

1 OPEN EXECUTIVE SESSION TO CONSIDER AN ORIGINAL BILL
2 ENTITLED THE "TAX CUTS AND JOBS ACT" (CONTINUATION)
3 TUESDAY, NOVEMBER 14, 2017
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC

7 The meeting was reconvened, pursuant to notice, at
8 9 a.m., in Room 216, Hart Senate Office Building, Hon.
9 Orrin G. Hatch (chairman of the Committee) presiding.

10 Present: Senators Hatch, Grassley, Crapo, Roberts,
11 Enzi, Cornyn, Thune, Burr, Isakson, Portman, Toomey,
12 Heller, Scott, Cassidy, Wyden, Stabenow, Cantwell,
13 Nelson, Carper, Cardin, Brown, Bennet, Casey, Warner,
14 and McCaskill.

15 Also present: Tom Barthold, chief of staff, Joint
16 Committee on Taxation; and Tom West, tax legislative
17 counsel, U.S. Treasury.

18 Republican Staff: Jennifer Acuna, Senior Tax
19 Counsel and Policy Advisor; Chris Armstrong, Chief
20 Oversight Counsel; Tony Coughlan, Senior Tax Counsel;
21 Bryan Hickman, Senior Counsel; Matt Hoffman, Policy
22 Director; Jay Khosla, Staff Director; Jennifer
23 Kuskowski, Health Policy Director; Alex Monie,
24 Professional Staff Member; Eric Oman, Senior Policy
25 Advisor for Tax and Accounting; Martin Pippins,

1 Detailee; Mark Prater, Deputy Staff Director and Senior
2 Tax Counsel; Preston Rutledge, Senior Tax and Benefits
3 Counsel; Jeff Wrase, Chief Economist; and Nicholas
4 Wyatt, Tax and Nominations Professional Staff Member.

5 Democratic Staff: Ryan Abraham, Senior Tax and
6 Energy Counsel; Robert Andres, Tax Policy Analyst;
7 Christopher Arneson, Tax Policy Advisor; Adam Carasso,
8 Senior Tax and Economic Advisor; Ryan Carey, Press
9 Secretary and Speech Writer; Michael Evans, General
10 Counsel; Elizabeth Jurinka, Chief Health Advisor; Sarah
11 Schaefer, Tax Policy Advisor, Small Business and Pass-
12 Throughs; Joshua Sheinkman, Staff Director; Tiffany
13 Smith, Chief Tax Counsel; Arielle Woronoff, Senior
14 Health Counsel; and Drew Crouch, Senior Tax and ERISA
15 Counsel.

16 Non-Designated Staff: Jewel Harper, Senior Deputy
17 Clerk; Joshua LeVasseur, Chief Clerk and Historian;
18 Susanna Segal, Deputy Clerk; and Athena Schritz, Hearing
19 Clerk.

20

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

3

4 The Chairman. The Committee will come to order.

5 Today the Committee will continue its consideration
6 of the chairman's mark for the Tax Cuts and Jobs Act.

7 We will begin by walking through the mark with the
8 help of Mr. Tom Barthold, the chief of staff of the
9 Joint Committee on Taxation, and then proceed to
10 questions from members.

11 Following the conclusion of this process, which
12 will likely take some time, a modified mark will be
13 provided to members later today, which reflects input
14 received from the amendments that have been filed.

15 Because of the large number of amendments that we
16 have processed, the modified mark will be given to
17 members later today as has been discussed with our
18 ranking member. And everyone can then have time to read
19 over the modifications.

20 After that process, we will resume the markup
21 tomorrow morning with the modified mark.

22 But before we proceed today, I want to make a few
23 comments. I appreciate members' participation during
24 yesterday's session. I was glad to hear everyone's
25 initial thoughts. However, a number of issues were

1 raised yesterday that, in my view, warrant some
2 additional responses.

3 First is the characterization of the bill as a
4 massive tax cut for the rich. That particular claim was
5 repeated, I believe, by almost every minority member of
6 this Committee. The problem with that claim is that it
7 is just not true.

8 The Joint Committee on Taxation, a nonpartisan
9 congressional scorekeeper, has concluded that not only
10 does the bill maintain the current level of
11 progressivity in the tax code, but that the largest tax
12 cuts in terms of percentage of income will go to middle-
13 income earners.

14 I understand that the distributional analysis is
15 inconvenient for the Democrats who are committed to the
16 narrative that Republicans intend to give the so-called
17 rich a tax cut. But JCT's analysis should not be
18 ignored altogether.

19 Secondly, there was the repeated claim supposedly
20 based on JCT analysis that the bill is a massive tax
21 hike on the middle class. To reach this conclusion,
22 members had to willfully twist the meaning of JCT data.
23 Specifically, members cited the JCT table, concluding
24 that someone in the middle class may see a tax increase
25 under the bill, while those same members completely

1 ignored the fact that the very same data showed that the
2 vast majority of middle-class taxpayers, about 90
3 percent, are either going to get a tax cut or, at the
4 very least, be held harmless under the bill.

5 Yesterday, I mentioned a tax bill introduced by the
6 ranking member a few years back. I noted that there
7 were a number of similarities between his previous bill
8 and the one we are debating today. However, there are
9 some differences.

10 For example, I am not aware of any JCT
11 distributional analysis on the Wyden-Coats tax bill, but
12 the Tax Policy Center, who did look at some of the
13 potential distributional effects of the ranking member's
14 bill when he introduced it with former Senator Gregg.

15 Interestingly enough, TPC found that close to 25
16 percent of middle-income taxpayers would have gotten a
17 tax increase under Wyden-Coats and about 17 percent of
18 the lowest-income earners would have seen their taxes
19 raised.

20 Now, I do not raise this to play tit for tat, and I
21 do think there are reasons to not consider analysis by
22 outside think tanks to be the gospel when it comes to
23 these matters, but I do think it is fair to note for the
24 record that the ranking member in the relatively recent
25 past authored and championed tax reform legislation that

1 according to the standards he and others have used to
2 criticize the current bill was far more problematic and,
3 according to a think tank often cited by members on the
4 other side, would have raised taxes on far more middle-
5 and low-income taxpayers than the legislation we are
6 considering this week.

7 Next, I want to address the many complaints about
8 process we heard during opening remarks yesterday.
9 Members lamented the lack of hearings, arguing that the
10 70-plus hearings we have had since I have been the lead
11 Republican on this Committee were not enough and that we
12 needed multiple additional hearings to examine the
13 specifics of the chairman's mark.

14 What they did not mention was that this demand
15 would be a significant departure from the way this
16 Committee has traditionally operated.

17 Historically, the Committee has not held hearings
18 on specific marks issued by its chairman. We certainly
19 did not do so when we considered the Affordable Care Act
20 or any other major mark in the modern history of the
21 Committee. It is therefore absurd to demand that we do
22 now.

23 In addition, we heard members complain about the
24 partisan nature of this exercise, yet I do not believe a
25 single Committee member of the minority even

1 acknowledged the fact that three months ago every single
2 one of them signed a letter indicating, among other
3 things, that they would not engage in a bipartisan tax
4 reform process unless Republicans agreed up front to not
5 use reconciliation.

6 Given the history of this Committee and Congress'
7 recent history with regard to tax policy, such a demand
8 is entirely unreasonable.

9 It is not a rarity for major tax bills to move
10 through reconciliation. And the potential use of
11 reconciliation in no way bars the possibility of
12 bipartisan compromise. Knowing this, I can only
13 conclude that the intent of my colleagues' letter was to
14 communicate that they had no intention of engaging
15 meaningfully in tax reform.

16 But even if I am wrong in that interpretation, over
17 the past 10 months I have made countless public
18 statements where I called on my Democratic colleagues to
19 join in this effort, to offer their views and advice
20 without preconditions or upfront demands. Yet to my
21 knowledge, no one on the Democratic side said anything
22 to suggest that my conclusion about their prerequisites
23 was incorrect.

24 For what it is worth, I am still hoping we can get
25 some Democratic votes in favor of this bill.

1 As I mentioned yesterday, the vast majority of the
2 major proposals in our bill have enjoyed bipartisan
3 support in the recent past, including from Democratic
4 members of this Committee.

5 Middle-class tax relief is something that members
6 of both parties should be able to get behind. Lowering
7 corporate tax rates and making America's businesses more
8 competitive is something that both Republicans and
9 Democrats have sought to do for years.

10 And updating our outdated international system has
11 been a bipartisan endeavor for a while now. As I noted
12 yesterday, the Senate minority leader, as a co-chair of
13 one of our working groups, drafted a report calling for
14 international tax reforms that are consistent with what
15 we are trying to do with this bill.

16 I intend to move forward if members want to vote on
17 the substance of the policy and not with an eye toward
18 next November. I think a few more will eventually find
19 themselves supporting this approach.

20 This is a good bill. It will give real tax relief
21 to middle-class families. It will grow our economy,
22 increase wages and create jobs. I think that,
23 ultimately, most members who decide to vote against it
24 based on partisan strategy will regret taking such a
25 course.

1 Once again, the next step in this process is to
2 walk through the mark. We will begin that process in a
3 few minutes.

4 But before we get to that, I will turn to my friend
5 Senator Wyden for any comments he would like to make at
6 this point.

7

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

3

4 Senator Wyden. Thank you very much, Mr. Chairman.

5 Mr. Chairman, you could tell that you have a lot of
6 fans on our side of the dais yesterday. When Claire
7 McCaskill said that she adored you, I was just thinking
8 to myself I am not sure she would always say that about
9 me. So you have got -

10 The Chairman. Well, I was pleased she said it
11 about me, I will tell you that.

12 Senator Wyden. I was going to say, very, very
13 complimentary and it reflects our affection for you.

14 I still want to make the point, Mr. Chairman, that
15 what is going on now in the Finance Committee is not
16 right.

17 When we left last night, we were told we would get
18 the modified chairman's mark the first thing this
19 morning. That has not happened. So now we are on the
20 second day and we still do not have the full text of the
21 bill we are actually supposed to be writing in this
22 markup.

23 So I gather from hearing from the staff the idea
24 now is that senators can ask questions about legislation
25 that may not be relevant in five or six or maybe 10

1 hours. This is further evidence that the Finance
2 Committee is not ready to proceed with a bill that makes
3 trillions of dollars of changes to the tax code.

4 This does not resemble, no matter how much my
5 colleagues on the other side say otherwise, this does
6 not resemble the regular order in the Finance Committee.

7 This is, colleagues, reckless haste.

8 Now, we have already heard about the evidence of
9 how millions and millions of middle-class families are
10 going to pay higher taxes. This morning the news was
11 about how this proposal would open up a bonanza of new
12 loopholes for multinational corporations and special
13 interests. So I do not want to pretend that this is in
14 the public interest.

15 Members are going to have less time to actually
16 work on the real legislation, real legislation that is
17 going to affect millions of our people, will remake the
18 American economy in fundamental ways and will make
19 changes in tax law that affects trillions of dollars.

20 This is trying to make fundamental tax reform on
21 the fly. That is not what Ronald Reagan did. That is
22 not what I did when I worked with our former respective
23 colleagues Senator Gregg and Senator Coats. This is not
24 in the public interest.

25 And I will make the plea that I did yesterday, Mr.

1 Chairman. We share your view that the tax code is a
2 broken mess. We share your view that we would like a
3 bipartisan bill. But given what has happened just in
4 the last 12 hours, we are continuing to move in the
5 wrong direction. And I hope that we will see that
6 change.

7 I thank the chair.

8 The Chairman. Thank you.

9 Once again, the Committee has before it a
10 chairman's mark of an original bill entitled the Tax
11 Cuts and Jobs Act.

12 Ordinarily, we would incorporate the modification
13 into the mark at this point in the markup. However, as
14 I noted earlier, we are still working on some final
15 details of the modification. And I want to make sure
16 members of the Committee have time to look the
17 modification over before it is incorporated into the
18 mark. And that is something that naturally I would like
19 to accomplish.

20 I expect to be able to deliver the modification
21 later today. For now, we should begin with our
22 walkthrough of the mark and proceed to questions from
23 members. Then tomorrow we will walk through and hear
24 questions about the modification tomorrow morning.

25 Continuing our usual practice with tax legislation,

1 the chief of staff of the Joint Committee on Taxation,
2 Tom Barthold, is joining us here today to assist us in
3 this endeavor.

4 Mr. Barthold, could you please describe the mark?

5

1 STATEMENT OF TOM BARTHOLD, CHIEF OF STAFF, JOINT
2 COMMITTEE ON TAXATION

3

4 Mr. Barthold. Thank you, Mr. Chairman and members
5 of the Committee.

6 You have before you three Joint Committee
7 documents, JCX-51, 52 and 53, which describe the
8 chairman's mark in detail, provide the staff's revenue
9 estimates of the provisions and a distributional
10 analysis of the chairman's mark.

11 The chairman's mark would undertake a significant
12 restructuring of the Internal Revenue Code. And the
13 chairman asked me if I could take several minutes to
14 give a fairly high-level review, emphasizing or
15 highlighting for the members a number of the significant
16 features that are changed.

17 So I will start with the changes in the individual
18 income tax. The individual income tax under the
19 chairman's mark would provide for seven tax brackets
20 with marginal tax rates of 10 percent, 12 percent, 22.5
21 percent, 25 percent, 32.5 percent, 35 percent and a new
22 top rate of 38.5 percent, which would also, unlike
23 present law, would eliminate the marriage penalty and
24 the threshold breakpoint.

25 The chairman's mark would repeal the individual

1 alternative minimum tax.

2 The chairman's mark nearly doubles the present-law
3 standard deduction to have a value of \$24,000 for
4 married joint filers, \$18,000 for head of households,
5 \$12,000 for all other filers.

6 But at the same time, the mark would repeal several
7 itemized deductions, including the present-law
8 deductions for state and local income or sales taxes,
9 personal property taxes, real property taxes, excess
10 casualty losses and itemized deductions that are
11 otherwise subject to the 2 percent floor.

12 That means that the mark would retain the mortgage
13 interest deduction with a modification, the deduction
14 for charitable contributions and medical expenses.

15 The mark would also repeal the present-law
16 limitation on itemized deductions known colloquially as
17 the Pease limitation.

18 The aggregate effects of this in the estimate of my
19 colleagues is that whereas under present law
20 approximately 29 percent of taxpayers claim itemized
21 deductions, under the chairman's mark it would be
22 approximately 5 percent of taxpayers would claim
23 itemized deductions.

24 In addition, under the individual income tax, the
25 chairman's mark would repeal the personal exemptions,

1 but it would expand the child credit, increasing the
2 value of the child credit to \$1,650 for children under
3 18, which is also an expansion of eligible children.
4 One thousand dollars of that child credit would remain
5 refundable and would be indexed in the future.

6 In addition, for other dependent nonchildren, other
7 dependents, there would be a \$500 credit.

8 Also, the phase-outs of the child credit and the
9 nondependent credit would be increased, expanding the
10 number of taxpayers who might be able to take advantage
11 of the child credit.

12 Another significant feature under the individual
13 income tax is the chairman's mark would provide a
14 special effective reduced tax rate on income earned by
15 owners of passthrough enterprises, such as sole
16 proprietors, partners in partnerships and owners of S
17 corporations.

18 This effective reduction in tax rates is
19 effectuated by a 17.4 percent deduction for the amount
20 of taxable income otherwise earned by that business
21 entity.

22 This deduction would generally not be available to
23 enterprises that largely provided professional services,
24 such as accounting, consulting, law firms, with the
25 exception that, if the professional services owners had

1 taxable incomes of less than \$150,000 in the case of a
2 joint return, \$75,000 for others, they would be able to
3 avail themselves of the deduction.

4 The deduction itself is limited to no more than 50
5 percent of the qualifying W-2 wages paid to employees of
6 the enterprise.

7 And the last thing of significant note for
8 individual taxpayers is the mark would double the
9 present-law effective exemption amount of \$5.49 million
10 under the estate and gift tax to effectively just shy of
11 \$11 million.

12 In terms of business income taxes, the mark would
13 reduce the present-law corporate statutory tax rate from
14 35 percent to 20 percent effective starting in the year
15 2019.

16 The mark would repeal the corporate alternative
17 minimum tax.

18 The mark would expand present-law bonus
19 depreciation which is a 50 percent first-year deduction
20 to 100 percent bonus, a 100 percent write-off in the
21 first year. That provision would be effective for five
22 years.

23 The mark would also expand expensing that taxpayers
24 may claim under Section 179, which presently is limited
25 to \$500,000 worth of annual qualifying investment. It

1 would expand that to \$1 million worth of qualifying
2 investment.

3 The mark would make some changes in terms of the
4 cost recovery lives of nonresidential and residential
5 real estate, and farming equipment.

6 It would modify taxpayers' timing of claiming net
7 operating losses that may have occurred in a prior year.
8 Net operating losses would be limited in any one year to
9 90 percent of taxable income, but any unused losses
10 could be carried forward indefinitely.

11 The mark also puts a new limitation on the net
12 interest expenses of businesses, limiting the deductible
13 amount of interest expense to no more than 30 percent of
14 taxable income. Within that provision, an exception is
15 provided for real property businesses that might choose
16 to elect out and continue to fully deduct their interest
17 expense. If they do so, in electing out they would have
18 to use the ADS class lives and cost recovery for
19 nonresidential and residential property.

20 In addition and of note, several small business
21 provisions of present law are expanded and given a more
22 uniform threshold of "small business." "Small
23 businesses" for the purposes of expanded access to cash
24 accounting and expanded exceptions from inventory rules
25 and uniform capitalization and the percentage completion

1 method are expanded to include any business that has
2 annual gross receipts of \$15 million or less.

3 Last major area of note involves cross-border
4 taxation of investments and enterprises. The mark would
5 move the United States away from its current hybrid
6 worldwide tax system to a territorial tax system by
7 providing a 100 percent dividends-received deduction.

8 In part, to effectuate this shift from a worldwide
9 system to a territorial system, the mark would deem a
10 repatriation of currently untaxed earnings held abroad.
11 It provides a bifurcated tax rate on those repatriated,
12 untaxed earnings of 10 percent for liquid assets,
13 generally cash and cash equivalents, and 5 percent for
14 nonliquid assets.

15 The mark also makes some other significant changes
16 to protect against profit shifting. It creates a
17 current tax on what the mark defines as global
18 intangible low-taxed income. This is a calculation of
19 income that is above that which you might expect to be
20 earned just on the tangible investment abroad. In a
21 manner similar to Subpart F, this income would be
22 currently taxable.

23 The global low-taxed income - and there is a slight
24 error I should note in the markup document. It is not
25 reflected in the estimates and I will clarify that in a

1 second. But the effect of the inclusion is that global
2 intangible low-taxed income would face a current
3 effective marginal tax rate of 12.5 percent.

4 In parallel, the mark would also create what it
5 defines as foreign-derived intangible income. This is
6 income that is potentially equivalent to the global
7 intangible low-taxed income, but it is income that is
8 derived from foreign sources but is paid in the U.S. or
9 earned by the U.S. taxpayer.

10 Again, in this case, the mark has an error in that
11 it says that there is a 37.5 percent deduction for that.
12 In fact, the mark intended a 50 percent deduction. It
13 was a typographical error that I did not catch on
14 proofreading our markup document. And that creates an
15 effective marginal tax rate on foreign-derived
16 intangible income of 10 percent.

17 And then perhaps lastly of note, to protect against
18 domestic base erosion, there are several provisions in
19 the mark. Perhaps the two of note are that it modifies
20 the ability of a taxpayer to claim interest expense,
21 stripping the U.S. base, by comparing interest expense
22 to that of the worldwide leverage ratio of the
23 multinational enterprise.

24 The mark would also impose a base erosion anti-
25 abuse tax. This is a tax that would apply only to

1 taxpayers that have gross receipts in excess of \$500
2 million annually. And it is a tax that in its workings
3 it would look at cross-border, related-party payments if
4 a taxpayer has cross-border, related-party payments that
5 are deductible and those exceed more than 4 percent of
6 the taxpayer's total deductible payments. Then the
7 comparison would be made of tax liability under the
8 regular income tax and a 10 percent tax on an expanded
9 base that adds back certain related-party, cross-border
10 payments.

11 That is very brief. There is a lot of material in
12 the mark, a number of details that I did not cover. But
13 I know the members are interested in getting to
14 questions, so I will conclude and am happy to answer any
15 questions that the members might have.

16 The Chairman. Well, thank you, Mr. Barthold.

17 Joining Tom at the table are: Ms. Jennifer Acuna
18 from the Finance Committee majority staff, and I believe
19 Ms. Sarah Schaefer will come later, Mr. Adam Carasso,
20 Mr. Ryan Abraham and Mr. Drew Crouch from the minority
21 staff.

22 All are present to answer questions about the mark.

23 We are also joined by Mr. Tom West who serves as
24 tax legislative counsel at Treasury. Mr. West is here
25 to give us the administration's perspective on issues

1 under discussion.

2 I am sure members of the Committee have several
3 questions about the mark and I will recognize members
4 for the purpose of asking such questions in the
5 appropriate order under the rules of the Committee. So
6 we will just go from there.

7 We will turn to you, Senator Wyden.

8 Senator Wyden. Thank you, Mr. Chairman.

9 And the first thing I want to say is Tom Barthold
10 and his team at the Joint Committee on Taxation, in my
11 view, are the gold standard for professionalism in this
12 field. They call it on the basis of the facts. They
13 are objective. They are straight with Democrats, they
14 are straight with Republicans, they are straight with
15 everybody across the political spectrum.

16 Mr. Barthold, I just want to begin by thanking you
17 and your staff for your habitual professionalism. And I
18 think we are probably going to make you a little tired
19 over a very, very long day.

20 And I want to make sure - we have had some
21 colleagues come in in the last few minutes. And we are
22 now proceeding on something that is even bizarre by
23 Washington, DC standards. We are now asking questions
24 on a bill that is not the bill. In other words, we were
25 told that we would get the modified chairman's mark the

1 first thing this morning so that we could actually ask
2 questions about a bill that is the bill when we are
3 looking at the prospect of almost \$10 trillion worth of
4 changes in tax policy.

5 So we do have a lot of questions. And I am going
6 to begin with two from this morning's headlines that
7 have me deeply troubled. From *The New York Times*,
8 "Haste on tax bill may leave a trail of loopholes." And
9 from *Bloomberg*, "Senate's offshore tax ideas could be a
10 gold mine for some companies."

11 Both of these stories talk about how some of the
12 complex new provisions in the bill, which have not
13 received a lot of scrutiny and certainly have gotten
14 zero bipartisan review would upend decades of U.S. tax
15 law and send even more taxable income overseas.

16 Colleagues, these headlines from this morning ought
17 to serve as alarm bells signaling the dangers and
18 consequences of rewriting America's entire economy in a
19 matter of days.

20 *The New York Times* story quotes experts like former
21 Assistant Treasury Secretary Steve Shay who testified
22 before our Committee a few weeks ago. It focuses on the
23 new rules for passthrough entities and multinational
24 corporations and on the one-year delay in the reduction
25 of the corporate tax.

1 These are complicated issues with complicated
2 implications for businesses across the country. Not
3 exactly dinner table conversation or stuff people are
4 going to talk about today in the lunchroom, but real
5 important.

6 So first on passthroughs, the bill sets up complex
7 new rules for passthroughs with different rules
8 depending on the type of work that the entity does and
9 how much income it makes. The article says that under
10 the bill a firm could, quote, "skirts" the limitations
11 in the bill by creating multiple partnerships with
12 different functions, with one providing services and the
13 other handling, say, licensing or leasing.

14 So I would like to get the staff reaction to this.
15 First Ms. Schaefer, then Mr. Barthold. What is your
16 reaction? Is it true?

17 Ms. Schaefer. Based on my understanding of the
18 mark, yes, that would be accurate. Others, no, there is
19 no exception that would disallow a taxpayer from setting
20 up a separate passthrough entity to distinguish business
21 income from their other service income.

22 Senator Wyden. Mr. Barthold.

23 Mr. Barthold. I guess, Senator, I am not quite
24 clear about what you have the taxpayer setting up.

25 Senator Wyden. Well, what the article says is that

1 under the bill, a firm could skirt the limitations by
2 creating multiple partnerships with different functions,
3 with one providing services and the other handling, say,
4 licensing or leasing. True?

5 Mr. Barthold. This is a service partnership?

6 Senator Wyden. Yes.

7 Mr. Barthold. If it is a service partnership and
8 we look to the mark, it anticipates looking at common
9 control -- related parties -- and treating them as one,
10 but if it is a service partnership, there is no
11 deduction except in the case of the service partner
12 having an income of less than \$150,000 in taxable
13 income.

14 The taxable income would be computed across all
15 sources. So if the service income that this owner was
16 trying to attribute to themselves was \$75,000 worth of
17 service income, whereas all other income was \$200,000 -
18 and I am abstracting from taxable income or adjusted
19 gross income, say it is taxable income -- that
20 individual would not qualify for the exception provided
21 in the chairman's mark.

22 Senator Wyden. So I think you agree with that, Ms.
23 Schaefer.

24 Ms. Schaefer. I guess what is unclear to me is, if
25 a partner, for instance in a service partnership, has a

1 different partnership interest and that partnership
2 holds a trade or business, would they be able to avail
3 themselves of a deduction that way.

4 Mr. Barthold. Well, again, you are looking at the
5 partner level when we are measuring income and the
6 source of their income. So just as if the individual
7 owned three different retail establishments, forget the
8 service income aspect, for the purpose of the
9 calculation we would add up the income from the three
10 different sources.

11 If we then created a fourth business for this
12 individual as a consultant in establishing retail
13 enterprises, consulting services are generally excluded
14 except for the income limitation that I noted.

15 So if the individual were successful in earning
16 income in his or her actual three retail enterprises
17 such that they had an income from those enterprises, a
18 taxable income in excess of \$150,000, it would not
19 matter if they set up a fourth enterprise that was to
20 provide consulting services. That income would not
21 qualify.

22 Senator Wyden. I will let you finish, Ms.
23 Schaefer. Sure looks like a lot of gaming to me.

24 Ms. Schaefer. Yes. I think what the article was
25 getting at is that the ability of taxpayers to bifurcate

1 what would be considered services from true trade or
2 business.

3 Senator Wyden. Right. Let us go on to the next
4 sort of end run on tax law. Is not it correct that if a
5 passthrough owner has multiple passthroughs for
6 different qualified businesses, for example a venture
7 capitalist, the wealthy investor could combine the
8 business income of a profitable business with few
9 employees with that of a business with very low income
10 and lots of employees to avail themselves of the maximum
11 deduction every year?

12 I think for you, Mr. Barthold, and I think any of
13 the other panel members.

14 Mr. Barthold. Just a moment, Senator Wyden.

15 Our understanding of the chairman's mark is that
16 the wage income limitation that I noted, and perhaps I
17 should just reemphasize, is that the income that can
18 benefit from the 17.4 percent deduction is limited by 50
19 percent of the wage income of the enterprise paid to
20 nonowners, but that that test would apply on an entity-
21 by-entity basis.

22 So in the example that you just laid out where
23 there was one enterprise that perhaps had 10 employees
24 and whatever their wage income was and another
25 enterprise that only had two employees, the one

1 enterprise's income would be limited by 50 percent of
2 the wages paid to the 10. The owner's income qualifying
3 for the benefit with respect to the second enterprise
4 would be limited by 50 percent of the wages paid to the
5 two.

6 Senator Wyden. Ms. Schaefer, you want to take
7 that?

8 Ms. Schaefer. Sure. Based on our discussions with
9 majority staff last week, while it is unclear in the
10 mark, our understanding is that these rules are to
11 operate like current law Section 199.

12 And Section 199 provides that a taxpayer may
13 aggregate all W-2 wages and all qualified production
14 activities' income across passthrough entities, which
15 would, if that is how these rules are to operate, would
16 allow an owner of multiple passthroughs to combine W-2
17 wages as well as business income.

18 Senator Wyden. Want to add anything to that, Mr.
19 Barthold?

20 Mr. Barthold. That is not our understanding of the
21 mark. So perhaps as the members deliberate it is a
22 point that we should clarify.

23 Senator Wyden. Good.

24 That is what I believe you were told by the
25 majority staff. Is that right, Ms. Schaefer?

1 Ms. Schaefer. That is correct.

2 Senator Wyden. Okay. Now, let us get into the
3 multinational area. This bill cuts those taxes
4 dramatically for multinationals. In fact, it actually
5 says that it is more attractive to do business overseas
6 than it is in the United States.

7 Now, according to the article, we could wind up
8 encouraging companies to shift even more profits
9 offshore. It also contains some limits, including one
10 that limits the new benefits to companies with annual
11 revenue of more than a hundred million dollars.

12 The article says that companies could set up
13 complicated structures with various subsidiaries and tax
14 haven affiliates to avoid the rules.

15 Mr. Abraham, is that right?

16 Mr. Abraham. Based on my understanding of the
17 chairman's mark, there seems to be some complexity
18 regarding how the GILTI and the BEAT, the foreign
19 inbound and the outbound provisions, might interact.

20 Your staff has been looking at a proposal regarding
21 controlled foreign corporations where if the controlled
22 foreign corporation is operating abroad, they could
23 potentially receive a 10 percent U.S. tax rate and then
24 they could sell their product associated with the IP
25 back into the U.S. And because the inbound proposal

1 does not affect cost of goods sold, there is actually
2 incentive to achieve a 10 percent tax rate versus a 12.5
3 percent tax rate in the U.S., which would encourage, as
4 you were saying, potentially shifting your IP to a
5 foreign jurisdiction.

6 Senator Wyden. Mr. Barthold, is Mr. Abraham
7 correct in his analysis?

8 Mr. Barthold. Well, he was maybe a little bit too
9 fast for me there, so I will just step back. I would
10 say relative to present law, I think the point that Mr.
11 Abraham made was that the incentives might be
12 substantially different from what they are today.

13 As I noted, the mark would create essentially an
14 effective rate on intellectual property that is held in
15 the United States and exploited to earn income abroad of
16 having an effective marginal tax rate of 10 percent,
17 which is a substantially better outcome for the investor
18 than is achievable under present law. That is without
19 shifting abroad.

20 If it is shifted, if it were shifted abroad, the
21 global intangible low-tax income, as I noted, would have
22 current taxation at an effective rate of also, what 12.5
23 percent, which would seem to equalize the outcome.

24 Compared to present law also, there is not current
25 taxation of any income earned abroad. So relative to

1 present law, the chairman's mark would seem like it was
2 trying to lessen the incentives to shift profit,
3 particularly profit from intangible profit abroad.

4 Senator Wyden. It just seems to me that companies
5 still, under this, are going to be able to use these
6 byzantine, unbelievably complicated structures with
7 various subsidiaries, tax haven affiliates to avoid the
8 rules. And I am just going to continue to kind of see
9 if we can drill into all the ways that this bill allows
10 those big companies to game the system.

11 Under the foreign base erosion rule, a controlled
12 foreign corporation in the United States of a U.S.
13 company pays 10 percent to the U.S. on income from their
14 foreign IP. They can then sell the product, a phone,
15 something similar, into the U.S. with no further tax
16 because the inbound base erosion rule does not apply to
17 the cost of goods sold. That is what the article refers
18 to.

19 Now, the chairman's mark includes a provision to
20 lower the tax to 12.5 percent if companies develop or
21 move their IP to the U.S. The problem is the companies
22 only get that if they export their IP, which could be a
23 trade violation and it does not allow U.S. companies to
24 get the lower tax rate when it sells to the largest
25 market in the world, the U.S.

1 I think we would like Abraham and Barthold to get
2 into that.

3 Mr. Abraham. Yes, you are picking up on the
4 comments that I made a few moments ago. You know, your
5 comment regarding the exporting of IP and the ability to
6 claim the lower 37.5 percent deduction which effectively
7 gets you the 12.5 percent rate in the U.S. as compared
8 to the otherwise 20 percent U.S. corporate rate is only
9 available for foreign derived intangible income,
10 essentially exporting the good associated with the IP.

11 There have been some concerns raised dating back to
12 when former Chairman Camp raised a proposal like this
13 that our staff has heard about that that could present
14 some issues with our trading partners.

15 You know, overall, you know, the article is
16 pointing out the shift to the territorial system, which
17 I know the ranking member has been concerned with, where
18 ultimately taxing United States activities at one rate
19 and then taxing foreign activities at a lower rate, and
20 that policy filters through the entire bill as you have
21 seen in the global low income tax rule, which ultimately
22 results in a U.S. company being able to achieve a final
23 tax rate of 12.5 percent max or potentially lower to the
24 extent it is just earning normal returns on its foreign
25 investment.

1 Senator Wyden. Okay.

2 Unless you want to add anything, Mr. Barthold, I am
3 going to wrap up with something I think is pretty easy.
4 Do you want to add anything on that?

5 Mr. Barthold. Yes. I think that my friend Ryan
6 did not exactly answer the example that you gave. You
7 had posited, let us say, a company with a fancy
8 electronic device with lots of technology built into it
9 that is manufactured abroad using technology that maybe
10 is being held abroad. And you had commented that it
11 seemed that this, because cost of goods sold is exempted
12 from the base erosion anti-abuse tax posited in the
13 chairman's mark, that this would seem ineffective and
14 that it would make sense to continue to maintain that
15 structure.

16 I think that misses part of the chairman's mark,
17 which is if you have returns from intangible income
18 abroad, that is what the global intangible low taxed
19 income tax regime is about. It would say that the
20 income earned in the U.S.-controlled CFC abroad would be
21 currently taxable to the extent that it exceeds the
22 threshold amount that Mr. Abraham mentioned.

23 Senator Wyden. So we are going to have lots more
24 questions, it is going to be a long day. I thought it
25 was important to start with the headlines about how what

1 I think is reckless haste, is going to leave an enormous
2 array of tax loopholes, a loophole bonanza out there for
3 people who want to game the system. I think the
4 offshore ideas are going to be a gold mine for some
5 companies.

6 And let us just wrap this round up with something
7 simple. By cutting the corporate rate, but by delaying
8 it for one year, there is an incentive for companies to
9 accelerate their deductions and delay their income.
10 That way, they get their deductions against a 35 percent
11 rate and their income is taxed at only 20 percent,
12 creating another huge incentive to game the tax code in
13 America.

14 Barthold, Abraham, back and forth here and then we
15 will wrap up the first round.

16 Mr. Barthold. No back-and-forth is needed, Senator
17 Wyden. It is the case when there are changes in tax
18 rates around a calendar date that, to the extent that an
19 individual or a business can have costs in the high tax-
20 rate year and income in the low-tax year, they will try
21 and, you know, alter their affairs so that that happens.

22 That can actually have some good economic outcomes.
23 In some cases, the Congress has tried to do that at some
24 points in the past to encourage earlier investment, for
25 example.

1 Senator Wyden. I just want to close this round
2 because, colleagues, there is no question that digging
3 into these kinds of issues is sort of like prolonged
4 root canal work. It is difficult, important stuff. But
5 this is why you need to take the time to really get tax
6 policy right.

7 And the last example that we walked through where
8 there was no disagreement is really going to create a
9 huge incentive for gaming. When you cut the corporate
10 rate, delay it for a year, you create an incentive for
11 companies to accelerate their deductions and delay their
12 income. That way they get deductions against a 35
13 percent rate, their income is taxed at only 20 percent.

14 And I used this as the last example, colleagues,
15 because this is just representative of the kind of
16 gaming that is going to go on under this legislation and
17 what happens when we do not take the time to get to the
18 kind of results that they pursued in 1986, that Senators
19 Gregg and Coats and I pursued that said we are going to
20 make sure that our tax code is competitive so we can
21 have more red, white and blue jobs.

22 But we are not going to create a new highway for
23 people to game a tax code that is already riddled with
24 loopholes.

25 The Chairman. Okay. Senator Cardin?

1 Senator Cardin. Thank you, Mr. Chairman.

2 I want to first raise a serious concern on asking
3 questions when we do not have the modified mark before
4 us. The chairman has indicated that he is going to
5 modify the mark before we start the actual amendment
6 process.

7 And one of the questions that I have is the
8 certainty of what we are doing here because tax
9 certainty is one of the issues I hear over and over
10 again from people who are looking at tax reform as
11 giving them some certainty.

12 We know in the House bill they have different time
13 limits on different tax provisions. We are concerned as
14 to whether the chairman's mark, modified mark, is going
15 to put different dates than we have now and perhaps not
16 the permanency.

17 We also are concerned because we are using
18 reconciliation. As I understand the Byrd Rule, the
19 permanency of certain provisions is going to be very
20 difficult to achieve because of the Byrd Rule under
21 reconciliation.

22 So, Mr. Chairman, my first concern is, are we
23 really going to give the American public a tax code that
24 is certain? And I cannot answer that because we are
25 being asked to use a process that does not even give us

1 the tax proposal that we are going to be taking up in
2 this Committee.

3 I also, Mr. Barthold, want to challenge the
4 chairman's assessment on the distributional charts just
5 for one moment, if I might, because I know that it is
6 very difficult to do a distributional chart on business
7 income relief. And I applaud your professionalism in
8 trying to deal with that.

9 But as I understand it, you did not even attempt to
10 do it in regard to the estate tax relief, the \$94
11 billion are not reflected in the distributional charts.
12 Is that accurate?

13 Mr. Barthold. That is correct. Would you like me
14 to explain why?

15 Senator Cardin. You could if you want, but I just
16 want to make sure that we know that we are not dealing
17 with the \$94 billion of tax relief that is provided
18 under the chairman's mark that goes to the billionaire
19 families. I understand you may have a difficult time
20 figuring out how errors would line up economic-wise, but
21 clearly we are dealing with a class of people that are
22 generally conceived to be the wealthiest in America.

23 Mr. Barthold. Well, Senator Cardin, it is
24 certainly correct that the Joint Committee staff does
25 not include the change in liabilities from the estate

1 tax in our distribution analysis. It is not because the
2 real conceptual issue is not one of data and matching
3 up. In fact, I would be happy to provide to you and all
4 the members of the Finance staff some data analysis that
5 we have done that links decedents for a prior year -- I
6 think our analysis was 2013 -- against their five-year
7 preceding death average income that gives an idea of
8 that number.

9 I will have that provided to all the members.

10 Senator Cardin. That would be helpful. But I
11 think it is important --

12 Mr. Barthold. The conceptual issue is that tax on
13 wealth is a tax on stock. And the income taxes are on
14 flows. And adding stock values and flow values is a
15 conceptual mish-mash.

16 Senator Cardin. Yes, I think I summarized it
17 pretty well. It is not in here. You are dealing with
18 the wealthiest families in America, which are at a
19 different income level than we can even conceive, and
20 that is not included in the distributional chart.

21 Mr. Barthold. That is correct. And I will provide
22 you the analysis that I described.

23 Senator Cardin. You do, though, provide the
24 bottom-line number, despite what some of my colleagues
25 on the other side of the aisle have tried to dispute,

1 and that is the amount that it adds to the debt over 10
2 years and that is approximately \$1.5 trillion, is it
3 not?

4 Mr. Barthold. That is our estimate as reported in
5 JCX-52.

6 Senator Cardin. Thank you. Despite what our
7 colleagues will say, this bill, as scored by the rules,
8 would add \$1.5 trillion to our national debt over the
9 next 10 years.

10 I want to get to the state and local tax deduction,
11 if I might, because in my state, close to half the
12 taxpayers use the state and local tax deduction. Am I
13 correct in assuming that the chairman's mark allows
14 businesses to continue to deduct the taxes they pay, but
15 not individuals?

16 Mr. Barthold. The chairman's mark allows
17 businesses, as under present law, to recover the costs
18 of earning business income, and so that would include
19 costs from property taxes on business property, sales or
20 other use taxes that they might incur, and state and
21 local and foreign income taxes.

22 Senator Cardin. But individuals would not be
23 allowed to deduct those taxes and in effect pay a tax on
24 taxes that they have already paid to their state and
25 local government.

1 Mr. Barthold. That is correct. The itemized
2 deduction would be repealed.

3 Senator Cardin. Have you done any analysis as to
4 what impact that could have on property valuation
5 considering that one of the selling points for owning a
6 home is being able to deduct your property taxes?

7 Mr. Barthold. We have not done any analysis on
8 this particular point.

9 Senator Cardin. And that could have an effect on
10 property evaluation, which could affect local revenues,
11 could it not?

12 Mr. Barthold. If property values change and the
13 property tax is assessed on that base, state and local
14 governments would have to make decisions about whether
15 to change their rates or just maintain what they have.

16 Senator Cardin. Let me just ask one more question
17 with the chairman's permission.

18 This bill is called a jobs bill. To me, the most
19 important tools we have out there in my community are
20 the economic tools we have to generate economic
21 activity, the historic tax credits, the new market tax
22 credits, the low-income housing tax credits. Those
23 types of issues create jobs.

24 Am I correct that the only change in those tax
25 provisions in this trillion-dollar tax bill is to take

1 away 50 percent of the benefit of the historic tax
2 credit?

3 Mr. Barthold. That is correct, Senator Cardin.

4 Senator Cardin. And was there any rationale,
5 policy reason for a 50 percent haircut in the historic
6 tax credit?

7 Mr. Barthold. Senator Cardin, I am not the person
8 to ask about the policy choices.

9 Senator Cardin. Well, I was just wondering. You
10 did talk about some of the policy choices on the
11 international tax form, going to a territorial, going to
12 dealing with base erosion, but you are not prepared to
13 talk about policies on historic tax credits?

14 Mr. Barthold. I am not trying to be evasive. I
15 thought in talking about the territorial system I was
16 talking about the economic incentives.

17 Senator Cardin. Was there any reason brought to
18 your attention why we would do a 50 percent haircut on
19 the historic tax credits?

20 Mr. Barthold. I was not told, I was not informed
21 of any specific reason.

22 Senator Cardin. Thank you, Mr. Chairman.

23 The Chairman. Senator Bennet?

24 Senator Bennet. Thank you, Mr. Chairman.

25 Mr. Barthold, I understand a significant share of

1 taxpayers receive a tax hike or a very minimal change in
2 tax burdens of less than \$100 in either direction based
3 on your distributional analysis. Could you briefly tell
4 the panel and help me understand more about who those
5 taxpayers are?

6 Mr. Barthold. Senator Bennet, as I noted in the
7 walkthrough, there are significant changes in the
8 structure of the entire Internal Revenue Code, but in
9 particular the individual income tax.

10 And so the moving pieces that you are looking at,
11 aside from changes in rates and breakpoints, are the
12 base of what determines taxable income. So changes that
13 can help reduce individual taxes, the increase in
14 standard deduction removes a significant amount of --

15 Senator Bennet. That is not the question I am
16 asking, Mr. Barthold. Who are the taxpayers that -

17 Mr. Barthold. Well, I was trying to get there.

18 Senator Bennet. If you could get to that because
19 you have consumed a minute of my time. I apologize.

20 Mr. Barthold. I am sorry. I am sorry. The loss
21 of personal exemptions can cause upper --

22 Senator Bennet. Are the vast majority of those
23 taxpayers not working that are seeing those tax
24 increases?

25 Mr. Barthold. I do not believe that to be the

1 case.

2 Senator Bennet. Do you agree, Mr. Barthold, that
3 the taxpayers with the highest incomes do not receive a
4 tax cut, on average, in this plan?

5 Mr. Barthold. Your question again, sir?

6 Senator Bennet. Again, this is my time, not your -

7 Mr. Barthold. I am sorry, sir.

8 Senator Bennet. Not your time, Mr. Barthold. Do
9 you agree that the taxpayers with the highest incomes do
10 not receive a tax cut, on average, in this plan.

11 Mr. Barthold. Do not receive? On average, there
12 is a tax reduction across all income categories. So
13 yes, the highest do receive, on average, a tax
14 reduction.

15 Senator Bennet. A tax cut.

16 Mr. Barthold. Yes.

17 Senator Bennet. Do you agree, Ms. Acuna, that the
18 highest-income taxpayers, on average, no matter which
19 threshold you choose, receive a tax cut in this plan?

20 Ms. Acuna. As Tom mentioned a moment ago, in every
21 one of the cohorts the taxpayers receive a tax
22 reduction.

23 Senator Bennet. Is the answer yes?

24 Ms. Acuna. Yes, they do.

25 Senator Bennet. Thank you.

1 As a share of their after-tax income, Mr. Barthold,
2 do the taxpayers in the richest thresholds get a larger
3 increase than taxpayers with incomes below \$100,000, on
4 average?

5 Mr. Barthold. I have not made that calculation on
6 a basis of after-tax income.

7 Senator Bennet. Okay.

8 Mr. Barthold. Our calculations presented to you in
9 JCX-53 are -

10 Senator Bennet. I would like to see that if we
11 could get it.

12 Mr. Barthold, in the chairman's mark, for Americans
13 filing as a married couple living in Washington, D.C.
14 and making \$174,000 per year, how much do they receive
15 from the \$1,650 child credit if they have two children.

16 Mr. Barthold. The children are under age 18?

17 Senator Bennet. Yes.

18 Mr. Barthold. And the salary is --

19 Senator Bennet. The salary is a senator's salary
20 of \$174,000 in Washington, D.C. with two children.

21 Mr. Barthold. They should not be phased out, so it
22 should be two times \$1,650.

23 Senator Bennet. That would be \$3,300.

24 Mr. Barthold. Yes.

25 Senator Bennet. Mr. Barthold, does a single mom

1 working as a waitress in Rifle, Colorado making \$18,000
2 a year receive \$3,300 in child credits for her two
3 children?

4 Mr. Barthold. How much was she making?

5 Senator Bennet. Eighteen thousand dollars.

6 Mr. Barthold. Eighteen thousand dollars.

7 Senator Bennet. Not \$174,000.

8 Mr. Barthold. Okay. Then she would see no tax
9 liability accounting for the credit and would receive
10 all or a portion of the thousand-dollar refundable
11 credit. But I would have to do the calculation.

12 Senator Bennet. So she would some portion of a
13 thousand dollars you think. What if she had three or
14 four children?

15 Mr. Barthold. Then it would be the same portion
16 multiplied by three or four.

17 Senator Bennet. And what about the person making
18 \$174,000 if they continue to have three or four or five
19 children?

20 Mr. Barthold. Child credit is additive.

21 Senator Bennet. Which means they get a massive
22 credit, whereas the person who is a single mom in Rifle,
23 Colorado gets a de minimis credit.

24 Mr. Barthold. With three or four children, income
25 tax liability would be driven to zero and the amount of

1 refundable credit would probably be -

2 Senator Bennet. To me, Mr. Barthold, it just says
3 it all. It just says it all about how this plan is
4 stacked. We have such an opportunity if we worked in a
5 bipartisan way to actually drive incomes of middle-class
6 people up and that is not what we are using this to do.

7 And I said enough about the process yesterday,
8 except I would say, Mr. Chairman -- and I know I will
9 lose that argument with my colleagues here -- there is
10 not a school board in Colorado, there is not a city
11 council in Colorado faced with a zoning issue that would
12 get away with a process that looks like this.

13 The Chairman. Senator Stabenow?

14 Senator Stabenow. Thank you, Mr. Chairman.

15 To follow up with Senator Bennet, this morning
16 after putting together lots of questions and wanting to
17 delve deeply into this bill, and now I am hearing that
18 we are asking questions about the bill that is not the
19 final bill.

20 Mr. Chairman, if there is going to be a new bill
21 coming forward tonight, are we going to get to ask
22 questions on the real bill?

23 The Chairman. Yes. The answer is yes.

24 Senator Stabenow. Yes? So right now we are asking
25 questions, but the real bill is not in front of us.

1 The Chairman. You are pretty sure what the bill is
2 going to be.

3 Senator Stabenow. This is very concerning.

4 The Chairman. It is not like you are blind.

5 Senator Stabenow. Mr. Chairman, this is very --
6 normally, our Committee has done great bipartisan work.
7 And it is really unfortunate what is happening at the
8 moment.

9 But let me talk about the bill in front of us, so
10 assuming that this will be similar to the bill that we
11 are actually going to be voting on.

12 There are a lot of promises that have been made to
13 the American people, to families, to workers about what
14 the bill will do for them. They have been promised, the
15 middle class, new jobs and thousands of dollars in their
16 pocket, but yet we know this is the same old trickle-
17 down scheme that has not ever produced that in the past.

18 And so I have some questions for Mr. Barthold.

19 The administration has promised the average family
20 will get a \$4,000 minimum, at least a \$4,000 annual
21 raise if this legislation is enacted. Is there anything
22 in this bill that would end the corporate tax giveaways
23 if this turns out not to be the case?

24 Mr. Barthold. I will make two comments, Senator
25 Stabenow. That analysis is based on a macroeconomic

1 analysis and the Joint Committee staff has not
2 undertaken a macroeconomic analysis yet.

3 But to answer your question, there is, under the
4 chairman's mark, the 20 percent corporate tax rate is
5 permanent.

6 Senator Stabenow. Okay. So if the promised
7 minimum of a \$4,000 increase in wages does not happen,
8 there is no consequences for that.

9 Mr. Barthold. The corporate tax rate is permanent
10 under the mark.

11 Senator Stabenow. Thank you. If instead a large
12 corporation ends up using the windfall for stock
13 buybacks or more dividends for their shareholders
14 instead of jobs, is there anything in the bill that
15 prevents them from doing that?

16 Mr. Barthold. The managers, the owners of the
17 corporation are free to make whatever investment choices
18 or distribution choices they choose.

19 Senator Stabenow. So in the past, what we have
20 seen is jobs have not been created, wages have not gone
21 up and there is nothing in the bill that would stop that
22 outcome from happening, nothing changes if in fact
23 corporations choose to just basically reinvest in stock
24 buybacks and so on.

25 Mr. Barthold. The mark is not predicated on future

1 actions by any business entity.

2 Senator Stabenow. Thank you. The administration
3 has promised the economy will gain millions of
4 additional jobs, which I would love to see happen, would
5 support anything that would really do that, they are
6 saying if this legislation is enacted. Unfortunately,
7 we have never seen that happen. We have seen the same
8 promises over and over again. And we have not seen that
9 happen with trickle-down economics.

10 But if the economy does not gain millions of
11 additional jobs, but instead only creates huge debt, is
12 there anything in this bill that would end the corporate
13 tax giveaways?

14 Mr. Barthold. As I noted before, Senator Stabenow,
15 under the chairman's mark, the 20 percent corporate tax
16 rate would be a permanent feature of law

17 Senator Stabenow. So no matter what, if there is
18 debt, no matter what happens, the tax giveaway
19 continues. What if the economy actually lost jobs
20 compared to our current expectations as a result of the
21 bill's passage? Does this bill include anything that
22 would end the corporate tax giveaways if companies
23 actually created fewer jobs?

24 Mr. Barthold. Again, the corporate tax rate
25 provided in the mark is not predicated on any other

1 economic indicators or future actions.

2 Senator Stabenow. No matter what. Some have
3 represented that this legislation will encourage
4 companies to bring jobs home, which I certainly am at
5 the front of the line and pushing to have done, to bring
6 back jobs to America. Does anything in this bill end
7 the corporate tax cuts if that turns out not to be true
8 and instead we find that more jobs are being sent
9 overseas?

10 Mr. Barthold. Again, the rate reduction would be a
11 permanent feature of law, not predicated on any
12 subsequent economic action or economic indicators.

13 Senator Stabenow. Is it also true that today if a
14 company moves those jobs overseas, we as taxpayers pay
15 for it because they can write off the costs of their
16 move?

17 Mr. Barthold. Senator Stabenow, moving expenses,
18 whether they be a domestic relocation or an
19 international relocation, are an ordinary and necessary
20 business expense deductible against gross income.

21 Senator Stabenow. Okay.

22 The Chairman. Okay.

23 Senator Stabenow. Finally, I would just say, would
24 one of my constituents who has transferred from an
25 employer, from a job in Grand Rapids, Michigan to

1 Detroit be able to deduct those moving expenses under
2 this legislation?

3 Mr. Barthold. The chairman's mark would curtail
4 the above-the-line deduction for moving expenses, except
5 in the case of the armed forces.

6 Senator Stabenow. So someone getting a new job in
7 our country could not deduct moving expenses, but a
8 company who takes our jobs and ships them overseas could
9 deduct those moving expenses and taxpayer would pay for
10 that?

11 Mr. Barthold. The one is a deductible business
12 expense and the other would not be deductible under the
13 law.

14 Senator Stabenow. The answer is yes. Yes.

15 Thank you, Mr. Chairman.

16 The Chairman. Mr. Barthold, Senator Wyden
17 expressed concern about the corporate tax rate not going
18 down to 20 percent until 2019 instead of in 2018. But
19 let me just ask you this question for clarification:
20 Would it be fair to say that many plans and decisions as
21 to making income in 2018 have already been made by
22 corporations and that reducing corporate tax rates so
23 abruptly might not materialize much additional economic
24 activity in 2018?

25 Mr. Barthold. Mr. Chairman, your question goes to

1 how possible is it for people to move around certain
2 expenses. And it is certainly the case that many
3 investment plans and if we are going to start building a
4 new factory or something, those have long lead times.
5 So there are many expenses that probably the timing of
6 which could not be materially changed.

7 The Chairman. Well, that is the point.

8 Senator Wyden. Mr. Chairman, if I could just
9 briefly respond. The point of the question, and I was
10 glad of Mr. Barthold's answer, was to show the kind of
11 sleight of hand that is going to allow powerful
12 interests to get around paying taxes. And the point is,
13 this is just part of a long procession of changes that
14 is going to allow for still more gaming.

15 And certainly, there are instances, as you suggest,
16 Mr. Chairman, where there is innocent intent. What I am
17 concerned about is this opens up a bonanza for powerful
18 interests to figure out how to lower their taxes, game
19 the system.

20 I thank you for the chance to further amplify on a
21 point that Mr. Barthold expressed I think very clearly,
22 as demonstrating the kind of sleight of hand that
23 represents this bill.

24 The Chairman. Senator Toomey?

25 Senator Toomey. Thank you, Mr. Chairman.

1 I would like to follow up on this very topic with
2 Mr. Barthold and discuss this dynamic of the interaction
3 between the capital expensing provision and the rate
4 reduction. Senator Wyden describes this as sleight of
5 hand.

6 Under the chairman's mark, capital items are
7 permitted to be expensed beginning in 2018. Is that
8 correct, Mr. Barthold?

9 Mr. Barthold. I think it is even with the date of
10 November 2nd.

11 Senator Toomey. Okay.

12 Mr. Barthold. Basically, as of after this markup.

13 Senator Toomey. Yes. That would include items
14 like tractors, vehicles, machinery --

15 Mr. Barthold. Yes.

16 Senator Toomey. -- computer systems.

17 Mr. Barthold. Tangible property.

18 Senator Toomey. Tangible property that businesses
19 purchase from other businesses, that it takes jobs to
20 build those items. Right?

21 Mr. Barthold. That is correct, sir.

22 Senator Toomey. And I think economic theory has a
23 very, very broad consensus that when workers have more
24 capital-intensive equipment to work with, all else being
25 equal, they tend to be more productive and, therefore,

1 able to earn higher wages.

2 The dynamic that Senator Wyden calls a sleight of
3 hand strikes me as one that, all else being equal,
4 simply encourages business to purchase this kind of
5 equipment next year because the deduction is available
6 at the rate of 35 percent, and in the future, deduction
7 will come against the 20 percent rate.

8 So all else being equal, it creates a greater
9 incentive to make these purchases next year. Does that
10 sound sensible to you?

11 Mr. Barthold. I think the economics of the
12 accelerated depreciation proposal in the mark would be
13 to encourage acquiring equipment sooner rather than
14 later.

15 Senator Toomey. So my point, and I know Senator
16 Wyden has characterized this as a sleight of hand, but I
17 think we should be clear about what this is, is an
18 incentive for business to make very substantial
19 investments in growing their business, purchasing
20 equipment from other businesses and hiring more workers
21 to use that equipment. Of course, there will be a need
22 for more workers to provide that equipment.

23 Well, if that is sleight of hand, then I guess I am
24 in favor of sleight of hand. I think it is a very, very
25 constructive and pro-growth dynamic. And I just wanted

1 to make that point.

2 And, Mr. Chairman, I will yield the balance of my
3 time.

4 The Chairman. Well, thank you, Senator.

5 Senator Enzi?

6 Senator Enzi. Mr. Chairman, I would pass until the
7 end of the round.

8 The Chairman. All right. Then Senator Casey. Is
9 Senator Casey here?

10 Senator Casey. Yes, Mr. Chairman, thank you very
11 much.

12 Mr. Chairman, I want to start this morning on the
13 matter that we have had a big dispute about, which is
14 the process that has been undertaken to consider this
15 legislation. We have heard for a long time now, months
16 and months and months, on both sides people expressing a
17 desire to consider this legislation in a bipartisan
18 fashion. Whether that was the intent at the beginning
19 or not, I just do not think it has played out that way.

20 And I think the most relevant comparison here is
21 not some recent consideration of legislation generally.
22 I think the most relevant comparison is what happened
23 the last time the United States Senate considered tax
24 reform 30 years ago, not an insignificant matter.

25 In this case, as I said yesterday, we are talking

1 about moving around something on the order of \$9
2 trillion.

3 So we have heard a lot about bipartisanship, but I
4 think the only way to achieve that and to achieve a
5 process that would yield a bipartisan bill, or at least
6 increase the prospects for that, would be a lot more
7 hearings, a lot more time on the bill, not just on
8 having hearings about general tax reform, which is what
9 we have had in this Committee.

10 And all of that is important. It is good to have
11 hearings on policy over a long period of time. It is
12 good to have the efforts that were undertaken where
13 groups were formed to consider and study tax reform
14 policy. That is all positive.

15 But when you get down to hearings on the bill or
16 hearings on a very detailed proposal, I think this
17 process has fallen way short of that.

18 And I cite against what happened in the '80s.
19 President Reagan had a proposal that was 489 pages long,
20 a very detailed proposal. The Finance Committee held 27
21 hearings on that 489-page proposal.

22 The House had a bill which had 26 days of markup.
23 And when the Finance Committee in the Senate got the
24 House bill, there were seven hearings on that bill.

25 So when you add the two together, it is 34

1 hearings. I am not saying we need to have 34, but
2 certainly more than we will have undertaken by the end
3 of this process.

4 So let me move to one of the major issues, and this
5 is critical to the country, but also in a very
6 particular way critical to Pennsylvania, and that is the
7 state and local tax deduction.

8 I would assert that if we go in the direction of
9 the Senate bill on this particular issue, lots of
10 Pennsylvanians will pay higher taxes. We know that, for
11 example, in 2014, a little more than half of
12 Pennsylvania taxpayers claiming the state and local
13 deduction made under -- under -- a hundred thousand
14 dollars in Pennsylvania, and almost 30 percent of our
15 taxpayers itemize. So it is a big number in
16 Pennsylvania.

17 Mr. Barthold, I want to thank you for your work,
18 your professionalism and that of your staff. I guess
19 the first question I have for you is, will companies be
20 able to deduct the state and local taxes they pay as
21 this bill is currently written?

22 Mr. Barthold. Senator Casey, the mark makes no
23 changes in a business enterprise's ability to deduct
24 ordinary and necessary business expenses, which include
25 the taxes that they may pay in terms of property taxes,

1 sales taxes, use taxes and their state and local and
2 foreign income taxes.

3 Senator Casey. And the same question with regard
4 to individuals. Are individuals able to deduct state
5 and local taxes?

6 Mr. Barthold. All the taxes that are currently
7 deductible on Schedule A would no longer be deductible.

8 Senator Casey. Mr. Abraham, I ask you, if
9 individuals cannot deduct their state and local taxes,
10 does that mean they will be taxed twice on the same
11 income?

12 Mr. Abraham. Yes, that is the effect of denying
13 the deduction to the individual.

14 Senator Casey. And this provision, this
15 deductibility provision as it relates to state and local
16 taxes, has been in the code since what year?

17 Mr. Abraham. I believe it has been in the code
18 since the beginning of the United States federal tax
19 code.

20 Senator Casey. Is there anything you can tell us
21 about the services that state and local taxes finance?

22 Mr. Abraham. State and local governments fund -
23 well, they charge their state and local income taxes or
24 property taxes and use those for any number of things,
25 from schools and hospitals to police and firefighters,

1 volunteer firefighters and other items.

2 The Chairman. Senator Cornyn.

3 Senator Wyden. Mr. Chairman, could Senator Casey
4 have 30 more seconds at least to just finish this round?

5 Senator Casey. If I may just make one more point,
6 I will come --

7 Senator Wyden. He is only 30 seconds over his
8 time.

9 The Chairman. Well, I did not know he wanted to
10 finish, but he can have the 30 seconds.

11 Senator Wyden. Thank you very much.

12 The Chairman. I have been doing that for every
13 Democrat here today going over, every one.

14 Senator Wyden. Thank you.

15 Senator Casey. Mr. Chairman, I will be very brief,
16 and I will come back to it later.

17 One point I want to make is about Pennsylvania.
18 Twenty-one percent of our state's budget, the
19 expenditures in the budget, go to public education.

20 And there is a report just issued last week by the
21 National Education Association that is entitled -- the
22 summary of the report says nearly 250,000 education jobs
23 are at risk if Congress eliminates the state and local
24 income tax deduction.

25 The Pennsylvania number for that comes down to

1 about \$8.9 billion in public education revenue at risk
2 over the next 10 years.

3 So, Mr. Chairman, thank you for that time. I will
4 come back to some other issues later.

5 The Chairman. Well, thank you.

6 Let me just ask you, Mr. Barthold, just for
7 clarification. Why does JCT classify the SALT
8 deduction, state and local tax deduction, for
9 individuals as a tax expenditure, but does not classify
10 the SALT deduction for businesses as the production of
11 income as a tax expenditure.

12 Mr. Barthold. Mr. Chairman, the answer to that
13 question goes a little bit to tax theory or the theory
14 of tax expenditure analysis. Tax expenditure analysis
15 posits a normal income tax that would provide, aside
16 from rates, a standard deduction and would not have
17 exclusions or deductions for anything other than
18 expenditures that are necessary for the production of
19 income.

20 So in the case of business property, business
21 property taxes as one example, those are necessary costs
22 for an enterprise engaged in earning income. So that is
23 not a tax expenditure.

24 Payment of a property tax on owner-occupied housing
25 is an elective consumption choice by the household, so

1 it is considered a tax expenditure.

2 The Chairman. Thank you.

3 Senator Cornyn?

4 Senator Cornyn. Thank you, Mr. Chairman.

5 Ms. Acuna, I want to ask you to repeat something I
6 think you said earlier, because I think it is pretty
7 significant. Did you say that every taxpayer in the
8 country will see a reduction in their tax rate?

9 Ms. Acuna. To restate what I said previously, I
10 said that every one of the income cohorts will
11 experience a tax reduction.

12 Senator Cornyn. Okay. And those are people in the
13 cohorts, right?

14 Ms. Acuna. Yes, those are people.

15 Senator Cornyn. Okay. So the way I interpret what
16 you said is that every taxpayer in the country will see
17 a reduction in their tax rate. Thank you for your
18 answer.

19 Senator Wyden. Mr. Chairman, I --

20 Senator Cornyn. Mr. Chairman, I want to just
21 address this argument --

22 Senator Wyden. Mr. Chairman, parliamentary
23 inquiry.

24 Senator Cornyn. No, regular order, Mr. Chairman.

25 Senator Wyden. Parliamentary inquiry.

1 The Chairman. Let the Senator ask his question and
2 then we will let the ranking member ask.

3 Senator Cornyn. We have heard from our colleagues
4 on the other side of the aisle, I would like to get a
5 chance to make a few points.

6 We have heard the argument that this is somehow a
7 secret bill, Mr. Chairman.

8 The Chairman. Yes.

9 [Laughter.]

10 Senator Cornyn. But I would point out that you as
11 the chairman of the Committee are handling this
12 legislation like every other bill that the Senate
13 Finance Committee considers and every other bill that
14 committees consider in Congress. It is because our
15 Democratic colleagues refuse to participate that we find
16 ourselves in the unusual circumstances that we are in
17 now.

18 But the idea that there is some secret bill because
19 there will be perhaps an amended mark, a chairman's
20 mark, or maybe amendments offered in the Committee that
21 are accepted just defies logic and is just simply
22 untrue.

23 The Chairman. I appreciate you making that point.

24 Senator Cornyn. It strikes me it is the old story
25 of the child that does in their parents and then asks

1 for sympathy because they are an orphan. This is
2 entirely of the making of our Democratic colleagues.

3 And this idea characterizing the legislation,
4 reducing the corporate tax from 35 percent to 20 percent
5 in order to make American businesses more competitive
6 and investment in the United States more attractive as
7 some sort of corporate giveaway strikes me as pure
8 demagoguery.

9 And the idea that by eliminating the SALT, the
10 state and local tax deduction, from federal income tax,
11 it strikes me that the taxpayers that benefit from those
12 services at the local level ought to pay for them. And
13 it makes no sense that the federal taxpayer in places
14 like my state should have to subsidize the state and
15 local taxes paid by taxpayers in New York or California
16 or elsewhere. This just strikes me as a matter of
17 simple fairness and equity.

18 And I guess our colleagues who are complaining
19 about reducing the corporate tax rate like the flight of
20 American businesses overseas along with the jobs and
21 investment that go along with it, because that, in
22 essence, is what they are complaining about.

23 And we would like to reverse that, we would like to
24 see more businesses invest in the United States, more
25 manufacturing here in the United States stamped with

1 "made in America" on it rather than see them flee to
2 lower-tax countries like Ireland and elsewhere.

3 So I guess all I can say, Mr. Chairman, is I am a
4 little disappointed in the rhetoric and the refusal of
5 our Democratic colleagues to participate in the process.

6 My understanding is that they have got several
7 hundred amendments that they intend to offer. I hope
8 they do and in that do join us in this process.

9 I anticipate in the end that, like most
10 reconciliation bills, it will be a bipartisan product.
11 But I just think our Democratic colleagues protest too
12 much.

13 Senator Wyden. Mr. Chairman?

14 The Chairman. Yes?

15 Senator Wyden. Just very briefly before we leave
16 that point, I mean, Senator Cornyn has been trying very
17 hard to say that everybody is going to get a tax cut.
18 And I would like, with Mr. Carasso, to clear up this
19 point.

20 Everybody would get a tax rate reduction as a
21 policy, but not everybody is going to see their taxes go
22 down.

23 Mr. Carasso, could you walk us through that?
24 Because I think people are going to leave that little
25 exchange with the wrong impression.

1 Mr. Carasso. That is correct, Senator. In 2019,
2 based on JCT's distribution tables, as many as 14
3 million Americans with incomes under \$200,000 can expect
4 to see a tax increase and another 36 million could
5 expect to see almost no tax change. So that is anywhere
6 either between less than a hundred-dollar tax increase
7 to less than a hundred-dollar tax cut.

8 Senator Wyden. The reason I am bringing this up,
9 and I will drop it here, Mr. Chairman, is you hear about
10 tax rates on income cohorts. That is not going to be
11 much comfort to the 14 million middle-class families
12 whose taxes go up because of this proposal.

13 And I appreciate you clearing it up.

14 The Chairman. Senator Isakson?

15 Senator Isakson. Thank you, Mr. Chairman.

16 I am going to show some of my ignorance in asking
17 these questions because I have gotten a lot of help and
18 encouragement on what to ask, so it is not necessarily
19 original thought on my part.

20 But it is important to make sure the system is not
21 gamed. I have heard a lot of people talk about gaming
22 of the system. And there were a lot of people talking
23 about how they would do that. And I have a couple of
24 questions to be clarified.

25 Mr. Barthold, I want to thank you for your

1 leadership on this. I know that provisions in this and
2 the attribution rule in the bill are needed to prevent
3 companies from gaming the system. However, I have heard
4 some from companies in my state the provisions may be
5 overly broad.

6 Let us say a U.S. corporation A has a 10 percent
7 stake in foreign corporation B. The foreign corporation
8 owns other subsidiaries around the world with no
9 connection to the United States.

10 Mr. Barthold, is it accurate to say that under the
11 current law as well as the bill we are marking up, the
12 U.S. corporation would not have tax liability under
13 Subpart F for the earnings of the other corporation?

14 Mr. Barthold. Well, Senator Isakson, under present
15 law, Subpart F is generally about passive and mobile
16 income. So if it were portfolio income, there would be
17 tax liability of the controlled foreign corporation
18 currently payable back to the United States. I may not
19 understand completely the facts that you are positing.

20 And if it would be helpful, I could work with your
21 staff later and clarify this point to you in writing.

22 Senator Isakson. It would be helpful if my staff
23 had a better senator.

24 [Laughter.]

25 Senator Isakson. But in the absence of that taking

1 place right now --

2 Mr. Barthold. I do not think that is the case,
3 sir. And I would be happy to work with your staff.

4 Senator Isakson. You know it helps when you are
5 showing your ignorance, believe me. So let me restate
6 that, though.

7 The foreign corporation owns other subsidiaries
8 around the world with no connection to the United
9 States. If corporation A in America owns an interest in
10 corporation B that has interests in other subsidiaries
11 or foreign corporations that principal corporation A
12 does not have, that would be treated just like it has
13 been here.

14 Mr. Barthold. I think that is correct.

15 Senator Isakson. I think I am right, too, but I am
16 obviously not certain.

17 Mr. Barthold. As I say, Senator, if you would
18 like, my colleagues can work with your staff and we can
19 answer the question in writing for all the members on
20 the Committee just to make it clear. Would be happy to
21 do that, sir.

22 Senator Isakson. I am going to get with you on
23 that, but I am going to try and answer this other one
24 that I want to ask as soon as I get back to my note
25 page. The chairman got to me faster than I thought.

1 Mr. Barthold, under section -

2 Senator Wyden. No, the gentleman has the time. I
3 thought he was worried about being over.

4 Senator Isakson. No, no.

5 The Chairman. No, no, he is fine.

6 Senator Isakson. -- I am worried about not being
7 fast enough -- which creates the deduction for foreign
8 dividends received by a United States company, this is a
9 key piece of moving toward a more competitive
10 international tax system so United States companies can
11 compete on a level playing field with non-U.S. companies
12 that do not face a second layer of tax when they bring
13 their earnings back home.

14 And I am a big supporter of the territorial tax
15 system, what you are doing, and it does level the
16 playing field in terms of competition without giving an
17 undue advantage.

18 Let us say U.S. corporation A owns control of
19 foreign corporation B. And foreign corporation B also
20 holds a 10 percent share in foreign corporation C. As I
21 understand it, under the current law, a dividend paid to
22 a controlled foreign corporation is taxed the same way
23 as if it had been taxed in the U.S. parent company.

24 So would it be correct to say that the dividend to
25 company B received from company C would also be eligible

1 for territorial tax treatment under this bill?

2 Mr. Barthold. Under the chairman's mark, that is
3 correct, sir.

4 Senator Isakson. So a dividend pay by a lower-tier
5 10 percent-owned foreign corporation subsidiary to a
6 controlled foreign corporation will be eligible for a
7 territorial exclusion just like the dividend that was
8 paid directly to a domestic shareholder.

9 Mr. Barthold. Yes, sir.

10 Senator Isakson. I thank you, Mr. Barthold. I
11 appreciate all your work.

12 I yield back, Mr. Chairman.

13 The Chairman. Well, thank you. I appreciate that.

14 Let me just make a couple of points here that I
15 think might be clarifying points.

16 My friends on the other side are making the claim
17 that the modification of the chairman's mark will
18 dramatically alter the structure of the bill. Under our
19 rules, the chairman has the right to modify the mark.
20 The chairman can do that up until he or she opens the
21 bill for amendment. Now, that has been the general
22 practice of the Committee and is the general practice of
23 the Committee.

24 Indeed, 20 years ago when the Finance Committee was
25 marking up the Taxpayer Relief Act of 1997, the

1 chairman's mark was modified several times and several
2 items, including my State Children's Health Insurance
3 Program and an increase in the tobacco tax, the aviation
4 tax was dramatically changed.

5 As I stated at the beginning, we need to bring the
6 mark in compliance with the Byrd Rule. We are working
7 on those changes and will discuss them with all of you
8 in a chairman's modification. These changes are
9 essential to put the bill in good form for
10 reconciliation purposes.

11 That modification when finished will be released.
12 We will walk through the modification, and that is in
13 keeping with our process.

14 On substance, let me assure all my friends here the
15 modification will be keeping the character of the tax
16 relief in the mark. It will be focused on middle-income
17 tax relief. I hope to do even better than we have for
18 middle-income taxpayers. It will bring the U.S.
19 corporate rate down to the 20 percent level, bringing
20 the U.S. rate into line with our trading partners. And
21 it will make sure that U.S. companies are competitive
22 overseas and will reverse the bleeding of the U.S. tax
23 base, which has been going on.

24 Senator Wyden. Mr. Chairman?

25 The Chairman. Yes?

1 Senator Wyden. If I could just respond briefly.
2 As you know, you have heard it from colleagues, this is
3 not a question about your integrity and your honor.

4 The Chairman. Well, I hope not.

5 Senator Wyden. What we need to know is that we are
6 dealing with a bill that is actually the bill. We are
7 making changes that involve trillions and trillions of
8 dollars of tax policy. And what we were told last night
9 is that we would get the new modified chairman's mark
10 first thing this morning so that we would be able to use
11 this time, I think we would both agree because we tend
12 to see these matters similarly, so that the senators on
13 both sides could ask pertinent questions.

14 Now, you have just said that the new modified
15 chairman's mark will be in the character of what is
16 really on offer. While we respect you, we still are
17 legislators who have election certificates as well and
18 we have got to have the time to actually see this rather
19 than move forward with what I consider to be reckless
20 haste on changes of an extraordinary nature.

21 So I understand what you have said and I want you
22 to know how strongly we feel about how we are now asking
23 about a bill that is not the bill.

24 The Chairman. I understand.

25 Senator Thune?

1 Senator Thune. Thank you, Mr. Chairman.

2 Mr. Barthold, a lot has been made about how the
3 benefits of this tax bill distribute across different
4 income cohorts. And I am interested in your thoughts
5 about how the tax burden, in other words, after this is
6 all said and done and the distribution tables, in
7 addition to determining how the benefits flow through
8 different income categories, what the tax burden is and
9 whether or not that tax burden reflects the tax burden
10 that is paid today by different income categories.

11 So could you comment generally about after the
12 effects, the benefits of the tax reform bill are
13 distributed across different income categories, the
14 overall tax burden borne, is it similar to or relative
15 to what we would see today in terms of what people in
16 different income categories are paying as their share of
17 the overall tax burden in the country?

18 Mr. Barthold. Thank you, Senator Thune. I think
19 what you are asking is actually just an explanation of
20 how the Joint Committee staff presents some of its data.

21 So in JCX-53, which is our distribution analysis,
22 if you look at page five, for example, which is the last
23 year of the budget period 2027, we present two or three
24 basic different ways of thinking about what the proposal
25 in front of the Committee does.

1 At the very far right, we look at average tax rates
2 on individuals in different income groups. And as a
3 general outcome, you can see that the average tax rate,
4 because there is net revenue loss in the bill, the
5 average tax rate across all income groups falls.

6 I think the question that you are looking at is
7 more the comparison in the middle two columns -

8 Senator Thune. Correct.

9 Mr. Barthold. -- of federal taxes under present
10 law and federal taxes under the proposal. These two
11 columns report on the aggregate amount of federal taxes
12 paid by all the individuals in those income groups and
13 how that compares to the total federal tax take.

14 So I believe the point that you are asking to
15 highlight is that if you compare the percentage column
16 of percentage of tax paid out of the 100 percent total,
17 it is roughly comparable across all the income groups
18 under present law and under the proposal in 2027.

19 So, for example, the income group of our classifier
20 of \$20,000 to \$30,000 pays seven-tenths of 1 percent of
21 federal taxes under present law. Under the proposal,
22 they would pay seven-tenths of 1 percent.

23 If you look at the income group of \$100,000 to
24 \$200,000, 29.3 percent of all taxes under present law,
25 29.4 percent of all taxes under the proposal.

1 Senator Thune. Right. And the \$1 million and
2 over, just out of curiosity, under present-law tax
3 burden and tax burden under the proposal looks to me
4 like it goes up.

5 Mr. Barthold. As we have reported here, 19.1
6 percent under present law, 19.4 percent under the
7 proposal, Senator.

8 Senator Thune. So in other words, millionaires
9 would be paying at least as much or more of the overall
10 tax burden in America under the proposal as they are
11 today?

12 Mr. Barthold. That is what this column calculates.

13 Senator Thune. Right. Okay. And with respect to
14 the reduction in business taxes, there has been a lot
15 made about cutting the corporate rate and the rate for
16 passthroughs by the amount that is under consideration
17 in this proposal and whether or not the \$1.5 trillion
18 deficit, the instruction that was given to the Finance
19 Committee to meet, if you back out, I know you do not,
20 you use current-law baseline, if you use current-policy
21 baseline, that would make that number about a trillion
22 dollars.

23 My understanding is the Congressional Budget Office
24 says that for each one-tenth of 1 percentage point
25 increase in GDP, it generates roughly \$273 billion in

1 additional revenue.

2 And if that is the case, then the growth rate that
3 is assumed over the course of the next decade by the CBO
4 at 2 percent or a little under, what would it take to
5 cover that trillion-dollar bogie in terms of additional
6 growth in the economy?

7 Mr. Barthold. Well, the simple arithmetic on that
8 would be about four-tenths, but you should qualify that
9 some because that would be four-tenths from the
10 beginning of the budget period. It would be an
11 immediate jump up in four-tenths I think is what the CBO
12 analysis would be --

13 Senator Thune. Right.

14 Mr. Barthold. -- which would be different than
15 achieving a growth rate four-tenths higher somewhere out
16 as the economy starts to grow faster.

17 Senator Thune. Yes. I mean, but the assumption
18 would be, in order to be able to have this cover that
19 trillion-dollar number, you would have to have about
20 four-tenths of growth in the economy relative to what is
21 predicted today, which is a little under 2 percent. So
22 we would have to assume economic growth of somewhere in
23 the 2-3 [percent] range perhaps in order to make that?

24 Mr. Barthold. Again, with sort of the caveat that
25 I noted that that would be 2-3 [percent] starting

1 essentially next year.

2 Senator Thune. Right; got it. Okay.

3 Mr. Chairman, I would simply say that it seems like
4 to me that the American economy, which historically has
5 grown since the end of World War II at over 3 percent, 3
6 to 3.5 [percent], to achieve 2.3 percent growth in this
7 great economy, if unleashed with some of the policies
8 that are presented in this proposal, seems reasonable to
9 me. And I would certainly hope we ought to be able to
10 get the American economy growing at 2.3 percent or more.

11 The Chairman. Well, thank you, Senator.

12 Senator McCaskill?

13 Senator McCaskill. Thank you, Mr. Chairman.

14 Mr. Barthold, or any of the panel members, I have
15 got in front of me the current tax code. And this was
16 billed as a simplification. I have tried to the best of
17 my ability in a very short period of time. I am jealous
18 of Senator Toomey. I think he is much more familiar
19 with this product than I am. I understand why he did
20 not need to use all of his time. I need lots of time.

21 There are incredible complexities in this proposal,
22 particularly as it relates to the passthrough deductions
23 and the change in the passthrough brackets. The
24 international is very complex in terms of all of the
25 different provisions that are there.

1 Would you estimate how many of these books we are
2 going to take away with the change in the tax law that
3 is being proposed in front of us? How many books are we
4 going to remove? I think there is one, two, three,
5 four, five, six, seven, eight of them; how many are
6 going away?

7 Any idea, Mr. Barthold?

8 Mr. Barthold. Well, I would not hazard a guess.
9 What you have before you, most of the books are
10 regulations.

11 Senator McCaskill. Yes, and we are going to need
12 lots of regs based on these proposals. Correct?

13 Mr. Barthold. And there will have to be --

14 Senator McCaskill. Is that correct, Mr. Barthold,
15 there is going to be a lot of regulations with these
16 proposals?

17 Mr. Barthold. Presumably some things go away, but
18 there would have to be new notices and new regulations
19 to effectuate the policies in the mark in the areas that
20 you mentioned, the new passthrough regime and the shift
21 to a territorial regime with the base erosion
22 protections that I noted.

23 Senator McCaskill. And what about interest
24 deductions? Those are pretty complex also. There is
25 going to be regs there, right?

1 Mr. Barthold. Actually, there is a number of
2 regulations related to interest deductions now, so that
3 might be a net wash.

4 Senator McCaskill. A net wash. So if you and I
5 were having a friendly beer in a bar and I wanted to lay
6 a bet with you on whether or not there would be a new
7 book or whether or not we would take away a book, I am
8 willing to bet there is a new book based on this
9 proposal. Would you take that bet against me?

10 Mr. Barthold. Well, if I may be a little light in
11 answering, the publishers tend to like to leave the
12 footnotes of the old prior law, so that I would agree
13 with you that there would almost certainly be a new
14 book.

15 Senator McCaskill. So we are not going to simplify
16 here, we are going to add a book. What happened to the
17 postcard? This is not simplification. This is
18 incredibly complex.

19 Is there anything in this proposal that will touch
20 all the various regulations and laws that allow very
21 wealthy people to avoid the estate tax under trust law?
22 Did anybody touch any of that, all the crummy trusts,
23 the dynasty trusts, all the ways that trust lawyers -
24 frankly, Gary Cohn has publicly said a number of times
25 that people who have \$10 million generally have trust

1 lawyers and they are not worried about estate taxes.

2 Do we touch any of that in this bill?

3 Mr. Barthold. As I noted in the walkthrough,
4 really the only change in the estate tax is the doubling
5 of the present-law exemption. So nothing that defines
6 the base changes.

7 The individual income tax rates have conforming
8 rates for trust income. But again, the definitions of
9 income or qualifying trusts are not changed.

10 Senator McCaskill. And I want to make sure. I
11 want to, on my next round, I want to talk about the
12 passthrough, understanding that the passthrough is about
13 95 percent of the businesses in America. Correct?

14 Mr. Barthold. In terms of total entities, that is
15 probably correct. I would have to double check, but
16 definitely a very, very high percentage.

17 Senator McCaskill. So 95 percent of the businesses
18 in America are going to be looking at the new
19 passthrough provisions as their tax-planning guide.

20 Mr. Barthold. They would certainly like to look at
21 it to see if they could take advantage, if they would
22 qualify for the 17.4 percent deduction.

23 Senator McCaskill. And it is my understanding, and
24 correct me if I am wrong, but at this point in time, JCT
25 and the Finance staff do not even agree on how that is

1 going to be calculated based on what W-2, whether there
2 is aggregation or not aggregation, whether it is an
3 individual W-2 or a business-wide W-2.

4 Is it my understanding that right at this moment
5 there is not even agreement between the Finance staff
6 and JCT on how that is going to work?

7 Mr. Barthold. Ranking Member Wyden asked an
8 initial question and my friend Sarah disagreed with the
9 analysis that I presented.

10 Senator McCaskill. Okay. So I am a little panicky
11 that we are going to have tax planning for 95 percent of
12 businesses in America and you guys cannot even decide
13 how it works together and agree on it. I would say that
14 is the definition of complexity and complexity is the
15 playground for loopholes and tax avoidance.

16 Thank you, Mr. Chairman.

17 The Chairman. Thank you, Senator.

18 Let me just make a point here that I think needs to
19 be made.

20 Ms. Acuna, will fewer people want to itemize and
21 instead claim the standard deduction? Am I right on
22 that?

23 Ms. Acuna. Yes.

24 The Chairman. So fewer people will not want to
25 itemize, right?

1 Ms. Acuna. That is correct.

2 The Chairman. They want to claim the standard
3 deduction. Now, will that be simplifying?

4 Ms. Acuna. Yes, that would offer a simplification.

5 The Chairman. That would be a massive
6 simplification. We are talking about 90 percent of the
7 people in this country, right?

8 Ms. Acuna. That is right.

9 The Chairman. Okay.

10 Senator Wyden. Mr. Chairman, if I might. The
11 Senator from Missouri was talking about businesses.

12 The Chairman. I am not talking about the senator
13 from Missouri, I just wanted to ask that question
14 because I think it has been kind of misrepresented
15 throughout this hearing.

16 Senator Wyden. But I think, Mr. Chairman, if I
17 could just continue. The senator from Missouri, as I
18 was trying to do, was highlighting the enormous
19 complexity associated with these passthrough changes
20 that involve business. And the chairman, my friend, is
21 talking about individuals.

22 The Chairman. Well, yes, I am talking about
23 individuals and how simple this is working out and what
24 a break it is going to be for individuals in this
25 country.

1 And, you know, I think it is time people understood
2 that. This is a major, major sea change in tax law.

3 Senator Wyden. And it certainly is a sea change
4 for the wealthy who are going to have, as Senator
5 McCaskill said, a bonanza of new opportunities to game
6 the system, particularly in the areas she talked about,
7 business, when we cannot even get the people at the
8 table to agree what the passthrough changes mean.

9 The Chairman. And that is what I call bull corn.

10 [Laughter.]

11 The Chairman. Now, let me turn to, let us see who
12 is next -- Senator Warner.

13 Senator Warner. Thank you, Mr. Chairman.

14 Just echoing a little bit about what Senator
15 McCaskill said and as someone who falls into those
16 categories and has tax accountants and planners. I was
17 going to ask everyone who is in the room that was a
18 lawyer or an accountant to stand up. My staff convinced
19 me not to ask that question, but I can assure you that
20 because we are rushing this we are going to create a
21 bonanza of new loopholes. And I hope in later rounds to
22 get into this.

23 You know, one of the ways that we have seen
24 repeatedly to mask the costs of a tax plan, and both
25 sides have used this tool repeatedly, is to make some

1 tax provisions only temporary, meaning that the
2 provision terminates or only applies to a certain period
3 of time.

4 Dr. Barthold, Tom, how long have you worked at JCT?

5 Mr. Barthold. A little over 30 years, sir.

6 Senator Warner. That gives you a great deal of
7 experience. In all that time, how many times would you
8 say that Congress passed a tax package that had an
9 expiration date and then when it got close to that
10 expiration date we would go ahead and extend that tax
11 provision?

12 Mr. Barthold. That has happened on a large number
13 of occasions, Senator.

14 Senator Warner. Yes, we can call them, we have got
15 a name for them, we call them extenders. And so history
16 has suggested that a provision that is enacted as
17 temporary, Congress often comes back when the rubber
18 hits the road and extends those provisions. So all this
19 does is actually hide the real long-term costs, so that
20 a 10-year estimate, you know, provided by JCT or CBO
21 oftentimes does not accurately reflect just how much
22 revenue gets lost when we go ahead and extend these
23 provisions.

24 For example, the bill before us sunsets expensing
25 for large businesses after five years. And we will

1 hopefully get into this in a later round, where it
2 actually shows by ending after five years it generates
3 additional revenue in the second five. And so a little
4 complicated, but I hope we get into it in the next
5 round.

6 Now, I know that Senate Finance staff has asked for
7 a while for a score so that if we could assume what,
8 Tom, you have said has been Congress' behavior over the
9 last 30 years, that oftentimes when we set these
10 provisions to expire we then extend them, I would hope
11 and I am going to offer an amendment that would make all
12 the provisions in this proposal permanent because that
13 has been what history has shown us to do, so that we
14 could actually know the real costs of this bill before
15 we vote on it.

16 Do you know if JCT has completed that score yet?

17 Mr. Barthold. I can tell you that we have not. We
18 have had a large number of requests. And actually, it
19 is not quite as simple as looking at one line as a
20 general matter because that affects number of the other
21 provisions and the economic -

22 Senator Warner. Well, expensing would be a classic
23 case, where if you were 10 years would be about \$128
24 billion.

25 Mr. Barthold. No, I understand your question.

1 Senator Warner. You have got it down at \$61
2 billion and you have got a revenue gain or that is
3 because people would expense immediately and then not
4 take those provisions later, but it is not really an
5 additional \$63 billion of revenue. These are some of
6 the games.

7 And again, both sides have used these games for
8 years. But before we do this kind of massive tax
9 overhaul, I really think we ought to have all this data.

10 You know, one of the areas that I think all of us
11 realized, and maybe an interesting intent, but ended
12 needing reform was the AMT. And the AMT for a long time
13 was the notion that those of us who have done really
14 well with the system ought to be able, ought to pay at
15 least some minimum tax.

16 A little hard for somebody that is making hundreds
17 of millions of dollars or claims to be making hundreds
18 of millions of dollars, as the President has claimed at
19 times, and then he complains about the AMT.

20 But the AMT crept up and it started hitting middle-
21 class taxpayers. So there was room for reform on the
22 AMT.

23 Dr. Barthold, is there any AMT or AMT-like
24 provision left in this bill?

25 Mr. Barthold. Both the individual and the

1 corporate AMT are repealed. Some of the features or
2 some of the aspects of the AMT you see in the bill, for
3 example under the AMT there was a limitation on net
4 operating losses, the chairman's mark would modify the
5 recovery of net operating losses under present law. So
6 you might say that that is a feature of --

7 Senator Warner. I guess what I -- and my time is
8 running out and I do not want to offend the chairman
9 because I want to make sure I get my full five minutes
10 on the next round. But is there any even guesstimate
11 that those folks who are paying AMT at this point, when
12 that is eliminated, any guesstimate how many of them
13 will still pay any tax at all? Or will we not arrive
14 where we were before the AMT, which I think was
15 bipartisan when I originally came in, where people who
16 do very, very well can end up paying zero taxes on a
17 personal basis?

18 Mr. Barthold. We have not made an estimate of that
19 particular point, sir.

20 Senator Warner. Thank you, Mr. Chairman.

21 The Chairman. Okay, thank you.

22 Okay, we will go to Senator Carper at this point.

23 Oh, excuse me, Senator Grassley is next. I
24 apologize.

25 Yes, you are next.

1 Senator Grassley. Before I ask Ms. Acuna a
2 question, I want to comment on the discussion that was
3 just done.

4 The original intent of the alternative minimum tax,
5 I believe it was 1969, was that there was about 120
6 people who were not paying any individual income tax.
7 So the feeling was, if you make X number of dollars, you
8 are relatively rich, you take care of every advantage to
9 get out of paying income tax, then you ought to pay a
10 little bit, 120 people at that time.

11 I was never indexed. It was never intended to
12 cover millions and millions and millions of upper-
13 middle-income people. So if you want something to apply
14 just to a few rich people, you know, it might have some
15 legitimacy. But it got out of control, and doing away
16 with it is justified.

17 Ms. Acuna, would expensing -- well, my question
18 comes from the fact that we are hearing from the other
19 side all about the complications we are putting into
20 this. So, you know, my question is coming from the fact
21 that I think we are simplifying.

22 So would expensing be simplifying for business?

23 Ms. Acuna. Yes, it would be a substantial
24 simplification just by virtue of the fact that you are
25 reducing the corporate rate and providing expensing.

1 That mitigates the incentive to engage in complex and
2 costly tax planning.

3 Senator Grassley. And then I think maybe you just
4 partly answered my last question. Would a much lower
5 corporate tax rate mean that corporations will engage in
6 much less complex tax planning?

7 Ms. Acuna. Yes, that is right. It takes some of
8 those incentives away when you have a lower rate. That
9 is oftentimes referred to as the most effective form of
10 anti-base erosion.

11 Senator Grassley. I assume as an expert in this
12 area you are kind of flabbergasted with the people who
13 say we are making the system more complicated.

14 Ms. Acuna. I believe there are certain features
15 that do provide simplification.

16 Senator Grassley. Yes, thank you.

17 I will yield back or I will reserve my time, Mr.
18 Chairman.

19 The Chairman. All right. Then we will go to I
20 guess Senator Carper at this time.

21 Senator Carper. Senator Carper is right over here
22 to your right, to your right.

23 Good morning. Thanks so much for joining us.

24 Senator Roberts, thanks for joining us.

25 [Laughter.]

1 Senator Carper. This is encouraging.

2 Senator Roberts. I can assure you it is just
3 temporary.

4 [Laughter.]

5 The Chairman. What is the problem here?

6 Senator Carper. All right. I am sitting here this
7 morning, folks, thinking back a month or two ago. I am
8 not on the Health, Education, Labor and Pension
9 Committee, but I became sort of an honorary member there
10 for several weeks. And Senators Alexander and Murray
11 held a series of bipartisan hearings, two weeks in a
12 row, two hearings per week, and they invited to come in
13 and talk to them about how to stabilize the exchanges,
14 how to stabilize the health exchanges. And they had
15 governors in, Democrat and Republican, from all over the
16 country. They had insurance commissioners. They had
17 health insurance companies, health providers, health
18 economists.

19 And they had those four hearings at 10 a.m., four
20 of them over the span of two weeks. Before they had the
21 hearings to deal with this issue, stabilizing the
22 exchanges, they had roundtables and folks, members of
23 the Senate, Democrat and Republican, who were not in the
24 HELP Committee were invited to the roundtables to have a
25 conversation for an hour or so with the witnesses. It

1 was extraordinary.

2 And out of that process came bipartisan legislation
3 which has 12 Democratic cosponsors and 12 Republicans
4 cosponsors.

5 And I have a friend, you ask him how he is doing,
6 he always says, compared to what? He says, compared to
7 what?

8 And what I am doing is comparing this process that
9 we are going through to what I thought was a really good
10 process that actually led to bipartisan legislation
11 which I think has a good shot of being enacted.

12 I have a question I want to -- I was elected state
13 treasurer. I was 29. I was elected state treasurer of
14 the state with the worst credit rating in the country.
15 We were tied with Puerto Rico, dead last, dead last. We
16 could not balance our budgets. We could not balance our
17 budgets at all.

18 We were really good at overestimating revenues,
19 underestimating spending, overestimating revenues,
20 underestimating spending year after year after year.
21 That is how we got the worst credit rating. We were
22 tied for dead last with Puerto Rico, and even Puerto
23 Rico they were embarrassed to be in the same company
24 with us.

25 I have a question for Mr. Barthold. Tom, give us

1 some idea if we enact this legislation what it is likely
2 to do to our budget deficits over the next decade or so,
3 please?

4 Mr. Barthold. The conventional estimate that we
5 have provided to the Committee in JCX-52 projects that
6 the chairman's mark would reduce revenues by 1 trillion
7 496 billion dollars over the 10-year budget period.

8 Senator Carper. How much?

9 Mr. Barthold. One trillion 496 billion dollars.

10 Senator Carper. Yes. So \$1.5 trillion over the
11 next 10 years. And beyond that, is the expectation that
12 the deficit cause would go down and we would sort of in
13 the next 10 years things would get better?

14 Mr. Barthold. Under the baseline projections that
15 we used, we do not actually have a baseline to measure
16 against. If your question is, are there, you know,
17 provisions that reverse that --

18 Senator Carper. When the Affordable Care Act, when
19 we passed the Affordable Care Act, the expectation,
20 according to CBO, was, and I think JCT, one of the
21 expectations was the first 10 years the deficit would be
22 reduced by a hundred billion dollars, the second 10
23 years a trillion dollars. So that is what I am looking
24 for.

25 Mr. Barthold. The Affordable Care Act had some

1 provisions that changed at the end of the initial budget
2 period and actually then changed further in the second
3 budget period. There are no similar provisions in the
4 chairman's mark.

5 Senator Carper. Now, what I am just trying to get
6 at, Tom, what I am trying to get at, if the deficit is
7 expected to go up by \$1.5 trillion the first 10 years,
8 should we expect it to go up by more than that or less
9 than that in the second 10 years?

10 Mr. Barthold. Well, that is what I was saying. We
11 have not made a projection of would the deficit that is
12 projected here, would it continue at about the same
13 rate, would it be bigger, would it be smaller? We have
14 not made that projection.

15 Senator Carper. Any idea what the likely effect is
16 on interest rates for borrowing from increasing the
17 federal deficit by this magnitude?

18 Mr. Barthold. I have not undertaken that analysis.

19 Senator Carper. All right.

20 Mr. Barthold. I believe the Congressional Budget
21 Office has made some analysis of the deficit. It may
22 have been with respect to the House legislation.

23 Senator Carper. All right. My time is expired.
24 Thank you.

25 The Chairman. Senator Cassidy?

1 Senator Cassidy. Let me just follow up where
2 Senator Carper was.

3 Based on those projections that there would be an
4 increase in deficit, obviously you are basing that upon
5 GDP growth. And the more the GDP grows, whatever rate
6 it grows, so will grow federal revenues. What is the
7 average GDP growth projected to come up with the
8 baseline for those deficit numbers?

9 Mr. Barthold. As we noted a little earlier, all
10 Joint Committee estimates, all congressional estimates
11 are made relative to the Congressional Budget Office
12 macroeconomic baseline and the Congressional Budget
13 Office macroeconomic baseline projects GDP growth at
14 approximately 1.9 percent, 2 percent per year.

15 Senator Cassidy. And this may have been covered
16 earlier. I apologize, I was in another committee
17 hearing. But if growth goes up to 2.5 percent, do you
18 have a sense of what that would do to federal revenue on
19 a compounded basis, obviously?

20 Mr. Barthold. Sure. No, it would substantially
21 increase federal revenue.

22 Senator Cassidy. And if it substantially increases
23 federal revenue, would it be sufficient to cover this
24 projected deficit when GDP growth is projected to be 1.9
25 [percent]?

1 Mr. Barthold. If the current growth rate suddenly
2 jumped from where we are today to next year 2.5 percent,
3 yes, it would probably be sufficient to cover that
4 deficit.

5 Senator Cassidy. And actually, you misspoke, if I
6 may, and I am always hesitant, someone whose hair is
7 greyer than mine, to allege that you are misspoken, but
8 where we are today is 3.0 [percent] growth over the last
9 two quarters. So actually, what we would jump from is
10 from the projected 1.9 [percent]. We have already seen,
11 perhaps in response to current deregulatory policies, a
12 growth to 3.0 [percent] over the last two quarters.

13 So just a point, you are welcome to dispute that,
14 but I think that is where I would go with that.

15 Mr. Barthold. And, no, I was not disputing it. As
16 you said, I was reporting the projected growth rate and
17 making the change relative to the projected growth rate.

18 Senator Cassidy. Got it. And I understand that
19 earlier Senator Casey was suggesting that repeal of the
20 SALT was speaking about repeal of state and local taxes.
21 But let me ask, if you double the standard deduction, to
22 what extent does the repeal of the SALT, the state and
23 local tax deduction, which means that obviously people
24 can no longer deduct that from their taxes, to what
25 extent would that hit middle-income people as opposed to

1 what extent would that affect higher-income people?
2 Again, presuming that we double the standard deduction.

3 Mr. Barthold. Well, Senator Casey, starting from
4 the base of present law, under present law,
5 approximately 30 percent of taxpayers itemize their
6 deductions; 70 percent claim the present-law standard
7 deduction. The 30 percent of taxpayers who itemize tend
8 to be in the top half. This is not, you know, everyone,
9 but tend to be in the top half of the income
10 distribution.

11 If you increase the standard deduction, you take
12 people from the bottom incomes of those 30 percent and
13 they would be more likely to choose the standard
14 deduction. So that is where most of the initial benefit
15 from increasing the standard deduction would fall.

16 Senator Cassidy. So implied in what you are
17 saying, if not outright stated, is that the tax plan
18 that we have put forward would actually benefit those
19 middle-income folks, and those who would pay a little
20 bit more because of the repeal of the state and local
21 tax deduction would be those who would be upper income.

22 Mr. Barthold. That is generally so. Although I
23 should qualify a little bit because there are many other
24 things changing in the plan. There is also --

25 Senator Cassidy. I get that. In a country with

1 310 million people, you are going to have some
2 complexity. I am okay with that. You know, there is
3 going to be some folks that win and some folks that
4 maybe do not win quite as much.

5 So let me see if there is anything else.

6 Now, oh, Senator McCaskill's line of questioning I
7 found very intriguing, but I will wait for a later
8 opportunity to speak to that.

9 And I will reserve the balance of my time.

10 The Chairman. Senator Brown?

11 Senator Brown. Thank you, Mr. Chairman.

12 I would like to direct questions to Mr. Abraham.

13 Thank you for anticipating that and moving up
14 there.

15 Our trade and tax policy, as we all know, and we
16 have all perhaps on both sides talked about this, has
17 encouraged a corporate business model fairly new to
18 world economics, a corporate business model that shuts
19 down factories in Toledo or Dayton, cashes in on a tax
20 credit at the expense, fundamentally, of working
21 Americans and then ships production to Reynosa or Wuhan.
22 It then sells those goods back to the United States.

23 Far too many of those jobs that remain do not pay
24 enough in wages and benefits to compensate American
25 workers for the hours they put in.

1 The goal of international tax reform or the goal of
2 tax reform overall is to put dollars, as we said
3 yesterday -- if we are going to give a tax break to the
4 middle class, we ought to give a tax break to the middle
5 class directly.

6 But the other goal is that we should stop
7 outsourcing and shut down tax havens. I think that we
8 have all paid homage, we have all at least said that in
9 this Committee, but I am not so sure this bill does
10 this.

11 My questions are this. The bill introduced by
12 Senate Republicans has a minimum tax rate, Mr. Abraham,
13 for profit that can be attributed to so-called
14 intangible assets, things like intellectual property,
15 trade secrets that are kept offshore.

16 As I read it, there is no minimum tax rate, there
17 is no minimum rate for real business activity overseas.
18 That means that every U.S. corporation would have an
19 incentive to keep profits overseas. Is that correct?

20 Mr. Abraham. Yes, there is no tax on routine
21 returns for U.S. companies operating overseas.

22 Senator Brown. So it really does incent those
23 companies to keep their profits overseas, correct?

24 Mr. Abraham. Yes.

25 Senator Brown. That is pretty amazing considering

1 the speeches we have heard and the position of the
2 President and the position of my colleagues at the White
3 House and from this Committee.

4 So the minimum tax in this bill does not tax
5 routine overseas returns at all. In other words, there
6 is a zero rate of taxation on profits held overseas, is
7 that right?

8 Mr. Abraham. Yes.

9 Senator Brown. So would that same U.S. corporation
10 get to exclude a routine return on the investment made
11 in the U.S.?

12 Mr. Abraham. No.

13 Senator Brown. So a large U.S. multinational
14 corporation could shut down a factory in St. Louis or
15 Cleveland, could deduct the cost of the move, could
16 build a new factory in a low-tax country in Asia and pay
17 no further U.S. tax on that factory, assuming it is only
18 earning routine returns. Is that correct?

19 Mr. Abraham. Yes.

20 Senator Brown. But those same earnings, contrast
21 this, so same earnings would be subject to a full U.S.
22 tax if that same factory was built in Akron, Ohio.

23 Mr. Abraham. Yes, the U.S. rate is dropped to 20
24 percent, but if that same facility is in a foreign
25 jurisdiction and is only earning routine returns, there

1 is no further tax under the territorial system on that
2 increase of profits.

3 Senator Brown. So as an investor in Summit County,
4 Ohio, home of Akron and Barberton, two cities in Summit
5 County, and the investor decides to build in Akron, that
6 investor is paying 20 percent on his taxes under the
7 Republican plan. But moving that plant overseas, the
8 investor would pay zero.

9 Mr. Abraham. That is my understanding of the
10 chairman's mark.

11 Senator Brown. So under the Senate bill, what the
12 statutory U.S. tax rate would be for a U.S. corporation
13 that hires American workers, again, what is the
14 statutory tax rate for a U.S. company that hires
15 American workers to manufacture products in Akron and
16 sell them around the world? What is their statutory
17 rate?

18 Mr. Abraham. It is 20 percent. There is the loss
19 of the 199 manufacturing deduction, so it is just a 20
20 percent top rate, top corporate rate.

21 Senator Brown. Under this bill. Now, what would
22 the statutory U.S. tax rate be for a U.S. multinational
23 that instead of manufacturing in the U.S. decides to
24 incorporate in a tax haven like Ireland or even in a
25 lower-rate tax haven and starts manufacturing in --

1 well, let me stick to that. So they incorporate in a
2 tax haven like Ireland and they start manufacturing in a
3 lower or no-tax jurisdiction area.

4 Mr. Abraham. My understanding, under the
5 chairman's mark is there would be no U.S. tax on that
6 earnings and profits assuming that there are only
7 routine returns that are associated with that
8 manufacturing.

9 Senator Brown. So there is in fact a tax incentive
10 in this bill in manufacturing, but the tax incentive is
11 to move jobs out of the U.S. under this bill and
12 incentivizing. So one of the outcomes of this bill, one
13 of the possible outcomes, is that this bill incentivizes
14 outsourcing. Correct?

15 Mr. Abraham. That is a -- I mean, under the
16 situations that you have described, there seems to be an
17 incentive under the chairman's mark to achieve a lower
18 tax rate by having manufacturing outside the U.S.

19 Senator Brown. That is just incredible. For the
20 time I have been in the Senate, Senator Wyden and my
21 friends on this Committee, the time, the 10 years that
22 Senator McCaskill and I have been in the Senate, one of
23 the things we have been most unhappy about is a tax code
24 that encourages outsourcing of jobs. The President won
25 an election talking about that.

1 The President and senator after senator after
2 senator at the White House the other day, in both
3 parties, said we have got to do something about that.

4 But what this bill does is encourages corporations
5 to keep profits overseas. It encourages corporations to
6 send jobs overseas.

7 So once again, Mr. Chairman, if we want to cut
8 taxes for the middle class, let us cut taxes for the
9 middle class. Let us eliminate the middle man, this 43
10 percent corporate tax reduction, 43 percent cut in
11 corporate taxes under the guise of some of it will
12 trickle down for a lower tax rate for workers and some
13 of it, they say \$4,000, will mean higher wages. But why
14 do it that way? Why not cut out the middle man?

15 Again, if we are going to give a tax break to the
16 middle class, let us, Mr. Chairman, give a tax break for
17 the middle class.

18 That is why my Patriot Corporations Act, that the
19 President says he likes, will work. That is why our
20 Working Families Relief Act, which will put money in the
21 pockets of people making 25 [thousand dollars] and 50
22 [thousand dollars] and \$75,000, works.

23 Thank you, Mr. Chairman, Mr. Abraham.

24 The Chairman. Okay. Senator Portman, I guess you
25 are next.

1 Senator Portman. Well, thank you, Mr. Chairman.

2 I was here earlier. I had to run out to another
3 couple of markups, but I appreciate, Mr. Barthold, your
4 work with Joint Tax to try to give us a good analysis of
5 this bill.

6 I am concerned by some of the back-and-forth,
7 including with the minority staff that I think
8 inaccurately portrays this bill.

9 I think it is amazing that we are sitting here
10 talking about how great the current tax system is when
11 we see jobs and investment going overseas constantly.
12 Forty-seven-hundred companies would be American
13 companies today if we had had this kind of a proposal in
14 place as we have before us. That is based on Ernst &
15 Young's analysis that came out recently, that is over
16 the last 13 years.

17 And it is quite simple: Right now there is an
18 incentive to go overseas, the outsourcing is happening,
19 and for someone to defend what is going on and say we
20 should not change it.

21 And I just, again, refer you to the working group
22 that I co-chaired with Chuck Schumer. We reported two
23 years ago that we had to lower the business rate and we
24 had to go to a competitive international system, a
25 territorial system, because otherwise we were going to

1 continue to lose jobs and investment overseas.

2 And, you know, I will just tell you, three times as
3 many foreign companies are buying U.S. companies now as
4 U.S. companies buying foreign companies. That is what
5 is happening.

6 And so I would just ask you, Mr. Barthold, to tell
7 us, not from a partisan point of view, but from a Joint
8 Tax point of view, do you believe that this bill changes
9 the incentives? Does it, for this person who was just
10 referred to who is a manufacturer in my home state of
11 Ohio, who now unfortunately is often in the position
12 because of our tax code of being incentivized to move
13 production overseas, how does this legislation change
14 that incentive?

15 Mr. Barthold. Senator Portman, in our analysis, in
16 part to produce the revenue estimates and for initiating
17 our macroeconomic analysis required by the Congress, we
18 see multiple incentives in the bill, not all of which
19 necessarily go in the same direction.

20 The increased cost recovery in the United States,
21 the 100 percent bonus depreciation is a clear incentive
22 for both domestic investors and foreign investors to
23 invest in the United States.

24 Senator Portman. So let us stop there for a
25 second. Let us say that you are a company that is

1 finding their market expanding and want to increase
2 production. And right now, let us say you produce
3 globally and let us say that company maybe is
4 headquartered in Japan, like Honda that has a huge
5 facility in Ohio, in fact the biggest auto complex in
6 Ohio, I guess, and most workers is Honda, how do your
7 incentives change in terms of whether you decide to
8 invest in Japan, in China, in Germany or in the United
9 States, based on what you just said?

10 Mr. Barthold. The expensing provision by itself,
11 absent other changes, immediately makes the United
12 States more attractive tomorrow than it is today.

13 Senator Portman. So it is more likely you are
14 going to see foreign investment coming in to Ohio
15 because of that change you mentioned, but also,
16 obviously, the lower rate also creates an incentive.

17 Mr. Barthold. One of the other factors I was going
18 to mention is the lower tax rate is also an incentive to
19 locate in the United States.

20 Senator Portman. So that is good, we want more
21 jobs in the United States. I did not mean to interrupt
22 you, but if you could continue to talk about the U.S.
23 company, the example of a multinational U.S. company
24 manufacturing in the United States, manufacturing
25 overseas now, which is the case of many of our

1 companies, currently they are in a situation where if
2 they make money overseas and do not bring it back
3 because of deferral, they are not paying the taxes, at
4 least the taxes are deferred, this is they there is 2.5
5 [trillion dollars] to \$3 trillion locked out overseas,
6 money that could come back, but talk to me about what
7 the incentives are in this bill. What changes in this
8 bill compared to current law?

9 Mr. Barthold. Okay. Well, first of all, whether
10 it be a foreign or a domestic company, the 20 percent
11 domestic rate, the expensing in the United States are
12 incentives to locate in the United States.

13 Your next question really goes to changing to the
14 territorial system. There are some pluses and some
15 minuses. One of the pluses that you alluded to is, to
16 the extent that U.S. multinationals currently hold some
17 earnings that they have earned abroad abroad rather than
18 pay residual tax upon repatriation, the 100 percent
19 dividends received deduction makes it easier, there is
20 not a tax cost to redeploying those earnings wherever
21 they may choose. And again, the United States could be
22 one such location.

23 A territorial system --

24 Senator Portman. So let us just for a second pause
25 there. So the situation you mentioned earlier, you said

1 a company that has a lot of technology might now be
2 moving its intellectual property to Ireland. You did
3 not say Apple, but you were describing Apple as I heard
4 you talk about it. Now what is their incentive?

5 Right now, their incentive is to keep that money
6 overseas. They do not bring it back, as you know. It
7 is in the area of hundreds of billions of dollars. What
8 would be their incentive under this legislation?

9 Mr. Barthold. Well, on a new -- well, remember,
10 for what is already abroad, you have the deemed
11 repatriation. But setting that aside and thinking
12 prospectively of future earnings, that enterprise would
13 be able to freely move their earnings back for
14 reinvestment in the United States or any other location
15 in the world.

16 Senator Portman. Right. And now they are not
17 doing that, do not have the ability to do that and
18 invest in America.

19 And tell me a little, if you would, and, Ms. Acuna,
20 maybe you could jump in here, too, because I know you
21 are an expert on this, what are the other incentives in
22 this bill to actually create product here in America and
23 export it rather than what they are currently doing,
24 which is these companies take their intellectual
25 property overseas to a lower-tax jurisdiction, like

1 Ireland, Singapore, sometimes Luxembourg or Switzerland,
2 what are the incentives in this bill for them actually
3 to produce the product here, use the patent here and
4 export that product to other markets, therefore creating
5 jobs in America?

6 The Chairman. Okay, Senator, your time is up.

7 Senator Portman. Can I get an answer to the
8 question, please?

9 Mr. Barthold. Very briefly, the provision in the
10 chairman's mark that I think you are asking about,
11 Senator Portman, relates to what is defined as foreign-
12 derived intangible income and that would be income
13 attributable to economic activity in the United States,
14 but based on foreign sales.

15 Senator Portman. So it would be an incentive to
16 create that -

17 Mr. Barthold. It is a lower effective tax rate for
18 --

19 Senator Portman. Lower effective tax rate here.

20 Mr. Barthold. -- for maintaining that property.

21 Senator Portman. If you make it here and export it
22 here rather than making it overseas.

23 Mr. Barthold. That is correct, sir. That is
24 correct, sir.

25 Senator Portman. I think these are all incentives

1 to go the right way because we want more jobs here in
2 America.

3 Thank you, Mr. Chairman.

4 The Chairman. Senator Cantwell?

5 Senator Cantwell. Yes, we do want more jobs here
6 in America. And if you wanted more jobs right now in
7 Ohio, you would make sure the Export-Import Bank was
8 reauthorized. GE jobs have left Ohio because we do not
9 have functioning Export-Import Bank. So that should be
10 number one. Talk to your colleagues and to this
11 administration.

12 If I could, Mr. Chairman, we had this discussion
13 yesterday, which was about middle-class individuals.
14 Now, I am all for having the broad discussion my
15 colleague from Ohio just wanted to have, but I am not
16 willing to have it at the expense of Washington
17 taxpayers.

18 That is to say, this chart shows two earning
19 families and an average salary for an elementary school
20 teacher and a police officer. They have two kids under
21 the age of 17. So they are trying to live the American
22 dream.

23 Yet under this proposal, they will pay \$900 more in
24 taxes than they currently do, \$900 more, which is less
25 money for college education, less money for groceries,

1 less money for a rainy day.

2 So when we started this debate, it was about how we
3 were going to close corporate loopholes and make sure
4 that the tax bill paid for itself or that we were going
5 to close loopholes and maybe add, but not that we were
6 going to do it on the backs of my constituents.

7 So this number right here, \$927 more for this
8 family, which is average.

9 Now, I think some of my colleagues think, well,
10 that just must be an anomaly, that just must be this
11 mythical person that you came up with.

12 No, I have read, Mr. Abraham, our charts, the
13 things that have been pointed out by Joint Tax. My
14 estimate in my state, because 20 percent of my middle
15 class is what you are saying this affects, it is more
16 than 300,000 or could be 300,000 people in the state of
17 Washington that this could affect.

18 So am I reading the charts right from Joint Tax
19 that they are estimating that it is 20 percent, Mr.
20 Abraham?

21 I am going to ask Mr. Barthold a second question.

22 Mr. Abraham. Yes, that is correct.

23 Senator Cantwell. Okay.

24 And, Mr. Barthold, you have come up with a number
25 that you think that this is the number that could be

1 affected across the United States. Your number is 13
2 million, is that correct?

3 Mr. Barthold. Senator Cantwell, I believe you are
4 referring to some analysis that we did at the request of
5 Senator Wyden. And I think I have that here somewhere,
6 but it will take a moment. So if you want to ask
7 another question, I will look it up.

8 Senator Cantwell. Okay.

9 Mr. Abraham, is that right? We are estimating it
10 is 13 million people?

11 Mr. Abraham. That is correct.

12 Senator Cantwell. Okay. So I hardly call 13
13 million middle-class Americans inconsequential. I
14 hardly call it just a random thing where we are raising
15 taxes on just a few people; 13 million people and
16 certainly 300,000 in my state are not just a few people.

17 So the point is, Mr. Chairman, when we started this
18 exercise, we were going to close some of these other
19 business loopholes. We talked about that businesses
20 were coming to tell us they wanted simplification, that
21 they were willing to do things in order to get these,
22 but yet we have not done those things. Now, I do not
23 know in the process of this markup whether we are going
24 to continue.

25 But did we -- I mean, I do not want to distract

1 you, Mr. Barthold, from your looking at these. Are you
2 verifying the 13 million?

3 Mr. Barthold. Well, I cannot immediately verify
4 the 13 million. The information that we provided to
5 Senator Wyden's staff was a percentage calculation of a
6 percentage of taxpayers in different income categories
7 that would have a tax increase, no tax change or a tax
8 decrease. And so I assume the 13 million was calculated
9 by my friend Mr. Abraham or one of his colleagues.

10 Senator Cantwell. Okay. Okay. I think it is
11 actually 13.8 million. But my point is, you know,
12 people are talking about letting states do what they
13 want to do. Our state has a unique tax code. We have
14 grown our economy faster than the national average every
15 year since World War II. Now you are taking that away
16 from us.

17 People said they would close these loopholes. The
18 CEO of AT&T said he would give up expensing perks on the
19 books in exchange for a 20 percent corporate rate.

20 Mr. Barthold, does this mark eliminate bonus
21 depreciation, accelerated depreciation or other
22 expensing?

23 Mr. Barthold. After five years.

24 Senator Cantwell. So we are going to take it from
25 my constituents in the meantime.

1 So, Mr. Chairman, I want us to understand that
2 these are states like Nevada, Texas, Florida that all
3 have tax codes that are, I would say, efficient tax
4 codes. A lot of people have debates about them, about
5 whether they should have a different tax structure like
6 the rest of the country, but this is our tax system.

7 And we do not appreciate -- now, a lot of these
8 corporations are right in our state, too, and they are
9 doing very, very, very well. And if you ask them what
10 do they want dealt with here, they would say I want the
11 immigration policy dealt with, I want a trained and
12 skilled workforce, I want affordable housing, I want the
13 infrastructure to work. That is what they want.

14 And I guarantee you, none of them are going to call
15 me up and say, yes, please gouge middle-class taxpayers
16 in King County and make them pay a thousand dollars more
17 and please open the Arctic Wildlife Refuge because, by
18 God, I cannot be competitive without it. I guarantee
19 you they are not going to call me up and say that.

20 So I hope that -- I will be happy to send my
21 colleague from Louisiana the details here.

22 So I hope that we can come to some resolution
23 because the day that you switched over to making the
24 state and local deductions the major pay-for in this
25 bill, along with this huge deficit, is the day you made

1 a mistake.

2 And gouging middle-class families to pay for the
3 corporation breaks that you want to give is just wrong.

4 Thank you, Mr. Chairman.

5 The Chairman. Well, thank you.

6 Senator Roberts, you are next.

7 Senator Roberts. Thank you, Mr. Chairman.

8 The Chairman. Excuse me, I am sorry. Senator
9 Heller is next.

10 Senator Roberts. Oh, I am sorry.

11 The Chairman. Senator Heller.

12 Senator Roberts. Please.

13 The Chairman. Okay, Senator Roberts, go ahead.

14 Senator Roberts. Thank you, Senator Heller. That
15 is very kind of you.

16 To staff who are persevering and being very patient
17 with all of the questions, slings, arrows and plaudits,
18 thank you. Thank you for your patience, your
19 perseverance and what you are doing.

20 Mr. Barthold, especially for you, Tom, you have
21 been here 30 years. Is that right?

22 Mr. Barthold. That is correct, Senator Roberts.

23 Senator Roberts. I have got you by seven. I am
24 not counting the two years when I was an administrative
25 assistant for Senator Carlson who was on the Finance

1 Committee and was the ranking member at that particular
2 time, 12 years in the House.

3 The reason I am saying this, not asking a question,
4 which I will do in just a minute, but I am not going to
5 keep you long, is I found out real quick you are only as
6 good as your staff. And I want to thank all of you for
7 your insights and being able to respond at least to some
8 degree to the questions. Some of these questions are
9 not questions, but sort of a conclusion and then asking
10 you to agree with it.

11 So I am going to talk about agriculture just a
12 minute. Senator Stabenow and I just were visiting here
13 just a while back, not that we are not interested in
14 everybody's questions, but we were talking about the
15 Farm Bill, what we would have to do down the road.

16 And this bill, I think, is very pro growth with
17 regards to agriculture. And I want to thank Senator
18 Thune, Senator Grassley, Senator Enzi, our Budget
19 chairman, for the efforts of treating agriculture in a
20 fair way. It is so terribly important now because we
21 are in a pretty rough patch. We have a lot of problems
22 or a lot of challenges there.

23 But to Mr. Barthold, can you describe the cost
24 recovery provision relating to farm property?

25 Mr. Barthold. Yes. The chairman's mark provides a

1 five-year recovery period for farm property, Senator
2 Roberts.

3 Senator Roberts. When you do your macro score on
4 this provision, could we accurately describe this as a
5 pro-growth policy?

6 Mr. Barthold. As my colleagues and I have written
7 on several occasions, things that we view as pro growth
8 are things that accelerate cost recovery, that those are
9 pro-growth economic incentives.

10 Senator Roberts. This is a perfect example, I
11 believe, of what we are doing right in this bill, and
12 that is to induce investment more particular for
13 agriculture and for our farmers and our ranchers and our
14 growers who are going through a tough time.

15 Again, I want to thank my colleagues for, I think,
16 doing a wonderful job in behalf of these folks.

17 And again, I want to thank the staff for your
18 perseverance and for your expertise.

19 I yield back, Mr. Chairman.

20 The Chairman. All right.

21 Senator Heller?

22 Senator Heller. Mr. Chairman, thank you. And
23 thanks for this hearing.

24 I want to thank those that are here with us today
25 and for your efforts and patience with all of us.

1 Mr. Barthold, I want to go back to something that I
2 heard earlier in the hearing and that had to do with the
3 White House Council of Economic Advisers that is chaired
4 by Hassett.

5 Also, at Boston University, economists that were
6 talking about the reduction of 15 points of your
7 corporate tax rate and the impact it would have in
8 increasing wages. And I believe those numbers were
9 somewhere between \$3,500 to \$4,000 a year. Is that
10 accurate?

11 Mr. Barthold. I have seen Chairman Hassett quoted
12 as saying \$4,000 a year.

13 Senator Heller. What do you know about those
14 studies?

15 Mr. Barthold. Excuse me?

16 Senator Heller. What do you know about those
17 studies?

18 Mr. Barthold. Well, frankly, I have not had a
19 chance to read some of them recently. I have been doing
20 some other work.

21 Senator Heller. I understand, I understand. So
22 you have not had a chance to review those.

23 Mr. Barthold. I have not personally. Some of my
24 colleagues, I know, have tried to take some time to read
25 some, but I have not had a chance to talk with them yet.

1 Senator Heller. So do you have any reason to
2 believe that they are inaccurate?

3 Mr. Barthold. I know that some of them were peer
4 reviewed. I also know that some other people have
5 raised questions about the methodology, the
6 applicability. Some of them are cross-country studies
7 rather than studies that are based on the U.S. economic
8 experience or based solely on U.S. data. So there are,
9 I mean, I know there are some questions that one could
10 call to mind.

11 Senator Heller. Yes.

12 Mr. Barthold. But again, I have not looked in
13 detail.

14 Senator Heller. All right. Mr. Barthold, to
15 change subjects for a minute, the real median household
16 income in Nevada is \$55,000 a year according to the U.S.
17 Census Bureau. For that income group from, I guess,
18 50[,000 dollars] to \$75,000, what percentage does this
19 bill cut those taxes?

20 Mr. Barthold. Just a moment, Senator. From the
21 analysis that I was referring in answer to Senator
22 Cantwell, we had estimated that in calendar year 2027
23 that, let us see, that would be about a little over
24 three-quarters of taxpayers will have a tax decrease of
25 \$100 or greater.

1 Senator Heller. What do you get in year 2027?

2 Mr. Barthold. That was year 2027.

3 Senator Heller. That was year 2027. Okay. What
4 is your definition of middle class?

5 Mr. Barthold. I do not define middle class,
6 Senator. It means a lot of different things to a lot of
7 different people.

8 Senator Heller. Have you ever tried?

9 Mr. Barthold. I guess I found it unwise in my
10 position to define it.

11 [Laughter.]

12 Senator Heller. Does this bill provide a tax cut
13 to every income group?

14 Mr. Barthold. Yes. On average, there is tax
15 reduction across all income groups.

16 Senator Heller. I am looking at the 2027 chart at
17 the 50[,000 dollars] to \$75,000 income category and I am
18 looking at 6.1 percent. Is that accurate?

19 Mr. Barthold. Okay. I think you are looking at -

20 Senator Heller. Did I pick the wrong thing?

21 Mr. Barthold. No, no, not the wrong thing at all,
22 I am sure. Are you looking at JCX-53? Okay, we want to
23 look at 2027. Okay, yes, 6.1 percent is the change in
24 federal taxes for that. That is of the aggregate taxes
25 paid to the federal government. It would be a reduction

1 by that income group of 6.1 percent of the taxes paid.

2 Senator Heller. Okay. I just wanted to make sure
3 that was clarified.

4 Mr. Barthold. Yes.

5 Senator Heller. Mr. Barthold, Dr. Barthold, thank
6 you for your time. Thank you for answering my
7 questions.

8 Mr. Chairman, thank you.

9 The Chairman. Thank you, Senator.

10 Senator Nelson?

11 Senator Nelson. Mr. Chairman, thank you again for
12 your courtesies yesterday, you and the ranking member,
13 so that I could give my opening statement. Thank you
14 very much.

15 The Chairman. Well, we appreciate the hardships
16 you have had down there and appreciate all the good work
17 you are doing.

18 Senator Nelson. Thank you.

19 Mr. Barthold, if you were a lawyer for someone, a
20 tax lawyer, for someone well-off, how would you advise
21 them to game the tax system and avoid taxes under this
22 bill?

23 Mr. Barthold. First of all, Senator Nelson, you
24 know you are asking me to play make-believe because I am
25 not a tax lawyer. I do not have a good answer for you

1 at this time.

2 Senator Nelson. Well, do you have any --

3 Mr. Barthold. I mean, I guess it also goes a
4 little bit into what you call game.

5 Senator Nelson. Let us talk about loopholes.

6 Mr. Barthold. There are certainly advantages to
7 doing certain -- well, there are certainly advantages to
8 doing some things rather than other things.

9 Senator Nelson. So what loopholes would you want
10 to use? Or the flipside of that is, what loopholes
11 should we close?

12 Mr. Barthold. Well, again, there are things, there
13 might be provisions of present law that are unchanged by
14 the chairman's mark that you might like to address.

15 Some things that the chairman's mark addresses
16 would maybe change the relative advantage of aggressive
17 transfer pricing. I know the Committee has been
18 concerned about aggressive transfer pricing in the past
19 on both sides of the aisle. But that is in a business
20 context. I did not know if you were speaking as an
21 individual.

22 Senator Nelson. Let me ask Mr. Abraham.

23 Mr. Abraham. Senator, your colleagues have raised
24 a few ideas earlier in the markup, talking about areas
25 where there is rate differentials. The ranking member

1 was talking about the potential ability between a 35
2 percent corporate rate and a 20 percent corporate rate.

3 There has been a discussion on the international
4 side of some of the interaction between how the global
5 low-taxed income provision might work and different
6 treatment between active and passive or intangible
7 income.

8 Off the top of my head, that is what some have
9 talked about.

10 Senator Nelson. Okay, all right.

11 Let me go back to Mr. Barthold. Your Committee on
12 Taxation memo shows that most middle-income taxpayers
13 would see less than a hundred-dollar change in their tax
14 bill under this plan, but that around 21 million middle-
15 class households would actually see a tax increase by
16 2025. So of those Americans that make under \$200,000 a
17 year and would see a tax increase under the bill, can
18 you point out what in the tax bill here that we are
19 facing are the reasons why, why that middle-income group
20 would see a tax increase?

21 Mr. Barthold. Yes, Senator Nelson. Under the
22 individual income tax, as I noted in the walkthrough,
23 there are a lot of different, significant changes.

24 One significant change, of course, is the change to
25 disallow certain itemized deductions. So that means,

1 absent anything else, that could create more taxable
2 income for certain households.

3 On the other hand, there is an expansion in the
4 value of the child tax credits, that for any household
5 leads to a potential decrease.

6 There is the loss of personal exemptions. That can
7 lead to an increase in taxable income and potentially a
8 greater tax liability for some households.

9 On the other hand, there is a change in the overall
10 rate structure by lowering some of the rates and moving
11 up the breakpoint so that you actually, for any given
12 amount of income, you might have a lower tax liability
13 had you not made any of the base changes.

14 And so it is a weighing of those different factors
15 and the different individual circumstances. The biggest
16 ones are probably the loss of some itemized deductions
17 by some taxpayers and the loss of personal exemptions
18 relative to the tradeoff of rates and the child credit.

19 Senator Nelson. Mr. Chairman, may I ask one more
20 question?

21 The Chairman. Sure.

22 Senator Nelson. The chairman's mark has a
23 passthrough deduction worth 17.4 percent of a small-
24 business owner's income. Why would you not apply the 20
25 percent tax rates that corporations get under this tax

1 bill? Why would it not be equalized as opposed to
2 giving them a 17 percent deduction?

3 Mr. Barthold. Well, the answer would be a question
4 for you and your colleagues, of course, to debate. The
5 effect of the deduction is to reduce the effective
6 marginal tax rate that would otherwise be provided by
7 the statutory bracket. So in other words, take the 35
8 percent bracket, reduce it by 17.4 percent; take the 25
9 percent bracket, reduce it by 17.4 percent.

10 Your broader question was, why not have that equal
11 to the proposed corporate tax rate of 20 percent? And I
12 think that returns to sort of the question of the
13 overall design, recognizing that the corporate tax rate
14 has two levels of tax. There remains under the
15 chairman's mark the tax on qualified dividends and
16 capital gains so that if a tax-paying owner of a
17 corporation receives a distribution, such as a dividend,
18 there is the tax at the corporate level of 20 percent,
19 plus the dividend tax rate at the individual level.

20 And so it appears that the mark is making a
21 balancing of the businesses that are organized such that
22 there is two levels of tax as opposed to businesses that
23 are organized where there is only one level of tax.

24 The Chairman. Okay.

25 Senator Enzi?

1 Senator Nelson. Mr. Chairman, may I submit a
2 question for the record about Puerto Rico?

3 The Chairman. Of course.

4 Senator Nelson. Thank you.

5 The Chairman. Senator Enzi.

6 Senator Enzi. Thank you, Mr. Chairman.

7 I have been listening all morning to these
8 questions and trying to figure out how it all fits in
9 with what we are going to do, which is have an open
10 process where people can propose amendments to correct
11 any of the things that they see here. But having worked
12 in both state revenue and federal revenue for some time,
13 I know it is a pretty complicated situation. And I
14 appreciate all that you have done with it.

15 In the Budget Committee, we have held some hearings
16 that affect what we are doing here. And one of those
17 things was to determine what the GDP is and would be and
18 how that would affect any tax proposals.

19 And we agreed to go with a static scoring with a
20 trillion-and-a-half [dollars] deficit because we did not
21 want to argue what the dynamic effect of the whole thing
22 was going to be. But we held hearings on it anyway and
23 found out that apparently the average is about 3.2
24 percent growth. And as was mentioned earlier by Senator
25 Cassidy, we have been through two quarters of 3 percent

1 growth.

2 But the Congressional Budget Office relies on 1.9
3 percent. So we thought that 2.6 [percent] was pretty
4 reasonable. Now, that is mostly affected by what
5 happens with private businesses. The corporate tax and
6 the passthrough entities, that would be the private
7 sector that we are talking about here.

8 And I had the opportunity to talk to Prime Minister
9 Netanyahu. I have talked several times to people in
10 similar situations in Israel about how they got their
11 budget to balance. And he made it clearer than any of
12 the other treasurers that I talked to who have some
13 phenomenal formulas that we might have to adopt and want
14 to adopt at some point in time.

15 But he made it pretty simple. He said you have got
16 to make sure that the private sector grows twice as fast
17 as government. That has not been the case. That is
18 what we are trying to do with this bill.

19 And I think what we are talking about is the
20 private sector here with the corporate tax and the
21 passthrough entities. Mr. Barthold, would that be a
22 correct assumption? Nonprofits are excluded from the
23 tax system, I assume, or we would not call them
24 nonprofit.

25 Mr. Barthold. Passthrough entities are taxpayers

1 or private entities as are C corporations.

2 Senator Enzi. And that is who we are relying on
3 primarily for growth in GDP. Is that correct?

4 Mr. Barthold. That is where the economic
5 incentives embedded in the chairman's mark are targeted,
6 sir.

7 Senator Enzi. Thank you.

8 The Chairman. All right. Well, we have finished
9 the first round, so we will start the second round at
10 this particular point.

11 Ms. Acuna, is it fair to say that the great
12 majority of individuals with less than \$200,000 of
13 income will have a tax cut or at least no tax increase?

14 Ms. Acuna. Yes, that is correct.

15 The Chairman. Okay. Again, is the trend in the
16 developed world to transition from a worldwide tax
17 system like the U.S. currently has to a territorial
18 system like the mark provides? Is that the trend in the
19 organized world?

20 Ms. Acuna. Yes, it is. The U.S. is very much an
21 outlier with its current worldwide system.

22 The Chairman. Yes, we are stupid to keep the
23 system that we have if we do not make a change, right?

24 Ms. Acuna. No comment.

25 [Laughter.]

1 The Chairman. Well, I think you could comment. We
2 are stupid. We are not competing with the rest of the
3 world.

4 Let us turn to Senator Wyden for his second round.

5 Senator Wyden. Thank you very much, Mr. Chairman.

6 I think it is appropriate to start the second round
7 talking about the two tax systems in America. There is
8 one for a cop and a nurse and they have to pay on a
9 compulsory basis, it comes right out of their paycheck.

10 Then there is another one for the people that can
11 hire good accountants. They are high flyers, they know
12 how to run the system and they can pretty much pay what
13 they want, when they want to.

14 And nothing illustrates the second system more than
15 the carried interest loophole in the tax code today,
16 because this essentially allows that second group to
17 take ordinary income, call it a capital gain and pay a
18 lower tax rate.

19 Question for you, Mr. Barthold. Candidate Trump
20 said he was going to close the carried interest
21 loophole. Mr. Mnuchin promised at his confirmation
22 hearing to close the carried interest loophole as part
23 of the Republican tax plan. Does this proposal close
24 the carried interest loophole?

25 Mr. Barthold. The chairman's mark does not address

1 carried interest, sir.

2 Senator Wyden. Thank you.

3 Second, the secretary said that the Trump tax plan
4 would provide no absolute tax cut for the wealthy. This
5 strikes me to be really preposterous. So my question to
6 you is, does this proposal provide no net tax cut for
7 the wealthy?

8 Mr. Barthold. As I pointed out, our distribution
9 analysis shows, on average, tax reductions in all income
10 categories.

11 Senator Wyden. So the wealthy would get a tax cut
12 is what Mr. Barthold has told us, contrary to what
13 Secretary Mnuchin said to the Committee.

14 And third, Secretary Mnuchin has claimed that tax
15 cuts do not just pay for themselves, but they will raise
16 an additional \$1 trillion above and beyond their costs,
17 and that strikes me as really hocus-pocus arithmetic.

18 Mr. Barthold, does JCT believe the Republican tax
19 cuts will pay for themselves or, frankly, even come
20 close?

21 Mr. Barthold. Senator Wyden, the Congress has
22 requested that for major tax legislation we provide a
23 macroeconomic estimate to that legislation. And we have
24 not begun that analysis yet, so it would really be
25 inappropriate for me to pre-judge an answer for analysis

1 that we have not completed.

2 Senator Wyden. Well, what I will tell you is all
3 of the economists who came before the Senate Finance
4 Committee said tax cuts will not pay for themselves.

5 I have been of the view that you generally felt
6 that there was some modest effect as it relates to
7 behavior. We will await your final judgment.

8 I want to close this round of questioning by
9 setting something straight with respect to Republicans
10 saying that Democrats are not interested in
11 bipartisanship. And they have been citing a letter that
12 almost all of us signed.

13 The very first sentence, the first sentence out of
14 the gate, and I quote, is, "We are writing to express
15 our interest in working with you on a bipartisan tax
16 reform." That was the very first thing.

17 And as the chairman knows, I and others have
18 actually laid out proposals for a bipartisan tax reform
19 bill, something we shared with Republicans, looked at
20 specific text.

21 Now, I will tell you, our letter must surely be
22 considered a doozy by Republicans, because it caused
23 them so much dismay that they locked themselves into a
24 room and refused to invite us to work on actual text of
25 a bipartisan bill. I guess they thought we would come

1 bearing our super-powerful letter.

2 And I would ask unanimous consent, Mr. Chairman, to
3 put this super-powerful letter that describes our great
4 interest in bipartisanship into the record at this
5 point.

6 The Chairman. We will put whatever the letter is
7 in the record.

8 [The letter appears at the end of the transcript.]

9 Senator Wyden. Mr. Chairman, I am not quite done
10 here. I am going to use the remainder of my time to
11 point out that this so-called extraordinary letter,
12 which, as I said, focuses on our desire for
13 bipartisanship, does not go as far as Ronald Reagan went
14 in 1986 when he said that we ought to treat income and
15 wages as the same from a tax standpoint.

16 And I think it just goes to show that these
17 principles, and I will close with this, which the
18 President of the United States has said he agrees with,
19 he said that pointblank at the White House, ought to be
20 the basis for what we should be doing, which is working
21 together in a bipartisan way as Ronald Reagan did with a
22 big group of Democrats.

23 I yield back.

24 The Chairman. Okay, thank you, Senator.

25 Now, we are going to be tough on time limits here

1 in this second round.

2 We will turn to Senator Stabenow. And I want
3 people to live within the time constraints.

4 Senator Stabenow. Thank you, Mr. Chairman.

5 I have some specific questions on impact, but I
6 wanted to start, Mr. Abraham, I just wanted to be clear
7 on what we have said today, that based on the Joint Tax
8 analysis that you have looked at, 14 million people
9 would get a tax increase?

10 Mr. Abraham. That is my understanding from the
11 documents.

12 Senator Stabenow. Fourteen million people would
13 get a tax increase. And then the number of people
14 getting a tax increase would go up over time, is that
15 correct?

16 Mr. Abraham. That is correct.

17 Senator Stabenow. Okay. So we are looking at
18 millions of people getting a tax increase on something
19 that we would like very much to see everybody getting a
20 tax decrease.

21 Mr. Barthold, I wanted to ask some questions on
22 specific provisions. What percentage of taxpayers would
23 take the standard deduction under this legislation?
24 What percentage?

25 Mr. Barthold. Senator Stabenow, we estimate that

1 under the chairman's mark 95 percent of individual
2 taxpayers will claim the standard deduction.

3 Senator Stabenow. Thank you. So 95 percent of the
4 taxpayers then essentially would be barred from
5 receiving literally any tax benefit for charitable
6 giving. They would not be benefiting from charitable
7 giving.

8 Mr. Barthold. Well, claiming the standard
9 deduction is an elective choice.

10 Senator Stabenow. Right.

11 Mr. Barthold. But it is usually in the taxpayer's
12 interest, if the circumstances warrant, that they do in
13 fact choose the standard deduction.

14 Senator Stabenow. Correct. So 95 percent of the
15 people would lose that, the tax incentive, not that they
16 might not want to give certainly. But I know that
17 charitable organizations are extremely concerned about
18 the impact of that.

19 Let us talk about homeownership. The percentage of
20 taxpayers who would no longer benefit essentially from
21 homeownership, well, homeownership in terms of using the
22 mortgage tax deduction, how many people would qualify
23 for that? If we have got 95 percent of the taxpayers
24 using the new standard deduction, what does that mean in
25 terms of homeownership?

1 Mr. Barthold. In 2018, the number of itemizers we
2 project to be approximately 9.5 million, so that would
3 be 9.5 million who might avail themselves of the
4 mortgage interest deduction, although it would not
5 necessarily be all of them.

6 Senator Stabenow. Okay, so great concern in terms
7 of that incentive for homeownership.

8 Let me ask about the provisions in the House bill
9 as it compares to the Senate bill, because we know that
10 in the end we will have a House bill and then we will
11 have a Senate bill and then the differences will be
12 reconciled. And so provisions in the House bill may be
13 in the final bill and that is how it works in a
14 conference committee. Correct? So we do not know for
15 sure what will be in the final bill.

16 So in light of that, let me ask some questions on
17 the House Republican bill as well. Would the House bill
18 eliminate the medical expense deduction for seniors?

19 Mr. Barthold. It eliminates the medical expense
20 deduction for all taxpayers.

21 Senator Stabenow. For everyone, so it is not just
22 seniors. It is parents that have a child with
23 disabilities or seniors or others. Okay.

24 Would it eliminate the medical expense deduction
25 then, I assume, for people with Alzheimer's disease?

1 Mr. Barthold. All taxpayers.

2 Senator Stabenow. Okay. And a person with cancer,
3 someone with special needs and so on.

4 Mr. West, does the administration support
5 eliminating this important deduction?

6 Mr. West. Thank you, Senator. I am here to talk
7 for the administration about the administrability of
8 some of these provisions. I really was not prepared
9 today to speak to the administration's position on any
10 particular provision.

11 Senator Stabenow. We know, though, that in a
12 conference committee there will be the House, the Senate
13 and the administration. So the Trump administration's
14 opinion, what you advocate for, will be very, very
15 important. And we asked that you be here to speak about
16 the administration's position, so I am surprised that
17 you do not feel you can do that.

18 The Chairman. Senator, your time is up.

19 Senator Stabenow. Thank you very much, Mr.
20 Chairman.

21 The Chairman. Okay. Let us go to Senator Enzi.

22 Okay.

23 Senator Grassley. I thought I was next.

24 The Chairman. Oh, Senator Grassley would be next.
25 I thought Enzi was. Yes, go ahead.

1 Senator Grassley. Mr. Barthold, you have heard
2 from my colleagues expressing concerns about the
3 distribution of the tax burden under the bill. Does not
4 your analysis of the mark show that those with incomes
5 above \$1 million will shoulder a greater share of the
6 tax burden under the chairman's mark than under the
7 current law?

8 Mr. Barthold. Senator Grassley, this is the point
9 that Senator Thune was making earlier, that when you
10 look at the middle - we present multiple takes in our
11 distribution analysis. And when you look at the
12 percentage of all federal taxes paid and you make a
13 comparison of present law as opposed to under the
14 proposal, in the category of a million [dollars] and
15 over in all years, that percentage increases at least
16 modestly in all years.

17 Senator Grassley. Yes. And the table that I think
18 you -

19 Mr. Barthold. This is JCX-53.

20 Senator Grassley. Over a million [dollars],
21 present law would have them paying 19.3 percent of the
22 total income tax. It would go up to 19.4 percent.

23 Mr. Barthold. That is correct for calendar year
24 2019.

25 Senator Grassley. Okay. Also, how does the

1 individual AMT impact affected SALT deductions, that is
2 state and local income tax deduction?

3 Mr. Barthold. Under present law, the AMT does not
4 permit you to claim state and local income tax or sales
5 tax deduction. It is added back into the AMT base.

6 Senator Grassley. So then by repealing the state
7 and local tax deduction, are we not achieving some of
8 the effects of the AMT, but without all that complexity?

9 Mr. Barthold. Well, it is certainly the case that
10 it has some of the same effect.

11 Senator Grassley. I yield, Senator.

12 The Chairman. All right, thank you.

13 Senator Bennet, we will go to you next.

14 Senator Bennet. Thank you, Mr. Chairman. Thanks
15 so much for having a second round of questions.

16 Ms. Acuna, I would like to know if the lack of an
17 energy title in the Senate markup implies an endorsement
18 of the House bill which undercuts the permanent
19 extension of the ITC for solar, it reduces the credit
20 for the wind PTC. Or does the Committee plan on
21 honoring the ITC, PTC commitment we made two years ago
22 in a bipartisan way during reconciliation at conference?
23 Do you expect to maintain that in the conference and is
24 that our position?

25 Ms. Acuna. Thank you. I am not at liberty to

1 speak of whether or not the mark represents an
2 endorsement or a lack of endorsement of the House bill
3 with respect to the energy provisions. That rests with
4 our members and I will leave it at that.

5 Senator Bennet. So can silence be read to be
6 acquiescence to the House bill? How should we
7 understand it?

8 What is the administration's position, Mr. West, on
9 this question?

10 Mr. West. I am not here to speak to the
11 administration's position today, Senator, on that
12 particular provision.

13 Senator Grassley. If the senator would yield, I
14 can speak to -

15 Senator Bennet. Sure, I would yield to my
16 colleague. You were at the heart of those negotiations.

17 Senator Grassley. Yes. From this standpoint, both
18 in the privacy of my office pre-Mnuchin nomination and
19 at this hearing, I asked that very question about the
20 administration's or at least his view on preserving it.
21 I do not know whether he get into the pros and cons of
22 the tax, but I brought it up from the standpoint that
23 two years ago we established a transition rule phasing
24 out the wind energy credit in 2020. And that is three
25 years through that process. That transition rule ought

1 to be maintained and he said yes.

2 Senator Bennet. Well, let me say I am grateful for
3 your leadership as I always have been.

4 That is not the position that the House has taken
5 in their bill.

6 Senator Grassley. They have done great damage to
7 our transition rule.

8 Senator Bennet. I would agree. And now we do not
9 know what the administration's position is.

10 What about with respect -- this was not actually
11 going to be a question, but it occurred to me -- respect
12 to the different between the House and Senate versions
13 of the bill with respect to the exemption for property
14 tax and state and local?

15 Is that something that the administration has a
16 position on, Mr. West?

17 Mr. West. Senator, I was here today to speak to
18 the administrability of the provisions in the chairman's
19 mark.

20 Senator Bennet. Okay.

21 Mr. West. And the administration to date is
22 leaving it to the tax-writing committees to work out the
23 differences.

24 Senator Bennet. Okay. I appreciate that. Thank
25 you.

1 Ms. Acuna, can you assure the Committee that all of
2 the tax policy in your bill will eventually comply with
3 the Byrd Rule?

4 Ms. Acuna. The Committee will be responsive and
5 meet its requirements under the reconciliation
6 instruction.

7 Senator Bennet. So is your answer to my question
8 yes? I would be happy to repeat it again. Can you
9 assure us that all of the tax policy in this bill will
10 eventually comply with the Byrd Rule?

11 Ms. Acuna. I am not at liberty to make those
12 assurances at the moment.

13 Senator Bennet. This is just incredible. This is
14 so unfair to the people that I represent, this process
15 and these answers.

16 Mr. Barthold, at a time when we are nearing full
17 employment, is permanent tax policy more supportive of
18 growth than temporary tax policy, all else held equal?

19 Mr. Barthold. Permanent policy is generally better
20 in any economic environment because of the uncertainty
21 of the temporary policy, sir.

22 Senator Bennet. What about a permanent corporate
23 tax rate versus a temporary tax rate cut?

24 Mr. Barthold. I would actually like to work with
25 my colleagues to run the analysis on it rather than wing

1 it from the table.

2 Senator Bennet. I do not think it would be winging
3 it asking you that question. I mean, the answer to that
4 question is obviously it would significantly deter
5 growth if tax cuts are to sunset. Do not you agree with
6 that?

7 Mr. Barthold. Well, as I said, permanent policy is
8 always better in any environment. I thought you were
9 asking for a relative magnitude.

10 Senator Bennet. No, I was not, so I appreciate
11 your answer. I am sorry I was not clear.

12 Mr. Chairman, thank you for the opportunity.

13 The Chairman. Okay, thank you.

14 Who is next?

15 Senator Crapo?

16 Senator Crapo. Thank you very much, Mr. Chairman.

17 And, Mr. Barthold, with regard to JCT's
18 distributional analysis, to what extent does the benefit
19 to workers of the reduction in the corporate tax rate
20 show up in your distributional analysis?

21 Mr. Barthold. Senator Crapo, thank you for the
22 opportunity to explain a little bit more the detail.

23 The analysis that we present to the committees
24 incorporates both tax changes that reduce liabilities of
25 businesses and reduce the direct liabilities of

1 individuals as they fill out their Form 1040, for
2 example.

3 But we believe, as most economists, that,
4 fundamentally, business entities do not pay taxes,
5 people do. And then it is a question of what people and
6 in what form.

7 And that is the question of economic incidence.
8 And there is a fair body of economic empirical work as
9 well as theory that suggests that taxes imposed on
10 capital income or business enterprises can, in part, be
11 borne by the workers or, in the opposite case, tax
12 reductions can lead to a benefit by workers.

13 The process in relatively simple terms is that
14 investment means increases in tangible property,
15 intangible property, research, all of which can lead to
16 either increased demands for employment or it can lead
17 to increased labor productivity. And it is labor
18 productivity, higher labor productivity, generates
19 higher wages. Higher demand for labor generates higher
20 wages.

21 And so it is in that way that there is transmission
22 of benefit in economic incidents from business taxes to
23 labor. That is reflected in our analysis.

24 Senator Crapo. So to try to put this into layman's
25 terms, a reduction in the corporate tax rate will yield

1 more jobs, greater income for workers and growth in the
2 economy.

3 Mr. Barthold. Our analysis is that there will be
4 benefit for workers, yes, sir.

5 Senator Crapo. And have you identified, for
6 example, what portion of the burden or reduction of
7 burden would benefit the workers as opposed to owners?

8 Mr. Barthold. Reflected in the analysis that we
9 have provided to the committees, because, as I
10 explained, it is a process of increasing capital, which
11 increases labor productivity, it is a process that
12 builds up through time.

13 Our analysis in the very short run takes the
14 stance, again, based on empirical evidence, that the
15 owners of the enterprise essentially would receive the
16 full benefit, like, in the first year.

17 But as there is increase in capital, there is more
18 benefit to labor, so that by the end of the 10th year,
19 our projection is based on 25 percent of the effective
20 corporate tax change, be it an increase or a decrease,
21 is borne as a detriment or a benefit by workers.

22 Senator Crapo. So has your analysis taken into
23 consideration that an ever-increasing portion of the
24 corporate ownership is held by pension funds or other
25 personal retirement funds.

1 Mr. Barthold. Yes, yes, it does. That is part of
2 how labor in the form of an owner of pension assets in a
3 defined contribution plan can benefit directly as an
4 owner as well as perhaps benefit in the longer-run
5 process that I was describing by an increased demand for
6 labor or --

7 Senator Crapo. So an individual could benefit both
8 as an owner through a pension plan and as a laborer, as
9 an employee.

10 Mr. Barthold. Vey definitely, and also as a direct
11 owner outside of a pension plan.

12 Senator Crapo. And outside of a pension plan. And
13 how about to the extent that our doubling of the
14 standard deduction could save millions of families
15 potentially hundreds of dollars if they do not any
16 longer have to pay someone else to do their taxes? Has
17 that been calculated into your distributional models?

18 Mr. Barthold. Well, we calculate compliance and
19 administrative effects into all of the basic revenue
20 analysis. And the distributional analysis is based off
21 the revenue analysis.

22 So in that sort of chain of events, the answer is
23 yes, although I could not point you to direct line.

24 Senator Crapo. Okay. One last question, and that
25 is, I am looking at a study done by the Tax Foundation,

1 back to our earlier questions, that indicates that the
2 reduction of the corporate rate could lead to 2.9
3 percent higher wages and 925,000 new full-time-
4 equivalent jobs.

5 Does that sound accurate to you?

6 Mr. Barthold. I have not read the Tax Foundation's
7 analysis. And as I was suggesting earlier in response
8 to a question, I prefer to wait to undertake our own
9 analysis and report to the Committee.

10 Senator Crapo. All right, thank you.

11 The Chairman. Let me just make something clear
12 here. We intend to comply with our reconciliation
13 instruction and budget rules. I think it is a bit
14 unfair to ask our staff to make assurances about member
15 decisions, so we have to be careful about that.

16 Senator Burr, you okay?

17 Then Senator McCaskill.

18 Senator McCaskill. Thank you, Mr. Chairman.

19 I do not know that I will have time to go into the
20 details of the passthrough provisions in this mark. But
21 it is nuts the way this is done.

22 And let me just ask some specific questions, Mr.
23 Barthold, that will expose this.

24 Mr. Barthold, would a local dentist that is not
25 married and earns \$110,000 a year be eligible for the

1 passthrough deduction?

2 Mr. Barthold. No, Senator.

3 Senator McCaskill. And would a casino developer
4 that reports business income of a million dollars
5 annually be eligible for the passthrough deduction?

6 Mr. Barthold. Yes, Senator.

7 Senator McCaskill. And would an engineer earning
8 \$200,000 be eligible for the passthrough, Mr. Barthold?

9 Mr. Barthold. Is the engineer self-employed, sole
10 proprietor?

11 Senator McCaskill. Yes.

12 Mr. Barthold. Earning \$200,000?

13 Senator McCaskill. Correct.

14 Mr. Barthold. No.

15 Senator McCaskill. No, he would not. But how
16 about the owner of a massage parlor earning \$750,000 a
17 year, would he be eligible for the passthrough?

18 Mr. Barthold. Yes, Senator.

19 Senator McCaskill. And would a husband and wife
20 that own a small accounting firm and have a combined net
21 income of \$200,000 be eligible for the passthrough?

22 Mr. Barthold. No, they would be phased out of the
23 income limitation.

24 Senator McCaskill. Because they are making
25 \$200,000 a year, they would not be entitled to it.

1 Mr. Barthold. If the \$200,000 is taxable income.

2 Senator McCaskill. But the massage parlor owner
3 would be entitled to it.

4 Mr. Barthold. That is correct, Senator.

5 Senator McCaskill. And would the owner of a golf
6 course -- let me say that again -- would the owner of a
7 golf course reporting passthrough earnings of \$3 million
8 a year be eligible for the passthrough?

9 Mr. Barthold. Subject to the other limitations on
10 the provision, yes.

11 Senator McCaskill. And how about a single lawyer
12 running a legal clinic in St. Louis making \$95,000 a
13 year, would they be eligible for the passthrough?

14 Mr. Barthold. A single individual at that level of
15 income generally would not.

16 Senator McCaskill. And what about a venture
17 capitalist who earns millions on Wall Street by buying
18 bakeries up around the country, would they benefit from
19 the passthrough deduction?

20 Mr. Barthold. Probably not because financial
21 services are also excluded.

22 Senator McCaskill. Okay, so a venture capitalist.
23 Would somebody who is just investing, that would be
24 financial services?

25 Mr. Barthold. If they are just investing, then the

1 other provisions of the chairman's mark with respect to
2 capital gains, qualified dividends, so it would apply.

3 Senator McCaskill. Yes, because passive income is
4 included in this, right?

5 Mr. Barthold. Not in the passthrough deduction
6 calculation.

7 Senator McCaskill. Passive income is not included
8 in the passthrough deduction?

9 Mr. Barthold. It is not, no.

10 Senator McCaskill. Okay. But what about a bakery
11 that is operating at a break-even -- their bakery, their
12 LLC that is the bakery is at a break-even with no net
13 business income, but picking up shifts at the local
14 supermarket to make ends meet, would they see a benefit
15 from the passthrough deduction?

16 Mr. Barthold. I am sorry, I was trying to make
17 sure I had answered your prior question. Could you
18 quickly repeat?

19 Senator McCaskill. I was saying a bakery, somebody
20 who started a bakery, but they have got no net business
21 income, but they are working at other part-time jobs to
22 try to make their business work, do they see any benefit
23 from the passthrough?

24 Mr. Barthold. If they are not at present earning
25 any income from the passthrough entity, there would be

1 no benefit conferred.

2 Senator McCaskill. And that dentist I talked about
3 in the beginning, he is not eligible for any passthrough
4 deductions if he is earning \$110,000 a year. What if he
5 created three LLCs and he had one for cleaning and
6 checkups, one for orthodontics and one for oral surgery
7 and fillings and each one of those three separate LLCs
8 made less than \$75,000 a year, then he would qualify,
9 would not he, all three of them?

10 Mr. Barthold. I think not because, again, as I
11 noted once before, we look at related parties.

12 Senator McCaskill. So we are going to aggregate
13 them.

14 Mr. Barthold. The calculation is ultimately done
15 at the individual's return.

16 Senator McCaskill. Okay. So what you are saying
17 is the real estate developer that has lots and lots of
18 LLCs is not going to take advantage of this because you
19 are going to aggregate them all?

20 Mr. Barthold. I do not think I said that. There
21 is not a prohibition against real estate as qualifying.

22 Senator McCaskill. Oh, so the real estate guy gets
23 them all, but the dentist does not.

24 Mr. Barthold. In each case, it is aggregated and
25 you are tested. In the one case, the dentist is service

1 income, which is a service provider, labor service
2 provider, which is generally excluded except in the case
3 of incomes less than the designated levels.

4 In the case of other enterprises that are not in
5 professional services, they are generally qualifying
6 regardless of their size.

7 And in both cases, all the entities, however they
8 organize themselves, would flow to the individual
9 return.

10 Senator McCaskill. Well, I think those examples
11 just show how crazy this is. I mean, this is nuts that
12 the massage parlor guy gets a break, the golf course guy
13 gets a break, but a couple that has an accounting
14 business does not get a break.

15 That makes no sense, Mr. Chairman.

16 I have got more questions about the passive versus
17 active, more questions about how this is designed. I
18 will save that for the next round.

19 And then we have got to get to the incredible
20 complexity of the international taxation scheme that is
21 laid out in this mark.

22 Thank you, Mr. Chairman.

23 The Chairman. Senator Enzi?

24 Senator Enzi. Thank you, Mr. Chairman.

25 In light of the questions that were just asked

1 there, under the present tax system, is there any
2 variation within a cohort between the people in that
3 cohort or they all pay the same?

4 Mr. Barthold. Senator Enzi, of course, there is
5 substantial variation within our income classifications.

6 Senator Enzi. So there are a lot of moving parts
7 to it then. So in the version that the chairman has put
8 up as a mark, would there be any difference within a
9 cohort in what the people would be paying on?

10 Mr. Barthold. Of course, Senator Enzi. As we have
11 talked about before, there is a number of reasons why
12 there might be different outcomes at same-income levels,
13 depending upon marital status, number of children, age
14 of children, other personal circumstances.

15 Senator Enzi. I will be interested to see the
16 amendments that apparently the other side can fix within
17 a cohort so that all people get a tax break regardless
18 of what kind of business they are working for or in or
19 make or how many jobs they hold.

20 I think we will still wind up with a variation
21 within a cohort where some people will get less than a
22 hundred dollars, some people will get more than a
23 hundred dollars, some people will not get any break at
24 all.

25 I will be interested to see the solutions the other

1 side has. This is not my first time of legislating. I
2 was in the Wyoming legislature for 10 years, and clear
3 back then I discovered that it is easier to kill a bill
4 than it is to pass one. And all you have to do during
5 any one of the several steps, and here we have committee
6 work, we have floor work, we have conference, we will
7 have a reaffirmation of the conference votes, and at any
8 one of those points if you can create a little confusion
9 you can kill a bill.

10 But to pass a bill, you have to get a positive vote
11 at every one of those. So I hope there will be some
12 effort and we will see through the amendments whether it
13 is an attempt to kill the bill or whether it is an
14 attempt to improve the bill.

15 So I have not seen so far much effort to pass a
16 bill, but we will look at the amendments.

17 I yield.

18 The Chairman. Okay, Senator Crapo, you can take
19 over and then Senator Heller. Okay?

20 Senator Wyden. Mr. Chairman?

21 The Chairman. The ranking member.

22 Senator Wyden. Thank you, Mr. Chairman.

23 A couple of additional questions for you, Mr.
24 Barthold. The administration and the majority have
25 promised that if the \$1.5 trillion deficit-busting bill

1 is passed, households can expect average wages to rise
2 by \$4,000. Based on the tax provisions and the debt it
3 is going to rack up, is the Joint Committee or the
4 Congressional Budget Office forecasting average wages to
5 rise \$4,000 anytime over these next five years?

6 Mr. Barthold. I do not know what the Congressional
7 Budget macroeconomic baseline forecast is for employment
8 income growth as part of the baseline.

9 The \$4,000 figure that you attribute to the
10 administration I believe is the figure cited by the
11 Council of Economic Advisers Chairman Kevin Hassett.

12 And as to the Joint Committee staff, as I had noted
13 earlier, with respect to the mark before us, I would
14 prefer to wait to do our economic analysis before
15 commenting.

16 Senator Wyden. I understand. Let me ask it this
17 way. I would like to know whether you think that there
18 is any possibility of something like this? Because my
19 understanding, listening to you over the years, the
20 Senate bill provisions are unlikely to produce that sort
21 of increase in household incomes, at least within the
22 10-year forecast. Is that off base, given your history?

23 Mr. Barthold. We have on our website, as I know
24 you well know, analyses that we have done in the past.
25 They have all been in the context of bills that do not

1 make as many and as substantial changes as this bill,
2 but it would be fair to characterize them as probably
3 not having as big an increase as Chairman Hasset has
4 suggested.

5 Senator Wyden. All right.

6 Colleagues, I hope everybody gets the significance
7 of that before lunch. Mr. Barthold does it by the book.
8 He does not do it by politics. And he said, and I
9 respect economic-speak, he said it was unlikely that you
10 are going to see what the heart of the administration's
11 proposal for these corporate tax breaks is about, that
12 workers are going to see a \$4,000 increase. And I
13 appreciate the answer.

14 Let me ask about one other matter.

15 Mr. Barthold, there have been press reports
16 indicating that the President recently called a group of
17 Democratic senators and said that he would personally
18 get killed financially under this Senate bill.

19 Now, I find that hard to believe. And I also very
20 much respect that you cannot comment on the President.
21 So let us just set that aside, that is not what my
22 question is about.

23 What I would like to do, though, is talk and have
24 you walk us through a hypothetical billionaire, real
25 estate investor, who, say, has investments in more than

1 500 partnerships. This is a hypothetical example. I
2 want to underline it, hypothetical billionaire example.
3 Do you think that a taxpayer in this hypothetical
4 billionaire example I am talking about would get, quote,
5 "killed" under the Senate bill?

6 Mr. Barthold. Senator Wyden, as just with the
7 exchange with Senator McCaskill, regardless of the size
8 of the enterprise or the number of entities that an
9 owner might own, if it were not an enterprise that is a
10 professional service enterprise, can generally claim the
11 benefit of the 17.4 percent deduction for your business
12 income subject to the limitations of 50 percent of the
13 W-2 wages that you pay your employees. So there is a
14 limit on that.

15 So in your hypothetical example, I guess we do not
16 know how many or how much the employees are paid. That
17 would be a limiter.

18 Senator Wyden. Just for, again, sort of general
19 awareness of this, what might our hypothetical
20 billionaire benefit from? Because it strikes me there
21 are a host of past provisions, the lower, you know, rate
22 for people at the top of the top and the estate tax and
23 the like. But just tick off what might this
24 hypothetical real estate billionaire benefit from.

25 Mr. Barthold. Well, I guess we should start with

1 the rate. You are saying the person is a billionaire,
2 so you are thinking that they probably have an income in
3 excess of \$500,000 or a million dollars, those are the
4 single and joint thresholds, taxable incomes for the
5 38.5 percent rate under the chairman's mark.

6 On the qualified business income, the bill would
7 allow a 17.4 percent deduction, which I am hoping one of
8 my colleagues has quickly figured out the deduction
9 amount for the effective marginal rate, a reduction from
10 38 percent, let me say that is roughly not quite a
11 sixth, so maybe six points down. So it would mean
12 instead of having a 38.5 percent rate on the qualified
13 business income, you would have something around a 32
14 percent marginal tax rate.

15 Senator Wyden. So that person got a significant
16 reduction based on your marginal rate calculations on
17 the top rate as well.

18 Mr. Barthold. And that was independent of real
19 estate, manufacturing, retail, whatever the enterprise
20 might be.

21 Senator Wyden. Anything else they would be
22 eligible for?

23 I know I am over my time.

24 The Chairman. You are.

25 Senator Wyden. I assume the estate tax reduction

1 and that kind of thing.

2 Mr. Barthold. There are changes, since you
3 mentioned real estate, there is changes in the cost
4 recovery lives of residential and nonresidential real
5 estate. And so that could prove beneficial.

6 Senator Wyden. I am over my time. Thank you.

7 The Chairman. Senator Stabenow?

8 Senator Stabenow. Thank you, Mr. Chairman.

9 I do want to note that it is very possible to do
10 bipartisan tax reform that really benefits our small
11 businesses, middle-class families, makes us competitive
12 internationally, lowers a tax rate while closing
13 loopholes. We started working on that last year.
14 Senator Enzi and I co-chaired a bipartisan working
15 group.

16 And it is disappointing, very, very disappointing
17 to see this bill is moving with reckless haste through
18 the process and that the initial numbers, what we see,
19 is within a year this bill would actually raise taxes on
20 14 million people and in seven years raise taxes on 21
21 million people. So that is the concern that I have and
22 other colleagues.

23 But let me talk a little bit more about specifics.
24 Again, back to the fact that we have House, Senate,
25 administration, all will be coming together in a room to

1 decide the final bill. So I want to talk a little bit
2 more again about the House.

3 Mr. Barthold, would the House bill eliminate the
4 ability of a teacher who buys books and supplies for
5 their classroom out of their own pocket to deduct those
6 costs on their taxes?

7 Mr. Barthold. H.R. 1 as ordered reported by the
8 Committee on Ways and Means would repeal the above-the-
9 line deduction for classroom expenses incurred by
10 teachers.

11 Senator Stabenow. Thank you very much.

12 And, Mr. West, when Chairman Hatch introduced you
13 this morning, he said Mr. West is here to give the
14 administration's position on the tax proposal being
15 discussed. So I would ask, does the administration
16 support eliminating this important deduction for
17 teachers?

18 Mr. West. I understand the introduction this
19 morning, Senator. I was invited up here to talk about
20 the administration and the potential administrability of
21 these provisions. And I would be happy to help with
22 questions about that. Otherwise, I am not here to
23 discuss the position of the administration on any
24 particular provision.

25 Senator Stabenow. That is unfortunate because that

1 would be very helpful to know where the President and
2 the administration stands on these bills.

3 Mr. Barthold, would the House bill eliminate tax-
4 exempt bonds for nonprofit rural hospitals?

5 Mr. Barthold. The House bill would eliminate the
6 ability to issue private activity bonds, and so that
7 would include nonprofit.

8 Senator Stabenow. That is correct. Thank you very
9 much.

10 And, Mr. West, do you know where the President
11 stands on this?

12 Mr. West. Again, I am not going to talk about the
13 position of the administration on any particular
14 provision.

15 Senator Stabenow. Thank you.

16 Mr. Barthold, would the House bill end the
17 deduction for student loan interest, raising taxes on
18 millions of young people who are struggling to pay off
19 student loan debt?

20 Mr. Barthold. The student loan interest deduction
21 of present law is one of several non-itemized deductions
22 and itemized deductions that H.R. 1 as reported by the
23 Ways and Means Committee would repeal. Yes.

24 Senator Stabenow. Mr. West, any, you know, any
25 idea on where the President stands on supporting

1 students that are going to college?

2 Mr. West. Again, Senator, I am not going to speak
3 to the administration's position on any of these
4 particular provisions.

5 Senator Stabenow. Okay. Let me talk about another
6 provision that relates to tax loopholes. I thought we
7 were supposed to be closing tax loopholes and I support
8 doing that, bringing jobs home, making the tax system
9 more fair for all businesses as well as individuals.

10 But looking at things, Mr. Barthold, as we look at
11 the tax provisions for oil companies, could you speak
12 about the current tax provisions that oil companies
13 enjoy in the current code?

14 Mr. Barthold. Income of oil companies is measured
15 with a number of special industry-specific rules that
16 the Congress has passed through time. Among them are
17 the treatment, generally expensing, for smaller
18 producer, amortization for larger producers of
19 intangible drilling costs. There is amortization of
20 geological and geophysical costs. There is percentage
21 depletion allowed for small producers.

22 Senator Stabenow. There is a lot, just in the
23 interest of time.

24 Mr. Barthold. There are several.

25 Senator Stabenow. I think we will say there are a

1 number of things, some started as far back as, I think,
2 1916 or 1917.

3 There is a current part of the tax code called
4 foreign base company oil-related income that, as I
5 understand it, keeps companies from gaming our
6 international system. Is that correct?

7 Mr. Barthold. It is actually basketing of foreign
8 tax credits on income taxes that foreign governments
9 impose on oil operations. The genesis of it is that
10 oil, particularly moving it and trading across seas, was
11 seen as mobile income. And the Congress, and I am not
12 sure when, decided to wall off that source of foreign
13 tax credits to diminish what is referred to as cross-
14 crediting.

15 Senator Stabenow. I understand. And it relates to
16 minimum taxes. But as I understand it, both the House
17 and Senate bills eliminate this provision, is that
18 correct?

19 Mr. Barthold. That is correct.

20 Senator Stabenow. So that we are going to actually
21 see a new loophole being put in just for oil companies.

22 Mr. Barthold. Well, that actually might be hard to
23 judge. Without speaking for the chairman, in moving to
24 the territorial regime, in general, many companies will
25 not be claiming foreign tax credits on active business

1 activities.

2 Senator Stabenow. No, understand, but actually
3 repealing this loses money. Correct? Repealing this
4 provision would lose money.

5 Mr. Barthold. Relative to present law.

6 Senator Stabenow. Relative to present law.

7 Thank you very much.

8 The Chairman. Senator Cardin?

9 Senator Cardin. Thank you very much, Mr. Chairman.

10 Mr. Barthold, I want to concentrate this round on
11 one of our objectives here and that is to make the tax
12 code simpler and to provide more certainty, which is one
13 of the issues I hear a great deal, particularly from
14 those who have the burdens of trying to comply with our
15 tax laws.

16 Now, as you went through the explanation of foreign
17 intangible income and base erosion provisions, I doubt
18 whether many people fully understood what you were
19 saying, not your fault, but because it is anything but
20 simple or easy to understand.

21 I want to get to the foreign intangible income
22 because I served in the House of Representatives on the
23 Ways and Means Committee when we went through FSC
24 debates and the problems we had because we felt we
25 passed a pretty simple provision for manufacturing only

1 to find out it was WTO illegal.

2 What we are trying to do here is encourage exports
3 at a lower rate, which seems to me is going to be a red
4 light for the WTO. Do we have a plan B? Are we going
5 to potentially go through many years of uncertainty in
6 regards to this provision's legality under the World
7 Trade Organization?

8 Mr. Barthold. Well, Senator Cardin, it is the
9 chairman's mark. I am not a trade expert. My
10 colleagues on staff are not trade experts, so I cannot
11 really opine on the important issue that you are
12 raising.

13 If trade people think that there is, you know, some
14 uncertainty there, you know, that, as you say, the
15 uncertainty is unfortunate for business.

16 And, Mr. Chairman, I would just urge us. We went
17 through years of debate on trying to fix something that
18 we thought was well intended to encourage exports only
19 to find out because of WTO rules we could not do.

20 My guess is that this is going to be an issue that
21 will be challenged in the WTO, which means that we are
22 not going to have the certainty that we want to
23 encourage U.S. exports. It is just another uncertainty
24 that would be baked into the law. Another reason why
25 you need time to make sure what we are doing is right.

1 Let me, if I could, go over a second issue that
2 could run into problems, and that is our international
3 tax treaties and how you are trying to deal with the
4 deductibility of certain expenses that may run contrary
5 to tax treaties that we have entered into.

6 Do you have somebody on staff that is an expert on
7 treaties to make sure we are not violating any of the
8 treaties?

9 Obviously, the treaties would, I would think, take
10 precedent, but I am not sure if the tax law requires one
11 result and the treaty a different result.

12 Mr. Barthold. Well, to answer the simple part of
13 your question is, several of my colleagues are quite
14 expert on treaties that we help advise the Senate
15 Foreign Relations Committee and their review of income
16 tax treaties as a regular matter.

17 And I believe in particular you were talking about
18 the proposed base erosion anti-abuse provision of the
19 chairman's mark. And it is structured as an alternative
20 tax compared to the income tax. So I think our view is
21 that there is not a treaty override inherent in that
22 design.

23 Senator Cardin. So you believe, even though it is
24 circumventing a treaty, that it will be acknowledged by
25 our treaty partners as a clever way to avoid the treaty?

1 I think that is what you just said.

2 Mr. Barthold. I do not think I used quite those
3 words, I think I said it was not a treaty override.

4 Senator Cardin. I wonder whether we would take the
5 same view if our treaty partner used a circumvention to
6 get around their obligations under a tax treaty. I just
7 wonder whether we would take the same attitude.

8 I am trying to figure out how we are going to
9 enforce the passthrough limitations that you have on
10 getting the reduction. You had the professional service
11 rule, you had the W-2 income rule. How would the
12 taxpayer know what they can deduct and what they cannot
13 deduct? Is this going to mean we will revise the K-1s
14 if it is a partnership-type entity? Is this really
15 enforceable?

16 Mr. Barthold. In terms of thinking about the
17 deduction, Senator, you first start with taxable income
18 as you would compute it today. So compute taxable
19 income --

20 Senator Cardin. I understand that, but I have a K-
21 1, I have -- I am a passive --

22 Mr. Barthold. Oh, the deduction is then taken
23 against the individual return's rate.

24 Senator Cardin. But would I get the information
25 about whether I am -- how would I know?

1 Mr. Barthold. Oh, so you are asking --

2 Senator Cardin. How would a taxpayer know what
3 they could --

4 Mr. Barthold. I guess your question is really
5 about how to apply the wage limitation.

6 Senator Cardin. If you have got a wage limitation.
7 I do not know the workings of the underlying company,
8 all I know is I have income.

9 Mr. Barthold. I think you are correct that we
10 envision that there would be reporting of wage
11 information so that taxpayers can comply.

12 Senator Cardin. But a taxpayer would not know, so
13 they are going to be using third-party information.

14 Mr. Barthold. That is right.

15 Senator Cardin. And then if that gets audited
16 later, then --

17 Mr. Barthold. Well, which is the same as present
18 law. If there are errors, be they unintentional or
19 intentional, reported to the taxpayer.

20 Senator Cardin. That is true.

21 But, Mr. Chairman, that is absolutely true. But
22 today, some of this is a little bit more subjective and
23 more removed than what we have on K-1s today.

24 I would just point out I think you are creating an
25 enforcement challenge because some of this -- and

1 personal service is another area that may be subject to
2 different interpretation. And you are going to have
3 taxpayers relying upon information received from third
4 parties that may or may not be accurate.

5 The Chairman. Okay.

6 Senator Casey?

7 Senator Casey. Thank you, Mr. Chairman.

8 I will be focused on outsourcing, Mr. Chairman. I
9 realize that this panel has not had a break and it is
10 the lunch hour, so I will stay within my limits here.

11 I wanted to focus on outsourcing because one of the
12 concerns we have about the bill is that it could
13 actually encourage outsourcing, which would be
14 devastating to American families who have already
15 endured the adverse impact of that over many years.

16 The bill includes a complicated calculation which
17 may actually allow companies who outsource manufacturing
18 to avoid paying any tax on those foreign profits. At
19 best, the Senate bill will tax foreign profits at a rate
20 that is 7.5 percentage points less than profits earned
21 in the United States -- 7.5 percentage points less than
22 that earned in the U.S.

23 So if you are a company that moved a manufacturing
24 plant overseas to take advantage of cheap labor, you get
25 a tax cut under this proposal.

1 Our workers have lived for decades under the
2 constant threat of jobs leaving to go to Mexico or other
3 places. And it has been a terrible pall or dark cloud
4 that has hung over so many communities.

5 So I guess I will start with Mr. Abraham.

6 I would ask you, is four days enough time to fully
7 understand the impact of the changes being proposed in
8 this bill as it relates to how we tax profits of global
9 corporations?

10 Mr. Abraham. Yes, we have started analyzing it
11 since Thursday evening, so we are still trying to
12 understand the broad effects, ramifications of the bill.

13 Senator Casey. I am assuming you could use more
14 time.

15 Mr. Abraham. That would be helpful to better
16 understand the implications, yes.

17 Senator Casey. So we are concerned about
18 encouraging outsourcing, as I said. From what you know
19 about the bill so far, can you explain how this bill may
20 actually encourage outsourcing as well as how it may
21 reward companies who actually have already outsourced
22 jobs?

23 Mr. Abraham. Yes, Senator. So based on my
24 understanding of the bill, of the chairman's mark before
25 us, maybe I will handle the second part first.

1 There is a transition rule in the bill having to do
2 with previously untaxed earnings and profits of
3 controlled foreign corporations. Normally, that would
4 be subject to a 35 percent U.S. rate. And the
5 chairman's mark provides both a 5 percent and a 10
6 percent rate, a bifurcated rate on that income.

7 Some have said other proposals have had a higher
8 rate on that previous income. That might be an issue.

9 And then on the first part of your question as far
10 as sort of permanent tax relief or tax incentives,
11 comparing a U.S. manufacturing facility, I believe was
12 your example, to a foreign, as you said, there is
13 potentially a 7.5 percentage point, meaning a 20 percent
14 versus a 12.5 percent, rate differential. And you can
15 achieve that because the highest rate that would be paid
16 on the intangible portion of the income would be 12.5
17 percent.

18 But on normal routines, you could potentially be
19 paying nothing as compared to a 20 percent rate in the
20 U.S. That is my understanding of the legislation.

21 Senator Casey. So is it correct that if you are a
22 U.S. company with a manufacturing facility in China, it
23 is likely that your profits are, quote, "routine"
24 returns and you will likely pay a zero percent rate on
25 U.S. tax on the profits and at most you are paying 7.5

1 percentage points less than if those profits were in the
2 United States? Is that correct?

3 Mr. Abraham. Yes, assuming it is a manufacturing
4 facility, as I understand your example, that is my
5 understanding of the chairman's mark and how it will be
6 treated.

7 Senator Casey. So this is just my assessment of
8 it, but that means a company who has outsourced jobs
9 will be paying less tax on profits than a company that
10 kept their jobs here.

11 Mr. Chairman, thank you.

12 The Chairman. Okay.

13 Senator Portman?

14 Senator Portman. Thank you, Mr. Chairman.

15 We have had this discussion already, so I will not
16 belabor it except to say that the incentives in this
17 bill are actually to stop what is happening now, which
18 is jobs and investment going overseas.

19 And, Mr. Abraham, you talked about you think that
20 deemed repatriation is going to encourage more jobs to
21 go overseas. I do not get that. Deemed repatriation is
22 saying we are actually going to tax you for your
23 earnings that you have already earned and for your
24 investment you have already made.

25 It is not going to help in terms of companies that

1 want to send their profits overseas. It is going to do
2 just the opposite. It is going to require them to pay
3 taxes that are going to be owed in order to shift to a
4 territorial-type system.

5 And again, we have looked at this for years. We
6 just had a working group. Chuck Schumer and I co-
7 chaired it. We said a territorial system is the way to
8 go, a lower rate, to stop the current system, which is
9 moving jobs and investment overseas.

10 We did an investigation of this in the Permanent
11 Subcommittee on Investigations that I chair. We found
12 out that these companies are taking their jobs with them
13 and money with them.

14 I would just say that what I think my colleagues
15 are recommending on the Democratic side of the aisle is
16 a worldwide system that is going to have even more jobs
17 going overseas and having even more companies that are
18 foreign buying U.S. companies. Because if you tell
19 Procter & Gamble that is in Ohio that they have got to
20 make diapers in America only, guess what? You cannot
21 make diapers in America and sell them all over the world
22 like they do and be able to be competitive. You make
23 the diapers where the market is.

24 And by telling them they are going to have a higher
25 tax than anybody else on that, Procter & Gamble becomes

1 a foreign company because a foreign company can pay a
2 premium -- so that is the problem we have now.

3 There was also an argument made earlier that
4 somehow this is going to be violative of the WTO, that
5 the World Trade Organization is going to step in and say
6 that this is something that is inconsistent with their
7 rules. Senator Cardin talked about it, Senator Wyden
8 talked about it earlier.

9 Let me just say that what we are talking about here
10 has been carefully crafted to avoid that very problem.
11 The provision targets intellectual property. WTO
12 subsidy rules do not apply to intellectual property. So
13 to the extent that the lower rate applies to
14 intellectual property income, which is the intent of
15 this, that is the end of the analysis right there.

16 In addition, this 10 percent rate is not export
17 dependent. In other words, yes, it is to bring IP back
18 here and be able to export it. That is the carrot. But
19 there is also a stick, so that it is not dependent on
20 whether it is exported or not, it is a rate on
21 intangible income, including CFC intangible income,
22 which also deals with any potential WTO problem.

23 So I would just ask you -- I know, Mr. Barthold,
24 you are the Joint Tax Committee and not the Joint Trade
25 Committee and you said you are not a trade lawyer,

1 expert, but has anything I have said with regard to the
2 international trade elements of this been incorrect?

3 Mr. Barthold. Well, not to my knowledge. But,
4 again, not a trade expert.

5 Senator Portman. Yes. Well, it is drafted in a
6 way that avoids those WTO problems that were raised.

7 Let me ask you something you can talk about, which
8 is the tax side of this. Again, Democrats have called
9 our international plan, quote, today, "a multi-billion-
10 dollar tax break for U.S. multinationals."

11 Can you tell me what the revenue costs of the
12 international tax system in this bill are? Does it
13 raise revenue or lose revenue? Is it a big tax cut?

14 I am looking at page six right now of your revenue
15 table entitled *International Tax Reform*, that is this
16 table, page six of your revenue tables. Does the
17 international provision, as was said earlier, provide
18 for a big tax cut for a multinational company?

19 Mr. Barthold. It is fairly much a break-even
20 across the 10-year budget period, Senator.

21 Senator Portman. So it is break-even. I see
22 actually a \$104 billion razor.

23 Mr. Barthold. That is correct, in terms of big
24 scale.

25 Senator Portman. I guess by Washington standards,

1 \$104 billion one way or the other is, you know --

2 Mr. Barthold. It is not a big loser, it is
3 positive.

4 Senator Portman. Yes, it actually raises money.
5 There is no tax cut here. So, I mean, I appreciate the
6 back-and-forth, but I just think we have got to go back
7 to the facts and look at what is happening.

8 And let me ask Ms. Acuna, who has not gotten a
9 chance to talk much today, but she has been involved
10 with a lot of this base erosion, anti-abuse stuff that
11 we have been trying to do to ensure that we are not
12 going to lose out on our revenue that we are due here in
13 this country.

14 You have been involved in this issue, trying to be
15 sure that this is fair and balanced. Can you talk to us
16 a little about why it is so important to move to these
17 kinds of incentives to be able to keep jobs here in
18 America?

19 Ms. Acuna. Well, as you mentioned, one of the
20 biggest problems that we are facing is international
21 competition. And our global competitors do provide
22 preferential rates in their countries. And in recent
23 years, now those rates have to be paired with nexus
24 requirements. That means that they actually have to
25 move bodies and jobs overseas in order to take advantage

1 of those rates.

2 So what this is designed to do is to level the
3 playing field in that respect, to provide a preferential
4 rate with respect to your foreign earnings and a similar
5 rate with respect to your U.S. earnings so that there is
6 not a large tax difference between being U.S. and
7 foreign.

8 Senator Portman. So to keep the jobs from going
9 overseas and, as you indicate, it is an increasing
10 problem. In other words, now countries are saying you
11 can take advantage of our patent box and our lower rate,
12 but only if you bring the R&D with you. You have to do
13 the R&D now in those countries and that is the future.

14 And if we do not do this, we are going to find
15 ourselves losing out even more. Is that accurate, Ms.
16 Acuna?

17 Ms. Acuna. That is accurate.

18 Senator Portman. Thank you, Mr. Chairman.

19 The Chairman. Okay. We are going to recess until
20 2:30.

21 Senator Wyden. Mr. Chairman?

22 The Chairman. Yes?

23 Senator Wyden. Just on the point you and I have
24 been talking about -- and I want to again express my
25 appreciation for our working relationship -- senators on

1 our side are not filibustering. We have got real
2 questions that go right to the heart of making \$10
3 trillion worth of changes in the tax law.

4 I mean, on the last round, I got at what I think is
5 a key question where the White House said, as a result
6 of this tax reform, people were going to see their wages
7 rise \$4,000.

8 Mr. Barthold, the professional that he is, used
9 economic-speak and said that that was very unlikely.

10 So I appreciate your saying we are going to come
11 back at 2:30. My colleagues have very real questions.
12 When you and I talked about it, and I have appreciated
13 it, you said as long as they are not filibustering, as
14 long as they are asking real questions -- and we are not
15 yet even on the bill that is the bill -- we should
16 continue.

17 And I want to say that I am going to work with you
18 and we will discuss it with our colleagues.

19 The Chairman. Okay.

20 We will recess until 2:30.

21 [Whereupon, the Committee was recessed at 12:50
22 p.m., reconvening at 2:27 p.m.]

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AFTER RECESS

[2:47 p.m.]

The Chairman. Thank you. Well, the Committee will come to order.

The purpose of this afternoon's session is to discuss the details of the chairman's mark. We are not here to speculate about items that may or may not end up in the House bill. We are not here to debate items that are not currently part of the chairman's mark because as of now, there is no official or final version of the modification.

As I made clear this morning, we are still working to finalize the details of the modification. When that work is done, the details will be provided to the Committee with ample time to go through them. And after that, most likely tomorrow morning, we will have another walkthrough to give members an opportunity to discuss and ask questions about the modification.

Long story short, no one needs to be talking about the individual mandate at this point. It is not part of the mark. Arguments, questions or statements about the individual mandate are a distraction from the meeting we are having now and, frankly, they are a waste of this Committee's time.

Members have told me that they have additional

1 questions to ask about the mark and I want to be
2 reasonable, accommodating. So I will ask, do any
3 members have any questions or comments about anything
4 other than Obamacare or the individual mandate?

5 Senator Brown. I do, Mr. Chairman.

6 Senator McCaskill. I do, lots.

7 Senator Bennet. I do.

8 Senator Wyden. Mr. Chairman? Mr. Chairman?

9 The Chairman. Yes? Yes?

10 Senator Wyden. Thank you, Mr. Chairman.

11 First, the press is reporting that what will be
12 offered tomorrow will contain a repeal of the individual
13 mandate under the Affordable Care Act. Are those press
14 reports correct?

15 It quotes Mitch McConnell.

16 The Chairman. Well, my understanding is --

17 Senator Brown. This changes every day, Mr.
18 Chairman.

19 The Chairman. My understanding is that we are
20 going to have a modification this afternoon.

21 Senator Wyden. Correct. Okay.

22 Mr. Chairman, so I want everybody to understand,
23 because Senate-speak is a little hard to follow. What
24 has now been confirmed, at some point fairly soon Senate
25 Republicans are going to propose a repeal of the

1 individual mandate under the Affordable Care Act. That
2 means that the tax bill is going to hit the American
3 people with a health care double whammy.

4 First, the Congressional Budget Office announced
5 today that if the Republican tax bill passes, it would
6 trigger a sequester that would result in \$25 billion in
7 cuts to Medicare.

8 Now on top of that blow to vulnerable senior
9 citizens, according to the Congressional Budget Office,
10 your change that we will be getting later today will
11 cause millions to lose their health care and millions
12 more to pay higher premiums, all to pay for yet more tax
13 breaks for multinationals.

14 Now, in addition to the serious harm to seniors and
15 the middle class, our view is that this is a violation
16 of Committee practice. There was no amendment filed
17 that in any way addressed the individual mandate or the
18 Affordable Care Act at all, so now we have got a
19 provision flying into the modified mark that was not
20 filed as an amendment, and it certainly goes against the
21 well-established Finance Committee precedent.

22 This is yet another example, one more about how the
23 process being used for this tax bill is not regular
24 order.

25 So my request, Mr. Chairman, is this: If the

1 modified mark opens up the health care debate by
2 including a major change to the Affordable Care Act, it
3 is only fair that members be allowed to offer amendments
4 to address other health care issues. And since there
5 was no notice that health issues would be addressed
6 during this markup, I believe members ought to be
7 allowed to file additional amendments addressing health
8 issues.

9 So I close by asking unanimous consent that members
10 have until 5 p.m. tomorrow, Wednesday, November 15th, to
11 submit additional amendments and that any amendment
12 related to health care that is within the jurisdiction
13 of the Finance Committee be considered germane.

14 The Chairman. Well, the amendment time has already
15 passed. You already have your amendments. You can
16 modify the existing amendments, but we are not going to
17 allow any new amendments.

18 Senator Wyden. Well, Mr. Chairman, again, because
19 we were never told that health care was going to be part
20 of it, and this just flew in literally out of nowhere in
21 the last 20 minutes, I think basic fairness -- basic
22 fairness -- would mean that members would have
23 additional time, I think 5 p.m. tomorrow is reasonable,
24 to submit additional amendments.

25 And certainly, if Republicans are going to put this

1 in and say it is germane to the work of the Finance
2 Committee on taxes, it ought to be that any amendment
3 related to health care within the jurisdiction of the
4 Committee be considered germane.

5 The Chairman. Well, I have already ruled, so let
6 us move on to the walkthrough because, you know, I think
7 that you can modify your amendments that you have
8 onboard here.

9 Senator Wyden. Well, Mr. Chairman, I think our
10 staffs are going to have to do some work in the hours
11 intervening between when we wrap up --

12 The Chairman. I agree.

13 Senator Wyden. -- this afternoon and tomorrow to
14 ensure basic fairness. Because to me, to be able to add
15 something brand new on the Republican side, particularly
16 something that puts at risk health care affordability --
17 the Congressional Budget Office says this is going to
18 raise premiums. And the reason it is going to raise
19 premiums is because you will not have as many healthy
20 people in the risk pool. So this is a major change and
21 we will have plenty to talk about to ensure fairness.

22 The Chairman. There is nothing brand new here.
23 This is stuff we have been talking about for a long
24 time.

25 Senator Wyden. Mr. Chairman, I would also appeal

1 the ruling of the chair on this. This is so serious.

2 The Chairman. All right.

3 Senator McCaskill. Can we speak to that, Mr.
4 Chairman?

5 Senator Wyden. Mr. Chairman, there are people who
6 want to speak to it.

7 The Chairman. Senator McCaskill?

8 Senator McCaskill. Yes. I am not really sure what
9 the majority is afraid of.

10 I want to wait for the chairman.

11 I am not really sure what the majority is afraid
12 of. We are getting notice. I am reading on my little
13 device here that Senator Toomey just told a reporter
14 that it is in. Mitch McConnell just told a reporter
15 that it is in. We are all reading that the individual
16 mandate is going to be in the mark.

17 We had no idea health care and all the torturous
18 debate around the Affordable Care Act and all of the
19 debate we have had and all the attempts at trying to
20 dismantle it that have occurred, the idea that we would
21 not be allowed 24 hours to offer amendments on a subject
22 matter so incredibly important.

23 What would be the harm, Mr. Chairman? What would
24 be the harm in allowing us to offer amendments on that
25 subject matter? I need to understand, what is it we are

1 afraid of?

2 Senator Toomey. Mr. Chairman?

3 The Chairman. Okay.

4 Senator Toomey. Mr. Chairman?

5 The Chairman. Senator Toomey?

6 Senator Toomey. Yes, I would just respond, it is
7 my understanding that existing amendments can be
8 completely modified. My Democratic colleagues have
9 submitted I do not know how many amendments. Is it in
10 the hundreds? It is a large number, it is in the
11 hundreds. Every one of them can be modified to deal
12 with this very issue.

13 And if that is what members want to do, they will
14 be free to do it. I do not understand this argument
15 that it is not possible for Democrats to offer
16 amendments on health care issues. I suspect there is
17 going to be a lot of them.

18 The Chairman. I do not either.

19 Senator Toomey. And you have got the vehicle with
20 which to do it.

21 The Chairman. I do not understand it either.

22 Senator McCaskill. I am confused. I am a new
23 Committee member. Explain it to me, Mr. Chairman. You
24 are saying I can take an amendment that I have offered
25 on a passthrough guardrail and I can say, by the way, I

1 want to include something on the Affordable Care Act?
2 Is that what I can do? I can just rewrite the body of
3 the amendment to add an addendum that deals with health
4 care?

5 The Chairman. You can certainly modify it.

6 Senator Wyden. Mr. Chairman and colleagues, we are
7 talking about a whole new subject, a subject that, as I
8 have indicated, can raise health insurance premiums on
9 millions of people. And I think this is a modest
10 request, why I called -- and I have not done this -- for
11 an opportunity for members to vote on whether or not we
12 ought to have until 5 p.m. tomorrow to submit additional
13 amendments.

14 And obviously, Mr. Barthold, we are going to be
15 interested in whether your distributional analysis is
16 going to be updated to include the individual mandate.

17 So there are a host of questions, which is the
18 point Senator McCaskill has mentioned.

19 And, Mr. Chairman, I know you want to move on, some
20 colleagues want to, and if we could vote on my motion.

21 The Chairman. Well, let us see if there are any
22 other comments.

23 Senator Stabenow. Mr. Chairman?

24 The Chairman. Yes, Senator Stabenow?

25 Senator Stabenow. Thank you, Mr. Chairman. I

1 support the ranking member's motion. And I just wanted
2 to indicate, this is a very unfortunate turn. Instead
3 of having something that is going to be in this tax bill
4 that will actually raise premiums, health care premiums,
5 what we should be doing is focusing on a bipartisan
6 effort that Senator Alexander and Senator Murray have
7 put together to stabilize the markets that would
8 actually begin to lower premiums.

9 And so this is a very unfortunate turn of events
10 and also makes me very skeptical about what is coming
11 next when there is a \$1.5 trillion debt increase built
12 into this bill, and then the next thing we see is a
13 budget resolution with about \$1.5 trillion in cuts to
14 Medicaid and Medicare.

15 So if we are going down this road, you know, there
16 is a whole lot of concerns that I know people in
17 Michigan will have about their health care.

18 Senator Wyden. Parliamentary inquiry, Mr.
19 Chairman, before we vote?

20 The Chairman. Go ahead.

21 Senator Wyden. Thank you.

22 So Senator Toomey has said everything is going to
23 be honky-dory here, that we are going to be able to talk
24 about our concerns with this amendment.

25 I would just like to have clarified by the majority

1 that health amendments would not be ruled as non-
2 germane, that all the health amendments within the
3 jurisdiction of this Committee be considered germane. I
4 think that is a minimum commitment, given the importance
5 of this very important issue which, as I say, just flew
6 in through the door in the last couple of hours.

7 Senator Thune. Mr. Chairman?

8 The Chairman. Senator?

9 Senator Thune. Mr. Chairman, my understanding is
10 that the individual mandate is a tax collected by the
11 IRS. The individual mandate, the Supreme Court ruled,
12 is a tax. So it seems to me it is perfectly within the
13 jurisdiction of this Committee to move forward and
14 address something that is imposing a mandatory tax on
15 millions of Americans for simply choosing not to buy
16 health insurance. That is what we are talking about
17 here.

18 This is a tax that punishes people for doing
19 something that they would not want to do. So it seems
20 to me it is perfectly within this Committee's
21 jurisdiction to address this in the form of an
22 amendment.

23 And so I do not know what the outrage is about this
24 not being germane or pertinent to the subject before us.

25 Senator Brown. Mr. Chairman?

1 Senator Wyden. Mr. Chairman?

2 Senator Brown. Mr. Chairman?

3 Senator Wyden. Mr. Chairman? Just before I yield
4 to my colleague, let us understand this redefines the
5 scope of this markup. We did not know anything about
6 this. That is why it is so important that we get the
7 time to address it because this, in all the particulars,
8 redefines the scope of this markup.

9 The Chairman. Let me just --

10 Senator Thune. Mr. Chairman? Mr. Chairman?

11 The Chairman. Let me just --

12 Senator Thune. How is it outside the scope?

13 The Chairman. The chairman is going to speak.

14 Senator Thune. It is a tax, it is the IRS, the
15 Internal Revenue Code. I do not know how it is outside
16 the scope.

17 Senator Brown. Mr. Chairman? Mr. Chairman?

18 The Chairman. Okay. Now, let me just make this
19 comment. The Democrats have offered to run 60
20 amendments with no text at all. It seems to me they are
21 awfully easy to modify. There is nothing strange about
22 this at all. And I do not get the crying.

23 Senator Wyden. Mr. Chairman, I think the question
24 still is germaneness. And that is what is most relevant
25 to the question that Senator McCaskill asked, to make

1 sure that she is actually going to be able to offer
2 amendments within our jurisdiction.

3 I still have not heard an answer to this.

4 Josh, why do not you clear this up for us? What is
5 doable?

6 Mr. LeVasseur. During the ACA, members were able
7 to completely modify their amendments in any way
8 possible.

9 The Chairman. There is nothing to stop them from
10 doing it here?

11 Mr. LeVasseur. There is not. Based upon that
12 precedent, members could easily offer and change their
13 amendments as they wish.

14 Senator Wyden. So I want to hear the words "health
15 care amendments are germane" because that is what is
16 going to be asked tomorrow, in my view, unless we
17 clarify this.

18 Mr. LeVasseur. I cannot speak to germaneness,
19 Senator Wyden; that is up to the chairman.

20 Senator Wyden. Mr. Chairman?

21 The Chairman. Well, let us understand, to be
22 germane they have to be related to the Internal Revenue
23 Code. And at least the individual mandate is the
24 Internal Revenue Code, so that is my understanding. I
25 do not see any problem here.

1 Senator Wyden. Mr. Chairman, we have redefined the
2 scope of the bill to health care. We were not talking
3 about health care in the Senate Finance Committee until
4 about an hour ago. So I think it is only fair to allow
5 members to submit additional amendments related to
6 health care and the jurisdiction of the Committee.

7 This is now, on the basis of the announcement that
8 has been made, a major health care bill.

9 Senator Cassidy. Mr. Chairman? Mr. Chairman?

10 The Chairman. What? Yes, Senator Cassidy.

11 Senator Cassidy. I have a question for the ranking
12 member.

13 The Chairman. Go ahead, Senator Cassidy.

14 Senator Cassidy. This is for Senator Wyden or
15 maybe Senator McCaskill.

16 Senator Thune points out that the individual
17 mandate is a tax. But I am getting from you, when you
18 want to open up all health care, you would like to bring
19 up Medicaid 340B, Medicare Part D? I mean, that is the
20 jurisdiction this Committee has over health care.

21 Are we really saying, because we are going after or
22 because we are discussing something which has been
23 declared a tax, which is a tax, that we are now going to
24 go and bring in Medicaid and 340B? I mean, that just
25 seems like a stretch.

1 And as loud as the volume can be and as forceful as
2 the delivery, I have got to admit this is a tax and it
3 is not 340B and it is not Medicaid. I do not quite get
4 the connection between the whole scope of health care
5 that this Committee has and that which is specifically a
6 tax.

7 Senator Wyden. Mr. Chairman, if I can respond to
8 my colleague.

9 The Chairman. Okay.

10 Senator Wyden. This is related to a host of other
11 health care issues. This is a partial repeal of the
12 Affordable Care Act. And that is why the Congressional
13 Budget Office scored it with such ominous consequences:
14 millions of people losing coverage, millions of people
15 having their premiums go up.

16 My colleague has been involved in health care. We
17 will have far fewer healthy people go into the risk
18 pool, which means that premiums are going to go up in
19 this country.

20 This is turning a tax bill into a health care bill
21 with our colleagues getting an hours' worth of notice.

22 Senator Cassidy. But that does not address my
23 question. If you wish to address the consequences of
24 the individual mandate repeal, that is one thing. But
25 if you want to bring in everything that this Committee

1 has to do with health care, 340B for example, that is a
2 stretch and that is far beyond the scope of what we are
3 discussing here.

4 Senator Wyden. We are happy to make this any --

5 The Chairman. Let us ask for recognition by chair.

6 Senator Wyden. Mr. Chairman?

7 The Chairman. Okay? From here on in, I am tired
8 of this. It is jumping in and yelling and screaming. I
9 do not want any more yelling and screaming. Let us just
10 talk like gentlemen here and women, well, women and
11 ladies, and then let us treat each other with respect.

12 Now, I have made my ruling. The Internal Revenue
13 Code related amendments would be in scope. That is it.
14 Now, let us just move on.

15 Senator Wyden. Mr. Chairman?

16 The Chairman. Senator Wyden?

17 Senator Wyden. Thank you. To respond --

18 The Chairman. Let us run this like it needs to be
19 run.

20 Senator Wyden. To respond to my colleague from
21 Louisiana --

22 The Chairman. Yes.

23 Senator Wyden. -- we are interested in making sure
24 that it is germane to offer amendments related to the
25 Affordable Care Act. That is what the individual

1 mandate is all about. And I do not think we have locked
2 this issue down.

3 And, Mr. Chairman, unless colleagues want to keep
4 speaking, for those who have just come in, what we have
5 pending is I have asked unanimous consent that members
6 have until 5 tomorrow to submit additional amendments
7 related to this matter of health care and the Affordable
8 Care Act.

9 We have been turned down. The chair ruled against
10 us. And what is pending is an appeal of the ruling of
11 the chair.

12 The Chairman. The Senator from Pennsylvania.

13 Senator Toomey. Mr. Chairman, I think I would like
14 to respond to the ranking member's concern by saying,
15 look, everything in the tax code relates to something.
16 We have provisions in the tax reform bill that affect
17 the financial services industry, it affects trade, it
18 affects every industry in the economy because every
19 industry pays taxes.

20 That does not mean the entire universe is open for
21 amendment and germane. What is germane is anything that
22 directly affects the Internal Revenue Code because this
23 issue is a tax. It is very clear, it is a tax.

24 So I do not understand the concern. Our Democratic
25 colleagues can modify the amendments. They have

1 submitted 60 blank amendments, they can fill those in.
2 And to the extent that they are related to the code,
3 they are presumably going to be ruled germane, as our
4 amendment is germane.

5 So I just do not see the issue here, Mr. Chairman.
6 Senator Wyden. I have something else.

7 The Chairman. Well, I do not see the issue either.
8 You do have 60 blank amendments.

9 Senator Wyden. Senator McCaskill is wanting to
10 speak, and then one other point, Mr. Chairman.

11 The Chairman. Well, let me just make the point you
12 have 60 blank amendments, you can use them. I mean,
13 nobody is stopping you from doing that.

14 Senator McCaskill, we will turn to you now.

15 Senator McCaskill. Thank you, Mr. Chairman.

16 So I assume that all the Cadillac tax and medical
17 device tax and all those taxes will be considered
18 germane. Anything having to do with the Affordable Care
19 Act that has to do with taxes is germane.

20 And I guess the point we would make is that when
21 you start dismantling the ACA piece by piece, it has an
22 indirect effect on the entire operation of the ACA. I
23 mean, it is going to raise premiums.

24 In fact, what I would ask of JCT, will we have a
25 distribution analysis, a new one, that will show the

1 impact of this? Because the people this is going to hit
2 are the people that do not get insurance at work. They
3 are the small-business people out there that are buying
4 on the exchanges that make a little too much money to
5 qualify for the subsidies. That is who this is going to
6 hit. That is where those premiums are going to go up,
7 as you all well know.

8 So the people this is going to hit are middle-class
9 people that ostensibly this whole bill was supposed to
10 be about helping. So the way I get it is, we are going
11 to make their insurance more expensive, create 13
12 million uninsured people, all to make sure that
13 passthroughs get a 5 [percent] or 6 percent cut in
14 taxes? Unless, of course, you are a small passthrough
15 and happen to be doing certain kinds of work. I will
16 not get into the complexities.

17 But golf course owners, real estate developers,
18 massage parlor owners are going to get a break. But on
19 the other hand, we are going to be charging them more
20 for their insurance.

21 Will we have a distribution table?

22 Mr. Barthold. Senator McCaskill, I do not have an
23 amendment to examine. Our order of work is we would
24 estimate the revenue consequences of any modification
25 that the chairman might propose, and then we try to

1 produce a distribution table.

2 So it is unlikely that a distribution table would
3 be available as soon as we complete the work on the
4 revenue table. But we would work towards providing a
5 distributional analysis.

6 The Chairman. Senator Scott wants to be
7 recognized, so we will recognize Senator Scott.

8 Senator McCaskill. I think it would be really
9 important, Mr. Chairman, for us to get the distribution
10 analysis.

11 The Chairman. Senator Scott?

12 Senator Scott. Thank you, Mr. Chairman.

13 The Supreme Court has already ruled. Senator Thune
14 has pointed this out, Senator Toomey has reinforced it,
15 that the individual mandate, without any question, is a
16 tax.

17 So the question is, who is paying that tax? The
18 reality of it is a very simple answer, a very simple
19 answer: Households under \$25,000 of household income,
20 one-third are paying that tax. Out of the entire folks
21 who are paying the tax, 80 percent of the folks who are
22 paying the tax today live in a household under \$50,000.

23 If we are seriously concerned about hardworking
24 Americans, let us look no further than the current
25 debate over the individual mandate and its impact on

1 low-income Americans.

2 Twenty-five-thousand-dollar household is half, less
3 than half of the average income in South Carolina. And
4 yet, a third of the folks who are paying the penalty,
5 who are essentially having a higher tax rate, live in
6 households under \$25,000. Why? Because they are paying
7 a tax. Fifty-thousand-dollar threshold, 80 percent of
8 the folks, that is slightly less than the average income
9 in South Carolina, 80 percent of the folks who are
10 paying this tax are folks who live in a household under
11 \$50,000.

12 If we are talking about doing the right thing for
13 the middle class, we are talking about doing the right
14 thing for hardworking Americans, here is a good place to
15 start, cutting their taxes.

16 Senator Wyden. Mr. Chairman?

17 The Chairman. Senator Cornyn was next.

18 Senator Cornyn. Mr. Chairman, I will give my time
19 back to Senator Scott --

20 Senator Brown. Mr. Chairman?

21 Senator Cornyn. -- who made my point better than I
22 could.

23 Senator Wyden. Mr. Chairman?

24 Senator Brown. Mr. Chairman? Mr. Chairman?

25 The Chairman. You ready to vote?

1 Senator Wyden. I think Senator Brown would like to
2 talk.

3 Senator Brown. One brief comment, Mr. Chairman.

4 Senator Wyden. And I would like to make a quick
5 closer and Senator Carper.

6 The Chairman. Well, Senator Brown?

7 Senator Brown. Thank you, Mr. Chairman. I will be
8 brief.

9 You know, I listened to all this and I do not think
10 my colleagues are thinking much about individual people,
11 how this is going to affect their lives.

12 I am puzzled that my colleagues on the other side
13 of the aisle just cannot help themselves. This is at
14 least the fourth time. Now, this is a bunch of people
15 sitting around a table, all of us have government health
16 insurance, good insurance paid for by taxpayers, and it
17 seems my colleagues are just sitting around, just these
18 unrelenting efforts to find ways to take health
19 insurance from people in our states.

20 In my state, 200,000 people are getting opioid
21 treatment right now because they have insurance under
22 the Affordable Care Act. And we sit around here as
23 privileged members of the Senate with great titles and
24 good pay and insurance paid for by taxpayers, scheming
25 up ways. This comes out of a Republican lunch today

1 when they were talking about we cannot give up on
2 getting rid of the Affordable Care Act, let us try to
3 find a new way and they are doing it through this bill.

4 I am just puzzled by the brainpower that my
5 colleagues, and there is a lot of brainpower on the
6 other side of the aisle, my colleagues are willing to
7 put in to these unrelenting efforts to take people's
8 health insurance way.

9 And this is their fourth try, at least their fourth
10 try this calendar year. And I am just puzzled by it,
11 Mr. Chairman.

12 Senator Wyden. Mr. Chairman?

13 The Chairman. Senator Wyden?

14 Senator Wyden. Mr. Chairman, Senator Carper would
15 like to speak and then I would like to just restate the
16 motion so everybody knows what we are talking about.

17 The Chairman. Okay.

18 Senator Carper?

19 Senator Carper. Thanks. Mr. Chairman, you said
20 about five of 10 minutes ago you had cautioned us to be
21 respectful of one another. And I can appreciate that.
22 I think most of us try to abide by the golden rule,
23 treat other people the way we would want to be treated.

24 And I would just ask you today to think, how does
25 this line up with the golden rule? I know that is

1 something that you believe in. I know that is something
2 Senator Grassley believes in and others that are here.
3 I am not so sure that it is consistent.

4 I want to go back in time. I want to go back in
5 time maybe two months. And I spent a fair amount of
6 time in this room two months ago on a committee that I
7 am not even a part of, and it was the Health, Education,
8 Labor and Pensions Committee. And under the leadership
9 of Lamar Alexander and Patty Murray, they for two weeks
10 held bipartisan hearings in this room -- in this room --
11 and they brought in governors, bipartisan, across the
12 country, they brought in insurance commissioners,
13 bipartisan, from across the country, they brought in
14 health economists, they brought in health insurers, they
15 brought in providers for health insurance.

16 And the theme that emerged and what they were
17 trying to focus on is, how do we stabilize the
18 exchanges? Which I think our President is intent on
19 destabilizing.

20 But their focus was, how do we stabilize the
21 exchanges to bring down the cost of coverage in the
22 exchanges? And there was general agreement that there
23 were three things, if we would do them, that we would
24 stabilize the exchanges, we would have more insurers
25 offering insurance in the exchanges and that competition

1 would bring down prices significantly, sometimes some
2 folks have said by as much as 30 [percent] to 35
3 percent.

4 They basically gathered, there seemed to be a
5 consensus of three things we ought to do in order to
6 stabilize the exchanges.

7 Number one, we sure make it clear that these CSRs,
8 cost-saving reductions, which are really a way to bring
9 down the cost of copays, deductibles for folks who are
10 low income, make sure that that is not going away, make
11 it clear that that is not going away.

12 Number two, said we need some kind of reinsurance
13 program. Make it clear that, as much as we have done in
14 Medicare Part D, that we have a backstop there for
15 really expensive cases that insurance companies might be
16 otherwise stuck with paying.

17 Third thing they said we ought to do is continue to
18 have the individual mandate and not get rid of it. And
19 several of our witnesses said we could reduce the cost
20 of premiums in the exchanges by as much as 35 percent if
21 we would do those three things, if we would do those
22 three things.

23 Mr. Chairman?

24 The Chairman. Yes?

25 Senator Carper. I just walked us back in time too

1 much. I want to walk us back in time to 1993. In 1993,
2 I was a governor, I was a brand-new governor of my
3 state. And in 1993, a senator named John Chafee
4 introduced legislation that was reported to this
5 Committee. And the legislation that he introduced was
6 actually ideas that were brought to him by the Heritage
7 Commission as I recall. And those ideas were turned
8 into legislation that was cosponsored by 23 Republican
9 senators. It was an alternative to "Hillarycare," an
10 alternative to "Hillarycare."

11 And among those five ideas that were introduced in
12 that legislation that two of the finest people on this
13 Committee, you, Mr. Chairman, and Senator Grassley,
14 cosponsored was legislation that said every state should
15 have an exchange, there should be a sliding scale tax
16 credit to buy down the costs of coverage for low-income
17 people, there should be an individual mandate to make
18 sure that the exchange has a healthy mix of people young
19 and old, healthy and unhealthy, there should be an
20 employer mandate and there should be a prohibition that
21 said insurance cannot refuse to cover people with a
22 preexisting condition.

23 That was a Republican alternative to "Hillarycare."
24 In the end, "Hillarycare" did not go anywhere and
25 neither did the legislation that two of our colleagues

1 cosponsored.

2 You had a good idea. That bill was a very good
3 idea. And for the life of me, I do not understand why
4 you have been running away from it. This administration
5 and so many of our colleagues have been running away
6 from it for years.

7 I think this President, he attacks it because it is
8 Obamacare. He thinks Obama had something to do with it;
9 he had nothing to do with it. He had nothing to do with
10 it. It was an effort by this Committee to find a
11 bipartisan plan or proposal around which to rally to
12 extend coverage to people who otherwise would not have
13 it.

14 I would just say, Mr. Chairman, if the shoe were on
15 the other foot and something like this were introduced,
16 which really is a major change in the bill, and we asked
17 for or you asked for, like, another 24 hours to think
18 about it and offer amendments, I think we would probably
19 say yes. That is the way we would treat you. We would
20 put ourselves in your shoes. And I would just urge you
21 to do that today.

22 Give us 24 hours, treat us the way we would
23 probably, hopefully, treat you and let us just move on.
24 This is not the way to develop to bipartisan consensus.
25 In fact, if anything, this just diminishes the trust and

1 confidence with one another and takes us in the wrong
2 direction. I urge us not to go there.

3 The Chairman. Okay.

4 Senator Wyden?

5 Senator Wyden. Mr. Chairman, I am going to be
6 brief, because Tom Carper, who is always trying to bring
7 people together and is always a gentleman, has said it
8 very well. And let me just kind of make two quick
9 points and then I will offer my appeal of the ruling of
10 the chair.

11 First, we have learned in the last hour that this
12 tax bill will now be a major health care bill. We have
13 just learned that.

14 The individual mandate is an integral part of the
15 Affordable Care Act. And rumors abound about whether it
16 is going to be completely repealed or partially
17 repealed. But the bottom line is, as Senator Carper
18 just said, the senators ought to be able to respond and
19 have the tools to do so.

20 So I had originally asked unanimous consent that
21 members have until 5 p.m. tomorrow to submit additional
22 amendments and that any amendments relating to the
23 Affordable Care Act, that is within the jurisdiction of
24 this Committee, be considered germane. The chair ruled
25 that my unanimous consent request was denied.

1 So I ask for a vote, Mr. Chairman, on appealing the
2 ruling of the chair and would now ask for the yeas and
3 nays.

4 Senator Cardin. Mr. Chairman, just a point of
5 order for one moment, because maybe I do not understand
6 what is happening here. Can I just raise a point?

7 The Chairman. Go ahead.

8 Senator Cardin. Would it be possible that we will
9 get an amended chairman's mark that includes a major
10 health care provision and that your ruling would deny us
11 an opportunity to amend that provision that is added,
12 that was not in there before? Is that what the ruling
13 is about?

14 The Chairman. Well, the individual mandate is in
15 the Internal Revenue Code, as I understand it. So I
16 think you can amend that.

17 Senator Cardin. So we will be able to offer
18 amendments that will not be subject to the chairman
19 ruling them nongermane and out of order?

20 The Chairman. As long as they apply and are in the
21 Internal Revenue Code, the chair would uphold them.

22 Senator Wyden. Mr. Chairman, I would like to have
23 the yeas and nays on my appeal of the ruling of the
24 chair. Because as Senator Cardin pointed out, there are
25 a lot of unanswered questions with respect to this

1 dramatic new development that turns this tax bill into a
2 health care bill.

3 I ask for the yeas and nays on my appeal of the
4 ruling of the chair.

5 The Chairman. Okay. The yeas and nays.

6 Senator Wyden. Yes. For colleagues, I am asking
7 for a repeal of the ruling of the chair, which means
8 that those colleagues who agree that this would be basic
9 fairness, which I do for a brand-new matter, would vote
10 "aye. "

11 I would ask for the clerk to call the roll.

12 The Chairman. The clerk will call the roll.

13 The Clerk. Mr. Grassley?

14 Senator Grassley. No.

15 The Clerk. Mr. Crapo?

16 Senator Crapo. No

17 The Clerk. Mr. Roberts?

18 Senator Roberts. No.

19 The Clerk. Mr. Enzi?

20 Senator Enzi. No.

21 The Clerk. Mr. Cornyn?

22 Senator Cornyn. No.

23 The Clerk. Mr. Thune?

24 Senator Thune. No.

25 The Clerk. Mr. Burr?

1 Senator Burr. No.

2 The Clerk. Mr. Portman?

3 Senator Portman. No.

4 The Clerk. Mr. Toomey?

5 Senator Toomey. No.

6 The Clerk. Mr. Heller?

7 Senator Heller. No.

8 The Clerk. Mr. Scott?

9 Senator Scott. No.

10 The Clerk. Mr. Cassidy?

11 Senator Cassidy. No.

12 The Clerk. Mr. Wyden.

13 Senator Wyden. Aye.

14 The Clerk. Ms. Stabenow?

15 Senator Stabenow. Aye.

16 The Clerk. Ms. Cantwell?

17 Senator Cantwell. Aye.

18 The Clerk. Mr. Nelson?

19 Senator Nelson. Aye.

20 The Clerk. Mr. Carper?

21 Senator Carper. Aye.

22 The Clerk. Mr. Cardin?

23 Senator Cardin. Aye.

24 The Clerk. Mr. Brown?

25 Senator Brown. Aye.

1 The Clerk. Mr. Bennet?

2 Senator Bennet. Aye.

3 The Clerk. Mr. Casey?

4 Senator Casey. Aye.

5 The Clerk. Mr. Warner?

6 Senator Warner. Aye.

7 The Clerk. Mrs. McCaskill?

8 Senator McCaskill. Aye.

9 The Clerk. Mr. Chairman?

10 The Chairman. No.

11 Senator Isakson just came in.

12 Senator Isakson. No.

13 The Chairman. Announce the results.

14 The Clerk. Mr. Chairman, the final tally is 11
15 ayes, 14 nays.

16 The Chairman. Okay.

17 Now, let me just restate what happened. There will
18 be no extension of the amendment deadline. You all have
19 your amendments filed. There are 60 blank ones. You
20 can use them as long as they comply within the scope,
21 which is the Internal Revenue Code, and we can move on
22 from there. But that is where we are.

23 Mr. Carper. Mr. Chairman? Mr. Chairman, to your
24 right. Could I be recognized for a moment?

25 The Chairman. Yes, you can, Senator Carper.

1 Senator Carper. I do not mean to be presumptuous
2 on this, but I have chaired a committee and a bunch of
3 subcommittees. And I am going to ask you to think, Mr.
4 Chairman --

5 The Chairman. Go ahead.

6 Senator Carper. -- I want to ask you to think
7 about something for just a minute.

8 The Chairman. Yes, I am listening.

9 Senator Carper. Everybody on this Committee and
10 most of the people in this room that are watching this
11 know that in order for the exchanges to be successful
12 there have to be a good mix in the exchanges of healthy
13 and younger people as well as those who are older and
14 maybe not so healthy.

15 There is more than one way to do this. The
16 individual exchange is one, the auto enrollment, and
17 there might be others. There are different ideas. And
18 one of the great things that the HELP Committee did two
19 months ago is they had a great lineup of witnesses from
20 across the country, from all different walks of life,
21 smart people, informed people, Democrat and Republican,
22 to come in and say this is how we think there are
23 different ways to stabilize the exchange.

24 I would love for us to have a hearing here or back
25 in our regular hearing room, 215 Dirksen, that just

1 brought in smart people from around the country and
2 said, in addition to the individual mandates, what are
3 some other good ideas that either by themselves or in
4 combination with other ideas could actually get the mix
5 of young people that we need in the exchanges? That
6 would make a lot of sense to me.

7 As my father would say, just use some common sense.
8 And I think that is common sense.

9 Senator Wyden. Mr. Chairman?

10 The Chairman. Okay, Senator Wyden.

11 Senator Wyden. Mr. Chairman, when now will we see
12 the revised bill including sunsets and any other
13 changes? Because we are constantly being informed of
14 changes, told we are going to have to have responses,
15 all of which is so far removed from the way the Finance
16 Committee traditionally does business.

17 I think what we need to do before we go on to
18 anything else is get from the majority when we are going
19 to see the revised bill, including sunsets and any other
20 changes.

21 Could you and the majority staff give us some time
22 when we could expect that?

23 The Chairman. I have been informed that we can do
24 that later today.

25 Senator Wyden. That is, like, midnight, 10:00?

1 The Chairman. Well, you will have it later today,
2 whenever we can get it done. I mean, that is all I can
3 say.

4 Is there anybody else?

5 Senator Stabenow. Mr. Chairman?

6 The Chairman. Yes, ma'am?

7 Senator Stabenow. Just a comment. What is being
8 talked about now would, at the same time we are being
9 told that the tax bill will raise taxes on 14 million
10 people in a year, would now take away 4 million people's
11 insurance on top of that, 13 million over the next 10
12 years.

13 I want to just stress one thing. You know, one of
14 the things that brings us together as human beings is we
15 all get sick. The kids get sick, our parents get sick.
16 As my friend from South Carolina was talking about who
17 pays a penalty if they do not have insurance, let me
18 just remind all of us that if someone cannot take their
19 children to the doctor they go to the emergency room,
20 which is the most expensive way to provide health care
21 that there is.

22 Who pays when somebody without insurance goes to
23 the emergency room? Everybody else with insurance,
24 which is why you end up with an \$80 aspirin or some
25 other kind of cost.

1 So when we talk about health care, part of this is
2 also personal responsibility and accountability, but it
3 is also about the fact that we have seen in the last few
4 years the costs of people walking into the emergency
5 room who do not have insurance, who cannot take their
6 children to the doctor in the middle of the night with a
7 sore throat or a high fever, they can now go to the
8 doctor. Ninety-seven percent of the children in
9 Michigan can now go to the doctor. And because they are
10 not using the emergency room, the costs have gone down
11 for our hospitals in uncompensated care. And we have
12 begun to see in other insurance markets the costs
13 flattening out in terms of the group markets and so on.

14 Someone pays when kids get sick. Someone pays for
15 that. So either they pay by having the capacity to take
16 children to the doctor because they have insurance or
17 everybody else who has insurance pays for that when they
18 use the most expensive kind of care, which is going to
19 the emergency room.

20 I just want to indicate that that is the reality of
21 the economics around health care.

22 The Chairman. Understand.

23 Do members of the Committee have questions on the
24 underlying mark?

25 Senator Cantwell. Mr. Chairman?

1 Senator Wyden. Mr. Chairman?

2 Senator Cantwell. Mr. Chairman?

3 The Chairman. Yes.

4 Senator Cantwell. Mr. Chairman, thank you.

5 Mr. Chairman, I know the ranking member is asking
6 you about timing because this seemed to be, you know,
7 just a sprint, like, it is, like, I do not know if there
8 has ever been a bill, I do not even know if there has
9 been an ambassador that has been moved out of the
10 Committee and on to the Senate floor in this record-
11 speed time.

12 That is, that we left here on Thursday night with
13 some language that we were supposed to see. And I
14 worked all weekend, just like many people here. We were
15 in Veterans' Day parades, but we would pull aside and
16 call people up and say, when do we have to have our
17 amendments in? And what does the language say? And
18 what is the intent of this section? And what is the
19 impact? Is this in, is that out? Are property taxes
20 in? Are mortgage deductions out?

21 So the notion that we leave here on a holiday, on
22 Thursday night, with one draft and now we are having a
23 major change proposed here and another proposal is going
24 to come out tomorrow morning and then that is what we
25 are going to start marking up?

1 Look, I think people are here. I worked in
2 software. I know what software hours are. You
3 basically work 18 hours a day. People here, we are
4 willing to work even 18 hours a day. But I guarantee
5 you we cannot even keep up with that speed because you
6 are changing it every minute.

7 Why are you rushing, is the point? Why are you
8 rushing?

9 Now, I would have said, after the August recess, I
10 hoped our Committee was going to play a big role in
11 health care. I wanted us to play a big discussion. We
12 kind of ceded over to the HELP Committee all of the
13 discussion about the changes as it related to the mark.

14 I proposed something that we passed out of this
15 Committee that is working very successfully in New York.
16 It is \$500 for an annual premium for the low end of the
17 market. Why? Because you bundled up people and you
18 created a market. It is a market force.

19 So I wanted to discuss that program of the basic
20 health plan and why it is working so successfully and
21 what we could do to get more people to adopt it here.

22 But for whatever reasons, our Committee has not
23 spent the time and energy on the larger discussion of
24 health care reform.

25 I suggested many times on the Senate floor the

1 delivery system reforms that are cost-saving measures
2 should be part of this discussion in general because I
3 do believe, unlike Speaker Ryan who thinks, well, he
4 will just get this tax bill done and then people will
5 see, oh, we cannot afford Medicaid and Medicare because
6 of the shifts in population, oh, we are just going to
7 whack them, I instead want to see changes to the
8 delivery system that are going to make those programs
9 most cost-effective and have better outcomes.

10 So, to me, the notion that we abdicated on the
11 health care debate in our Committee and we basically let
12 our colleagues discuss one aspect of it, even though we
13 had good cost-saving ideas, ideas that will save us
14 money and delivery better care, and we did not talk
15 about them.

16 And now all of a sudden, we are supposed to keep
17 going a breakneck speed here on policy and we are
18 willing to work around the clock. I mean, the Commerce
19 Committee, God love it, it never gets serious until
20 about midnight and then people negotiate between
21 midnight and 6 a.m. But usually, it is a smaller area
22 of law and they come back and they are, like, okay, here
23 is what we have dealt with and here is what we cannot
24 deal with.

25 But you are asking us to change those books in

1 front of Claire in major significant ways, not just
2 Thursday night to now today, you are proposing something
3 right now that is different, and then you are going to
4 roll out something at 7 a.m. tomorrow morning that is
5 also different, and then you are going to say let us
6 start amendments.

7 So I do not even know if staying up all night is
8 going to help because I do not even know when you are
9 going to roll this out. So it should not be in the
10 dark, it should not be a secret.

11 Look, I do believe in this Committee and I believe
12 that people here can work together. I do think that
13 things have continued to shift and I do not know what
14 the hurry is. And God hope it is not a December
15 election, okay? Because this tax code is too important
16 to just try to jam it down people's throats.

17 We need to have, for the certainty and
18 predictability, that this is policy that we are going to
19 live with. Thank you.

20 The Chairman. Senator Brown will be the last one
21 to ask some questions.

22 Senator Brown. Thank you, Mr. Chairman.

23 I think we were all waiting because we all had -- I
24 know Senator Bennet had questions --

25 The Chairman. And then the ranking member.

1 Senator Brown. -- Senator Warner -- sorry, Mr.
2 Chairman?

3 The Chairman. Go ahead, Senator Brown. We will go
4 to you and then we are going to finish with the ranking
5 member and then we are going to --

6 Senator Brown. -- and a lot of us had questions we
7 wanted to ask staff. The problem is it is hard to ask
8 questions about a bill that when you all go to lunch and
9 then you have a strategy meeting at lunch and then you
10 come up with a different bill after lunch. So it is
11 hard to kind of ask these questions on the fly on a bill
12 we do not really quite -- we are not able to digest.

13 But one thing we do know and what I wanted to ask
14 about is, is this is pretty troubling when you look at
15 what my colleagues want to do on health insurance, but
16 we know for sure what they want to do on Medicare.

17 Keith Hall, the director of the Congressional
18 Budget Office, sent a letter back talking about a \$25
19 billion cut in Medicare. We know what the Republican
20 budget looks like on Medicaid and Medicare.

21 We know what Martin Feldstein, President Reagan's
22 trickle-down economics guru, supply-side economics guru,
23 said, that we know tax cuts do not pay for themselves,
24 maybe only a quarter for themselves, so let us raise the
25 eligibility age for Social Security so the barber in

1 Garfield Heights and the construction worker in Warren
2 and the woman that works at the diner in Mansfield, they
3 cannot work until they are 70 years old. Maybe we can
4 because of the jobs we hold, but to ask others to wait
5 until 70 for Social Security all so we can do a tax cut?

6 So those questions I wanted to ask and understand
7 better from this Committee.

8 I guess you are saying we can do that tomorrow? I
9 hope you will live up to that commitment tomorrow so
10 that we can ask those questions.

11 The Chairman. Senator Wyden?

12 Senator Wyden. Thank you, Mr. Chairman.

13 Colleagues, this major tax bill is now officially a
14 moving target. And it is an enormous departure from the
15 way the Finance Committee has traditionally worked.
16 This now does not resemble regular order. It sets a
17 precedent, I guess, for letting practically anything fly
18 through the chute at any time and say it is relevant to
19 a tax bill if it amounts to an ideological trophy.

20 And on our side, Mr. Chairman, we have had it for
21 the day and expect us to be back tomorrow with a lot of
22 questions because there are a lot of unanswered matters
23 that we have not been able to work through today.

24 The Chairman. Well, that is fair. And we will
25 recess until 9 a.m. tomorrow.

1 We will have the modified mark later today. We
2 will then walk through the modifications tomorrow.

3 This is a change. And I apologize to every member
4 of the Committee for it, but that is the way it is and
5 we have all been through this before in some ways.

6 But in any event, we will recess until tomorrow
7 morning and hopefully we can all get together then.

8 [Whereupon, at 3:37 p.m., the meeting was
9 concluded.]

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I N D E X

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<u>STATEMENT OF:</u>	
THE HONORABLE ORRIN G. HATCH A United States Senator from the State of Utah	3
THE HONORABLE RON WYDEN A United States Senator from the State of Oregon	10

United States Senate

WASHINGTON, DC 20510

August 1, 2017

President Donald Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Orrin Hatch, Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear President Trump, Leader McConnell, and Chairman Hatch:

We are writing to express our interest in working with you on bipartisan tax reform. We are confident that, by working together, we could modernize our tax system to increase working families' wages, improve middle-class job growth, promote domestic investment, modernize our outdated business and international tax systems and put in place sound fiscal policy that raises the revenue needed to meet the needs of our country.

This letter highlights three key principles that we believe are prerequisites to any bipartisan tax reform effort.

First, we believe that tax reform should not increase the tax burden on the middle class. In addition, any reform effort should not benefit the wealthiest individuals, who have already seen outsized benefits from recent economic gains while working-class wages have remained stagnant. Treasury Secretary Steven Mnuchin expressed support for this principle when he stated before the Finance Committee that there would be "no absolute tax cut for the upper class." We hope you agree. Tax reform cannot be a cover story for delivering tax cuts to the wealthiest. We will not support any tax reform plan that includes tax cuts for the top one percent.

Second, we believe it is crucial that tax reform legislation go through regular order and not reconciliation. Using a fast-track process like reconciliation would undoubtedly result in outsized political influence on the process and significantly hinder lawmakers' ability to close loopholes and end special interest favoritism that plagues our current tax system. As such, reconciliation is just a tool to jam through partisan short-term tax cuts that would result in economic uncertainty and instability and significantly increase our budget deficit. This stands in

stark contrast to the regular order, transparent, and fiscally responsible process that allowed the 1986 tax reform to succeed and endure. Only regular order allows for a bipartisan effort and successful, lasting reform.

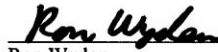
Third, tax reform should be focused on providing a revenue base that meets the needs of our country. Deep cuts to our corporate, individual, and other tax rates are very costly. We will not support any effort to pass deficit-financed tax cuts, which would endanger critical programs like Medicare, Medicaid, Social Security and other public investments in the future.

We look forward to working together to write tax reform legislation that provides real relief for America's working families.


Sincerely,



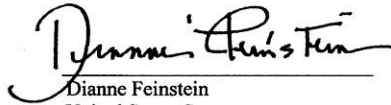
Charles E. Schumer
United States Senator



Ron Wyden
United States Senator




Patrick J. Leahy
United States Senator



Dianne Feinstein
United States Senator



Patty Murray
United States Senator



Richard J. Durbin
United States Senator



Jack Reed
United States Senator




Bill Nelson
United States Senator



Thomas R. Carper
United States Senator




Debbie Stabenow
United States Senator



Maria Cantwell
United States Senator



Robert Menendez
United States Senator



Benjamin L. Cardin
United States Senator



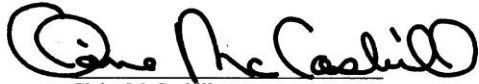
Bernard Sanders
United States Senator



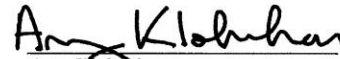
Sherrod Brown
United States Senator



Robert P. Casey, Jr.
United States Senator



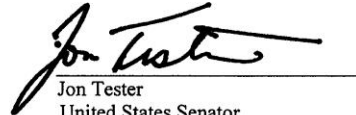
Claire McCaskill
United States Senator



Amy Klobuchar
United States Senator



Sheldon Whitehouse
United States Senator



Jon Tester
United States Senator

Tom Udall

Tom Udall
United States Senator

Jeanne Shaheen

Jeanne Shaheen
United States Senator

Mark R. Warner

Mark R. Warner
United States Senator

Jeffrey A. Merkley

Jeff Merkley
United States Senator

Michael F. Bennet

Michael F. Bennet
United States Senator

Kirsten Gillibrand

Kirsten Gillibrand
United States Senator

Al Franken

Al Franken
United States Senator

Chris Coons

Christopher A. Coons
United States Senator

Richard Blumenthal

Richard Blumenthal
United States Senator

Brian Schatz

Brian Schatz
United States Senator

Tammy Baldwin

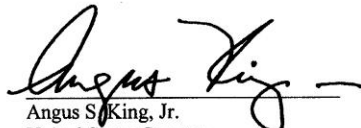
Tammy Baldwin
United States Senator

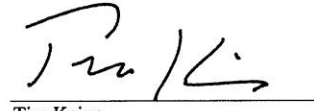
Christopher Murphy

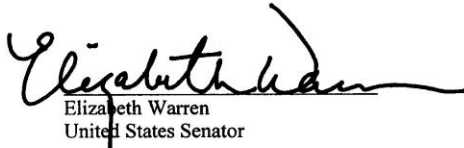
Christopher Murphy
United States Senator

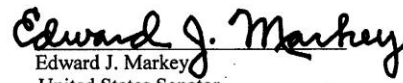

Mazie Hirono
United States Senator

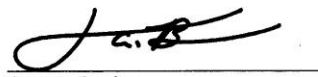

Martin Heinrich
United States Senator

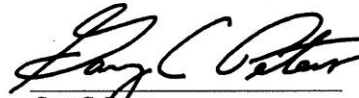

Angus S. King, Jr.
United States Senator



Tim Kaine
United States Senator



Elizabeth Warren
United States Senator


Edward J. Markey
United States Senator

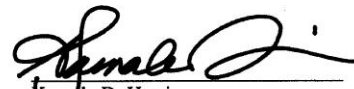

Cory A. Booker
United States Senator



Gary C. Peters
United States Senator


Chris Van Hollen
United States Senator


Tammy Duckworth
United States Senator


Margaret Wood Hassan
United States Senator


Kamala D. Harris
United States Senator


Catherine Cortez Masto
United States Senator