Tax Shell Game

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OSPIRG Foundation

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Executive Summary

Tax havens are countries with minimal or no taxes, to which U.S.-based multinational firms or individuals transfer their earnings to avoid paying taxes in the United States. Users of tax havens benefit from access to America's markets, workforce, infrastructure and security, but pay little or nothing for it—violating the basic fairness of the tax system.

Abuse of tax havens inflicts a price on other American taxpayers, who must pay higher taxes—now or in the future—to cover the government's revenue shortfall, or must deal with cuts in government services.

The United States loses approximately $100 billion in tax revenues every year due to corporations and individuals sending their money to offshore tax havens.

- Residents of Oregon paid $290 to make up for the taxes that are avoided by corporations and wealthy individuals through the use of offshore tax havens.

- In 2010, making up for this lost revenue cost the average U.S. tax filer $434. That's enough money to feed a family of four for three weeks.

Some of America's biggest companies—including many who have taken advantage of government bailouts or rely on government contracts—use tax havens. As of 2008, 83 of the 100 largest publicly traded U.S. corporations maintain revenues in offshore tax haven countries.

- **Goldman Sachs,** which reported more than $2 billion in profit in 2008, was able to use its 29 tax haven subsidiaries to reduce its federal tax bill to just $14 million. That means that Goldman Sachs' CEO Lloyd Blankfein, who made $42.9 million that year, earned more than three times the amount that the company paid in federal taxes.

- **General Electric** appears to have paid no federal income taxes in 2010, despite reporting profits in the United States of $5.1 billion. The biggest company in the country, GE has lobbied hard for tax breaks and loopholes in the federal tax code, and shifted many of its profits to tax havens to avoid paying U.S. taxes. GE employs nearly 1,000 people in its tax department to help exploit those loopholes, but has laid off one-fifth of its U.S.-based workers since 2002.

To restore fairness to the tax system by preventing corporations and wealthy individuals from avoiding taxes through the use of tax havens, policymakers should:

- End the ability of U.S. multinational corporations to indefinitely defer paying U.S. tax on their profits. U.S. corporations should pay taxes immediately on profits from U.S. business that companies attribute to their foreign entities, rather than wait until they someday bring the money back to the United States. The United States should not adopt a "territorial" system under which companies temporarily move profits and pay taxes in tax haven countries and then freely bring them back tax-free to the United States.

- Expand rules against money laundering to cover those who aid and abet. The rules should include lawyers who set up shell companies, hedge fund managers who set up anonymous accounts, and others who help taxpayers avoid tax laws.

- Increase the penalties and strengthen rules related to offshore tax shelters, including prohibiting tax strategy patents and fees contingent on obtaining tax benefits.

- Revise tax treaties to enhance sharing of tax information between countries to include the real names of account owners.

- Require multinational corporations to report financial statements on a country-by-country basis.

- Close loopholes that allow tax credits from other countries to count against U.S. tax liability.

- End the ability of U.S. multinational companies to apply tax deductions related to foreign income to U.S. income.

- Eliminate the incentive for U.S. companies to transfer intellectual property (e.g. patents, trademarks) to tax haven countries for artificially low prices and then pay inflated royalties to use them in the United States. This manipulation masks what would otherwise be U.S. taxable income.

- Stop the ability of multinational companies to manipulate how they define their corporate status to minimize their taxes, including the ability to represent themselves as different types of corporations to different countries.

- Treat foreign corporations as U.S. domestic companies if they are managed and controlled in the United States.

- Increase IRS resources to combat transfer pricing and tax haven abuses.

Introduction

Americans of all political stripes agree: something needs to be done to curb the federal deficit. A Pew Research Center poll in late 2010 showed that 70 percent of Americans believe federal spending is an urgent problem, and that the nation needs to pursue both tax increases and spending cuts to solve the problem.[1]

National elected leaders have recently proposed a range of spending cuts. The vast majority of these cuts come from programs widely viewed as providing broad public benefits or serving national priorities, including programs providing access to higher education, food safety, product safety, clean air and drinking water, and financial sector oversight to protect consumers and avoid future bank bailouts.[2]

In addressing the deficit, our leaders should examine all areas of spending where programs do not deliver benefits to the public. Our leaders should also address spending that takes place through tax code exemptions and through the appropriations process. These expenditures have the same impact on the national deficit as direct spending, and they should also be transparent, accountable and serve the public.

The burden of paying taxes should also be shared equally. At the same time that Congress and the president debate budget cuts—some of which will prove painful to ordinary Americans—a different group of Americans is avoiding paying its fair share of taxes.

Offshore tax havens used by corporations and wealthy individuals shortchange national priorities and increase the deficit by an estimated $100 billion a year—exactly the same amount that House leadership has sought to cut from the budget for the current fiscal year.[3] By refusing to pay their fair share of taxes, these corporations and individuals shift the burden onto ordinary Americans.

Moreover, the use of offshore tax havens violates basic principles of transparency, fairness and justice. Many Americans—having borne witness to the financial crisis and subsequent bank bailouts—are increasingly under the impression that the wealthy and well-connected are not subject to the same rules as the rest of us. The use of offshore tax havens is therefore corrosive to American society and our democracy.

Regardless of whether one cares about funding critical social services, cutting taxes, or simply enforcing basic notions of fairness, closing offshore tax havens is the right thing to do.

Corporations and Wealthy Individuals Use Tax Havens to Shift the Burden of Taxation

Tax havens are nation-states with low or no taxes, to which U.S.-based multinational firms transfer their earnings to avoid paying taxes in the United States. Companies then use a variety of repatriation strategies to bring the money back to the United States nearly tax-free.[4] Wealthy individuals also use tax havens to avoid paying taxes by setting up offshore shell corporations or trusts. Many tax haven countries are small or island nations, such as Bermuda, the British Virgin Islands, and the Cayman Islands.[5] In addition, most tax haven nations have financial secrecy laws that limit the disclosure of information about the people and companies who use them.

Worldwide, approximately $5 trillion is held in offshore tax havens. The IRS believes a large share of this is money from U.S.-based corporations and individuals.[6] Corporations who produce, transport, and/or sell their goods in the United States, but send the profits overseas to hide their earnings from U.S. tax collectors, deprive the United States of much-needed revenue. According to an investigation by the U.S. Senate, the United States loses approximately $100 billion in tax revenues every year due to corporations sending their money to offshore tax havens.[7]

The majority of America's largest publicly held corporations avoid paying taxes through offshore havens. According to the Government Accountability Office, 83 of the 100 largest publicly traded U.S. corporations maintained revenues in offshore tax haven countries as of 2008.[8] For example:

- **Goldman Sachs** reported more than $2 billion in profit in 2008, but the company was able to use its 29 tax haven subsidiaries to reduce its federal tax bill to just $14 million. That means that Goldman Sachs' CEO Lloyd Blankfein, who made $42.9 million that year, earned more than three times the amount that the company paid in federal taxes.[9]

- **General Electric** appears to have paid no federal income taxes in 2010, despite reporting profits in the United States of $5.1 billion.[10] The biggest company in the country, in recent years GE has lobbied hard for tax breaks and loopholes in the tax code, and shifted many of its profits to tax havens to avoid paying U.S. taxes. GE employs nearly 1,000 people in its tax department to help exploit those loopholes, but has laid off one-fifth of its U.S.-based workers since 2002.

- **ExxonMobil** made $19 billion in profit in 2009, but paid no federal income taxes.[11]

- Since 2007, **Google** has kept its effective corporate tax rate at 2.4 percent, despite mostly operating in countries with corporate tax rates of well over 20 percent. Google accomplishes this high level of tax avoidance by sending many of its earnings through Ireland, to the Netherlands, and then on to Bermuda. Using tax havens and other loopholes, Google has avoided $3.1 billion in taxes since 2007.[12]

- As of mid-2010, technology company **Cisco** had yet to pay U.S. taxes on $31.6 billion of earnings that was sitting offshore.[13]

- The airplane manufacturer and defense contractor **Boeing** earned profits of $9.7 billion from 2008 to 2010, yet paid no federal taxes, thanks in part to its 38 subsidiaries based in tax havens.[14]

Ironically, firms such as Boeing that go to great lengths to avoid paying federal taxes also derive a large portion of their business from contracts with the federal government. In 2007, the Government Accountability Office calculated that, of the 100 largest publicly traded U.S. federal contractors, 63 have subsidiaries in countries with broad financial privacy laws or that are tax havens.[15]

Contractors are not the only users of tax havens who benefit from America's market, workforce, infrastructure and security but pay little or nothing for them—violating the basic fairness of the tax system. TransOcean, for example, the owner of the Deepwater Horizon platform that caused the Gulf oil catastrophe in 2010, was "headquartered" in the Cayman Islands from 1999 to 2008 and avoided paying many federal taxes.[16] Yet when the oil spill occurred, TransOcean relied upon federal personnel and vessels to respond quickly to the disaster. Though the federal government subsequently billed TransOcean and other responsible parties for the cost of the cleanup, TransOcean greatly benefited from the rapid response made possible by other taxpayers who contributed their share over the years.

Citigroup took full advantage of U.S. markets and infrastructure until its business model failed and it became one of the banks most responsible for the 2008 economic collapse. During the recession, Citigroup managed to survive, thanks to a $45 billion bailout from federal taxpayers, despite the fact that the company has 427 subsidiaries located in tax havens—more than any other company in America, according to a 2008 report by the Government Accountability Office—and thus has avoided paying many federal taxes.[17]

When corporations and wealthy individuals avoid paying taxes, ordinary taxpaying households and small businesses end up picking up the tab for the missing revenue to the U.S. Treasury—an especially galling outcome given the deep cuts being proposed to many programs that benefit ordinary Americans.

Tax Havens Cost the Average American Taxpayer

Individuals and corporations that pay taxes in the United States shoulder the burden for those who do not. The $100 billion lost every year through the use of tax havens by corporations and rich individuals is recouped in the form of revenue from the people and companies who diligently pay their taxes, or by cutting government services for everyone.

In 2010, assuming that the added $100 billion tax burden was distributed evenly among all American tax filers, other corporate and individual tax filers would have paid an average of $434 to compensate for income lost to tax havens.[18] That's enough money to feed a family of four for three weeks.[19]

The burden of replacing the $100 billion in revenue lost to tax havens falls on taxpayers in different amounts based on their share of federal tax revenue. In 2010, the tax filers who paid the most lived in Delaware and New Jersey. They paid an average of $920 and $752, respectively. (See Table 1 for a list of the states where taxpayers faced the highest burden. A full list is available in Appendix A.)

The total additional tax bill varied by state, with California and New York paying the most: $11.9 billion and $8.8 billion, respectively. (Table 2 shows the 10 states that paid the highest total amount; see Appendix B for a full list.)

Table 1. Average Tax Burden Shifted to Other Individual and Corporate Tax Filers, Top 10 States[20]

State	Additional Burden per Tax Filer
Delaware	$920
New Jersey	$752
Minnesota	$732
Connecticut	$704
Arkansas	$693
Massachusetts	$608
Ohio	$585
New York	$576
Rhode Island	$562
Nebraska	$551

Table 2. Total Tax Burden Shifted to Other Individual and Corporate Tax Filers, Top 10 States[21]

State	Additional Burden for Tax Filers, by State (billions)
California	$11.9
New York	$8.8
Texas	$7.9
New Jersey	$5.4
Ohio	$4.8
Illinois	$4.8
Florida	$4.4
Pennsylvania	$4.4
Massachusetts	$3.2
Minnesota	$3.1

Eliminating Tax Havens Would Improve Fairness

Closing loopholes that allow corporations to avoid paying their share of taxes would increase federal revenues and improve the fairness of the tax system.

Markets work best when companies prosper based on their productivity and ability to innovate, not on their access to sophisticated tax lawyers and tax-avoidance schemes. Those who support the use of tax havens typically argue that American corporations are already taxed enough or too much. But this is beside the point. Whatever one's opinion about the proper rate of corporate taxation, there should not be a parallel shadow system of tax avoidance that leaves other taxpayers shouldering the burden.

Recent Action Limits Tax Havens, but More Work Remains

Over the past year, the President and Congress have taken steps to eliminate tax avoidance through the use of offshore tax havens, but much more can still be done.

The Hiring Incentives to Restore Employment Act, adopted in March 2010 and effective in 2013, added new reporting requirements and penalties to discourage individuals, companies and banks from hiding money in offshore tax havens. The law imposes a 30 percent tax on foreign financial institutions that fail to meet disclosure requirements on their American clients' accounts.

Other legislation also adopted in March 2010 should facilitate IRS enforcement of the Economic Substance Doctrine by incorporating that doctrine into the IRS code. The purpose of the Economic Substance Doctrine is to ensure that transactions are not executed purely to manipulate tax exposure but have some other economic purpose. The law places the burden of proof on tax lawyers and not regulators to demonstrate that a tax strategy is legal. It is projected to produce revenues of $4.5 billion over a decade.[22]

Decision-Makers Should Prohibit Use of Offshore Tax Havens

Strong action to prevent corporations and wealthy individuals from using offshore tax havens will not only restore basic fairness to the tax system, but will also alleviate America's fiscal crunch. In addition, corporate tax rules need to be updated.

To combat tax haven abuse, policymakers should:

- End the ability of U.S. multinational corporations to indefinitely defer paying U.S. tax on their profits. U.S. corporations should pay taxes immediately on profits from U.S. business that companies attribute to their foreign entities, rather than wait until they someday bring the money back to the United States. The United States should not adopt a "territorial" system under which companies temporarily move profits and pay taxes in tax haven countries and then freely bring them back tax-free to the United States.
- Expand anti-money laundering rules to cover those who aid and abet. The rules should include lawyers who

Tax Repatriation Holidays Are Not a Solution

Lawmakers are considering instituting a tax holiday on repatriated foreign assets. Such a tax holiday would allow companies to bring profits that they have stashed in offshore tax havens back to the United States at a significantly reduced tax rate—perhaps 5 percent compared to the standard corporate tax rate of 35 percent. A tax holiday, at first glance, appears to offer a win-win for companies and other taxpayers by allowing companies to bring money back to the United States at a reduced cost and providing a bump in federal revenues. However, a tax repatriation holiday has negative long-term consequences for compliant taxpayers and the federal deficit.

A 2004 tax holiday allowed corporations to return foreign profits to the United States at a nominal 5.25 percent tax rate (companies used other strategies to lower the effective rate to 3.7 percent). Companies brought $362 billion back to the country, more than 85 percent of it at the reduced tax rate.[23] The tax repatriation holiday provided some additional federal revenue, but failed to produce broad economic benefit. Rather than creating jobs or investing in new facilities, companies used most of the repatriated funds to buy back stock shares.

The 2004 tax holiday did something else: it created an incentive for companies to direct more of their current earnings overseas in the hopes of a future tax repatriation holiday. Just two years after the 2004 tax holiday, the total amount of profits kept abroad surpassed 2004 levels. Separately, an analysis of the financial statements of 30 major companies shows that the amount of profits kept overseas increased by 560 percent from 2000 to 2010.[24]

In the long term, a tax repatriation holiday will not help solve the nation's financial problems. Rather, it is likely to make those problems worse by encouraging corporations to increase their use of offshore tax havens and by removing pressure for comprehensive reform of the tax code.

set up shell companies, hedge fund managers who set up anonymous accounts, and others who help taxpayers avoid tax laws.

- Increase the penalties and strengthen rules related to offshore tax shelters, including prohibiting tax strategy patents and fees contingent on obtaining tax benefits.

- Revise tax treaties to enhance sharing of tax information between countries to include the real names of account owners.

- Require multinational corporations to report financial statements on a country-by-country basis.

- Close loopholes that allow tax credits from other countries to count against U.S. tax liability.

- End the ability of U.S. multinational companies to apply tax deductions related to foreign income to U.S. income.

- Eliminate the incentive for U.S. companies to transfer intellectual property (e.g. patents, trademarks) to tax haven countries for artificially low prices and then pay inflated royalties to use them in the United States. This manipulation masks what would otherwise be U.S. taxable income.

- Stop the ability of multinational companies to manipulate how they define their corporate status to minimize their taxes, including the ability to represent themselves as different types of corporations to different countries.

- Treat foreign corporations as U.S. domestic companies if they are managed and controlled in the United States.

- Increase IRS resources to combat transfer pricing and tax haven abuses.

Appendix A:
Average Tax Burden Shifted to Other Corporate and Individual Tax Filers, by State

State	Additional Burden per Tax Filer	State	Additional Burden per Tax Filer
Alabama	$230	New Jersey	$752
Alaska	$347	Montana	$180
Arizona	$293	Nebraska	$551
Arkansas	$693	Nevada	$221
California	$435	New Hampshire	$328
Colorado	$418	New Mexico	$197
Connecticut	$704	New York	$576
Delaware	$920	North Carolina	$310
District of Columbia	$1,657	North Dakota	$324
Florida	$289	Ohio	$585
Georgia	$370	Oklahoma	$373
Hawaii	$236	Oregon	$294
Idaho	$203	Pennsylvania	$464
Illinois	$494	Rhode Island	$562
Indiana	$412	South Carolina	$204
Iowa	$312	South Dakota	$257
Kansas	$375	Tennessee	$456
Kentucky	$356	Texas	$460
Louisiana	$490	Utah	$270
Maine	$219	Vermont	$238
Maryland	$472	Virginia	$411
Massachusetts	$608	Washington	$390
Michigan	$295	West Virginia	$188
Minnesota	$732	Wisconsin	$372
Mississippi	$165	Wyoming	$317
Missouri	$475		

Appendix B:
Total Tax Burden Shifted to Other Corporate and Individual Tax Filers, by State

State	Additional Burden for Tax Filers, by State	State	Additional Burden for Tax Filers, by State
Alabama	$712,566,974	Montana	$159,787,257
Alaska	$202,674,077	Nebraska	$785,606,735
Arizona	$1,254,334,620	Nevada	$441,853,849
Arkansas	$1,336,850,835	New Hampshire	$350,543,551
California	$11,858,065,665	New Jersey	$5,423,718,966
Colorado	$1,727,784,407	New Mexico	$279,416,277
Connecticut	$2,031,849,129	New York	$8,762,495,057
Delaware	$664,203,466	North Carolina	$2,008,911,365
District of Columbia	$889,227,843	North Dakota	$188,737,897
Florida	$4,439,092,240	Ohio	$4,846,464,561
Georgia	$2,469,389,858	Oklahoma	$974,865,204
Hawaii	$254,496,152	Oregon	$880,427,686
Idaho	$228,232,064	Pennsylvania	$4,423,059,195
Illinois	$4,810,173,710	Rhode Island	$469,745,259
Indiana	$1,850,926,271	South Carolina	$632,615,136
Iowa	$724,437,428	South Dakota	$177,627,371
Kansas	$811,659,697	Tennessee	$1,900,896,705
Kentucky	$995,936,176	Texas	$7,866,379,822
Louisiana	$1,532,564,199	Utah	$518,644,706
Maine	$232,874,250	Vermont	$133,193,546
Maryland	$2,100,583,443	Virginia	$2,429,829,380
Massachusetts	$3,210,055,383	Washington	$2,052,466,422
Michigan	$2,068,252,061	West Virginia	$219,060,991
Minnesota	$3,098,686,589	Wisconsin	$1,599,774,012
Mississippi	$305,898,681	Wyoming	$159,063,779
Missouri	$2,052,417,743		

Notes

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2 U.S. PIRG, *Analysis of H.R. 1, House Continuing Budget Resolution* (factsheet), 1 March 2011.

3 $100 billion: Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, United States Senate, *Tax Haven Banks and U.S. Tax Compliance*, 17 July 2008. A more recent estimate of the lost revenue from tax havens places the figure closer to $90 billion. See: "How Offshore Tax Havens Save Companies Billions," *NPR*, 17 March 2011, available at www.npr.org/2011/03/17/134619750/how-offshore-tax-havens-save-companies-billions.

4 Jesse Drucker, Bloomberg News, "Avoiding Taxes on Offshore Earnings an Art; Tax Holiday at Issue but Who Needs It?" *Pittsburgh Post-Gazette*, 30 December 2010.

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7 See note 3.

8 Government Accountability Office, *International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, December 2008.

9 Scott Klinger, Chuck Collins and Holly Sklar, Business and Investors Against Tax Haven Abuse, *Unfair Advantage: The Business Case Against Overseas Tax Havens*, 20 July 2010.

10 David Kocieniewski, "GE's Strategies Let It Avoid Taxes Altogether," *New York Times*, 24 March 2011. Although the company claims it will end up paying some minimal taxes for 2010, it also collected a $3.2 billion tax benefit. See also Ryan Chittum, "GE Flubs a Pushback Against *The New York Times*," *Columbia Journalism Review*, 31 March 2011.

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12 Jesse Drucker, "The Tax Haven That's Saving Google Billions," *Bloomberg Businessweek*, 21 October 2010.

13 See note 4.

14 Citizens for Tax Justice, *Boeing's Reward for Paying No Federal Taxes Over Last Three Years? A $35 Billion Federal Contract* (press release), 25 February 2011.

15 See note 8.

16 See note 10, David Kocieniewski.

17 See note 8. Note: "427" includes countries listed as "financial privacy jurisdictions." "$45 billion" from Eric Dash, "Citi Is Eager to Pay Back Bailout Aid," *The New York Times*, 10 December 2009.

18 $434 is obtained by dividing $100 billion by the number of corporate and individual tax returns filed in 2010, per: Internal Revenue Service, *2010 IRS Data Book; Table 3: Number of Returns Filed, by Type of Return and State*, 2011.

19 U. S. Department of Agriculture, Center for Nutrition Policy and Promotion, *Official USDA Food Plans: Cost of Food at Home at Four Levels, U.S. Average*, April 2010.

20 We calculated this figure by dividing the state's share of $100 billion by the number of filers in the state. We apportioned out $100 billion to states based on each state's share of the nation's net revenue. Net revenue was calculated by subtracting refunds from collections by state, per Internal Revenue Service, *2010 IRS Data Book; Table 5: Gross Collections, by Type of Tax and State, Fiscal Year 2010*, and *Table 8: Amount of Refunds Issued, Including Interest, by Type of Refund and State, Fiscal Year 2010*, 2011. The number of filers came from: Internal Revenue Service, *2010 IRS Data Book; Table 3: Number of Returns Filed, by Type of Return and State*, 2011. Full data for every state available in Appendix A.

21 To obtain these numbers, we apportioned the $100 billion total cost of offshore tax havens out by state based on each state's share of the nation's net revenue, as described in note 20. Full data for every state available in Appendix B.

22 Angie Drobnic Holan, "Require Economic Justification for Tax Changes," *St. Petersburg Times PolitiFact.com*, 10 June 2010.

23 Peter Coy and Jesse Drucker, "Apple, Google May Profit on a Tax Holiday," *Bloomberg Businessweek*, 17 March 2011.

24 Ibid.

25 See note 20.

26 See note 21.