Growth and Efficiency

Independent entrepreneurship represents financial self-sufficiency and promotes market flexibility and business efficiency. The Coalition submits that these are ideals that a government should encourage and support, as they lead to a strong and resilient economy.

A. Independent Entrepreneurship Increases Economic Growth

By encouraging independent entrepreneurism, new Code section 199A could lead to increased economic growth by expanding the formation of new businesses and creating new job opportunities, while increasing labor-force participation and reducing unemployment.

A 2010 study on independent contractors found that independent entrepreneurship increases economic growth and efficiency.[6] The study identified a strong correlation between independent contracting, entrepreneurship, and small business formation.[7] To be sure, it found that "of the 10.3 million independent contractors identified in the 2005 CAWA survey, nearly 2.4 million had one or more paid employees."[8] Furthermore, the study concluded that independent contracting "provides a first-step on the ladder to starting a small business, and creating jobs for others."[9]

Individual entrepreneurship also offers a gateway out of unemployment or underemployment. A McKinsey Global Institute study concluded that independent work[10] may help the unemployed by providing "a critical bridge to keep earning income while they search for new jobs."[11]

Several recent studies analyzing independent-contractor relationships quantified their economic impact. A January 2017 study found that "independent contractors played a large role in the economic recovery. Between 2010 and 2104, independent contractors grew 11.1 percent (2.1 million workers) and represented 29.2 percent of all jobs added during that time period."[12] The new establishments created by these 2.1 million workers generated nearly $192 billion in revenue from 2009 to 2014.[13] In the ridesharing industry, alone, the study found that the independent-contractor opportunities provided by ridesharing companies (*e.g.,* Uber and Lyft) generated an additional $573 million in revenue during 2014.[14]

Similarly, economists Lawrence Katz and Alan Krueger conducted an extensive study of alternative work arrangements—which is a broader category that includes independent contractors—and found that "all of the net employment growth in the U.S. economy from 2005 to 2015 appears to have occurred in alternative work arrangements."[15]

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[6] *See generally,* Jeffrey A. Eisenach, "The Role of Independent Contractors in the U.S. Economy," at 30–40 (December 2010) ("Eisenach Study"), *https://iccoalition.org/wp-content/uploads/2014/07/Role-of-Independent-Contractors-December-2010-Final.pdf.*

[7] *Id.* at 36.

[8] *Id.* at 36.

[9] *Id.* at 42.

[10] The independent workforce includes: self-employed, independent contractors, freelancers, some small business owners, and many temporary workers, including those who get short-term assignments through staffing agencies. "Independent Work: Choice, Necessity, and the Gig Economy," McKinsey Global Institute, 20 (October 2016) ("McKinsey Study").

[11] *Id.* at 14.

[12] Ben Gitis et al., "The Gig Economy: Research and Policy Implications of Regional Economic, and Demographic Trends," American Action Forum 7, Aspen Institute's Future of Work Initiative, 8 (January 10, 2017).

[13] *Id.* at 18.

[14] *Id.* at 20.

[15] Lawrence F. Katz and Alan B. Krueger, "The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015," National Bureau of Economic Research Working Paper No. 22667, 7 (September 2016). The term "alternative work arrangements" includes independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms.

Additional studies have found that independent entrepreneurship is often as lucrative, if not more lucrative, than full-time employment.[16] A recent study of freelancer workers—a group that includes independent contractors and other contingent workers—estimated that 57.3 million entrepreneurs earned $1.4 trillion in income from freelancing during 2017.[17]

The many documented positive effects of independent entrepreneurs on the nation's economy demonstrate the wisdom of government policies, such as new Code section 199A, that incentivize independent entrepreneurship.

B. Independent Entrepreneurship Increases Economic Efficiency

The above-referenced 2010 independent contractor study[18] also found that independent-contractor relationships increase economic efficiency. These relationships promote workforce flexibility and efficient contracting by permitting contracting companies to engage independent contractors as needed instead of being forced to hire full-time employees who may be over or underutilized depending on business demand.[19] This, in turn, provides contracting companies with increased cash flow to invest in hiring or expansion, which can generate additional economic activity.

Another positive attribute of independent entrepreneurs is that they are liberated to work for a variety of different clients,[20] and can "enter, exit, or participate partially in the labor force as they choose."[21] The 2010 study found that labor force flexibility is correlated with economic growth and job creation, while less flexibility leads to slower growth and higher unemployment.[22] Similarly, the McKinsey Global Institute study found that independent work "enables people to specialize in doing what they do best and what makes them feel engaged. Engagement typically has the effect of increasing productivity. . . ."[23]

Many studies have found that most independent entrepreneurs prefer independent work relative to traditional employment. One recent study found that in 2017, 63 percent of freelancers started freelancing by choice, an increase of 10 percent since 2014.[24] Moreover, 50 percent of respondents said there is no amount of money which would incentivize them to stop freelancing and instead work at a traditional job.[25] And, what might be surprising to some, the McKinsey Global Institute study found that one in six people in a traditional job would like to become an independent earner. For every one independent worker who would prefer traditional employment, two traditional employees would prefer to move in the opposite direction.[26]

The foregoing data suggest that the incentive toward independent entrepreneurship that Code section 199A provides can be expected to increase economic efficiency and worker productivity.

III. Independent Entrepreneurs Are a More Engaged and Satisfied Workforce

In addition to the positive impact individual entrepreneurship can have on the nation's economy, this type of work also offers profound benefits to the individuals themselves.

A recent study drawn from psychology and sociology and based on data collected on nearly 5,000 individuals in the United Kingdom, the United States, Australia and New Zealand who work in a wide variety of vocations including heath, finance and education, found that self-employed individuals reported significantly higher

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[16] *See* "Freelancing in America: 2017," Edelman Intelligence (Commissioned by Upwork and Freelancers Union) 43 (September 2017); John Husjng, "Owner-Operator Driver Compensation" 8, 14 (The California Trucking Association and Inland Empire Economic Partnership 2015) available at *http://web.caltrux.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=309.*

[17] "Freelancing in America: 2017," Edelman Intelligence (Commissioned by Upwork and Freelancers Union) 15, 41 (September 2017).

[18] *See* above note 6.

[19] Eisenach Study at 31–31.

[20] *Id.* at 31.

[21] *Id.* at 39.

[22] *Id.* at 39.

[23] McKinsey Study at 14.

[24] "Freelancing in America: 2017," Edelman Intelligence (Commissioned by Upwork and Freelancers Union) 25 (September 2017).

[25] *Id.* at 29.

[26] McKinsey Study at 7.

levels of "job engagement" than organization employees.[27] The term "job engagement" measures a higher energy level associated with task involvement.[28] The authors suggest that their finding that self-employed individuals tend to be significantly more "engaged" in their work could arise from greater energy inherent in feelings of engagement.[29]

Self-employed respondents were also found to value "challenging" aspects of work more than organizational employees, which contributes to their higher levels of job engagement.[30] In this context, the authors explain that job features that "challenge" an individual include financial and organizational responsibility, competition with others, demanding tasks, difficult decision making, and the requirement for innovation, personal independence, and autonomy.[31]

Studies have consistently found self-employed individuals to report higher levels of "job satisfaction" relative to organizational employees,[32] especially among non-managerial employees.[33]

The characteristics the studies found to be associated with the self-employed, such as working at a high energy level, valuing challenging aspects of work, and feeling satisfied with the work, are all characteristics the Coalition submits that government policy should encourage. The Tax Cuts and Jobs Act does this through its creation of new Code section 199A.

IV. Conclusion

The Coalition is supportive of Congressional actions that support and encourage independent entrepreneurship, such as new Code section 199A. Such actions promote economic opportunity and growth and create an incentive for individuals to pursue a path that can empower them to become more engaged and satisfied with their work. For these reasons, our early impression of this provision of the new tax law is strongly positive. The Committee's leadership in this important area is commendable.

Letter Submitted by Margaret Conrad

April 24, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals

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[27] Peter Warr and Ilke Inceoglu, "Work orientations, well-being and job content of self-employed and employed professionals," *Work, Employment and Society,* 8 (August 2017) ("Work Orientation Study").
[28] *Id.* at 4.
[29] *Id.* at 17.
[30] *Id.* at 12.
[31] *Id.* at 5.
[32] *See e.g.,* Eisenach Study at 33–35; U.S. Government Accountability Office, "Size, Characteristics, Earnings, and Benefits," GA0–15–168R 24 (2015) available at *http://gao.gov/products/GAO-15-168R;* "Freelancing in America: A National Survey of the New Workforce" 7 (Elance-oDesk and Freelancers Union, 2014) available at *http://fu-web-storage-prod.s3.amazonaws.com/content/filer_public/c2/06/c2065a8a-7f00-46db-915a-2122965df7d9/fu_freelancinginamerica report_v3-rgb.pdf.*
[33] Work Orientation Study at 12.

pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I set up my business many years ago. The business promotes and makes furniture with small artisanal workshops in France, United Kingdom, and Italy. The business is not terribly lucrative (in fact it made a loss last year and I have not taken a salary for 2 years). However, my business is important to so many small workshops and so I have continued. The imposition of the Transition Tax, however, would render it totally impossible to do so. If small businesses are not exempted I would have to close and possibly be forced into bankruptcy. This would be catastrophic for me and the people I work with. They totally depend on me for keeping their workshops solvent.

I am passionate about supporting craft and small businesses. I hope you will understand how important it is not to implement a tax which will destroy the livelihoods of so many people.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Margaret Conrad. I am an American living in the United Kingdom, and I vote in New Jersey.

DEMOCRATS ABROAD
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Hon. Orrin Hatch, Chairman
Hon. Ron Wyden, Ranking Member
U.S. Senate
Committee on Finance
Dirksen Senate Office Building
Washington, DC 20510–6200

April 20, 2018

Re: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law"—Tuesday, April 24, 2018.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, Democrats Abroad greatly appreciates this important hearing on the early impressions of the Tax Cuts and Jobs Act (Pub. L. 115–97) and we respectfully request that you accept this report for inclusion in the hearing record. We join other organizations representing Americans living abroad in our serious concern about the impact that new taxes in the Tax Cuts and Jobs Act will have on non-resident Americans who own businesses abroad.

In 2017 the U.S. Congress included Territorial Taxation for Corporations (TTC) in the group of reforms built into the Tax Cuts and Jobs Act (TCJA). We understand that TIC was implemented in order to help level the international tax playing field for U.S. multinational corporations. Congress also included in the TCJA two new "transition tax" provisions to capture tax on corporate profits long kept out of reach of the U.S. Treasury. These new "transition taxes" are our key concern because they materially threaten the viability of businesses owned by Americans living abroad.

The TCJA "Transition Taxes"

Repatriation Tax 15.5%—Imposed on undistributed (and therefore untaxed by the U.S.) business profits from 1986 through 2017. Overseas resident American business owners declare those undistributed business profits on their 2017 personal tax filing. *This is a retroactive imposition of tax that is unrelated to the realization of revenue that might be used to pay the tax.*

GILTI Tax regime—Starting in 2018, mandatory declaration of undistributed business profits on the personal tax filings of business owners abroad, *taxed at the highest personal marginal tax rate and without access to two critical offsets afforded corporate owners of businesses abroad: (1) a 50% deduction and (2) credits for taxes already paid on the profits to the business's jurisdiction of incorporation.* Further, as with the Repatriation Tax, *the GILTI tax is imposed on profits where there may be no realization of revenue to use to pay the tax.*

Clearly, TTC was enacted to strengthen U.S. multinational corporations. We believe TTC's "transition tax" provisions were never meant to beleaguer ordinary, hardworking Americans living and owning companies abroad. In truth, the Repatriation Tax and the GILTI Tax regime will have an enormously harmful financial impact on the estimated 1 million non-resident Americans who own businesses abroad.[1]

Transaction Tax Impacts on Non-Resident Americans Who Own Businesses Abroad

Americans living abroad owning and operating businesses are an exceedingly diverse group; they are architects, yoga studio owners, retailers, recruiters, beekeepers, IT professionals, film and television producers, music distributors, advertising agency owners, financial service providers and more.[2] When asked in early 2018 about the impact of the TCJA "transition taxes" on their enterprises, expat American owners of businesses in their countries of residence provided the following comments:

> My family and I own a small private property development company based in the UK and operating since 2001. The profits of this company are fully taxed in the UK and **none of the proceeds have been repatriated to the U.S. as they are used for the continuing financing of the business.**
>
> *Massachusetts voter living in the UK*
>
> I am a widow, mother of 2 children (ages 16 and 22). My husband was a Canadian glass artist. He did not have a pension. I am and have been a self-employed graphic designer for many years. I have no pension. **My corporation is just me. It holds my savings which are now being taken away by this tax.**
>
> *Wisconsin voter living in Canada*
>
> I operate my company with just myself and my spouse and make minimal profit ($20,000 PA at the most after all UK taxes have been paid) and most recently a loss, none the less I file my U.S. taxes at a cost of $1,000 each time and **now I find I might be hit with an extra U.S. tax making my company potentially nonviable.**
>
> *American living in the UK*
>
> I run a technology company from Hong Kong with offices in three territories (China, HK, and Taiwan). We have 10 employees and are an exceedingly small company who struggle every day to meet bills and grow our company. **But we have big dreams and want to succeed. Don't snuff out small business owners like myself.** We are the past, present, and future of American business both at home and abroad.
>
> *New Jersey voter living in Hong Kong*

[1] In 2014 research published by Democrats Abroad, approximately 20% of respondents identified themselves as "Self-employed/Business Owner." Given Department of State estimates that 6.5 million voting age Americans live abroad, we estimate that perhaps a million American citizens are impacted by the "transition taxes" in the Tax Cuts and Jobs Act.

[2] *See* Appendix 1—Sampling of Businesses Run by Americans Abroad.

As an architect, I established my small office of 6 employees as a Professional Corporation. This means that the U.S. government is attempting to take a percentage of my savings, which will be needed to weather downturns in the market, which greatly affects my ability to retain employees and keep my business open. I have no home office in the U.S., nor is there any way for me to benefit from the large corporation tax breaks. **This is simply the U.S. siphoning away the funds I need to keep my business up and running.**

Massachusetts voter living in Canada

I have been in Canada for several decades, except for 1997–2001 when my wife and I lived and worked in the U.S. For the past 11 years I have been doing IT consulting for the Canadian government, which required having a corporation. I have built up savings within the corporation which are meant for my retirement, and it operates solely within Canada, *i.e.* not a branch operation of any U.S. company. It was a shock to learn from my accountant that **I am facing a tax of about $12,000 on my retained earnings, as a result of the subject legislation.**

North Carolina voter living in Canada

My family business is a simple IT training and consulting corporation that employs me and my husband only. We file and pay taxes in Australia and the U.S. as required. **This new tax can ruin us,** and if we were simply living in the U.S., it would not apply to us. **This is unfair.**

California voter living in Australia

I have a little landscaping business with 5 employees. I am very proud of the work we do, but keeping on top of all of the paperwork is a struggle for me. I am happy to pay my fair share of taxes, but **this law is not fair.**

California voter living in Canada

My business is a one person marketing consulting corporation in which I maintain a simple portfolio to save for my retirement. This is a travesty.

Vermont voter living in Canada

I am a VERY small business owner, running a private counseling practice out of my home. I am very worried that the new laws will be punitive. I already have to pay a tax accountant more than $600 CDN each year for preparing my U.S. tax returns yearly. My fear is that the increased complexity will not only raise the amount I need to pay them, but will result in my needing to pay taxes twice on the same money.

Massachusetts voter living in Canada

My business is a values based business with a focus on sustainability. We make the best (REDACTED) in Vancouver, BC and strive to be the best employer in our industry. The livelihood of my family and the 100 staff that our business employs is in danger from this policy mistake.

Washington state voter living in Canada

I am a small business person with a trading company and some small service businesses. I declare my businesses and income and pay the taxes due both locally and to the U.S. Treasury. Although I have lived overseas for over 40 years, **I am proud to be an American and to support the government with my tax dollars. But this latest abomination of a regime is putting an unbearable burden on me and countless other Americans for little tangible benefit.** We're the small worthless fish being swooped up by a giant drift net meant to catch the larger valuable prey, and we're being left to suffocate and die for lack of interest. Please help us.

Wisconsin voter living in Taiwan

I am a practicing physician. I am shareholder in our small incorporated family owned medical business. **This Canadian only corporation serves only local people, and the income from this stays in Canada and is effectively our only pension.** The Repatriation/GILT is unfair taxation! We have diligently and without fail filed our U.S. Tax returns all the years that we have been required to do so in addition the Treasury Department forms at excess cost to us.

California voter living in Canada

> I run a one-person incorporated consulting business. I have worked part-time for the past 9 years, with the specific purpose of putting money aside to send my two daughters to college in the U.S. Any additional penalizing taxes paid out of my corporation will be a direct hit to the tuition funds I have worked hard to save, and result in a higher need for federal financial aid.
>
> *Illinois voter living in Canada*
>
> I am the owner of a small software development business that has never done any business in the U.S., yet still reports to the U.S. IRS, and will continue to do so as long as deemed that the cost is within reason. **My options are simply to shut it down or expatriate.**
>
> *California voter living in Sweden*

All of these comments, and several more not listed here, demonstrate that many Americans business owners living abroad fear that this additional tax burden *will force them to close their businesses.*[3] In addition to the new transition tax burden American business owners abroad will bear, they are also being subjected to even greater tax filing/compliance costs. The new rules for calculating the “transition taxes” are exceedingly technical and organizing accurate filings is proving very time-consuming and complex. U.S. expat tax professionals hired to prepare these filings are passing on to American business owners abroad the additional cost of their time and labor, enlarging the financial burden the new TCJA taxes places on the taxpayer.

Further, while U.S. corporations establish subsidiary businesses abroad in order to expand the operations and profitability of their U.S.-based parent company, U.S. citizens abroad establish businesses in their countries of residence in order to build a life and future abroad.

These are *desperate cries* from your constituents for help.

> I set up my business only in June last year (2017) as a stop-gap to enable me to earn consulting fees during a period of unemployment following involuntary redundancy. I am earning a fraction of what I earned when employed (about 75% less), yet I am now faced with the cost of employing a tax preparer to deal with the complexity of earning my small income through a UK limited company that I own rather than through a UK company owned by someone else. **On 2017 income of about US$15,000, I expect a bill from a tax preparer in excess of US$2,000, more than 10% of my total income, only to comply with the filing burden placed on me as UK business owner who happens to possess a U.S. passport. I can’t even estimate what the cost will be if any U.S. taxes are owed.**
>
> I have lived outside the United States for nearly 25 years and have filed my tax returns and FinCen and FATCA forms without the assistance of a tax preparer for the last 15 years. **Now, at a time when I am on significantly reduced income, I am being penalized for being a U.S. citizen earning money the wrong way.**
>
> *Virginia voter living in the UK*
>
> As a simple freelance consultant to the life sciences industry, I only established a British limited company on the request of my corporate clients to ensure compliance with local employment regulations and law. I have no employees and no teams of accountants and finance advisors. Between the transition tax and the small fortune I will spend on tax accountants, **my financial position will suffer detrimental damage**—not only will I suffer a significant income loss, the reduced income will severely impact my likelihood of being able to re-mortgage my home and potentially force me and my wife to sell our home at a loss. I have been fully compliant with U.S. tax and reporting laws for the 10 years of living overseas—**this law however has the potential to financially destroy millions of Americans like myself in a matter of months.**

[3] Appendix 2 contains comments from Americans living abroad who had planned to start businesses in their countries of residence but who may cancel those plans because of the Transition Taxes.

> I beg you, PLEASE, PLEASE, PLEASE, PLEASE, PLEASE, PLEASE, remove innocent overseas U.S. business owners from this broad net of unintended taxation. I believe it was not intended to financially destroy people like me, but it is has the potential to do exactly that.
>
> *Arizona voter living in the UK*

We believe strongly that a remedy is needed to exempt these taxpayers from a potentially crushing new tax liability—one that Congress never intended.

Transaction Tax Remedy

We believe Americans overseas with interests in foreign corporations should be exempt from the Repatriation Tax and from the GILTI Tax regime for any given year so long as:

(1) They meet the conditions required for exemption under IRC Section 911; and

(2) they are individual U.S. Shareholders.

This solution both achieves the U.S. Congress's goal of capturing corporate tax it has been long denied, and recognizes that the profits of businesses owned by Americans living abroad were never meant to be repatriated to the U.S. because they are needed to sustain the underlying business entities and the American expatriate families who rely upon them.

We strongly urge Congress to correct this unintended tax burden which harms Americans and their opportunities for personal savings and economic growth. American business owners abroad should be exempted from these transition taxes so they can remain positioned to manage and grow their businesses and take care of their families.

We thank you for considering our views. If you have any questions regarding this letter or would like to discuss the matter further, please do not hesitate to contact either me or Democrats Abroad's Carmelan Polce who can be reached at Carmelan@democratsabroad.org.

Sincerely,
Julia Bryan
International Chair
Democrats Abroad
chair@democratsabroad.org

Democrats Abroad is the branch of the U.S. Democratic Party for Americans living outside the U.S. Democrats Abroad has members in over 190 countries and official country committees in 53 nations on 6 continents. Democrats Abroad's main activity is helping overseas Americans register to vote in U.S. elections. We host our own voter assistance website to aid Americans in that process—*www.votefromabroad.org.* We often cooperate with U.S. Embassies and Consulates in our countries to encourage voter participation on a non-partisan basis. You can find out more information about us at *www.democratsabroad.org* or on our Democrats Abroad and Democrats Abroad country committee Facebook pages.

Appendix 1—Sampling of Businesses Run by Americans Abroad

I am an architect running a small home based practice with my Canadian spouse.

New Jersey voter living in Canada

I co-own a small yoga studio. We offer yoga and meditation classes and struggle to maintain a business in Toronto, Canada's most expensive city.

Ohio voter living in Canada

I simply own some souvenir stores in Quebec City.

Ohio voter living in Canada

I am a small business, just a one woman Recruitment firm—and a single mother.

California voter living in Canada

I am a beekeeper in Canada partnering with my Canadian husband.

Ohio voter living in Canada

I work as a producer and director of film and television. I am merely an individual artist and creator bringing content to the U.S. and international markets.

California voter living in Canada

My business . . . was established in 1992 and provides distribution services for small, independent music labels. I have lived in London since 1986.

New York voter living in the UK

I run a small advertising agency working locally.

New York voter living in Switzerland

Psychological assessment and therapy for clients in Calgary, Alberta area. I am the sole owner of my business and sole provider of therapeutic services.

Oregon voter living in Canada

The business that my wife and I run is a company dedicated to helping social enterprises to grow and to increase their positive impact on society and the environment. We employ 15 people, including a number of Americans, in Singapore, where we have lived for the past 14 years.

New York voter living in Singapore

I and my siblings own a very small corporation incorporated in Canada created solely for the purpose of splitting a small oil royalty between the eight children. Without the corporation, we would have had to sell the mineral interests because they don't generate enough money, and would have foregone our inheritance.

Utah voter living in Canada

Appendix 2—Americans Abroad Must Reconsider Plans to Start Businesses Given the New Tax Burden Imposed by the Tax Cuts and Jobs Act

I am a stay at home mom, and earn a little money for our family freelancing (writing, editing, and translating) from home. **I am hoping to start a small market farm business this year also in Chilliwack, BC, Canada where I live with my husband and two boys.**

Colorado voter living in Canada

I am currently a student, but planning to go into private practice as a therapist. So I am not a current business owner and **the U.S. Tax law may prevent me from operating in private practice as I hope to do.**

California voter living in Canada

I am an American married to a Dutch national, my "business" is that I am registered as a single-person company: a freelance graphic designer. I have freelanced on and off for several years, whenever I was in-between full time jobs. Currently I am unemployed and do not have any freelance income; these laws have the power to destroy me and my family financially. They limit my prospects for the future . . . I don't dare try to grow a business in any way because it will end up hurting my family in the end. **I can't save for my retirement, my child's education . . . the American tax laws are devastating to well-meaning citizens overseas that are caught in the unintentional crossfire.**

New York voter living in The Netherlands

I am a software engineer who works on embedded electronics. I have aspirations to start a small, consulting side company where I may be able to work on my own devices and electronics. Taxes in Denmark are quite high, and I have a large burden on any amount that I may be able to use on my start-up, but **adding another tax burden on top of this completely destroys all incentive for me to even start.** I am forced to remain a hobbyist that cannot use my engineering expertise outside of my current primary income, with little hope of driving my future career.

Montana voter living in Denmark

LETTER SUBMITTED BY DOUGLAS GOLDSTEIN

April 22, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me.

I am a proud American who moved with my wife and children to Israel, the land of our ancestors, over 20 years ago. Nonetheless, I still effectively work on Wall Street as a cross-border investment advisor. Through my work, I have helped to keep and/or send hundreds of millions of dollars of investment money into the United States. Moreover, I directly employ (and hire for contract work) six American citizens in my company. In many ways, I see myself as a goodwill ambassador for America, spreading the word of how good our financial markets are and encouraging people to invest there. In fact, in one of my books, I devoted a whole chapter to explain why the American markets are the best in the world. (*See:* "The Expatriate's Guide to Handling Money and Taxes;" 2013, Southern Hills Press.)

I always pay my taxes to the United States and in my professional capacity I encourage others to do so as well. I believe that over the years I have directed people to be in full compliance with their reporting requirements.

Unfortunately, because I am a business owner who has always kept some money in my company (retained earnings) for business and cash flow purposes, I have just been hit with an overwhelming 17.45% tax, which I cannot offset based on the U.S./Israel tax treaty. For a small businessman, this is a devastating blow.

It seems clear that the hundreds of thousands, and perhaps millions, of Americans like me were not the target of the new tax rule which was supposed to target large multinationals that were squirreling funds in offshore jurisdictions like Ireland.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Douglas Goldstein. I am an American living in Israel, and I vote in national elections via my last State of residence, New York.

LETTER SUBMITTED BY JERRY AND MARGARET GOODMAN

April 21, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me.

My wife and I have been living in Israel continuously since July of 1970.

We built our family here, paid all of our taxes, and have faithfully filed our USA Tax Returns, paid US taxes where applicable. We have been working for 48 years in Israel. I elected to keep retained earnings in my company because the funds are needed for the cash flow of my cash intensive business. This repatriation tax not only will limit my income if I keep working, but certainly takes away 17.45% these retained earning that are earmarked for our retirement. As we have lived in worked here for so long we do not get any Social Security or other retirement benefits from the USA. Therefore we feel that this tax in unfair and a double and crippling tax at our age of 71.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Jerry Goodman. I am an American living in Jerusalem, Israel, and I vote in Massachusetts.

LETTER SUBMITTED BY ISAAC GORDON

April 29, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance.

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to; grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Isaac Gordon. I am an American living in Israel, and I vote in New York.

LETTER SUBMITTED BY MARIANNE GOURAS

April 24, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws. In addition, filing fees in two countries are already very high, even without these new laws.

It is on the personal level that these laws are the most harmful to me. My small company has been active in a very specialized research consulting area, namely servicing clients seeking a portfolio of investments in hedge funds. Since 1994 I have managed to attract several clients who needed my assistance in researching hedge funds, complicated investment vehicles, on their behalf. In the last 3–4 years my client base has opted out of hedge fund investments and in favor of private equity and real estate, areas in which I am not specialized. As a result I am looking for an alternate business activity for my remaining employable years. Therefore this unexpected, egregious and unfair tax will decrease my ability to plow back much needed assets into my business so that I may re-educate myself in another type of profitable activity in my 60s. Please do not allow this to happen. I am a very productive person and want to continue to work for as long as I can find consulting work and can afford to do so.

On behalf of myself and many other Americans abroad who are legally paying taxes, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes they are financially disastrous to me as explained above.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Marianne Gouras. I am an American living in Toronto, and I vote in New York.

Letter Submitted by S.T. Herman

April 26, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that (1) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

However it is on the personal level that these laws are the most harmful to me. I am a 65 year old film producer born in Canada, raised my family in Canada, never resided in the U.S., never had a business permanent establishment in the U.S. I cannot repatriate a business that never was in the U.S. nor will ever expand there as I am at the end of a 35 year career, with plans for retirement. My small business is my pension plan, and both the "transition tax" and "GILTI" will eliminate my ability to retire with dignity.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Spencer Herman. I am an American living in Canada, and I vote in Florida.

Letter Submitted by Suzanne Herman

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

April 26, 2018

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.54% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like google and Apple have and will Continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never, ever, be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

However, it is on the personal level that these laws are the most harmful to me.

My husband and I are U.S. citizens living in Canada. I was born in the United States and left Florida in 1968 at age 12 when my Canadian mother decided to move back to Canada. My husband, Spencer, was born in Canada and is a U.S. citizen through his American born father. Due to our respective parents, we are both Canadian and American citizens at birth, and Spencer has never lived in the U.S. Although we have lived in Canada almost the entirety of our lives, we only became aware in 2011 through the Canadian media of the U.S.'s unique laws that impose full U.S. taxation on the "tax residents" of other countries who are U.S. citizens. Due to our personal circumstances we felt it necessary to become up to date in our U.S. tax filings, and did so. Our decision to comply with U.S. taxes for the necessary 8 years under the only available amnesty program at the time (OVDI) resulted in the payment of approximately $100,000 in tax, penalties and accountant's fees on the 2008 sale of our home in Canada—that which we had unfortunately sold before we knew we had any tax obligations to the U.S. (Note that the sale of the home in Canada—because it was a principal residence—was not subject to any taxation in Canada). As it was, it took several years to be processed through not one, but eventually two IRS amnesty programs to get our tax affairs in order. By then, there was much talk and promise among residents of other countries that U.S. tax reform would address the hardships of "Citizenship Taxation." The expectation was that the United States would adopt tax policies aligned with those of the rest of the world, and would cease imposing "worldwide taxation" on tax residents of other countries. These reforms were anticipated to put an end to the record number of Americans renouncing citizenship. Unfortunately this did not happen. Instead, what tax reform has delivered promises to be more financially crippling and unfair than we'd ever imagined.

In 2001 my husband and I incorporated a small film production business here in Canada.

From a Canadian perspective: Canadian tax and financial planning for family businesses will often involve use of a Canadian Controlled Private Corporation, and in a purely Canadian context these structures can provide asset protection, estate or succession planning, and tax-efficient allocation of income. Furthermore, for many Canadians, their Canadian Controlled Private Corporation operates as a private pension plan.

From a U.S. perspective: A small, closely held Canadian corporation like ours will be treated as a U.S. Controlled Foreign Corporation (CFC) if U.S. taxpayers who individually own at least 10% of the shares, own in aggregate more than 50% of the shares. We report this business interest on IRS form 5471 with our annual U.S. income tax return, and pay a specialized tax accountant $2,000 to $3,000 annually in professional fees to make proper filings for us. In order to not incur U.S. tax, we must avoid many Canadian investments, including some that would help us prepare for retirement. We have no assets, business or otherwise, in the U.S. and U.S. law prohibits either of us from opening a bank account in the U.S. or investing in U.S. sourced mutual funds. Unfortunately for individuals like us, the recently enacted Tax Cuts and Jobs Act has several provisions that could increase both U.S. tax and compliance costs for Canadian Controlled Private corporations that are U.S. CFCs under new § 965. There are two aspects. The first involves a retroactive tax on income that was not previously subject to U.S. taxation. The second involves a prospective income attribution from the corporation to the shareholder that destroys the value of using the Canadian Controlled Private Corporation in Canada.

Retroactive tax on income that was not previously subject to U.S. taxation: One aspect of the bill is a proposal to stop taxing U.S. multinational companies on much of the non-U.S. source income that they earn through non-U.S. (Canadian) subsidiaries. As an anti-avoidance measure, the legislation includes a provision for a one-off tax of 15.5% for cash and cash equivalents, or an 8% for illiquid assets, as of December 31, 2017. (In the case of individual shareholders the top rate is actually 17.5%). To the injury, individual shareholders DO NOT BENEFIT (as do corporations) from the transition to territorial taxation. While it is clear that the intention is for this tax on accumulated earnings to apply only to corporate shareholders of "Controlled Foreign Corporations," the actual legislative language applies this to all shareholders of CFCs, even individual shareholders who do not reside in the USA (who are not eligible to exclude foreign income from U.S. taxation). If the literal interpretation is allowed, this means that the IRS could collect up to 17.5% of the retail earnings of small Canadian corporations controlled by Canadian-U.S. dual citizens, and although U.S. individuals are also subject to the forced repatriation provisions, they are not eligible for the "going-forward" participation exemption regime.

In summary: What this means is the U.S. government, devoid of any taxable event, aims to "repatriate" a share of the retained earnings of a solely Canadian operated corporation, one which is not a subsidiary of a U.S. company and one which will never have a presence in the U.S.—simply because one or more of its shareholders are United States citizens. The IRS notice about the Transition/Repatriation Tax talks only about subsidiaries of U.S. domestic corporations. I do not believe that taxing the retained earnings of solely Canadian operated corporations was Congress's intention and ask that you fix the language of the bills to reflect that. Surely U.S. lawmakers would agree that Congress's true intention of repatriating American businesses that have left the U.S. because of high corporate tax rates would not apply to businesses that have never or will never have a presence in the United States!

Prospective income attribution from the corporation to the shareholder: Canada does not impose taxation on the income of a Canadian controlled private corporation until the income is distributed from the company. The Tax Cuts and Jobs Act (new section 951A) attributes virtually all the active income of the corporation to the shareholder even if the income has not been distributed.

I urge your prompt attention to this matter as the time remaining to make costly major decisions necessary to move forward is quickly dwindling as specific deadlines associated with the Tax Cuts and Jobs Act draw nearer.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes tor any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Suzanne Herman. I am an American living in Canada, and I vote in Florida.

Letter Submitted by Herbert Michael Hess

April 23, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not, or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws. I have been told to retain a U.S.

tax attorney, etc. This is unbelievable to me as I would have to spend whatever is left of my savings to find a way to minimize tax.

But it is on the personal level that these laws are the most harmful to me. . . . Here is my personal story.

I came to Canada in 1969, so I am in my 50th year living outside the USA. I have worked as a sales specialist for several computer companies, and in 1976, I started a small recruiting company, which I had incorporated to limit my personal liability. Most of the time, it has been just myself, trying to make an acceptable living, in the past with an occasional secretary, staff recruiter/researcher, or an outsourced specialist. I am now 80 years old, still working due to the high cost of living, and having an unmarried daughter and step-daughter requiring the occasional financial boost. My wife helps out, to make ends meet. I live in a townhouse and drive an 11 year old Pontiac Montana (2007).

In Canada, small corporations like mine keep funds in the business to serve as a retirement fund as I have no company pension or benefits but took the risk of self-employment in Canada. If I am not exempt from this frightening specter of the loss of a huge portion of this extremely hard-earned money, on which I have duly paid Canadian tax, according to local law, I will have to work until I die, to be able to support myself and will not be able to afford proper long term care if the usual end of life health disaster strikes.

Surely you cannot equate my feeble and small company with giants like Apple and Google, who run the world. Is there no world in which you can leave an 80 year old person, close to the end of life—four score years, as the Bible says—who has been out of the U.S. for 50 years, in peace?

If you have to go after ex-pat corporations, put some limits on this—eliminate this for companies with less than X million dollars, as with estate tax, put some age limit on this—*e.g.,* retirement age of 65 or 70, excuse those outside the country for more than a quarter of a century (for me, half a century—how could this be?), and consider the size of the company—I work alone to try to make ends meet—how about companies with more than 25 employees?

The word Company can be misleading and evoke a huge operation like GM. My company is me, working from home, trying to stay afloat.

I trust that the American spirit, which saved my parents during World War II, and which continues to do good around the world, will prevail, understand, and apply this as it should be applied, in a sensible and just fashion.

On behalf of myself and many other Americans abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem.

My name is Herbert Michael Hess. I am an American living in Canada, and I vote in Minnesota.

LETTER SUBMITTED BY AARON HUBER

April 24, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 1.7.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I incorporated a business in Israel in 2016 which has been my permanent home for the past 8 years. I did so to start a small consulting business which also employs two other American citizens living here in Israel. Because I had a large cash balance near the end of 2017 in order to pay employee salaries, and to manage my business in a responsible way.

I have been punished by the new tax law which will apply a hefty "deemed repatriation" tax of 15.5% on the entire savings of my company. These savings were not being hid away in offshore accounts to minimize U.S. taxation, they were simply meant to pay local suppliers and our U.S. citizen employees who reside in Israel.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Aaron Huber. I am an American living in Israel, and I vote in Florida.

LETTER SUBMITTED BY YOSEFA JULIE R. HUBER, CPA

April 27, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: Severe Impact of Repatriation and GILTI Taxes on Americans Living Overseas.

I am a U.S. citizen and Certified Public Accountant preparing tax returns for other U.S. citizens living in Israel. My husband (also a U.S. citizen) and I also own a small family business incorporated in Israel. A big part of my job involves educating U.S. citizens living in Israel, many of whom have never lived or worked in the U.S. and may not even speak English, their responsibilities to file a U.S. tax return and report foreign accounts.

I am writing to you today to express my deep concern that the new Section 965 Deemed Repatriation tax and GILTI tax feels like punishment for being an American abroad.

The one-time Deemed Repatriation Tax, A.K.A. Transition Tax, and annual Global Intangible Low Tax Income (GILTI) inclusions require U.S. owners of foreign companies to pay U.S. tax on accumulated earning of their foreign corporation *in addition to* the corporate tax paid to the foreign country *and* the tax the owner pays to both the foreign company and the U.S. on their wages and dividends. While corporate owners like Apple and Google have some relief through a credit on foreign taxes paid, individuals are excluded from using foreign tax credit to offset this tax. The GILTI tax, as the name implies, is a tax against income theoretically based on intangible assets. It effectively is a double tax on the corporate earning of companies, with an exemption based on the percent of long-term tangible assets held by the corporation. Again, this benefits owners of factories, land, and machinery, while disproportionately taxing service providers such as myself.

In addition to the increased cost of taxes under the new law, the cost of compliance for the average dentist or therapist living abroad is unconscionable and makes correct U.S. reporting unbearably costly. Small business owners living overseas don't have resources and sophisticated accountants and attorneys to handle the additional reporting.

Most of my clients impacted by the new tax law are sole proprietors in service industries—attorneys, mental health professionals, accountants, and consultants. The transition tax and GILTI tax hits us especially hard because (1) we are individuals, and under the new law, we are subject to higher tax rates and fewer exemptions than big corporations holding foreign companies and (2) our companies don't hold long-term tangible assets, so we can't benefit from the exemption on income from tangible assets. We are opening accounts and businesses in Israel because we LIVE in Israel. Americans living in Israel establish Israeli corporations for the same reasons Americans living in the U.S. do. We want legal protections, tax benefits, and the satisfaction that comes with owning a company and building equity in a family business. *Why should we pay more taxes on our income than Apple or Google? These multinationals pay GILTI tax of 21%—letting them bring income back into the U.S. at a lower tax rate than regular corporate rates, while we as individuals pay tax of 37% on income we don't have any intention to "repatriate" and need to keep our local businesses operating smoothly.*

We already report our corporation's income on Form 5471 and pay taxes on our wages and dividends. We pay corporate tax in our country of residence, and yet individuals can't get credit for foreign taxes, while corporations can. Why must we be punished for living abroad and incorporating? Why are we punished for keeping income in the company? Why are companies which had an excess of retained earnings on November 2nd (one of the measurement dates for the transition tax) in anticipation of giving holiday bonuses, being punished excessively?

Every week I speak with people who thought they were being responsible by registering their business in Israel, contributing to an investment account, and even hiring a U.S. accountant in the U.S. I must sensitively explain that their family's accountant has been reporting incorrectly. Their mutual fund is a "PFIC" and will require costly reporting, tax, and interest; they need to order their bank records for the past 6 years so we can file "FBARs," which the accountant in the U.S. didn't know about, and not reporting their company on a Form 5471 could cost them $10,000 a year or more. It's not intuitive, and most U.S. accountants can't even begin to comprehend the requirements for individuals living overseas.

Banks, international investment firms, and public companies already avoid accepting investments from U.S. individuals and corporations due to FATCA requirements. This will only get worse with Section 965 requiring reporting from any foreign company that has even a 1% corporate shareholder. These requirements stymie both U.S. businesses and responsible saving by Americans individuals abroad.

There is a simple practical solution to solve this problems of excess taxation and costly reporting.

An American living abroad should be exempt from the Section 965 Deemed Repatriation and GILTI tax for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Yosefa Julie R. Huber. I am an American living in Israeli, and I vote in Florida.

LETTER SUBMITTED BY CHARLES KLEIN

April 22, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp these sophisticated laws.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Charles Klein. I am an American living in Israel, and I vote in the State of Illinois. Thank you for your consideration of this urgent matter.

KOGOD SCHOOL OF BUSINESS
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Statement of Professor Caroline Bruckner, Executive-in-Residence, Accounting and Taxation, and Managing Director, Kogod Tax Policy Center, Kogod School of Business, American University

Chairman Hatch, Ranking Member Wyden, Members of the U.S. Senate Committee on Finance (the "Committee") and staff, as Managing Director of American University's Kogod Tax Policy Center (KTPC), which conducts nonpartisan policy research on tax and compliance issues specific to small businesses and entrepreneurs, I submit the following Statement for the Record in connection with the Committee's April 24th hearing titled, "Early Impressions of the New Tax Law."

The Committee's efforts to conduct oversight on the initial impact of the Tax Cuts and Jobs Act of 2017 (Pub. L. 115–97) (TCJA) should be applauded, and the Committee should expand its oversight of the implementation of the TCJA to consider whether and how women business owners have been underserved by tax reform. Although most U.S. taxpayers will see some tax savings from the marginal rate cuts included in the legislation, KTPC's research suggests that the additional investments targeted to individuals with business income (IRC § 199A) and small business owners (IRC § 179) could give rise to an effective "doubling down" on a billion dollar blind spot Congress has when it comes to women business owners and the U.S. tax code.

In June 2017, the KTPC published *Billion Dollar Blind Spot—How the U.S. Tax Code's Small Business Tax Expenditures Impact Women Business Owners,* groundbreaking research on how the U.S. tax code's small business tax expenditures targeted to help small businesses grow and access capital impact women-owned firms.[1] Our findings with respect to four specific tax expenditures targeted to small businesses (*i.e.,* IRC §§ 1202, 1244, 179 and 195) raised questions as to (i) whether the U.S. tax code's small business tax expenditures were operating as Congress intended; and (ii) whether the cost of these expenditures had been accounted for in terms of their uptake by women owned firms.

Ultimately, we concluded that tax incentives targeted to small businesses that exclude service firms by design (*e.g.,* IRC § 1202) or favor firms that are incorporated (*e.g.,* IRC § 1244) or in capital intensive industries (*e.g.,* IRC § 179), operatively exclude the majority of women-owned firms or bypass them altogether. This research is particularly relevant in today's economy because although women business owners account for more than 11 million (or 38% of all U.S. firms), they remain small businesses primarily operating as service firms and continue to have challenges growing receipts and accessing capital. In addition, we found that the existing lack of tax research and effective congressional oversight on how tax expenditures impact women business owners constrains policymakers from developing evidenced-based policymaking.

As a result, our initial assessment of two of the key tax investments of the TCJA confirms that questions raised in *Billion Dollar Blind Spot* were neither considered nor answered in connection with the Committee's efforts on tax reform. Instead, Congress made additional investments in tax expenditures that our research suggests are less favorable to women business owners in terms of distribution of tax benefits, which the Joint Committee on Taxation's (JCT) April 2018 distributional analysis seems to confirm.

For example, according to Table 3 of JCT's distributional analysis of the TCJA, more than 90% of the revenue loss generated from new pass through deduction under IRC § 199A will flow to firms with income of more than $100,000 in 2018 and 2024.[2] However, the most recent data available from the U.S. Census Bureau on business ownership finds that less than 12% of women-owned firms have annual receipts in excess of $100,000.[3]

This inequitable distribution is even more pronounced when considered at higher income levels: only 1.7% of women-business owners have receipts of $1,000,000 or more, but JCT found in 2018, 44% of the IRC § 199A revenue loss will flow to pass-through businesses with $1,000,000 of income. Moreover, JCT projects that the 44% revenue loss distribution will increase to 52% by 2024.[4] While many women business owners will no doubt see some benefit from IRC § 199A, JCT's distributional analysis raises serious questions as to the equity of the distribution of the tax expenditure with respect to women-owned firms. These questions will only become more pressing as Congress is forced to reckon with the budget consequences of the TCJA. The JCT estimate of the initial revenue loss generated from IRC § 199A alone is more than $414 billion from 2018–2027.[5]

In addition to concerns regarding the distribution of the revenue loss generated by IRC § 199A, our research suggests additional oversight and tax research is warranted with respect to the TCJA's investments into expanding IRC § 179. In 2017, we conducted a survey of 515 women business owners to test their familiarity with specific small business tax expenditures, including IRC § 179. Our research found that women business owners use IRC § 179 at significantly lower rates than existing

[1] Bruckner, C.L. (2017). *Billion Dollar Blind Spot: How the U.S. Tax Code's Small Business Expenditures Impact Women Business Owners.* Kogod Tax Policy Center Report, available at *https://www.american.edu/kogod/research/upload/blind_spot_accessible.pdf.*

[2] Joint Committee on Taxation, "Tables Related to the Federal System as in Effect 2017 through 2026" (JCX–32R–18), April 24, 2018. This document can be found on the Joint Committee on Taxation website at *www.jct.gov.*

[3] *Billion Dollar Blind Spot, supra* n. 1 at 11.

[4] JCT, *supra* n. 2 at Table 3.

[5] JCT, "Estimated Budget Effects of the Conference Agreement for H.R. 1, the 'Tax Cuts and Jobs Act'" (JCX–67–17), December 18, 2017. Under current law, IRC § 199A will sunset on December 31, 2025.

government research finds for businesses generally. Specifically, our research found that only 47% of our survey respondents benefited from IRC § 179, whereas Treasury's own analysis had concluded that take-up rates for IRC § 179 to range as high as 80% (for corporations and S corps) and as low as 60% (for partnerships and individuals).

Even before Congress made an additional $25 billion investment in IRC § 179 as part of the TCJA, this tax expenditure was one of the most expensive targeted to small businesses. However, our research suggests women business owners benefit less from IRC § 179 than Treasury's research finds for businesses generally. Consequently, this provision is a prime candidate for additional oversight to account for the more than $250 billion in revenue loss IRC § 179 will likely generate in the coming years.[6]

In the wake of tax reform and its now-estimated $1.9 trillion cost to American taxpayers,[7] the time is now for Congress to consider the tax challenges of women business owners who are now more than one-third of all U.S. businesses, but who continue to struggle getting access to capital. As such, we recommend the following strategies for this Committee to employ as part of its oversight of the TCJA:

1. Holding joint hearings together with the U.S. Senate Committee on Small Business and Entrepreneurship on the small business tax issues identified in this statement and in *Billion Dollar Blind Spot;* and

2. Requesting the Joint Committee on Taxation develop estimates on how TCJA's tax benefits in IRC §§ 199A and 179 are distributed to women-owned firms specifically.

The TCJA stands as evidence of Congress's commitment to investing in individuals with business income and small businesses. And yet there has been no formal accounting as to whether and how these expenditures impact or are distributed to or among women-owned firms—99% of which are small businesses, according to SBA's Office of Advocacy's latest report on women-owned firms.[8]

The sheer number of women business owners and the challenges they face accessing capital should be a priority of Congress and this Committee. Women-owned firms have increased to now total more than 11 million (or 38% of all U.S. firms), and the fact that the majority of women business owners are small businesses operating in service industries raises important TCJA questions we can and should answer. Moreover, they continue to have challenges growing their receipts and accessing capital, and it's time the Committee see through its billion dollar blind spot when it comes to women business owners and U.S. tax incentives. We stand ready to aid the Committee in this important work on behalf of the millions of small businesses impacted by these issues.

National Multifamily Housing Council and National Apartment Association

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The National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) respectfully submit this statement for the record for the Senate Finance Committee's April 24, 2018, hearing titled "Early Impressions of the New Tax Law."

For more than 20 years, NMHC and NAA have partnered to provide a single voice for America's apartment industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management

[6] The "more than $250 billion revenue loss" estimate reflects the IRC § 179 revenue loss derived from JCT's prior 5-year estimate set forth in JCT, "Estimates for Tax Expenditures for Fiscal Years 2016–2020" (JCX–18–10), January 30, 2017 (noting that Section 179 would generate a revenue loss of $248.2 billion from 2016–2020), together with the additional TCJA investment of $25 billion to IRC § 179.

[7] Congressional Budget Office, "The Budget and Economic Outlook: 2018 to 2028" (Table 8–3), April 9, 2018. This document can be found on the Congressional Budget Office website at *www.cbo.gov.*

[8] Michael J. McManus, "Issue Brief Number 13: Women's Business Ownership: Data From the 2012 Survey of Business Owners," Office of Advocacy, U.S. Small Business Administration (May 31, 2017), available at *https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf.*

and finance. NMHC represents the principal officers of the apartment industry's largest and most prominent firms. As a federation of 160 state and local affiliates, NAA encompasses over 75,000 members representing 9.25 million rental housing units globally.

At the outset, we would like to take this opportunity to congratulate Congress for enacting landmark tax reform legislation that we believe holds great promise for generating economic growth and fostering job creation. As multifamily housing firms begin to implement the new tax law, we want to draw your attention to several provisions that we request Congress and the Treasury Department work together to clarify so that our industry can build the 4.6 million new apartment units our nation needs by 2030. Without tax certainty, we are concerned that capital could sit on the sidelines and not be fully deployed.

Depreciation Period of Existing Multifamily Buildings

Our first request is that Congress either enact a technical correction or work with the Treasury Department to issue guidance to clarify that multifamily buildings in existence prior to 2018 be depreciated over 30 years for firms that elect out of limits on interest deductibility.

By way of background, Section 13204 of the tax reform law ("Applicable Recovery Period for Real Property") reduces the recovery period for residential rental property from 40 to 30 years for purposes of the alternative depreciation system (ADS) and requires real estate firms electing out of the limits on interest deductibility of Section 163(j) to use ADS to depreciate multifamily buildings. While we believe that Congress's intent was to apply this 30-year period to multifamily buildings in existence before enactment of the tax law and those yet to be placed in service, we are extremely concerned that without clarification, the statute requires that multifamily properties in existence prior to 2018 be depreciated over 40 years with regard to their remaining life.

The confusion arises because the interest deduction limitation rules are based on taxable year concepts and have an effective date of taxable years beginning after 2017, while the effective date for the ADS recovery period change is based on a placed-in-service concept (as depreciation changes generally are). It is the combination of two different types of effective dates in section 13204(b) of the statute that gives rise to the confusion.

We believe that Congress did not intend for existing multifamily buildings to be depreciated over 40 years for real estate firms electing out of interest deductibility limits. Reading the statute to require existing buildings to be depreciated over 40 years is unlikely to reflect Congress's intent from a policy perspective. There are few policy arguments for requiring real estate firms electing out of interest deductibility limits to depreciate buildings in existence prior to 2018 over 40 years instead of the previously applicable 27.5 years while allowing only new buildings to be depreciated over 30 years. Congress seems unlikely to have consciously wished to make such a drastic change.

Congress can be a key player in enabling existing multifamily properties to be depreciated over 30 years by enacting a technical correction or encouraging the Treasury Department to issue guidance. We believe Treasury can address this issue through the regulatory process either using the broad authority provided in IRC Section 163(j)(7) that addresses how real property trades or businesses elect out of limits on interest deductibility or under the "change of use authority" of IRC Section 168(i)(5).

Section 163(j) as amended by the tax reform law generally limits a taxpayer's allowable deduction for business interest. The legislation, however, enables real property trades or businesses to elect out of the limitation and requires that "Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable." One consequence of making the election is that real property trades or businesses must depreciate real property using ADS.

We believe that the "in such manner" language provides the Treasury Department with sufficient authority to allow electing real property trades or businesses to use post-enactment ADS (*i.e.,* the 30-year life) for purposes of depreciating multifamily property. In other words, Treasury can allow real estate firms to make the option of interest deductibility limitation *in such manner* that requires a 30-year ADS life.

In addition, the legislative history makes it clear that Congress intended that the election out of the interest limitation and the required use of ADS be treated as a change in use of the property. (Footnote 455 of the Senate Finance Committee report). Treasury has broad authority under Section 168(i)(5) to provide rules to implement changes in use of depreciable property, including rules to provide when such property is deemed placed in service.

In sum, we ask that Congress either enact a technical correction or encourage the Treasury Department to issue guidance that would enable real estate firms that elect out of the interest limitation to depreciate multifamily property in existence prior to 2018 over a 30-year ADS schedule. A failure to swiftly take action will unnecessarily disrupt cash flows and increase the tax liability of multifamily firms, reducing their ability to invest in their assets or develop new properties. That result would be contrary to the goal of the tax reform bill, and we ask that it be avoided.

Pass-Through Tax Deduction for Qualified Business Income

The multifamily industry is also eagerly awaiting guidance regarding the 20 percent deduction for pass through income under new IRC Section 199A. We believe that if properly implemented, this provision has the potential to unleash significant investment and job creation in the multifamily industry.

As the Treasury Department drafts implementing guidance, we would encourage Congress to request the Treasury Department to address three aspects of the pass-through tax deduction.

First, the new law requires that the pass-through deduction be determined for each qualified trade or business, but it does not provide a definition of trade or business. We request that the Treasury Department issue guidance enabling individuals to aggregate or group all qualified business activities at the partner level in a manner consistent with IRC Section 469. This would help ensure entities can focus on their business activities rather than engaging in costly restructuring efforts. Additionally, we would ask that Treasury specifically allow income earned from the development, operation and management of real estate assets to qualify for the deduction.

Second, the Treasury Department should provide rules regarding the unadjusted basis of property acquired pursuant to a like-kind exchange. Such basis should be no less than the unadjusted basis of the property relinquished in the exchange plus any cash or other consideration provided in the exchange. Taxpayers engaging in like-kind exchanges remain fully invested in real estate and should not be negatively impacted when they reallocate a portfolio. Indeed, providing onerous rules regarding the unadjusted basis for exchange property would reduce the velocity of real estate transactions and amount of aggregate investment in the sector.

Third, the new law allows REIT dividends to fully qualify for the 20 percent deduction. Treasury, however, should clarify that shareholders who invest in a REIT through a mutual fund are eligible as well. Approximately half of REIT shares are held in mutual fund portfolios.

Finally, the new and novel pass-through deduction is likely to lead to further questions and concerns being raised. We look forward to working with Congress and the Treasury Department on additional matters related to the provision as the regulatory process moves forward to ensure this deduction is as effective as possible.

Deductibility of Business Interest

NMHC/NAA were most grateful that lawmakers enabled real estate firms to elect to fully deduct business interest. Given that a typical multifamily deal can be 65 percent debt financed and that the Federal Reserve reports that as of the end of 2017, there was $ 1.31 trillion in outstanding multifamily mortgage debt, implementation of this provision will be critical. We ask that Congress encourage the Treasury Department to quickly clarify that a taxpayer may use any reasonable allocation method to deduct business interest attributable to a real property trade or business and that debt to capitalize such enterprises is fully deductible. Our goal is to avoid any disruption to the multifamily industry that relies so heavily on debt-financed capital.

Opportunity Zones

NMHC/NAA commend lawmakers for establishing Opportunity Zones as part of the new tax law. By providing for the deferral of capital gains invested in Opportunity Funds and eliminating tax on certain gains realized from Opportunity Fund investments, there is a strong potential to drive considerable investment in multifamily housing and workforce housing, in particular, in Opportunity Zones.

We ask that Congress work with the Treasury Department to make the Opportunity Zones program as effective as possible and that lawmakers encourage the Treasury Department to ensure:

- Multifamily housing is a qualified investment for Opportunity Funds;
- Multifamily properties receiving other tax benefits, including Low-Income Housing Tax Credits, Historic Tax Credits and New Markets Tax Credits, that are necessary to make a development viable are qualified investments for Opportunity Funds. It is often only a combination of incentives that make the difference between a project being able to move forward as opposed to never breaking ground; and
- Properties of all sizes be able to receive Opportunity Fund financing.

NMHC/NAA thank you for considering our views. We again congratulate you on this landmark achievement and hope to work with the Finance Committee to make the new tax law as successful as possible.

POLICY AND TAXATION GROUP
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The Honorable Orrin G. Hatch
Chairman
U.S. Senate
Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Hatch,

I write to you on behalf of the Policy and Taxation Group, which is an organization comprised of family-held businesses from throughout the country that are dedicated to reform of the estate tax. The Senate Finance Committee on April 24, 2018, held a hearing titled "Early Impressions of the New Tax Law." While the Committee focused on various aspects of tax reform, one key issue has received little attention: the temporary nature of all of the individual tax policies included in tax reform—including the doubling of the estate tax exemption.

While we are appreciative that tax reform included a doubling of the estate tax exemption, we believe that this should be a permanent change—not one which expires at the end of 2025. As you mentioned in your opening statement, the Committee's goal is to "make tax reform even better." To achieve that goal, we believe that it is critical that Congress make all of the temporary tax provisions in our tax code permanent. While we believe that eliminating the estate tax is ultimately the best approach, we also believe that permanently doubling the exemption is good policy that will indeed make tax reform even better.

That said, to maximize the benefits that come with reforming the estate tax, we believe that more than just a doubling of the exemption is needed. For example, based on the 2016 Internal Revenue Service estate tax tables, 88-percent of those who filed an estate tax return fall within the current exemption; however, of those who actually *paid* the tax, 66-percent *remain* subject to the tax—despite the increased exemption. This means that many of the family-held businesses that employ millions of Americans will be at risk when their estate tax bills come due—as will the jobs that they provide.

While we understand that Congress faced political and logistical constraints that prevented more expansive reforms of the estate tax last year, we urge you to use this as an opportunity to take bold action that will protect family-held business, spur additional job creation, and help the economy continue to grow. One idea that will help *all* family-held businesses subject to the estate tax: reduce the rate—which is arbitrarily the highest rate in the tax code—to the capital gains tax rate, while maintaining step-up in basis.

In addition to a reduction in the estate tax rate, there are various other policy changes that could be implemented to protect family-held businesses from the unfair and disastrous consequences of the estate tax. As the committee continues to examine such policies in a post-tax reform world, we stand ready to serve as a resource to you, your fellow Committee members, and staff and are happy to provide additional information or answer any questions that you may have.

Thank you for your consideration of these important tax policies and your continued efforts to improve our nation's tax code.

Sincerely,

Pat Soldano
Founder, Policy and Taxation Group

LETTER SUBMITTED BY MIKE POWER

April 23, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I used to retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I work in the mining industry as a prospector. The nature of the work requires that any business venture be in the form of an incorporated company. I have numerous partners in different ventures, each with their own company—in each case a CFC. My partners are not American citizens and do not consider themselves subject to U.S. tax laws; in fact they resent having to provide information to me to file with the IRS and it is only through their good will that I have been able to do so.

The cost and complexity of these filings as an American living abroad is horrendous. A simple income tax filing with all of the corporate reporting costs about $3,000. To comply with the new requirements this year, I have been quoted $17,000 by a reputable Colorado-based accountancy to ensure that I am in compliance. There was a time not long ago when I could live on that. Secondly, I am 61 years old and my best years are behind me. Whatever I have managed to save for retirement is locked up in these companies. The recent tax changes have imposed hardship on me by first requiring me to quickly come up with cash to taxes on 28 years of retained earnings—something that I can only do by immediately liquidating assets at fire sale prices thereby destroying residual value. Secondly, this payment has imposed additional taxes on both the corporations (capital gains where applicable to raise cash requiring payment of Canadian taxes) and on me through payment of Canadian dividend taxes when the money is paid to me in order to finally pay the U.S. taxes. My advisors are not sure if I will also be double taxed by the U.S. when taking the money out of the companies as this must first come out as a U.S.-taxable dividend and then be remitted as a tax payment on the retained earnings in the CFC's in which I am a shareholder.

Please keep in mind that I am self-employed and have no pension. Whatever I might have to retire on is locked up in these corporations. For the past 38 years I had worked within the laws, accumulating assets in these ventures which in turn would be used to fund a retirement. Taxes would have been paid to the U.S. when the money was withdrawn from the companies and paid to me as dividends. Changing the rules at this point amount to a forfeiture of my retirement savings, forcing me to face the prospect of working years past normal retirement age to make up the difference.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Michael Power. I am an American living in Yukon Territory, Canada, and I vote in Alaska.

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Written Testimony of Scott Smith, President

April 24, 2018

Chairman Hatch and Members of the Committee,

My name is Scott Smith, and I am the CEO of Pyromet, which is a privately owned precious metals manufacturer and refiner of silver, gold, and platinum group metals. Since 1969, Pyromet has been a reputable name in the precious metals industry. I also serve as President of the Precious Metals Association of North America (PMANA) and am submitting this written testimony on behalf of our members.

The PMANA represents businesses and workers all along the precious metals supply chain—including manufacturers, recyclers, and refiners. The industry has a keen interest in a tax code that creates certainty for businesses and sustains jobs for hard-working Americans. However, the two most recent overhauls of the tax code, including the passage of the Tax Cuts and Jobs Act (TCJA), continue to discourage investments in precious metals, limit consumer freedom over their investments, and hinder production opportunities all along the supply chain.

Background

Since 1982, gains made on precious metals bullion have been taxed at the ordinary income rate due to language defining such bullion as a collectible. Congress has made numerous attempts to mitigate the effects of this capital gains treatment on precious metals. The Tax Reform Act of 1986 granted the American Eagle family of coins an exemption from the "collectible" definition and allowed them to be included as equity investments in Individual Retirement Accounts. Over a decade later, the Taxpayer Relief Act of 1997 created purity and custody standards that, if met, would exempt bullion coins and bars from the definition while also allowing them in IRAs.

However, the "collectible" definition remains for non-IRA investments in precious metals, and these investments are taxed at the ordinary income rate for collectibles with a maximum rate of 28%—a rate 40% greater than the capital gains rate for equity investments.

Unlike rare coins that are sought after by collectors, bullion coins are fungible, highly refined precious metals products, round in shape, and produced to exacting specifications in large numbers by numerous countries throughout the world specifically as precious metal investment vehicles. They are widely traded, highly liquid, and their market values are globally publicized. Although they typically are ascribed legal tender status by the governments that mint them, bullion coins trade in the marketplace at or near the market price of the commodity they contain, which typically has no relationship whatsoever to the coin's legal tender, or "face" value. For example, this week, a one-ounce American Eagle gold bullion coin having a U.S. legal tender value of $50, traded in the market place at $1,319. These are not coins sought by collectors, but rather responsible taxpayers who want to diversify their portfolios.

Similarly, we are concerned that the TCJA's repeal of Section 1031 like-kind exchanges for personal property and investments will discourage future investments in precious metals and decrease production opportunities along the supply chain.

Many taxpayers with precious metals holdings secure their investments at a depository or refiner. At some point, they are likely to want to take possession of their investments. Prior to the TCJA, this would be accomplished by exchanging their gold bullion holdings for a product of "like-kind" such as American Gold Eagle bullion coins sold by the U.S. Mint.

Not only did these exchanges give taxpayers more freedom over their investments, but they generated activity along the supply chain for recyclers, refiners, and manufacturers. Since precious metals are a limited resource, our industry relies heavily on the continuous cycle of recycling and refining precious metals scrap—often found in electronics, auto parts, and home appliances—into new product whether it be bars, coins, jewelry, etc. Like-kind exchanges created new production opportunities for precious metals workers because it allowed them to take recycled scrap and transform it into a product that met the taxpayer's investment preferences.

Although we are concerned with the TCJA's limitation of Section 1031 exchanges to real property, we do not believe in any way that this was intentional. Members of the committee, and their counterparts in the House, worked thoughtfully to mitigate the effects of these changes. By expanding opportunities for the full expensing and bonus depreciation of qualified property, many businesses and investors do not have to worry about the changes to Section 1031.

Unfortunately, precious metals are not considered qualified property in the tax code. Furthermore, the temporary nature for full expensing and bonus depreciation are destined to create more uncertainty for businesses, whereas Section 1031 exchanges were a fixture in the tax code for nearly a century.

Policy Proposal

As Congress looks ahead to making corrections to the TCJA and considering additional changes to capital gains, the PMANA recommends the following policy changes.

First, amending Section 1(h)(5) of the Internal Revenue of 1986 to treat gold, silver, platinum, and palladium, in either coin or bar form, in the same manner as investments for the purposes of the maximum capital gains rate for individuals. This would eliminate the burden of paying 40 percent more in taxes on precious metals investments. Since precious metals are already considered investments in Section 408(m), this would also create parity and certainty for the treatment of precious metals throughout the tax code.

Second, we recommend corrections to the TCJA that reinstate like-kind exchanges for precious metals. Since precious metals are not qualified property for full expensing or bonus depreciation, this change would reduce investment "lock-in" by taxpayers and continue to generate production opportunities along the precious metals supply chain.

While there are beneficial provisions of the TCJA, there are many changes that could be made to maximize investment potential for taxpayers and create certainty within the precious metals industry. Thank you and I look forward to continuing working with the committee.

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May 4, 2018

U.S. Senate
Committee on Finance
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Re: Full committee hearing on "Early Impressions of the New Tax Law."

Dear Honorable Committee Members,

On behalf of Public Citizen's more than 400,000 members and supporters, we write to provide our perspective on the "Tax Cuts and Jobs Act" (Public Law No. 115–97). This legislation has done much to enrich wealthy shareholders; corporate CEOs and Wall Street bankers and has done little to assist average Americans. We urge you to reevaluate the legislation and go back to the drawing board in a bipartisan fashion to have a real discussion about what would be best for Americans—including which glaring loopholes in our tax code to close, and how to grow revenues to provide real investment in our communities.

The Tax Cuts and Jobs Act would be better named the "Benefits Cuts and Lost Jobs Act" since it will lead to declining services for families that are suffering and fewer health-care dollars for seniors and other vulnerable populations who need care. And instead of creating jobs, the new tax law will kill jobs by opening the door to further outsourcing of investments by multinational corporations. In short, the legislation is unfair, cruel, and disliked.

The tax legislation is unfair in several ways—first, we abhor the unequal footing created by the bill for domestic companies as compared to multinational corporations. Unlike Main Street U.S. companies, multinational corporations are able to make use of accounting gymnastics to book their profits to offshore subsidiaries housed in low tax countries—tax havens—as a way to reduce or eliminate their U.S. tax bill. Instead of fixing this problem, the Tax Cuts and Jobs Act worsens the offshoring of investments by allowing deductions that zero out, or at most halve, the tax rate applied to profits said to be made by offshore branches, keeping the incentive in place to book profits to foreign subsidiaries. The provisions included meant to minimize tax avoidance will actually mean outsourcing of investments will be Worse since companies are more likely to make physical investments offshore, like building plants, in order to lower their taxes. According to the Congressional Budget Office (CBO), "By locating more tangible assets abroad, a corporation is able to reduce the amount of foreign income that is categorized as GILTI [global intangible low-tax income]. Similarly, by locating fewer tangible assets in the United States, a corporation can increase the amount of U.S. income that can be deducted as FDII [foreign-derived intangible income]. Together, the provisions may increase corporations' incentive to locate tangible assets abroad." [1]

The tax legislation was also unfair for the way that it rewarded tax dodgers with a windfall for utilizing past avoidance schemes. Under the previous system of deferral, corporations had an estimated $2.6 trillion in profits "booked offshore" on which they owed an estimated $7.52 billion in taxes. Instead of making these companies pay what they owe, the tax bill gave a windfall to those tax dodgers by allowing deferred profits to be taxed at the bargain basement rate of either 8 or 15.5 percent. This gave around $400 billion payout for companies that had gambled on using profit shifting to defer paying their taxes in hopes such a handout would eventually come their way. We are bound to see the same failure as when a similar tax holiday was tried in 2004.

Already we're seeing companies using the money they have received from their discounted tax rate to pay shareholders dividends and buy back stock to increase the value of the existing shares, all the while cutting existing jobs. This clearly breaks promises about this bill made by the Republicans to American workers, who were sold the lie that these cuts are going to "trickle down" to everyday wage earners, instead of further lining the pockets of Wall Street investors. According to estimates of the results so far from the Tax Cuts and Jobs Act, corporations are spending

[1] U.S. Congressional Budget Office, *The Budget and Economic Outlook: 2018–2028,* at 109–110 (April 9, 2018), *https://bit.ly/2Jt8P1b*.

more than 40 times as much on stock buybacks than they are shelling out for increased wages or one-time bonuses.[2]

The tax bill also further rigs our economy to benefit the wealthy in numerous ways. Study after study has shown just how much the tax breaks were tilted toward the rich. It's estimated that 83 percent of the benefits of the tax cuts will go to the top 1 percent.[3] And, late last month, the Joint Committee on Taxation estimated that millionaires stand to gain handsomely from the changes, including the provision related to "pass-through" companies where almost a full half of the benefit will go to persons making $1 million or more, with that figure surpassing the halfway point by 2024.[4] This when millionaires are only .3 percent of tax filers.

And, as Americans continue to struggle to regain their economic footing after the Wall Street crash and Great Recession, it was unfair for the legislation to lower taxes on the top earners in our society, down from 39.6 percent to 37 percent. The Tax Cuts and Jobs Act also benefitted the wealthy by further weakening the estate tax by doubling the exemption limits, meaning far fewer estates will be subject to the tax. The previous thresholds were far too generous, and by increasing the exemption to more than $11 million (or $22 million-plus for married couples), we further entrench the ability of the "haves" in our society to hoard their wealth, and leave the rest of us to pick up the tab for government services that everyone depends on.

Not only was this legislation unfair, it was also cruel. The tax changes were unkind because senior citizens and working families will be made worse off through the passage of the legislation since decreasing government revenues will mean that funding for services like Medicare, Medicaid, nutrition services, and public education will be shortchanged. The newest estimates from CBO project that the tax cut legislation will increase the U.S. deficit by $1.9 trillion over the years.[5] And, lawmakers have already brazenly called for cutting of social safety net programs that seniors and families depend on in order to fill the hole caused by these tax cuts that mainly benefit their wealthy corporate donors. Moreover, the tax legislation is cruel because it ended the Affordable Care Act's insurance mandate, which will harshly push 13 million Americans out of the markets and will raise premiums for the rest of us,[6] leaving our nation that much further away from reaching the goal of universal health care, a right enjoyed by citizens of other industrialized nations.

In addition to being unfair and cruel—or likely because of it—the tax cut legislation is disliked. Despite a momentary uptick, public opinion remains squarely against the law and approval of the bill continues to decline.[7] Even prominent Senators are speaking unfavorably about the law. Most recently Senator Marco Rubio is quoted as saying, "[corporations] bought back shares, a few gave out bonuses; there's no evidence whatsoever that the money's been massively poured back into the American worker."[8] And, Senator Corker reportedly remarked, "If it ends up costing what has been laid out here, it could well be one of the worst votes I've made."[9]

In addition to the cuts that will come down the line to services hardworking Americans depend on like health and education programs, much of the reason the tax cuts are so disliked is because they are a clear example of self-dealing because the people

[2] "Key Facts: How Corporations Are Spending Their Trump Tax Cuts," Americans for Tax Fairness, *https://americansfortaxfairness.org/trumptaxcuttruths* (viewed on May 1, 2018).

[3] "Distributional Analysis of the Conference Agreement for the Tax Cuts and Jobs Act," Tax Policy Center (December 18, 2017), *https://tpc.io/2Bv5yLd.*

[4] Joint Committee on Taxation, JCX–32R–18: "Tables Related to the Federal Tax System as in Effect 2017 Through 2026" (April 24, 2018), *https://bit.ly/2I0JDyX.*

[5] U.S. Congressional Budget Office, *The Budget and Economic Outlook: 2018–2028* (April 9, 2018), *https://bit.ly/2Jt8P1b.*

[6] U.S. Congressional Budget Office, *Repealing the Individual Health Insurance Mandate: An Updated Estimate* (November 8, 2017), *https://bit.ly/2AugUyh.*

[7] *See e.g.,* Ryan Rainey, "Fewer Voters Report Seeing Paycheck Bump From 2017 Tax Law, Opposition to the Tax Code Rewrite Climbs to 39%," *Morning Consult* (April 25, 2018), *https://bit.ly/2JryhDy;* Lydia Saad, "Less Than Half in the U.S. Now Say Their Taxes Are Too High," *Gallup* (April 16, 2018), *https://news.gallup.com/poll/232361/less-half-say-taxes-high.aspx;* John Hardwood, "GOP Tax Cuts Have Gotten Less Popular With Voters, New NBC/WSJ Poll Says," *CNBC* (April 16, 2018), *https://cnb.cx/2qEpVRb.*

[8] "Marco Rubio Offers His Trump-Crazed Party a Glint of Hope," *The Economist* (April 26, 2018), *https://econ.st/2vYOkqv.*

[9] Niv Elis, "Corker: Tax Cuts Could Be 'One of the Worst Votes I've Made,'" *The Hill* (April 11, 2018), *https://bit.ly/2I2ygc3.*

who passed this law stand to benefit richly from the changes.[10] For example, many lawmakers have significant income from partnerships or limited liability companies where taxes "pass-through" and are filed by the owners on an individual basis, and a large number of President Trump's own web of companies are formed as LLCs. These business owners now get a 20 percent deduction, subject to some complicated rules and thresholds that are ripe for gamesmanship and that have proven difficult for true small business owners to navigate.[11] While, as noted previously, the majority of the benefit from this provision will go to millionaires.

This unfair, cruel, and disliked bill was clearly the output of a corporate patronage system where campaign contributions go in one end and tax cuts come out of the other. Republican lawmaker Representative Chris Collins shockingly admitted that his campaign donors were pressuring him to vote for the legislation.[12] The "debate" around the bill was also heavily mired in the swamp that Trump's base so clearly dislikes—Public Citizen research revealed the shocking statistic that more than 60 percent of all DC lobbyists weighed in on the bill—more than 7,000 individual lobbyists.[13]

If Congress and the President had truly cared about helping everyday Americans through the tax code changes, they would have actually closed unpopular tax loopholes instead of opening up new ones. For example, the carried interest loophole, which allows investment fund managers to pay a lower tax rate than teachers or construction workers was barely touched. The same is true for the loophole that allows performance-based bonuses of more than $1 million dollars to be deducted for most employees receiving such exorbitant pay packages from financial firms or other hugely profitable companies.

Americans have come together as a society and agreed to invest in services like health care, education, nutrition assistance, roads, first responders, courts, and other essential government programs. But the fact remains that we need tax revenues to fund these services that we depend on and expect. To address that, the tax debate should have also looked at creating new sources of revenue such as by taxing Wall Street trades, among other things. A tax of only 3 cents for every $100 traded would create more than $417 billion in revenue over 10 years. Money that could easily be channeled toward greater investments in our communities that will improve the lives of everyone, not just wealthy shareholders or corporate CEOs.

In America, equal opportunity should mean using taxes to pay for a hand up when you need it, not a handout to the rich who already have so much in comparison. We urge you to repeal the Tax Cuts and Jobs Act and come up with a real tax plan that will benefit all Americans, not just the few who need it the least.

Sincerely,

Lisa Gilbert	Susan Harley
Vice President of Legislative Affairs	Deputy Director
Public Citizen's Congress Watch division	Public Citizen's Congress Watch division

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LETTER SUBMITTED BY STEVEN RAPPAPORT

May 3, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," May 3, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

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[10] Brian Beutler, "New Memo Shows How Republicans Used Tax Bill to Enrich Themselves," *Crooked* (April 9, 2018), *https://bit.ly/2H8twRJ.*

[11] Ruth Simon and Richard Rubin, "Crack and Pack: How Companies Are Mastering the New Tax Code," *The Wall Street Journal* (April 3, 2018), *https://on.wsj.com/2HKzoO2.*

[12] Dylan Scott, "House Republican: My Donors Told Me to Pass the Tax Bill 'Or Don't Ever Call Me Again,'" *Vox* (November 7, 2017), *https://bit.ly/2zmmQeO.*

[13] Taylor Lincoln, Public Citizen, "Swamped" (revised edition), (January 30, 2018), *https://bit.ly/2FyuTV1.*

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I came to the Czech Republic in 1992 to start a company importing American products called LinkAmerika II, s.r.o. (a Czech limited liability company). We received no support from any U.S. export program (nor did our US export partners) and practically no assistance from our Embassy or Chambers of Commerce. As Czech banks in those days did not finance foreign-owned companies, we had to only self-finance by using family loans and brokering imports. As a result, we sacrificed a lot of growth in the first decade here while we saved to build capital. Still, we managed to launch **American** vitamin products, pet foods and peanut butter, grocery products and over 1,000 different references of food and health and beauty care. We work with many major FMCG brands including **Smucker's, General Mills, CocaCola, Pepsi, Quaker, Church and Dwight, Procter & Gamble, Colgate, ConAgra, Blue Diamond and many more, exporting millions of dollars of products from the USA to Europe and creating a lot of jobs back at home in the process.**

Over the last 26 years we built our capital base by hard work and savings, reinvesting our profits after paying Czech corporate taxes which ranged from 19%–24% and then personal taxes on wages, local social security and dividends. For years, I was left with the choice of building my business or taking more than a modest salary, I chose primarily to reinvest.

This repatriation tax means that after investing in my business for 25 years, we have to pay taxes twice on the same corporate earnings going back to the foundation of my company, plus my personal taxes. More than that, we have an absolutely enormous reporting requirement that costs over $8,000 per year for my U.S. return and is a major source of stress each year.

I feel I and others are being seriously abused by our government and this is another example of heavy-handedness. Other than Eritreans, none of my fellow expats have any of these difficulties.

There are 9 million Americans living abroad. We would be the 13th largest state if combined. We are great unofficial ambassadors for Americans: introducing products, culture and lifestyles to the varied communities we inhabit around the world. We use practically no government services nor have any benefits. Instead of our government shunning us, it should be embracing us as part of the global potential of America.

America is pushing away some of the best and brightest ambassadors with this type of legislation. I do not see any "American values" present in the double taxation of expatriate owned businesses and I think the result will be antipathy toward our home country that will erode America over time. **This bill is harmful to American expatriates, American families abroad, and American businesses in America.**

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Steven Rappaport. I am an American living in Prague, and I vote in Florida.

LETTER SUBMITTED BY JOHN RICHARDSON, BARRISTER AND SOLICITOR

May 3, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.54% Repatriation and GILTI Taxes have on Americans living overseas.

Re: Internal Revenue Code Section 965—"Transition Tax"

Part A—Introduction

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee:

I am based in Toronto, Canada and work with U.S. citizens living outside the United States who are required to comply with the tax laws of both the United States and their country of residence. U.S. citizens living in Canada (the majority of whom are dual Canada/U.S. citizens) are required to comply with the tax laws of both Canada and the United States. Dual citizens in general and "U.S./Canada dual citizens in particular," live in a world where compliance with U.S. tax laws is somewhere "between difficult and impossible." The difficulty is first because of the potential for double taxation and second because the U.S. Internal Revenue Code imposes far more punitive taxation on U.S. citizens living outside the United States than it does on U.S. citizens living inside the United States.

Part B—Re: The 2015 Senate Finance Committee Report on Tax Reform

In 2015 large numbers of Americans abroad made submissions to the Senate Finance Committee regarding U.S. "citizenship-based taxation" and FATCA. You will find the submissions collected here: *https://app.box.com/v/CitizenshipTaxation/folder/3414083388.*

The largest number of submissions from individuals were from Americans abroad. The Senate Finance Committee Report was released in July of 2015. The report is here: *https://www.finance.senate.gov/imo/media/doc/The%20International%20Tax%20Bipartisan%20Tax%20Working%20Group%20Report.pdf.*

There was only one reference to the concerns of Americans abroad. This reference was on pages 80–81. Specifically the report included:

F. Overseas Americans—According to working group submissions, there are currently 7.6 million American citizens living outside of the United States. **Of the 347 submissions made to the international working group, nearly three quarters dealt with the international taxation of individuals, mainly focusing on citizenship-based taxation, the Foreign Account Tax Compliance Act (FATCA), and the Report of Foreign Bank and Financial Accounts (FBAR).** While the co-chairs were not able to produce a comprehensive plan to overhaul the taxation of individual Americans living overseas within the time-constraints placed on the working group, **the co-chairs urge the Chairman and Ranking Member to carefully consider the concerns articulated in the submissions moving forward.**

I am sorry to observe that the "concerns articulated in the submissions" of Americans abroad have been neither heard nor considered. At the risk of stating the obvious, most Americans abroad are "tax residents" of other countries and are therefore subject to taxation in those other countries. In addition, many of these Americans abroad are in fact citizens of the countries where they reside. They cannot: (1) live in other countries; (2) be subject to taxation in those other countries; and (3) be expected to be compliant with the Internal Revenue Code of the United States. Double taxation is only one part of the problem. The larger problem is that their non-U.S. retirement assets and pension plans are subject to punitive taxation by the United States. These problems cannot be alleviated by the use of the Foreign Earned Income Exclusion, foreign tax credits, or a combination of the two. *See* for example:

> The biggest cost of being a "dual Canada/U.S. tax filer" is the "lost opportunity" available to pure Canadians.
>
> *http://www.citizenshipsolutions.ca/2017/08/04/the-biggest-cost-of-being-a-dual-canadau-s-tax-filer-is-the-lost-apportunity-avaiIable-to-pure-canadians/*

Part C—Senate Finance Committee Hearings About the "Tax Cuts and Jobs Act"—April 24, 2018

On April 24, 2018, the Senate Finance Committee held hearings which were designed to explore preliminary experiences with the new "Tax Cuts and Jobs Act."

These hearings featured *no* discussion of how the Tax Cuts and Jobs Act impacts Americans Abroad. Furthermore, the hearings included no discussion of the Section 965 "Repatriation/Transition" tax which (1) when applied to Homeland Americans is a "sweet deal" but (2) when applied to Americans abroad has the potential to effectively confiscate their "retirement savings."

Part D—Defining the Problem—The "Transition Tax" Found in Internal Revenue Code Section 965 Will Destroy Many Americans Abroad

The purpose of this letter is to alert you to the disastrous impact that Section 965 of the Internal Revenue Code has on U.S. citizens with small business corporations (which qualify as "Controlled Foreign Corporations" under the Internal Revenue Code). It is common for many residents of non-U.S. countries to use local corporations to carry on their small businesses. In Canada, small business corporations are used both as (1) a way to carry on business and (2) a vehicle to create private pension plans. Note that these "corporations" are not foreign to the individual. On the contrary, they are "local" to the individual, but "foreign" to the United States. Unfortunately, the tax compliance industry is interpreting Internal Revenue Code 965 to apply to—Canadian Controlled Private Corporations—which are really the equivalent of "S" corporations or LLC corporations in the United States. As a result, Many Canadian/U.S. dual citizens must now choose between compliance with U.S. tax laws (which will erode a large part of the undistributed earnings in their corporations) and retaining their retirement savings.

Part E—The Contextual Background—Why a "Transition Tax" at All?

It's perfectly clear that the purpose of the tax was to force U.S. multinationals to "repatriate earnings" which have not been subject to U.S. taxation in the past. To a large extent, it was a "trade off" for reducing the U.S. corporate tax rate from 35% to 21%.

To understand the context, *see* the following testimony of Apple CEO Tim Cook before a Levin Subcommittee, *https://www.youtube.com/watch?v=Lx6YINOfjaQ*.

It's clear that the target of the law was U.S. multi-nationals and not individual Canadian residents with dual Canada/U.S. citizenship.

Part F—What Internal Revenue Code Section 965 Requires

Section 965 prescribes what I will refer to as the "transition tax." In general, the "transition tax" imposes a "one time" tax on the "undistributed earnings" of certain Canadian (and other foreign) corporations.

Part G—Re: The 2017 Tax Cuts and Jobs Act and the "Taxation of Americans Abroad"

On December 22, 2017 President Trump signed the "Tax Cuts and Jobs Act" into law. The "Tax Cuts and Jobs Act" included a massive overhaul of the U.S. International Tax system as it affects U.S. corporations. There were no corresponding changes for individual Americans abroad. In fact, the "Tax Cuts and Jobs Act" has made things considerably worse. Specifically the "Transition/Repatriation tax" found in IRC Section 965 and the GILTI regime found in IRC Section 951A have made the situation for many Americans abroad impossible to continue.

The "Transition/Repatriation Tax" and "GILTI" were enacted without any awareness of how they might impact individuals who were (1) United States shareholders living outside the United States and (2) were also subject to the tax systems of other countries.

As you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

The following 7 points, which are based on a comment to an article published by the *Financial Times of London,* describe the impact of the "transition tax" on Canada/U.S. dual citizens who have Canadian Controlled Private Corporations.

Interesting article that demonstrates the impact of the U.S. tax policy of (1) exporting the Internal Revenue Code to other countries and (2) using the Internal Revenue Code to impose direct taxation on the "tax residents" of those other countries.

Some thoughts on this:

1. Different countries have different "cultures" of financial planning and carrying on businesses. **The U.S. tax culture is such that an individual carrying on a business through a corporation is considered to be a "presumptive tax cheat."** This is not so in other countries. For example, in Canada (and other countries), it is normal for people to use small business corporations to both carry on business and create private pension plans. So, the first point that must be understood is that (if this tax applies) it is in effect a "tax" (actually its confiscation) of private pension plans! That's what it actually is. The suggestion in one of the comments that these corporations were created to somehow avoid "self-employment" tax (although possibly true in countries that don't have totalization agreements) is generally incorrect. I suspect that the largest number of people affected by this are in Canada and the U.K. which are countries which do have "totalization agreements."

2. None of the people interviewed, made the point (or at least it was not reported) that this "tax" as applied to individuals is **actually higher than the "tax" as applied to corporations.** In the case of individuals the tax would be about 17.5% and not the 15.5% for corporations. (And individuals do not get the benefit of a transition to "territorial taxation.")

3. As Mr. Bruce notes, people will not easily be able to pay this. **There is no realization event whatsoever.** (It's just: "Hey, we see there is some money there, let's take it.") Because there is no realization event, this should be viewed as an "asset confiscation" and not as a "tax."

4. Understand that this is a **pool of capital that was NEVER subject to U.S. taxation in the past.** Therefore, if this is a tax at all, it should be viewed as a "retroactive tax."

5. Under general principles of law, common sense and morality (does any of this matter?) the retained earnings of non-U.S. corporations are first subject to taxation by the country of incorporation. The U.S. "transition tax" is the creation of a "fictitious taxable event" which results in a pre-emptive "tax strike" against the tax base of other countries. If this is allowed under tax treaties, it's only because when the treaties were signed, nobody could have imagined anything this outrageous.

6. It is obvious that this was **never intended to apply** to Americans abroad. Furthermore, no individual would even imagine that this could apply to them without "education provided by the tax compliance industry." Those in the industry should figure out how to argue that this was never intended to apply to Americans abroad, that there is no suggestion from the IRS that this applies to Americans abroad, that there is no legislative history suggesting that this applies to Americans abroad, and that this should not be applied to Americans abroad.

7. Finally, the title of this article refers to "Americans abroad." This is a gross misstatement of the reality. The problem is that **these (so called) "Americans abroad" are primarily the citizens and "tax residents" of other countries—** that just happen to have been born in the United States. They have no connection to the USA. Are these citizen/residents of other countries (many who don't even identify as Americans) expected to simply "turn over" their retirement plans to the IRS? Come on!

Some of these thoughts are explored in an earlier post: "U.S. Tax Reform and the nonresident corporation owner: Does the Section 965 'transition tax' apply"?

From:

http://citizenshiptaxation.ca/part-2-the-transition-tax-is-resistance-futile-the-possible-use-of-the-canada-u-s-tax-treaty-to-defeat-the-transition-tax/

Part H—About the Problem of "Double Taxation"

To this I would add that, because Canadian residents are also subject to taxation in Canada, the Section 965 Transition Tax will certainly result in double taxation. The reason is that:

First, the transition tax is paid by the individual to the United States out of the undistributed earnings of the corporation.

Second, when the undistributed income is distributed Canada will impose a second tax on that same income.

Third, because of timing mismatches, there is no possibility of offsetting the Canadian tax owed by the U.S. tax paid.

Bottom Line: This is clear double taxation.

Part I—The Canada U.S. Tax Treaty and (1) Double Taxation and (2) U.S. Taxation of the "Undistributed Earnings" of Canadian Corporations

U.S. taxation of the "undistributed earnings" of Canadian Corporations:

Paragraph 5 of Article X of the Canada U.S. Tax treaty reads as follows:

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, **nor subject the company's undistributed profits to a tax,** even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

By its plain terms the treaty appears to prohibit the United States imposing a tax on the undistributed earnings of a Canadian company.

Article XIV—Double Taxation

Article XIV makes it clear that the spirit of the treaty is to avoid "double taxation." By creating a "fictitious taxable event," the United States is creating an event to impose taxation before the Government of Canada imposes taxation according to their rules (which are based on an actual distribution and not a deemed distribution).

It seems reasonable to conclude that the Section 965 Transition Tax violates at least the spirit of the tax treaty, *https://www.fin.gc.ca/Treaties-Conventions/usa_-eng.asp.*

Part J—U.S. Tax Treaties and the Tax Cuts and Jobs Act

The Section 965 transition tax is arguably only one part of the Tax Cuts and Jobs Act that may not respect U.S. tax treaties. As argued by H. David Rosenbloom:

"If the policies at work are clear, it must also be said that the international provisions have a distinctly isolationist flavour. They take no account of the larger world, where countries other than the U.S. exist and have their own ideas about taxation. They make no accommodation to the U.S. network of tax treaties, which the international provisions appear to violate in several respects. In fact, the word "treaties" cannot be found in these provisions at all. . . .

"The underlying problem is that the international provisions have been crafted on the unstated assumption that the U.S. is the only country whose tax policies matter. That is unfortunate not simply because it is untrue but because it holds the potential for serious harm to U.S. interests. It is a shame to see the country fritter away a position of world leadership in a field as important as international taxation—a field that has gained immeasurably in international recognition as a result of BEPS and other developments in the OECD, the European Union, and at the UN. The fact that the U.S. Congress pretended for years that the BEPS project did not exist is emblematic of the attitude that is now manifest in the new international provisions. Our companies are likely to pay a price for the decline in U.S. leadership but, make no mistake, it will ultimately have negative influence in many corners of our national life."

http://www.capdale.com/international-aspects-of-us-tax-reform-is-this-really-where-we-want-to-go

Part K—How Could This Unintended Consequence Have Occurred?

On a conceptual level, it seems pretty clear to me that Americans abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) an individual American abroad pays a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while an individual pays tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which an individual does not; or (iv) an individual's small-business counterpart based in the United States, carrying on business through a U.S. corporation, would never ever be subject to such draconian taxes or complicated compliance; or (v) those individuals living inside the United States carrying on business through a CFC would not be impacted by the "Transition/Repatriation" in the same devastating way that an individual living outside the United States would be?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, individual Canadian residents do not have access to the kind of sophisticated accounting and legal advice that is necessary for complying with these sophisticated laws.

Part L—Unintended Consequences, Real People With Real Lives and Real Suffering

But enough of the theory, the lives and retirements of individuals are being destroyed by the unintended consequences of the Section 965 "transition tax."

For example, meet Suzanne and Ted Herman of Vancouver, British Columbia:

Begin with the video here:

http://www.cbc.ca/player/play/1223560259697

and then read:

http://www.cbc.ca/.../transition-tax-trump-corporations-1.463...

http://www.cbc.ca/listen/shows/cbc-news-the-world-at-six @14:30

http://www.cbc.ca/player/play/1222849091745

http://www.cbc.ca/.../poli.../trump-trudeau-tax-reform-1.4644074

The Hermans are only the "tip of the iceberg."

Part M—It's All a Mistake—Please Fix It!

On behalf of many other Americans Abroad, I ask you to exempt them from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to them.

Part N—A Proposed Solution

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as: (1) the American meets the conditions set forth under IRC Section 911; and (2) that person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

John Richardson —Toronto, Canada

LETTER SUBMITTED BY MONTE SILVER

April 21, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals like Google and Apple have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small expat firm I retain to do my U.S. taxes is simply unable to grasp, let alone assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I am a service provider. I am the only person employed in my small one-person local company. For years I have worked very hard to support my wife and two children. My local company pays very high local corporate income taxes. I personally pay high local personal income and social security taxes. If I continue to work hard, I hope to be able to save a modest amount in my CFC for my retirement and maybe even help my children a bit with their higher education. But these two taxes will rob me of my ability of achieving these humble goals. How can this be?

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as: (1) the American meets the conditions set forth under IRC Section 911; and (2) that person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Monte Silver. I am an American living in Israel, and I vote in California.

LETTER SUBMITTED BY MARC SOLBY

April 23, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes which were intended for corporate multinationals such as Google and Apple have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad.")

On a conceptual level, it seems pretty clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, the small firm I retain in Buffalo, NY to do my U.S. taxes is basically unable to assist me in complying with these sophisticated laws.

But it is on the personal level that these laws are the most harmful to me. I am a 54-year-old marketing consultant with two kids in college. I came to Canada as a child and made a life in Montreal and then Toronto. Despite living all my adult life in Canada, I chose not to renounce my American Citizenship and set about complying with the many tax filing complications required of Americans Abroad. I have incurred the time and expense of ensuring compliance, as required.

In 2001 I left my corporate job to start a one-person consultancy called Lighthouse Consulting and formed a corporation. During the good years I would take an adequate salary and leave the remainder of earnings in my company as savings for my retirement in 2020. Of course, I paid Canadian corporate tax on those earnings in the year they were made and will pay personal tax when those funds are withdrawn from the corporation. Several weeks ago, I was advised that I owe 17.5% of my total "nest egg + cash on hand + receivables" in U.S. tax. I am still unsure what the total amount will be, but it will likely be around $USD150,000. Needless to say this is devastating to my financial plan.

Prior to this moment these funds were never subject to this kind of double taxation. There is no way I could have arranged my affairs appropriately for this kind of "retroactive" taxation. I am a "sitting duck" to what is basically a confiscation. Sadly, if enacted, my choice now is to work an additional 5 years or stiff my kids on their college bills.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Marc Solby. I am an American living in Canada, and I vote in Vermont.

LETTER SUBMITTED BY ISAAC D. WAXMAN

April 25, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Regarding: Senate Finance Committee hearing to examine "Early Impressions of the New Tax Law," Tuesday, April 24, 2018.

Topic of statement: The devastating impact that the 17.45% Repatriation and GILTI Taxes have on Americans living overseas.

Dear Chairman Hatch, Ranking Member Wyden, and all Members of the Committee, as you are probably aware, the Repatriation Tax and GILTI Tax regimes were intended for corporate multinationals such as Google and Apple. Nonetheless, these taxes have and will continue to have a devastating impact on a large and unintended group: Americans living abroad who are individual U.S. Shareholders of CFCs (herein "Americans Abroad").

On a conceptual level, it seems clear to me that Americans Abroad were an unintended target of these new laws. Otherwise, how could it be explained that: (i) I pay a Repatriation tax higher than Google and Apple; or (ii) these multinationals pay GILTI tax of 21% while I pay tax of 37%; or (iii) these corporate giants enjoy tax credits and deductions under the GILTI regime which I do not; or (iv) my small-business counterpart based in the United States would never ever be subject to such draconian taxes or complicated compliance?

On a practical level, while Google and Apple had and continue to have access to dedicated teams of expert tax specialists working to minimize their taxes, our firm does not have such resources available. We have our modest firm in Israel. We provide services to our clients, collect fees, and then pay our salaries and other expenses. In the normal course of operating our business we retain a modest amount of earnings as appropriate to service our cash flow needs from year to year. The new laws impose a significant burden on our firm both in terms of additional taxation and compliance.

On behalf of myself and many other Americans Abroad, I ask you to exempt us from these draconian taxes and demands for reporting. While I may not have been the target of these taxes, they are financially disastrous to me.

There is a simple balanced solution to solve this problem: an American living abroad should be exempt from the Repatriation and GILTI Tax regimes for any given year so long as:

- The American meets the conditions set forth under IRC Section 911; and
- That person is an individual U.S. Shareholder.

I strongly request that the Congress act to correct this most painful problem. I thank you for considering my statement.

My name is Isaac D. Waxman. I am an American living in Israel, and I vote in Pennsylvania.

LETTER SUBMITTED BY JENNY WEBSTER

April 28, 2018

U.S. Senate
Committee on Finance
Dirksen Senate Office Bldg.
Washington, DC 20510–6200

Statement for the Record—"Early Impressions of the New Tax Law," April 24, 2018

Dear Senators, at the Full Committee Hearing entitled "Early Impressions of the New Tax Law," held on Tuesday, April 24, 2018, no mention was made of Territorial Taxation for Individuals (TTFI). This was disappointing, because the need to abolish the archaic and wasteful system of citizenship-based taxation (CBT) is urgent given the record-breaking numbers of Americans who have been tragically forced to renounce their citizenship since the implementation of the Foreign Account Tax Compliance Act, and the thousands of others who are sadly considering such a decision, like myself. Renunciation used to be absolutely unthinkable, but is now a necessity for many, simply to be able to live a normal life. The cost of lifelong complex extraterritorial compliance (*e.g.,* hundreds of pounds every year to prove that I owe no taxes to the USA, as I pay in full where I live), and severely reduced or non-existent banking and saving facilities, make U.S. citizenship into a hazard. The damage wrought by CBT has worsened with the new Transition Tax and GILTI introduced in the TCJA, which will force many middle-class Americans overseas into bankruptcy.

Changing to TTFI will solve these problems immediately, not to mention bringing policy for individuals in line with the TCJA's Territorial Taxation for Corporations, increasing America's competitiveness, and protecting the outreach of its diaspora, a valuable asset. Representatives Holding and Brady stated the pressing need for TTFI on the House floor. Millions of Americans like me around the world are living in hope that Congress will make this important change so that we can go on being mini-ambassadors, proud and blessed to be American. Thank you for your attention and I hope that the implementation of TTFI is a top priority in the Committee's further actions.

Yours sincerely,

Jenny Webster

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