Picking Up the Tab 2013

Average Citizens and Small Businesses Pay the Price for Offshore Tax Havens

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Executive Summary

Some U.S.-based multinational firms and individuals avoid paying U.S. taxes by using accounting tricks to shift profits made in America to offshore tax havens—countries with minimal or no taxes. They benefit from their access to America's markets, workforce, infrastructure and security; but they pay little or nothing for it—violating the basic fairness of the tax system and forcing other taxpayers to pick up the tab.

Even when tax haven abusers act perfectly legally, they force other Americans to shoulder their tax burden. Every dollar in taxes they avoid by using tax havens must be balanced by other Americans paying higher taxes, coping with cuts to government programs, or increasing the federal debt.

Academic studies conclude tax haven abuse costs the United States approximately $150 billion in tax revenues every year. Multinational corporations account for $90 billion and individuals the rest.

- Based on the $150 billion in avoided taxes, the average U.S. tax filer filling out their 1040 form would need to pay $1,026 in additional taxes to make up for lost revenue from tax havens. That's enough money to feed a family of four for a month.

- The states where taxpayers pick up the largest share of the tab are Connecticut and the District of Columbia. On average, tax filers in those states would pay an additional $1,965 and $1,938, respectively.

- To pick up the tab for the $90 billion multinational corporations avoid, the average small business in the United States would need to pay an average of $3,067 each in additional taxes. Large multinational corporations that use tax havens also gain an artificial competitive advantage over responsible small business owners.

- If the $90 billion burden from multinational companies using tax havens were shouldered entirely by small businesses, each state's small businesses would have to chip in hundreds of millions or even billions of dollars more. The largest total sums would be shouldered by small businesses in California ($21.4 billion), Texas ($14.6), New York ($14.0 billion), Florida ($10.6 billion), Illinois ($6.5 billion), and New Jersey ($5.4 billion).

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

- **Pfizer**, the world's largest drug maker, made 40 percent of its sales in the U.S., but managed to report no taxable income in the U.S. for the past five years. Pfizer uses accounting gimmicks to shift the location of its taxable profits offshore. The company operates 172 subsidiaries in tax havens and currently has $73 billion parked offshore

that is untaxed in the U.S., according to its most recent SEC filing. That is the second highest amount of money sitting offshore among U.S. multinational corporations.

- **Microsoft** avoided $4.5 billion in federal income taxes over three years by using sophisticated accounting tricks to artificially shift its income to tax-friendly Puerto Rico. All told, Microsoft keeps $60.8 billion offshore, on which it would owe $19.4 billion in U.S. taxes; that is 70 percent of the company's cash. It maintains five tax haven subsidiaries.

- **Citigroup** maintains 20 subsidiaries in tax havens and has $42.6 billion sitting offshore, on which it would owe $11.5 billion in taxes, according to its most recent SEC filing. Citigroup currently ranks 8th for most money sitting offshore among U.S. multinationals. The bank was also bailed out by taxpayers during the financial meltdown of 2008.

- **60 of the largest U.S. multinational companies account for $1.3 trillion of the estimated $1.7 trillion parked offshore by all U.S. companies.** That $1.3 trillion is 40 percent of the 60 companies' total revenue, according to a *Wall Street Journal* analysis. Ten of the companies moved more cash offshore in 2012 than they earned in profits for the year.

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 incentives to shift profits offshore.

- End the ability of U.S. multinational corporations to indefinitely defer paying U.S. tax on the profits they attribute to their foreign entities. Instead, they should pay U.S. taxes on them immediately. "Double taxation" is not an issue because the companies already subtract any foreign taxes they've paid from their U.S. tax bill. This reform would raise nearly $600 billion in revenue over the next decade.

- Reject a "territorial" tax system. Tax haven abuse would be worse under a system in which companies could temporarily shift profits to tax haven countries, pay minimal tax under those countries' laws, and then bring the profits back to the United States without paying any U.S. tax. A territorial tax system would add $130 billion to the deficit over the next decade.

Close the most egregious offshore loopholes.

- Eliminate the incentive for U.S. companies to transfer intellectual property (e.g. patents, trademarks, licenses) to shell companies in tax haven countries for artificially low prices and then pay inflated fees to use them in the United States. This common manipulation masks what would otherwise be U.S. taxable income. This deception can be prevented by implementing stricter transfer pricing rules with regard to intellectual property.

- Treat the profits of publicly traded "foreign" corporations that are managed and controlled in the United States as domestic corporations for income tax purposes.

- Stop the ability of multinational companies to manipulate how they define their corporate status to minimize their taxes. Companies should be required to make consistent claims about their type of corporate entity instead of maximizing their tax advantage by telling different countries inconsistent claims about what type of entity they are.

- Close the swap loophole, which allows companies that receive swap payments from the U.S. to claim that those payments originated offshore for tax purposes.

- Close the current loophole that allows U.S. companies that shift income to foreign subsidiaries to place that money in American financial institutions without it being considered earned in the U.S. for tax purposes. This "foreign" U.S. income should be taxed when the money is deposited in U.S. financial institutions.

- Stop companies from taking bigger tax deductions than they are entitled to for the taxes they pay to foreign countries by simply requiring companies to report full information on foreign tax credits. This would save taxpayers $57 billion over ten years.

- End two expensive and unnecessary "tax extenders" that make it easier for multinational companies to stash their U.S. earnings offshore and avoid paying taxes on them. The first provision, known as the "active financing exception," adds $11.2 billion to the deficit over two years. Likewise, the "controlled foreign corporation ('CFC') look-through rule" costs $1.5 billion over two years, according to estimates by the Senate Joint Committee on Taxation.

- Stop companies from deducting interest expenses paid to their own offshore affiliates, which put off paying taxes on that income. Right now, an offshore subsidiary of a U.S. company can defer paying taxes on interest income it collects from the U.S.-based parent, even while the U.S. parent claims those interest payments as a tax deduction. This reform would save nearly $60 billion over ten years, according to the Senate Joint Committee on Taxation.

Strengthen tax enforcement and increase transparency.

- Require full and honest reporting to expose tax haven abuse. Multinational corporations should report their profits on a country-by-country basis so they can't mislead each nation about how much of their income was taxed in the other countries.

- Give the Treasury Department the enforcement power it needs to stop tax haven countries and their financial institutions from impeding U.S. tax enforcement.

- Fully and promptly implement the Foreign Account Tax Compliance Act (FATCA), which was adopted by Congress in March 2010. FATCA has been stalled by multinational companies in an extraordinarily protracted stakeholder process.

Introduction

Ugland House is a modest five-story office building in the Cayman Islands, yet it is the registered address for 18,857 companies.[1] The Cayman Islands, like many other offshore tax havens, levies no income taxes on companies incorporated there. Simply by registering subsidiaries in the Cayman Islands, U.S. companies can legally shift much of their U.S.-earned profits to the Caymans and pay *no* tax on them.

They are able to do this because the U.S. corporate tax system allows companies to defer paying U.S. taxes on profits they earn abroad, until they declare the money has been brought back to the United States by paying dividends to shareholders, repurchasing stock, or making U.S. investments. Many U.S. companies game this system using loopholes that let them disguise profits legitimately made in the U.S. as "foreign" profits earned by a subsidiary in a tax haven.

The vast majority of subsidiaries registered at Ugland House have no physical presence in the Caymans other than a post office box. About half of these companies have their billing address in the U.S.[2] This unabashedly false corporate "presence" is one of the hallmarks of a tax haven.

Tax havens are nation-states with very low or nonexistent taxes, to which U.S.-based multinational firms transfer their reported earnings to avoid paying taxes in the United States. These companies then use a variety of strategies to bring the money back to the United States nearly tax-free.[3] Wealthy individuals also use tax havens to avoid paying taxes by setting up offshore shell corporations or trusts. Many tax haven countries are small island nations, such as Bermuda, the British Virgin Islands, and the Cayman Islands.[4] Most tax haven countries also have financial secrecy laws that thwart international rules by limiting disclosure about financial transactions made in their jurisdiction.

In 2008, American multinational companies reported 43 percent of their foreign earnings in five small tax havens countries. Yet these countries accounted for only 4 percent of the companies' foreign workforce and just 7 percent of their foreign investment. That same year, the amount of profit U.S. multinational corporations reported in Bermuda and Luxembourg – two tax havens – equaled 1,000 percent and 208 percent of those countries' entire economic output, respectively.[5]

The budget crunch in Washington adds new urgency to ending tax haven abuse. Offshore tax avoidance costs the Treasury an estimated $150 billion annually in lost revenue.[6] With Congress looking for ways to reduce the deficit while continuing to fund public priorities, closing tax haven loopholes represents a way to reduce the deficit, while making the tax system fairer and avoid raising tax rates. Over ten years, the $150 billion in annual revenue represents over a third of the $4 trillion ten-year deficit reduction goal that leaders from both parties have agreed to. This revenue could also be used to forestall cuts to important public programs, like education funding and food safety inspections.

$150 billion in revenue is lost every year from offshore tax havens

Since the previous version of this report, academic tax expert Kimberly Clausing of Reed College has updated her study of corporate income shifting to estimate that the U.S. loses $90 billion in revenue from the corporate use of tax havens. Her new study concluded that corporations have been shifting more income to overseas subsidiaries in recent years.

The most recent data on revenue lost from the use of tax havens by wealthy individuals comes from a study by Joseph Guttentag and Reuven Avi-Yonah. These academic tax experts estimate that the U.S. loses between $40 and $70 billion in revenue from tax haven use by individuals.

The estimate of $150 billion total lost to tax havens combines these two studies. An earlier report by the Senate Permanent Subcommittee on Investigations used Professor Clausing's original study to estimate that tax havens cumulatively cost the U.S. $100 billion annually. Previous versions of U.S. PIRG's report cited this study.

It makes sense for profits earned in America to be subject to U.S. taxation. The profits generally depend on access to America's largest-in-the-world consumer market[7], a well-educated workforce trained by our school systems, our strong private property rights enforced by America's court system, and American roads and rail to bring products to market. Multinational companies that depend on America's economic and social infrastructure are shirking their duty to pay for it if they "shelter" the resulting profits overseas.

When tax havens are used this way, other Americans are forced to shoulder the burden. Ordinary Americans pick up the tab either by paying higher taxes, suffering from cuts to public programs, or facing a larger national debt.

Not surprisingly, Americans strongly voice their dislike for such corporate tax loopholes in opinion surveys. A January 2013 Hart Research Poll found that 73 percent of Americans agree that we should "close loopholes allowing corporations and the wealthy to avoid U.S. taxes by shifting income overseas." The same poll found that 83 percent agreed that we should "increase tax on U.S. corporations' overseas profits to ensure it is as much as tax on their U.S. profits." This was the most popular policy of the twelve choices that were included in the poll.[8]

The small business community shows similarly strong support for closing corporate tax loopholes. An independent scientific poll found that 90 percent of small business owners believe big corporations use loopholes to avoid taxes that small businesses have to pay, and 92 percent agree it's a problem when "U.S. multinational corporations use accounting loopholes to shift their U.S. profits to their offshore subsidiaries to avoid taxes."[9]

This report focuses on the problem of offshore tax havens and offers some solutions to solve these problems. The study is our fourth annual report illustrating how much more ordinary tax filers would need to pay to make up for the estimated $150 billion in revenue that Congressional and academic studies estimate tax havens cost the Treasury each year. This report, which uses the most recent data on the distribution of taxes, also considers how much small businesses would need to pay in additional taxes to shoulder the $90 billion that is estimated to result from multinational corporations using tax havens.

18,857 companies register their address in this small office building in the Cayman Islands.

Corporations and Wealthy Individuals Use Tax Havens to Avoid Taxes

Worldwide, approximately $21 trillion is held in offshore tax havens, according to a study by the Tax Justice Network.[10] According to a 2008 investigation by the U.S. Senate, the United States loses approximately $100 billion in tax revenues every year due to offshore tax havens.[11] The most recent academic estimates put the total amount of lost revenue at approximately $150 billion: $90 billion from corporate tax avoidance and $40-$70 billion from tax evasion by individuals.[12]

The majority of America's largest publicly held corporations avoid paying taxes through the use of 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.[13]

Examples of major corporations that use tax havens to avoid taxes include:

- **Citigroup** maintains 20 subsidiaries in tax havens and has $42.6 billion sitting offshore, on which it would owe $11.5 billion in taxes, according to its most recent SEC filing.[14] Citigroup currently ranks 8th for most money sitting offshore among U.S. multinationals.[15] The bank was also bailed out by taxpayers during the financial meltdown of 2008.

- **Pfizer**, the world's largest drug maker, made over 40 percent of its sales in the U.S. between 2010 and 2012,[16] but managed to report no federal taxable income in the U.S. for the past five years. This is because Pfizer uses accounting gimmicks to shift the location of its taxable profits offshore. How does it work? The company licenses patents for its drugs to a subsidiary in a low or no-tax country. Then when the U.S. branch of Pfizer sells the drug in the U.S., it must pay its own offshore subsidiary high licensing fees that turn domestic profits into on-the-books losses and shifts profit overseas. The company operates 172 subsidiaries in tax havens and currently has $73 billion parked offshore that is untaxed in the U.S., according to its most recent SEC filing.[17] That is the second highest amount of money sitting offshore among U.S. multinational corporations.[18]

- **Caterpillar** allegedly dodged over $2 billion in income tax, illegally attributing over $5.6 billion to Swiss banking jurisdictions, according to the firm's long-time global tax manager who turned whistleblower.[19] The company maintains 73 subsidiaries in tax havens and has $15 billion sitting offshore, according to its most recent SEC filing.[20]

- **Google** uses techniques nicknamed the "Double Irish" and the "Dutch Sandwich" to shift its profits through two Irish subsidiaries to Bermuda – a tax haven – via the Netherlands. These techniques helped reduce its tax bill by $3.1 billion between 2008 and 2010 to achieve an effective tax rate of just 2.4 percent on its overseas profits.[21] According to its most recent tax filing, Google has $33.3 billion sitting offshore.[22] The company admitted to shifting $9.5 billion offshore in this past year alone.[23]

- **General Electric** paid a federal effective tax rate of 1.8 percent over a ten year period (2002-2011) despite being profitable all of those years. During four of those years, the company paid no federal income tax while receiving subsidies from the government.[24] GE currently maintains18 tax haven subsidiaries and keeps $108 billion parked offshore, according to its most recent SEC filing.[25] That is more money parked offshore than any other U.S. company.[26]

- **Microsoft** avoided $4.5 billion in federal income taxes over three years by using sophisticated accounting tricks to artificially shift its income to tax-friendly Puerto Rico. The company pays its Puerto Rican subsidiary 47 percent of the revenue generated from its American sales, despite the fact that those products were developed and sold in the U.S. All told, Microsoft keeps $60.8 billion offshore, the third highest amount among U.S. multinationals[27]; that is 70 percent of the company's cash.[28] According to its most recent SEC filing, the company would owe $19.4 billion on that income if it had to pay U.S. tax. It maintains five tax haven subsidiaries.[29]

- **Bank of America**, a company kept afloat by taxpayers during the financial meltdown, currently operates 311 subsidiaries in tax havens and has stashed $17.2 billion offshore, on which it would owe $4.5 billion in taxes, according to the company's most recent SEC filing.[30]

- **60 of the largest U.S. multinational companies account for $1.3 trillion[31] of the estimated $1.7 trillion parked offshore by all U.S. companies.**[32] That $1.3 trillion is 40 percent of the 60 companies' total revenue, according to a Wall Street Journal analysis. Ten of the companies moved more cash offshore in 2012 than they earned in profits for the year.[33]

- **At least 22 companies in the "Dirty Thirty"** used tax havens to reduce their income tax liability**.** The "Dirty Thirty" are thirty Fortune 500 companies that paid more in lobbying than taxes between 2008-2010, despite being profitable each of those years. Five of the companies used at least 20 tax haven subsidiaries each.[34]

Ironically, many firms 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 sweeping financial secrecy laws or that are tax havens.[35]

Big federal 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. 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.[36] Yet when the oil spill occurred, TransOcean relied upon U.S. 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. The company is now "headquartered" in Switzerland, another tax haven.

Likewise, Bank of America and Citigroup were kept afloat by taxpayers during the 2008 financial collapse. Following the financial crisis, these companies had years where they paid no federal income taxes despite being profitable.[37] Together, they operate 331 subsidiaries in tax havens and have nearly $60 billion parked offshore, according to their most recent SEC filings.

Tax Havens Cost the Average American Taxpayer

Individuals and businesses that pay taxes in the United States shoulder the burden for those who do not. The $150 billion in revenues lost every year through the use of tax havens by corporations and rich individuals must still be paid by somebody. The unpaid billions can take a combination of three forms: additional revenue paid through higher tax rates for households and companies who diligently pay their taxes, cuts to government programs that benefit the public, or additional national debt. Of course, the debt will eventually be paid for by future tax increases or program cuts.

Normally, the tab picked up by the public from those that use tax havens is invisible. We do not sign over our Medicare, food stamps, or veteran benefits directly to offshore tax dodgers, for instance. Nor do taxpayers send a separate tax check in the name of General Electric or some other company. But the effect is the same.

Recent across-the-board federal spending cuts have made the connection to lost revenue from tax loopholes more explicit. The annual sequestration cuts amount to less than the yearly $150 billion in lost revenue to offshore tax dodging.

If the added $150 billion tax burden was distributed evenly among all tax payers filling out their 1040 forms in 2012, each American taxpayer would pay an additional $1,026 to compensate for the revenue lost to tax havens.[38] That's enough money to feed a family of four for a month.[39]

If the added $150 billion tax burden was distributed evenly among all taxpayers, in 2012 each American taxpayer would pay an additional $1,026 to compensate for the revenue lost to tax havens.

Table 1. Average Tax Burden for Individual Filers, Top 10 States[51]

State	Additional Burden per Individual Tax Filer
Connecticut	$1,965
District of Columbia	$1,938
North Dakota	$1,875
Wyoming	$1,642
Massachusetts	$1,542
New York	$1,499
Texas	$1,293
California	$1,265
New Jersey	$1,260
South Dakota	$1,251

To illustrate the burden big multinational corporations shift onto smaller U.S. businesses through their use of tax shelters, we calculated the average cost for small businesses to shoulder the $90 billion in lost revenue attributable to offshore tax dodging by multinationals. If the burden were evenly distributed among U.S. businesses with less than 100 employees, each small business would need to pay an additional $3,067.[40]

These amounts are national averages, and the actual burden on tax filers and small businesses varies across the fifty states with differences in average income that correspond to different amounts contributed to the federal Treasury. In 2012, the tax filers who on average paid the highest federal tax bill lived in Connecticut and the District of Columbia. Based on the proportion of federal income taxes paid from these states, an average filer in those states would need to pay an additional $1,965 and $1,938, respectively, to shoulder the tax burden shifted by offshore tax havens. Table 1 lists the ten states where taxpayers faced the highest burden. (A full list is available in Appendix A.)

Table 2. Total Tax Burden Shifted to Individual Tax Filers, Top 10 States[52]

State	Additional Burden for Tax Filers, by State (billions)
California	$21.4
Texas	$14.6
New York	$14.0
Florida	$10.6
Illinois	$6.5
New Jersey	$5.4
Pennsylvania	$5.2
Massachusetts	$5.0
Virginia	$3.9
Ohio	$3.8

The distribution of the tax haven burden looks different when the *total* tax bills for each state are examined. Based on their share of total federal income tax receipts, the additional tax bill to cover $150 billion is largest in California and Texas, totaling $21.4 billion and $14.6 billion, respectively. Table 2 shows the ten states that pay the highest total amount (see Appendix B for a full list).

Tax "Repatriation" Holidays Are Not a Solution

Lawmakers have considered declaring a tax holiday for U.S. companies' profits that have been parked in tax havens. A tax holiday would allow companies to bring these tax-deferred profits back to the United States at a hugely reduced tax rate—perhaps 5 percent compared to the standard corporate tax rate of 35 percent. That is very attractive to companies using tax havens, since their untaxed profits cannot currently be used in the United States or distributed to shareholders.

A massive lobbying effort spearheaded by the Chamber of Commerce has sought to portray a tax holiday as a win-win for multinational companies, ordinary Americans and the federal Treasury. The Chamber's lobbyists claim that the companies will use the nearly tax-free money they repatriate to create American jobs and provide a short-term bump in federal revenues.

However, experience shows that companies repatriating profits tend to invest in their own stock buybacks and mergers, not jobs. 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 that to an effective 3.7 percent rate). Companies brought $362 billion back into U.S. accounts, more than 85 percent of it at the reduced tax rate.[41] But numerous studies show that rather than creating jobs or investing in new facilities, companies used most of the repatriated funds to buy back stock shares.[42]

In fact, a study done by the Senate Permanent Subcommittee on Investigations found that the 15 firms that repatriated the most money - collectively $150 billion - actually shed nearly 21,000 jobs, while increasing executive pay and stock buy-backs and slightly decreasing investment in research and development.[43] The bipartisan Joint Committee on Taxation has estimated that another 5.25 percent repatriation holiday would cost nearly $80 billion over the next ten years.[44]

The previous "repatriation holiday" also demonstrates how few companies really benefit from offshore tax loopholes. In 2004, just 843 of the 9,700 U.S. corporations that had offshore profits they could repatriate actually took advantage of the tax holiday. That is just .015 percent of the more than 5.5 million corporations that were registered in that year.[45]

The 2004 tax holiday did not create jobs or investment, but it did encourage companies to divert more of their current earnings overseas in the hopes of a future tax repatriation holiday. Companies sharply increased the amount of profit they parked offshore.[46] 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.[47] As of early 2013, an estimated $1.9 trillion in U.S. corporate profits remained undeclared foreign earnings,[48] in hopes of a new tax holiday. Almost half of these "foreign" earnings were actually deposited in financial institutions on U.S. soil.[49] For example, 93 percent of Microsoft's "offshore" cash is invested in U.S. government bonds, corporate bonds, or mortgage-based securities. Most of those assets sit in U.S. bank accounts.[50]

A tax repatriation holiday will not help solve the nation's long-term financial problems. In fact, 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.

The Tax Haven Burden on Small Businesses

Small businesses are hurt twice by multinationals that use offshore tax loopholes to dodge taxes. First, small businesses must pick up the tab in the form of cuts to public investments that help them thrive, higher taxes, or more federal debt. On top of that, multinationals gain an artificial competitive advantage over responsible small businesses that don't use offshore tax havens. Small businesses don't typically have large accounting and legal departments, foreign subsidiaries, or large quantities of extra cash to shift around for tax advantages.

To illustrate that burden, this paper looks at how much larger the average small business tax bill would need to be to cover the $90 billion in federal revenues estimated lost each year from multinational corporations using offshore tax havens. We define a small business as one with less than 100 employees, using Census Bureau data on the number of such businesses. Based on the number of small businesses in the United States, each would need to pay an additional $3,067 in taxes to shoulder this burden.

The burden of offshore tax loopholes on small businesses is further illustrated by the average and total costs that would need to be paid by small businesses to cover the $90 billion in missing revenues from corporate abuse of offshore tax havens. Using the same state shares of federal income tax revenue that we calculated for individual tax filers to apportion the $150 billion, Table 3 shows the average amount extra that businesses with fewer than 100 employees would pay to cover that sum in each

Defining Small Business:

There is no universal definition for "small business." The federal Small Business Administration includes separate definitions for small business for each of hundreds of different industries based on sales, assets or number of employees. For the purpose of this study, we use Census data which counts the number of businesses with various numbers of employees. We chose businesses with fewer than 100 employees as an intuitive definition of "small business." This definition represents about 98 percent of all registered businesses.

Table 3. Tax Burden Shouldered by Small Businesses Due to Offshore Tax Havens, Top Ten States Plus DC[53]

State	Average tax burden per business with less than 100 employees
Connecticut	$5,989
District of Columbia	$5,697
North Dakota	$5,528
Massachusetts	$4,690
Wyoming	$4,374
New York	$4,034
New Jersey	$3,941
Washington	$3,616
South Dakota	$3,601
Texas	$3,585
Connecticut	$5,989

of the top ten states. Table 3 lists the top ten states by their total small business burden. (Appendix C lists the average and the total extra burden for every state.)

Markets work best when companies prosper based on their productivity and ability to innovate, not on their access to aggressive tax lawyers and tax-avoidance schemes. Closing loopholes that allow corporations to avoid paying their share of taxes would therefore improve market competition as well as increase federal revenues and improve the fairness of the tax system.

Recent Action Limits Tax Havens, but More Work Remains

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

The Foreign Account Tax Compliance Act (FATCA), adopted in March 2010, added new reporting requirements and penalties to discourage individuals, companies and banks from hiding money in offshore tax havens.[54] The law will impose a 30 percent withholding tax on U.S. source payments to foreign financial institutions that fail to meet disclosure requirements on their American clients' accounts. While much of the law has not yet been implemented, progress has been made. The U.S. forged reciprocal agreements with France, Britain, Spain, Germany, Italy, Denmark, Mexico, Ireland, Japan, and Switzerland to provide for the automatic exchange of information about the foreign bank accounts of U.S. citizens.[55] These bilateral agreements, however, sometimes include exceptions, which will end up watering down their effect. Despite the progress, FATCA's impact has been limited because financial institutions have been drawing out the stakeholder consultation process, pushing back the effective date into 2014.[56]

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 Economic Substance Doctrine ensures that transactions have an economic purpose beyond manipulating tax exposure. The law places the burden of proof on those taxpayers conducting complex transaction rather than regulators to demonstrate that a tax strategy is legal. It is projected to produce revenues of $4.5 billion over a decade.[57]

In September 2011, Congress passed legislation to ban tax strategy patents, which allow tax lawyers to patent a myriad of tax avoidance strategies, including setting up shell companies in offshore tax havens. While this ban does not necessarily reduce tax shelter abuse, it at least reduces its profitability to the lawyers who facilitate it.

Most recently, in June 2012, the Treasury Department strengthened its interpretation of a provision of the 2004 American Jobs Creation Act requiring companies that have "inverted" – meaning they have re-registered the parent company in a tax haven where they have few if any employees—be treated as American companies for tax purposes, unless the company did "substantial business" in the country in which it was reincorporating. The Treasury Department issued new, much tougher temporary rules in June that define "substantial business" as a minimum of 25 percent of an inverting company's business. That is a hard threshold to meet if the main "business" in a country is merely a post office box. While U.S. based multinationals can still avoid billions in taxes by shifting income to their overseas subsidiaries, these rules make it difficult to re-register the company's headquarters on paper in a tax haven.[58]

Congress Should Reject a Territorial Tax System

As Congress debates corporate tax reform, lobbyists have been pushing for the U.S. to move towards what is called a territorial tax system, which would greatly exacerbate tax haven abuse by corporations.

America's current corporate tax system allows corporations to indefinitely postpone paying U.S. taxes on profits earned overseas, as long as the company keeps those profits abroad rather than bringing them back to the United States. If a company brings the profits back to the U.S., then it pays U.S. taxes after receiving a foreign tax credit for taxes paid to foreign governments so that it is not double taxed. This rule – called deferral – encourages companies to shift their profits to subsidiaries in low tax countries, where they often leave them indefinitely.

Under a territorial system, companies would *never* have to pay U.S. taxes on profits booked to offshore subsidiaries, even if they subsequently brought them back to the United States. Since tax havens levy little to no tax, companies would never have to pay any tax to any government on its profits, regardless of where the money is actually made. A territorial system therefore makes it even more attractive for companies to use accounting gimmicks to artificially move profits offshore.

Moving to a pure territorial tax system would add $130 billion to the deficit over ten years, according to the Treasury Department[60] and one study estimated that it would cause companies to create 800,000 jobs in low tax countries that would have been created in America.[60]

Corporations argue that every other country has a territorial tax system, so the U.S. should also do so to remain competitive. In reality, no country has a pure territorial system. The UK, for example, employs a minimum tax as an attempt to prevent tax haven abuse. However, even with this safeguard in place, Starbucks succeeded in paying no taxes in the UK for a three year period by shifting income offshore.[61]

Instead of moving to a territorial system, America should end the loopholes that let large companies use tax havens to avoid taxes.

Measures that Decision Makers Should Take to Stop Abuse 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 help alleviate America's fiscal crunch and improve the functioning of markets.

Lawmakers should reform the corporate tax code to end the incentives that encourage companies to use tax havens, close specific loopholes that are especially egregious, strengthen tax enforcement to crack down on tax evasion, and increase transparency so that companies can't use layers of shell companies to shrink their tax burden.

End incentives to shift profits offshore.

- The reason companies can use subsidiaries in tax havens to avoid taxes is because they can defer paying taxes on the profits they shift offshore until they use the money for stock repurchases, paying dividends, or U.S. investments. The most comprehensive solution to ending tax haven abuse would be to no longer permit U.S. multinational corporations to indefinitely defer paying U.S. tax on the profits they attribute to their foreign entities. Instead, they should pay U.S. taxes on them immediately. "Double taxation" is not an issue because the companies already subtract any foreign taxes they've paid from their U.S. tax bill. This simple reform is estimated by the Joint Committee on Taxation to raise nearly $600 billion over ten years.[62]
- Reject a "territorial" tax system. Tax haven abuse would be worse under a system in which companies could temporarily shift profits to tax haven countries, pay minimal tax under those countries' tax laws and then freely bring the profits back to the United States without paying any U.S. tax. The Treasury Department estimates that switching to a territorial tax system could add $130 billion to the deficit over ten years.[63]

Close the most egregious offshore loopholes.

- Eliminate the incentive for U.S. companies to transfer intellectual property (e.g. patents, trademarks, licenses) to shell companies in tax haven countries for artificially low prices and then pay inflated fees to use them in the United States. This common manipulation masks what would otherwise be U.S. taxable income. This deception can be prevented by implementing stricter transfer pricing rules with regard to intellectual property. Proposals made by President Obama and included in Senator Levin's CUT Loopholes Act could save taxpayers $20 billion over ten years, according to the Joint Committee on Taxation.[64]
- Treat the profits of publicly traded "foreign" corporations that are managed and controlled in the United States as domestic corporations for income tax purposes.

- Stop the ability of multinational companies to manipulate how they define their corporate status to minimize their taxes. Right now, companies can make inconsistent claims to maximize their tax advantage, telling one country they are one type of corporate entity while telling another country the same entity is something else entirely.

- Close the swap loophole, which allows companies that receive swap payments from the U.S. to claim that those payments originated offshore for tax purposes. An example of a "swap" is a credit default swap, which is a complex financial instrument that was at the center of the 2008 financial crisis.

- Close the current loophole that allows U.S. companies that shift income to foreign subsidiaries to place that money in American financial institutions without it being considered repatriated, and thus taxable. This "foreign" U.S. income should be taxed when the money is deposited in U.S. financial institutions.

- Stop companies from taking bigger tax deductions than they are entitled to for the taxes they pay to foreign countries by simply requiring companies to report full information on foreign tax credits. Proposals to "pool" foreign tax credits would save $57 billion over ten years, according to the Joint Committee on Taxation.[65]

- End two expensive and unnecessary "tax extenders." Each year Congress is asked to extend a raft of unrelated tax provisions. It tends to extend virtually all of them for another year with little scrutiny because some measures enjoy broad support, such as annual adjustment of the Alternative Minimum Tax. The next time Congress considers the tax extenders, it should cut two expensive provisions that were temporarily inserted into the tax code years ago. Each rule makes it easier for multinational companies to stash their U.S. earnings offshore and avoid paying taxes on them. The first provision, known as the "active financing exception," adds $11.2 billion to the deficit over two years. Likewise, the "controlled foreign corporation ('CFC') look-through rule" costs $1.5 billion over two years, according to estimates by the Senate Joint Committee on Taxation.[66]

- Stop companies from deducting interest expenses paid to their own offshore affiliates, which put off paying taxes on that income. Right now, an offshore subsidiary of a U.S. company can defer paying taxes on interest income it collects from the U.S.-based parent, even while the U.S. parent claims those interest payments as a tax deduction. This reform would save nearly $60 billion over ten years, according to the Joint Committee on Taxation.[67]

Strengthen tax enforcement and increase transparency.

- Require full and honest reporting to expose tax haven abuse. Multinational corporations should report their profits on a country-by-country basis so they can't mislead each nation about how much of their income was taxed in the other countries.

- Give the Treasury Department the enforcement power it needs to stop tax haven countries and their financial institutions from impeding U.S. tax enforcement.

- Fully and promptly implement the Foreign Account Tax Compliance Act (FATCA), which was adopted by Congress in March 2010. FATCA has been stalled by multinational companies in an extraordinarily protracted stakeholder process.

Appendix A:
Average Tax Burden for Individual Tax Filers, by State

State	Additional Burden per Tax Filer
Alabama	$650
Alaska	$1,048
Arizona	$803
Arkansas	$718
California	$1,265
Colorado	$1,183
Connecticut	$1,965
Delaware	$751
District of Columbia	$1,938
Florida	$1,090
Georgia	$712
Hawaii	$771
Idaho	$788
Illinois	$1,058
Indiana	$670
Iowa	$897
Kansas	$1,027
Kentucky	$592
Louisiana	$940
Maine	$642
Maryland	$1,065
Massachusetts	$1,542
Michigan	$674
Minnesota	$973
Mississippi	$564
Missouri	$783

State	Additional Burden per Tax Filer
Montana	$902
Nebraska	$963
Nevada	$1,064
New Hampshire	$934
New Jersey	$1,260
New Mexico	$677
New York	$1,499
North Carolina	$674
North Dakota	$1,875
Ohio	$700
Oklahoma	$1,049
Oregon	$816
Pennsylvania	$847
Rhode Island	$839
South Carolina	$604
South Dakota	$1,251
Tennessee	$718
Texas	$1,293
Utah	$786
Vermont	$846
Virginia	$1,022
Washington	$1,091
West Virginia	$621
Wisconsin	$773
Wyoming	$1,642

Appendix B:
Total Tax Burden for Individual Tax Filers, by State

State	Total Additional Burden
Alabama	$1,360,720,303
Alaska	$387,355,588
Arizona	$2,223,631,926
Arkansas	$883,018,227
California	$21,415,811,429
Colorado	$2,837,225,790
Connecticut	$3,422,362,341
Delaware	$323,954,321
District of Columbia	$633,588,712
Florida	$10,616,391,751
Georgia	$3,216,184,536
Hawaii	$507,879,879
Idaho	$524,763,048
Illinois	$6,455,052,039
Indiana	$2,015,584,090
Iowa	$1,267,558,430
Kansas	$1,359,391,158
Kentucky	$1,107,479,139
Louisiana	$1,894,437,384
Maine	$404,116,262
Maryland	$3,004,506,010
Massachusetts	$4,985,044,331
Michigan	$3,141,072,711
Minnesota	$2,518,057,903
Mississippi	$725,030,889
Missouri	$2,126,024,057

State	Total Additional Burden
Montana	$431,023,302
Nebraska	$835,113,316
Nevada	$1,373,593,366
New Hampshire	$630,171,591
New Jersey	$5,442,168,914
New Mexico	$617,759,871
New York	$14,019,800,448
North Carolina	$2,874,245,391
North Dakota	$637,315,648
Ohio	$3,843,787,719
Oklahoma	$1,683,944,827
Oregon	$1,427,293,701
Pennsylvania	$5,229,626,562
Rhode Island	$429,797,164
South Carolina	$1,252,011,565
South Dakota	$512,424,506
Tennessee	$2,078,032,445
Texas	$14,598,254,286
Utah	$905,778,748
Vermont	$269,727,021
Virginia	$3,862,948,172
Washington	$3,482,337,341
West Virginia	$490,376,284
Wisconsin	$2,140,000,367
Wyoming	$478,242,165

Appendix C:

Average Tax Burden on Small Businesses to Cover Estimated $90 Billion in Lost Federal Corporate Income Taxes Due to Tax Havens

State	Additional Burden per Tax Filer, by State
Alabama	$1,955
Alaska	$3,188
Arizona	$2,543
Arkansas	$2,071
California	$3,524
Colorado	$2,957
Connecticut	$5,989
Delaware	$2,504
District of Columbia	$5,697
Florida	$2,938
Georgia	$1,963
Hawaii	$2,470
Idaho	$2,029
Illinois	$3,202
Indiana	$2,320
Iowa	$2,712
Kansas	$3,183
Kentucky	$1,841
Louisiana	$2,573
Maine	$1,614
Maryland	$3,245
Massachusetts	$4,690
Michigan	$2,108
Minnesota	$2,886
Mississippi	$1,711
Missouri	$2,377

State	Additional Burden per Tax Filer, by State
Montana	$2,168
Nebraska	$2,868
Nevada	$3,507
New Hampshire	$2,711
New Jersey	$3,941
New Mexico	$2,262
New York	$4,034
North Carolina	$2,019
North Dakota	$5,528
Ohio	$2,361
Oklahoma	$2,876
Oregon	$2,350
Pennsylvania	$2,983
Rhode Island	$2,583
South Carolina	$1,900
South Dakota	$3,601
Tennessee	$2,101
Texas	$3,585
Utah	$2,096
Vermont	$1,996
Virginia	$3,317
Washington	$3,616
West Virginia	$2,299
Wisconsin	$2,746
Wyoming	$4,374

Appendix D:
Total Tax Burden on Small Businesses to Cover Estimated $90 Billion in Lost Federal Corporate Income Taxes Due to Tax Havens, by State

State	Amount
Alabama	$816,432,182
Alaska	$232,413,353
Arizona	$1,334,179,156
Arkansas	$529,810,936
California	$12,849,486,857
Colorado	$1,702,335,474
Connecticut	$2,053,417,405
Delaware	$194,372,593
District of Columbia	$380,153,227
Florida	$6,369,835,050
Georgia	$1,929,710,722
Hawaii	$304,727,927
Idaho	$314,857,829
Illinois	$3,873,031,223
Indiana	$1,209,350,454
Iowa	$760,535,058
Kansas	$815,634,695
Kentucky	$664,487,483
Louisiana	$1,136,662,430
Maine	$242,469,757
Maryland	$1,802,703,606
Massachusetts	$2,991,026,599
Michigan	$1,884,643,627
Minnesota	$1,510,834,742
Mississippi	$435,018,533
Missouri	$1,275,614,434

State	Amount
Montana	$258,613,981
Nebraska	$501,067,989
Nevada	$824,156,020
New Hampshire	$378,102,955
New Jersey	$3,265,301,348
New Mexico	$370,655,923
New York	$8,411,880,269
North Carolina	$1,724,547,235
North Dakota	$382,389,389
Ohio	$2,306,272,631
Oklahoma	$1,010,366,896
Oregon	$856,376,221
Pennsylvania	$3,137,775,937
Rhode Island	$257,878,298
South Carolina	$751,206,939
South Dakota	$307,454,704
Tennessee	$1,246,819,467
Texas	$8,758,952,571
Utah	$543,467,249
Vermont	$161,836,212
Virginia	$2,317,768,903
Washington	$2,089,402,404
West Virginia	$294,225,770
Wisconsin	$1,284,000,220
Wyoming	$286,945,299

Appendix E: Methodology for Calculations

The methodology has been adjusted slightly from last year's *Picking Up the Tab* report. As mentioned previously, new academic estimates have increased the estimates for lost revenue due to offshore tax haven abuse to $150 billion annually, including $90 billion for businesses. Data are not meant to be directly comparable to last year. The earlier report considered how revenue burdens would be distributed among the total volume of all types of income tax return collections such as from withholdings, gift taxes and others, this report considers the revenue burden only as distributed among individual income tax filings, chiefly through filling out various forms of 1040 forms.

Tax Filer Calculations

National: To illustrate the average extra tax burden per filer on the national level, we divided $150 billion by the number of tax filers. The data from these calculations comes from the IRS, 2012 Databook, available at http://www.irs.gov/pub/irs-soi/12databk.pdf (last visited 3/26/13), Table 2. The number of "individual filers" reported in 2012 is 146,244,000, comprised of 1040 tax form filers of various sorts including joint filers, departing aliens and others. Dividing the $150 billion in estimated lost revenue due to abuse of tax havens by the number of individual tax filers yields $1,026.

State: To illustrate the average extra tax burden per state, we apportioned the $150 billion among the states and then divided by the number of filers in each state. To apportion the tax burden, we figured out what percentage of the national revenue from "individual" (including joint household, etc) returns came from each state. Specifically, we used the IRS data for individual income taxes collected, which includes joint and other forms of household filing and includes self-employment tax, but does not include withheld taxes, FICA, unemployment tax, income taxes on estates and trust, or railroad retirement tax. We divided that number by the total individual income tax payments nationwide. The resulting percentage represents the amount of individual collections attributable to each state (total percentages of all states do not add up to 100 percent because Puerto Rico, territories, and overseas payments are not included). We multiplied $150 billion by those percentages to apportion the distribution of that burden between states. To determine how much of the burden would fall to an average tax filer in each state, we then divided each state's total burden by the number of tax filers in each state. The data from these calculations comes from the IRS, 2012 Databook, available at http://www.irs.gov/pub/irs-soi/12databk.pdf (last visited 3/26/13), Tables 2, 3 and 8. To the extent that tax refunds might be distributed across states differently than gross state collections, these estimates would be slightly under or over stated.

Small Business Calculations

The Data Sets: To conduct the small business calculations, we used Census data about businesses, both employers and non-employers. We extracted the data using the Census's Fact Finder tool: http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t. We extracted data from the

following two datasets: 2010 Nonemployer Statistics: Geographic Area Series: Nonemployer Statistics for the US, States, Metropolitan Areas, and Counties; and 2010 County Business Patterns: Geography Area Series: County Business Patterns by Employment Size Class 2010, which despite its name includes national and state data as well. For the purposes of this report, we defined a small business as having fewer than 100 employees. The 2009 data were the most recent available as of the date of this report.

National: To illustrate the average extra tax burden per small business on the national level, we took the $90 billion of the $150 billion that the U.S. Senate study attributes to corporate tax shelter tax avoidance strategies and divided it by the number of small businesses in the United States that have fewer than 100 employees. For this count of small businesses, we used the most recent data available from the Census Bureau, which is from 2010. The Census Bureau divides small businesses into two groups: those without any employees, and those with various numbers of employees. To derive the number of small businesses for our study, we used the 2010 nonemployer establishment data and added the 2010 employer firm data for firms with fewer than 100 employees.

State: To illustrate the average extra tax burden per small business on the state level, we apportioned the $90 billion among the states using the same percentages calculated for tax filers as discussed above in the explanation of our state tax filer calculations, and divided the quotient by the number of small businesses in each state, which was derived using the Census nonemployer establishment plus employer firm data for businesses with less than 100 employees in each state.

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51 This calculation illustrates the burden of lost tax revenue fully in the form of higher taxes by other filers. As mentioned earlier in the report, this burden is also absorbed by program cuts and increased national debt. The decision of how to distribute the burden among these three sources is ultimately political and the counterfactual cannot be reliably predicted based on tax payment data.

52 To obtain these numbers, we apportioned the $150 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.

53 To illustrate the average extra tax burden per small business on the national level, we used the $90 billion of the $150 billion that the U.S. Senate study attributes to corporate tax shelter tax avoidance strategies and divided it by the number of small businesses in the United States that have fewer than 100 employees. To generate state level numbers, we apportioned the $90 billion among the states using the same percentages calculated for all tax filers and divided by the number of businesses with fewer than 100 employees in each state. See Appendix E Methodology for more details. These numbers are not meant to be comparable year to year, and yearly changes may be sensitive to state tax laws that encourage or discourage registration as a business by the self-employed. These factors mean that the number of registered businesses may become more volatile in the face of difficult business conditions such as in 2009 to 2010.

54 On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 (H.R. 2847) (the Act) was enacted into law. Section 501(a) of the Act added a new chapter 4 (sections 1471 - 1474) to Subtitle A of the Internal Revenue Code (Code). Chapter 4 expands the information reporting requirements imposed on foreign financial institutions (as defined in section 1471(d)(4)) with respect to certain United States accounts (as defined in section 1471(d)(1)) (U.S. accounts), and imposes withholding, documentation, and reporting requirements with respect to certain payments made to certain foreign entities.

55 Treasury Department Press Release, "Treasury and IRS Issue Proposed Regulations Under the Foreign Account Tax Compliance Act to Improve Offshore Tax Compliance and Reduce Burden,"February 8, 2012.

56 See Internal Revenue Service, Notice 2011-53 at http://www.irs.gov/pub/irs-drop/n-11-53.pdf and Treasury regulations published on February 8, 2012, available at http://www.irs.gov/pub/newsroom/reg-121647-10.pdf

57 Angie Drobnic Holan, "Require Economic Justification for Tax Changes," *St. Petersburg Times PolitiFact.com*, 10 June 2010. http://www.irs.gov/businesses/article/0,,id=242253,00.html

58 U.S. PIRG, "Who's Afraid of Inversion." February 2013. http://www.uspirg.org/reports/usp/whos-afraid-inversion

59 As estimated by the Treasury Department, as cited in:The President's Economic Recovery Advisory Board, *Report on Tax Reform Options: Simplification, Compliance, and Corporate Taxation*, August 2010, p90.

60 Kimberly A. Clausing, "A Challenging Time for International Tax Policy," *Social Science Research Network*, 13 September 2012, available at dx.doi.org/10.2139/ssrn.2090216.

61 Simon Neville and Jill Treanor, "Starbucks to Pay £20m in Tax over Next Two Years after Customer Revolt," *The Guardian*, 6 December 2012.

62 "Fact Sheet on the Sanders/Schakowsky Corporate Tax Fairness Act," February 7, 2012, http://www.sanders.senate.gov/imo/media/doc/CORPTA%20FAIRNESSFACTSHEET.pdf

63 The President's Economic Recovery Board, "The Report on Tax Reform Options: Simplification, Compliance, and Corporate Taxation," August 2010, http://www.treasury.gov/resource-center/tax-policy/Documents/PERAB-Tax-Reform-Report-8-2010.pdf.

64 Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal," March 12, 2012, https://www.jct.gov/publications.html?func=startdown&id=4413.

65 Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal," March 12, 2012, https://www.jct.gov/publications.html?func=startdown&id=4413.

66 Joint Committee on Taxation, "Estimated Revenue Effects of the Chairman's Mark As Modified To The Provisions Of The "Family And Business Tax Cut Certainty Act Of 2012," August 2, 2012https://www.jct.gov/publications.html?func=startdown&id=4482

67 Joint Committee on Taxation, "Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal," March 12, 2012, https://www.jct.gov/publications.html?func=startdown&id=4413.