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REPATRIATING OFFSHORE FUNDS: 2004 TAX WINDFALL FOR SELECT MULTINATIONALS

MAJORITY STAFF REPORT

PREPARED BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE



OCTOBER 11, 2011

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REPATRIATING OFFSHORE FUNDS: 2004 TAX WINDFALL FOR SELECT MULTINATIONALS

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In 2004, the American Jobs Creation Act (AJCA) permitted U.S. corporations to repatriate income held outside of the United States at an effective tax rate of 5.25% instead of the top 35% corporate income tax rate. The purpose of this tax provision was to encourage companies to return cash assets to the United States, which proponents of the provision argued would spur increased domestic investment and U.S. jobs.[1] In response, corporations returned $312 billion in qualified repatriation dollars to the United States and avoided an estimated $3.3 billion in tax payments,[2] but the growth in American jobs and investment that was supposed to follow did not occur.[3]

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[1] See U.S. Congress, Conference Committee, "American Jobs Creation Act of 2004," Conference Report accompanying H.R. 4520, H.Rept. No. 108-755, 108th Cong., 2nd Sess., at 316 (Washington: GPO, 2004) (hereinafter "Conference Report") ("[I]n order to qualify for the deduction, dividends must be described in a domestic reinvestment plan [which] . . . must provide for the reinvestment of the repatriated dividends in the United States, including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, and the financial stabilization of the corporation for the purposes of job retention or creation.") See also, e.g., 150 CONG. REC. S11038 (2004) (statement of Sen. Grassley) ("This bill contains some of the most important international tax reforms in decades, bringing foreign earnings home for investment in the United States instead of investing overseas, hence creating jobs in the United States."); 150 CONG. REC. S4875 (2004) (statement of Sen. Graham) ("The rationale for this proposal is that reducing the tax rate will encourage U.S. multinational companies to expatriate income held offshore in order to make investments in the United States that will create jobs"); 150 CONG. REC. H8704 (2004) (Statement of Rep. Phil English-PA) ("Mr. Speaker, I particularly want to draw attention to one particular job-creating provision in this bill, which mirrors legislation I introduced and will lead to in-sourcing. This provision, known as the Homeland Investment Act, is one of the strongest stimulus proposals brought before Congress in recent years, and I think it is going to have a huge impact. It temporarily reduces the tax rate on foreign earnings of U.S. companies, when that money is brought back to the United States for investment here at home. The billions of dollars that will be brought back will be used by American employers to hire new workers, invest in top-of-the-line equipment, and build new plants right here at home, instead of in the countries where their earnings are currently stranded."), 150 CONG. REC. H8724 (2004) (statement of Rep. Udall-CO) ("I will vote for it because it includes provisions to encourage American corporations doing business abroad to repatriate their overseas earnings for investment here at home. This has great potential to stimulate investment in new plant and equipment as well as in the research and development that support innovation, job creation, and prosperity."); 150 CONG. REC. H4408 (2004) (statement of Rep. Eshoo-CA) ("I also strongly support the inclusion of incentives for corporations to repatriate their overseas profits which would stimulate the investment of hundreds of millions of dollars in our domestic economy.").

[2] See "Estimated Budget Effects of the Conference Agreement for H.R. 4520, The 'American Jobs Creation Act,'" Joint Committee on Taxation, JCX-69-04, Item IV.22 (10/7/2004) (estimating a tax revenue loss of $3.3 billion over ten years, 2005-2014), Report Exhibit 1. See also Edward D. Kleinbard and Patrick Driessen, "A Revenue Estimate Case Study: The Repatriation Holiday Revisited," 120 Tax Notes 1191 (9/22/2008) (noting that the Joint Committee on Taxation (JCT) had underestimated the total amount of dividends that would be claimed by corporations under the 2004 repatriation provision, projecting a total of $235 billion instead of the actual $312 billion, but concluding that the data available in 2008 did not demonstrate that the estimated tax revenue loss of $3.3 billion over ten years was inaccurate). While some dispute the JCT estimate and assert that the 2004 tax repatriation provision produced tax revenue of $16.4 billion [$312 billion in qualified dividends x 5.25%], that analysis fails to acknowledge that a portion of the dividends,

The U.S. Senate Permanent Subcommittee on Investigations has long had an investigative interest in issues involving the movement of corporate funds to offshore jurisdictions and the treatment of those funds under the U.S. tax system. Certain provisions of the U.S. tax code now encourage corporations to move jobs and money overseas. For example, corporations may qualify for deductions and otherwise reduce their U.S. taxes for expenses that they incur to shut down U.S. plants and move their operations to other countries, and are even allowed to deduct interest on facilities they build offshore.[4] Corporations can also defer taxes on the income of their foreign subsidiaries, generating tax savings, and use foreign tax credits to reduce their U.S. taxes. These and other tax provisions can encourage the outsourcing of American jobs. In addition, over the past ten years, some U.S. corporations with multinational operations have been reporting "staggering increases" in profits offshore, while reducing the taxes they pay to the United States.[5]

$100 billion according to JCT's estimate, would have been repatriated even without the 2004 law and under normal corporate tax rates would have produced revenues considerably in excess of $16.4 billion [for example, $100 billion x 35% = $35 billion]. It is that foregone revenue which forms the basis for the overall tax loss estimated by the JCT.

[3] See Jane G. Gravelle and Donald J. Maples, "Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis," Congressional Research Service (CRS), R40178, at 1-3 (12/17/2010) (hereinafter "CRS Study"). The original January 2009 CRS study was updated on December 17, 2010 and then again on May 27, 2011, with minor changes. This Report references the May 27 edition. The statistics cited in the CRS Study are based on information reported by corporations on Form 8895 and related corporate returns selected for Statistics of Income's corporate sample for Tax Years 2004 through 2006.

[4] For general rules governing deductions by corporations for business expenses and interest expenses, see Internal Revenue Code (IRC) section 162 (business expenses) and section 163 (interest expenses). See also Department of Treasury, "Fact Sheet, Administration's Fiscal Year 2012 Budget," http://www.treasury.gov/press-center/press-releases/Pages/tg1061.aspx ("U.S. businesses that borrow money and invest it overseas can claim the interest they pay as a business expense and take an immediate deduction to reduce their U.S. taxes under current law, even if they pay little or no U.S. taxes on their overseas investment."); Joint Committee on Taxation, "Description of Revenue Provisions Contained in the President's Fiscal Year 2012 Budget Proposal," JCS-3-11, at 162, June 2011 ("[A] U.S. taxpayer may claim a current deduction for interest expense that it incurs to produce tax-deferred income through a foreign subsidiary."); Mark P. Keightley, "An Overview of Major Tax Proposals in the President's 2012 Budget," CRS Report (R41699), at 11, March 17, 2011 ("U.S. parent firms can deduct expenses of foreign subsidiaries, such as interest, while not recognizing income from those foreign subsidiaries that is not repatriated .... U.S. parents thus benefit from deductions, while not including earnings in income."); Joint Committee on Taxation, JCS-3-11, at 166, citing Department of the Treasury, "General Explanations of the Administration's Fiscal Year 2012 Revenue Proposals," February 2011, at 40 (According to the Administration, "the ability to deduct interest expense attributable to foreign investments while deferring U.S. tax on the income from the investments may cause U.S. businesses to shift their investments and jobs overseas, harming the domestic economy.").

[5] Kimberly A. Clausing, "The Revenue Effects of Multinational Firm Income Shifting" at 2, (Mar. 2011) (estimating corporate offshore income shifting resulted in $90 billion in lost U.S. tax revenues in 2008, or roughly 30% of federal corporate tax revenues). See also, e.g., Rosanne Altshuler and Harry Grubert, "Governments and Multinational Corporations in the Race to the Bottom," 110 Tax Notes 979 (2/27/2006); Martin A. Sullivan, "Latest IRS Data Show Jump in Tax Haven Profits," 105 Tax Notes 151 (10/11/2004); Martin A. Sullivan, "U.S. Drug Firms Park Increasing Profits in Low Tax Countries," 35 Tax Notes Int'l 1143 (9/20/2004); Martin A. Sullivan, "Data Show Dramatic Shift of Profits to Tax Havens," 104 Tax Notes 1189 (9/13/2004); John Zdanowics, "Who's Watching Our Back Door?" Business Accents, Volume 1, No.1, Florida International University, at 27 (Fall 2004) (estimating offshore corporate transfer pricing abuses resulted in $53 billion in lost U.S. tax revenues in 2001).

To increase its understanding of these matters, the Subcommittee undertook a review of the 2004 tax repatriation provision. This Report describes the Subcommittee's review and provides findings and recommendations.

I. EXECUTIVE SUMMARY

A. Subcommittee Review

Beginning in 2009, the Subcommittee initiated a bipartisan review of the consequences of the 2004 repatriation provision which provided an exceptionally low tax rate to U.S. corporations with offshore funds. As part of that review, the Subcommittee surveyed 20 major multinational corporations, including the 15 corporations that repatriated the highest amounts of funds back to the United States. The survey sought information about the amounts of offshore funds repatriated to the United States, as well as data on domestic employment figures and corporate expenditures for executive compensation, stock buybacks, and other items over the six-year period, 2002 to 2008.[6] The Subcommittee also collected information and documents and conducted interviews with corporate representatives, tax professionals, and others. In addition, the Subcommittee researched the 2004 legislation, reviewed academic and corporate studies of the impact of the 2004 repatriation provision, and consulted with academic, tax, and other experts.

The American Jobs Creation Act essentially provided guidelines on four uses of repatriated funds: two – using funds for jobs and research and development – were encouraged, while two others – using funds for executive compensation and stock buybacks – were prohibited. Proponents of the 2004 repatriation claimed that it would encourage businesses to bring foreign income back into the United States to spur jobs growth, research and development expenditures, and other domestic investments; indeed, Congress made those objectives explicit requirements for spending repatriated funds.[7] The evidence presented in this Majority Staff Report, however, shows that, rather than producing new jobs or increasing research and development expenditures, the 2004 repatriation tax provision was followed by an increase in dollars spent on stock repurchases and executive compensation. In addition, the repatriation tax break created a competitive disadvantage for domestic businesses that chose not to engage in offshore operations or investments,

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[6] This Report does not include the data from 2008 because the effect of the national recession overwhelmed other economic factors in that year. The recession started in December 2007. See National Bureau of Economic Research, "U.S. Business Cycle Expansions and Contractions," http://www.nber.org/cycles.html.

[7] See 26 U.S.C. § 965(b)(4) (This section, entitled "Requirement to invest in the United States," permits a deduction only if the qualified dividend is invested "in the United States . . . for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation."). See also supra note 1.

and provided a windfall for multinationals in a few industries without benefiting the U.S. economy as a whole.

B. Report Findings

The Report makes the following findings of fact.

1. **U.S. Jobs Lost Rather Than Gained.** After repatriating over $150 billion under the 2004 American Jobs Creation Act (AJCA), the top 15 repatriating corporations reduced their overall U.S. workforce by 20,931 jobs, while broad-based studies of all 840 repatriating corporations found no evidence that repatriated funds increased overall U.S. employment.

2. **Research and Development Expenditures Did Not Accelerate.** After repatriating over $150 billion, the 15 top repatriating corporations showed slight decreases in the pace of their U.S. research and development expenditures, while broad-based studies of all 840 repatriating corporations found no evidence that repatriation funds increased overall U.S. research and development outlays.

3. **Stock Repurchases Increased After Repatriation.** Despite a prohibition on using repatriated funds for stock repurchases, the top 15 repatriating corporations accelerated their spending on stock buybacks after repatriation, increasing them 16% from 2004 to 2005, and 38% from 2005 to 2006, while a broad-based study of all 840 repatriating corporations estimated that each extra dollar of repatriated cash was associated with an increase of between 60 and 92 cents in payouts to shareholders.

4. **Executive Compensation Increased After Repatriation.** Despite a prohibition on using repatriated funds for executive compensation, after repatriating over $150 billion, annual compensation for the top five executives at the top 15 repatriating corporations jumped 27% from 2004 to 2005, and another 30%, from 2005 to 2006, with ten of the corporations issuing restricted stock awards of $1 million or more to senior executives.

5. **Only a Narrow Sector of Multinationals Benefited.** Repatriation primarily benefited a narrow slice of the American economy, returning about $140 billion in repatriated dollars to multinational corporations in the pharmaceutical and technology industries, while providing

no benefit to domestic firms that chose not to engage in offshore operations or investments.

6. **Most Repatriated Funds Flowed from Tax Havens.** Funds were repatriated primarily from low tax or tax haven jurisdictions; seven of the surveyed corporations repatriated between 90% and 100% of their funds from tax havens.

7. **Offshore Funds Increased After 2004 Repatriation.** Since the 2004 AJCA repatriation, the corporations that repatriated substantial sums have built up their offshore funds at a greater rate than before the AJCA, evidence that repatriation has encouraged the shifting of more corporate dollars and investments offshore.

8. **More than $2 Trillion in Cash Assets Now Held by U.S. Corporations.** In 2011, U.S. corporations have record domestic cash assets of around $2 trillion, indicating that that the availability of cash is not constraining hiring or domestic investment decisions and that allowing corporations to repatriate more cash would be an ineffective way to spur new jobs.

9. **Repatriation is a Failed Tax Policy.** The 2004 repatriation cost the U.S. Treasury an estimated net revenue loss of $3.3 billion over ten years, produced no appreciable increase in U.S. jobs or research investments, and led to U.S. corporations directing more funds offshore.

C. Report Recommendation

The Report recommends against enacting a second corporate repatriation tax break due to the harms associated with a substantial revenue loss, failed jobs stimulus, and added incentive for U.S. corporations to move jobs and investment offshore.

II. BACKGROUND

A. The U.S. International Tax System

The United States operates on a worldwide tax system under which U.S. corporations generally are taxed on their income, no matter where it is earned. This approach applies to the earnings of a domestic corporation's subsidiaries, including controlled foreign corporations (CFCs). One key feature of this approach is deferral. Under current law, income earned by a domestic parent corporation from foreign operations conducted by its foreign subsidiaries is subject to U.S. tax. Foreign income is actually taxed, however, only at the point when the income is repatriated, that is, brought back to the United States. Until foreign income is returned as income to the U.S. parent corporation, the U.S. tax on such income is deferred. Deferral is restricted by rules located in Subpart F of the Internal Revenue Code that require U.S. shareholders with a 10% or more stake in a CFC to pay tax on passive income or income from certain types of sales transactions, such as between related firms.[8]

The U.S. tax code also provides foreign tax credits, which are intended to avoid double taxation of corporate income where U.S. and foreign governments' tax jurisdictions overlap. The foreign tax credit is available to U.S. corporations to offset U.S. tax liability by the amount of tax paid to other countries.[9] Domestic firms can claim foreign tax credits for foreign taxes paid by their subsidiaries on foreign earnings used to pay repatriated dividends to the U.S. parent company. Deferral allows U.S. corporations to reap the benefits of a lower foreign tax rate on foreign earnings for as long as those foreign earnings remain overseas. Deferral, then, makes it more attractive for U.S. firms to leave funds offshore in countries with low tax rates.

The current top corporate statutory tax rate in the United States is 35%.[10] The effective marginal tax rate paid by many corporations after accounting for credits, deductions, and sometimes profit shifting, however, is much lower. A University of North Carolina study of U.S. multinationals' effective tax rates from 2003 to 2007, for example, shows that U.S. multinationals paid a tax rate of 26% on average, comparable to the global average rate of 25%.[11]

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[8] See Conference Report, at 312.
[9] See 26 U.S.C. § 901.
[10] 26 U.S.C. § 11(b).
[11] See Peter Cohn and Mathew Caminiti, "The Multinational Tax Advantage," Bloomberg Businessweek (1/20/2011); David Leonhardt, "The Paradox of Corporate Taxes," New York Times (2/1/2011); CBO, "Corporate Income Tax Rates: International Comparisons," (Nov. 2005). See also "Comparison of the Reported Tax Liabilities of Foreign- and U.S.-Controlled Corporations, 1998-2005," Government Accountability Office (GAO), GAO-08-957 (July 2008). This GAO report found that, for the eight-year period 1998 to 2005, about 1.2 million U.S. controlled corporations (USCCs), or 67% of the returns filed, paid no tax, despite having total

B. American Jobs Creation Act of 2004

The Homeland Investment Act, which was incorporated into the American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357), provided a one-time reduction in the tax rate on repatriated income. The repatriation provision, codified in a new Section 965 of the Internal Revenue Code, was intended to encourage U.S. corporations to repatriate foreign income and use the funds for domestic investment that would promote U.S. jobs growth.[12]

As noted above, foreign income earned by U.S. corporations is not taxed until it is repatriated. Repatriated income is then treated as a dividend paid by a controlled foreign corporation (CFC) to its domestic parent corporation. The 2004 AJCA repatriation provision allowed corporations to deduct from their taxable income 85% of the "qualifying dividends" received from their CFCs during either 2004, 2005, or 2006.[13]

For corporations that were taxed at the statutory corporate rate of 35%, allowing 85% of the qualifying dividends to be deducted from their taxable income reduced the effective tax rate on the qualifying dividends to 5.25%.[14] The repatriation provision also placed limits on the type and amounts of dividends that could "qualify" for the deduction and required the dividends to be used to fund allowable domestic investments. To qualify for the deductions, dividends had to be "extraordinary," that is, the dividends received by the U.S. parent had to exceed the average dividends received from its CFCs over a five-year base period.[15] Additionally, the amount of qualifying dividends was limited to the greater of $500 million or either the amount of earnings permanently reinvested outside the United States according to the corporation's balance sheet of its most recently audited financial statements as of June 30, 2003, or 35% of the

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gross receipts of $2.1 trillion. The report also found that about 55% of large USCCs reported no tax liability for at least one year during the eight years studied.

[12] 26 U.S.C. § 965, "Temporary Dividends Received Deduction;" IRS Notice 2005-10, Notice 2005-35, and Notice 2005-64 (providing guidance for use by corporations of section 965). See also U.S. Senate Committee on Finance, "An Examination of U.S. Tax Policy and Its Effects on the International Competitiveness of U.S.-Owned Foreign Operations," S.Hrg. 108-337 (7/15/2003) (discussing the concept of a repatriation tax break as a measure to stimulate domestic investment and U.S. job creation). The Senate considered legislation to initiate a second repatriation tax break in 2009, but defeated the proposal. See Boxer-Ensign Amendment No. 112, which failed by a vote of 52-44, CONG. REC. S1420 (2/3/2009).

[13] The deduction could be claimed only for a single year, which could be either the last tax year that began before October 22, 2004, or the last tax year that began during the one-year period beginning on October 22, 2004. See 26 U.S.C. § 965(f). Because companies have different tax years, the result was that the repatriation deduction could be taken over a three-year period, from 2004 to 2006. The deduction was required to be taken on a timely filed return for the taxable year with respect to which the deduction was claimed. See Conference Report, at 314.

[14] The 5.25% rate is determined by multiplying 15% of taxable dividends by the top corporate tax rate of 35% [15% of taxable dividends x 35% = 5.25%].

[15] 26 U.S.C. § 965(b)(2).

specific tax liability attributable to earnings permanently reinvested outside the United States.[16]

Congress intended that the deduction be limited to funds that would be used for job creation, capital investment, and other growth-producing expenditures described in a domestic reinvestment plan prepared by the corporation taking the deduction.[17] However, in a major statutory failing, the law did not provide any requirement to track repatriated funds to ensure they were spent on permitted uses. The Conference Report simply stated that "in order to qualify for the deduction, dividends must be described in a domestic reinvestment plan approved by the taxpayer's senior management and board of directors."[18] The Conference Report then set forth a non-exclusive list of permitted uses of repatriated dividends: "funding of worker hiring and training, infrastructure, research and development, capital investments, and the financial stabilization of the corporation for the purposes of job retention or creation."[19] Use of repatriated funds for executive compensation was expressly prohibited;[20] as was their use for share repurchases.[21] In the absence of any tracking requirement, however, the statute failed to provide any means for auditing repatriated funds to gauge compliance. Because corporations had no legal obligation to substantiate how they used repatriated funds, no documentary evidence was obtained establishing that corporations explicitly misapplied repatriated funds to prohibited uses in violation of the law.

The deduction was designed and intended to be available for a single year. The Conference Report stated: "The conferees emphasize that this is a temporary economic stimulus measure, and that there is no intent to make this measure permanent, or to 'extend' or enact it again in the future."[22] Doing otherwise was seen as encouraging corporations to stockpile earnings outside the United States in anticipation of future repatriation provisions, expand their offshore operations, and move more jobs overseas, and as making offshore operations more profitable than domestic operations.

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[16] 26 U.S.C. § 965(b)(1).
[17] 26 U.S.C. § 965(b)(4).
[18] Conference Report, at 316.
[19] Id.
[20] Id. The non-exclusive list of allowed uses of repatriated funds, and the bar on the use of such funds for executive compensation, is also set forth in the statute. See 26 U.S.C. § 965(b)(4)(B).
[21] Department of the Treasury, Notice 2005-10, "Domestic Reinvestment Plans and Other Guidance Under Section 965," at 26-27 (2005).
[22] Conference Report, at 314.

C. 2004 AJCA Repatriation Profile

After enactment of the AJCA, 843 corporations repatriated $312 billion that qualified for the lower tax rate.[23] Generally, corporations claiming the deduction were large multinational firms repatriating substantial offshore funds.

Five firms – Pfizer, Merck, Hewlett-Packard, Johnson & Johnson, and IBM – accounted for $88 billion, representing more than 28% of total repatriations.[24] The top 10 firms – adding Schering-Plough, DuPont, Bristol-Myers Squibb, Eli Lilly, and PepsiCo – accounted for 42% of total repatriated funds.[25] The top 15 – adding Procter & Gamble, Intel, Coca-Cola, Altria, and Oracle – accounted for over half or 52% of total repatriations.[26] According to the Internal Revenue Service (IRS), for the 843 repatriating corporations as a whole, the average amount repatriated was roughly $429 million, while the average qualifying dividend was $370 million.[27]

Most corporations, 86%, reported the deduction for tax year 2005, while 7.7% reported it for tax year 2004, and the remaining 6.8% reported it for tax year 2006.[28] Of the corporations surveyed by the Subcommittee, 17 corporations or 89% reported the deduction for tax year 2005, and two corporations or 11% reported it for tax year 2006.

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[23] See CRS Study, at 3.

[24] See results of a survey conducted by the Subcommittee ("Subcommittee Survey Results"), described further below and depicted in Tables 1-7 in the Appendix to this Report. See also CRS Study, at 4, citing Rodney P. Mock and Andreas Simon, "Permanently Reinvested Earnings: Priceless," 121 Tax Notes 835, at 835-848 (11/17/2008).

[25] Subcommittee Survey Results; CRS Study, at 4.

[26] Subcommittee Survey Results. The Subcommittee identified 15 U.S. corporations with the highest amounts of cash dividends that actually qualified for the deduction under Section 965. Those qualified cash dividend amounts, which were disclosed by the surveyed corporations to the Subcommittee and were not publicly available, provide an exact measure of the funds those corporations repatriated under the AJCA. Other articles have used a slightly different approach, focusing on the total cash dividends that each corporation returned to the United States from its CFCs, as reported in the corporations' publicly available financial statements. This approach identified the same 15 corporations as the Subcommittee survey, with one exception. By the latter measure, total cash dividends from the CFCs, the 15th highest repatriating company was Motorola, and the 19th was Oracle, while by the Subcommittee's measure, total *qualifying* cash dividends, the 15th highest repatriating company was Oracle, and the 16th was Motorola.

[27] Melissa Redmiles, "The One-Time Received Dividend Deduction," IRS, Statistics of Income Bulletin, at 103-104 (Spring 2008) (hereinafter "IRS Data").

[28] Id., at 103-104.

III. SUBCOMMITTEE REVIEW

In 2009, the Subcommittee initiated its review into the effectiveness of the 2004 repatriation provision. The 2004 provision required that corporations develop a domestic reinvestment plan describing the intended use of repatriated funds as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or financial stabilization for purposes of job retention or creation. The 2004 provision did not, however, require corporations to identify or track repatriated funds to make sure that they were actually used for the purposes enumerated in the statute. The Subcommittee's review sought to determine the size of repatriated funds, where the funds came from, and how these funds were employed. In particular, the review focused on the relationship between repatriated funds and the two major permitted uses for the funds, jobs, and research and development expenditures, and the two prohibited uses, share repurchases and executive compensation.

The evidence showed that the one-time repatriation provision did not achieve the objectives identified in the legislation and, in fact, encouraged additional corporate funds to leave the United States to be kept offshore. The data showed, for example, no evidence that the repatriation provision increased U.S. jobs. For research and development budgets, surveyed corporations increased their expenditures after repatriating funds but at roughly the same rates as before repatriation. The Subcommittee review also found that, because money is fungible and corporations were not required to track expenditures of repatriated funds, it was impossible to determine if the surveyed corporations used their repatriated funds to increase planned expenditures for worker training and hiring in the United States or for research and development (R&D), or instead used the repatriated funds to pay for expenses that had already been planned and would have been made in any event, and then used freed up funds to pay for prohibited purposes such as increased stock repurchases or executive compensation. The data is clear, however, at the surveyed corporations that repatriated substantial offshore funds, U.S. jobs decreased overall and the pace of R&D outlays did not increase after repatriation, while expenditures on stock repurchases and executive compensation increased substantially.

By allowing over $300 billion in offshore funds to be brought back subject to a 5.25% tax rate instead of the top 35% rate, the U.S. Treasury lost out on billions of dollars in tax revenues with no evidence of the benefits that it expected to receive in exchange for the loss. Section 965 also served as an additional incentive for U.S. multinationals to send more jobs, funds, and facilities offshore in anticipation of future opportunities to utilize extraordinarily low corporate income tax rates. Finally, repatriation disadvantaged U.S. small and mid-sized businesses by giving

multinational corporations an unfair competitive edge through a lower tax burden.

A. Results of the Subcommittee Survey

To gain a better understanding of the impact and implementation of the 2004 repatriation provision, the Subcommittee sent questionnaires to 20 U.S.-based multinational corporations that took advantage of the 2004 repatriation.[29] The questionnaire sought to discover how the repatriated funds were used by the corporations in the four key areas: American jobs, research and development, stock repurchases, and executive compensation. The review inquired into the amount of funds that had been repatriated; the amount that was planned to be spent; and how the funds had actually been used, including how much the corporation spent on hiring, research and development, stock repurchases, and executive compensation.

All 20 corporations that the Subcommittee contacted responded to the questionnaire. All 20 provided the Subcommittee with a copy of their domestic reinvestment plans indicating how repatriated funds would be spent. The corporations also described how they actually spent the repatriated funds. This Report utilizes data from 19 of the 20 corporations that provided information to the Subcommittee.[30] Because the 2004 provision did not require specific tracking of the repatriated funds, the corporations did not have contemporaneous documentation identifying specific expenditures of repatriated dollars. Instead, the Subcommittee relied on the information each corporation provided, as well as filings with the Securities and Exchange Commission (SEC), IRS published data, and other research and survey results to develop data on the amounts repatriated and amounts spent on hiring, research and development, stock repurchases, and executive compensation.[31]

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[29] The Subcommittee surveyed the 15 companies with the highest amounts of qualifying repatriated dividends. See supra note 26. In addition, the Subcommittee surveyed five companies that were significant repatriators of total dividends: Motorola, the 16th highest repatriating company; Wyeth, the 20th highest repatriating company (which was acquired by Pfizer in 2009); Honeywell International Inc., the 25th highest repatriating company; Cisco Systems Inc., the 40th highest repatriating company; and Microsoft, the 54th highest repatriating company. See Rodney P. Mock and Andreas Simon, "Permanently Reinvested Earnings: Priceless," 121 Tax Notes 835, at 835-848 (11/17/2008) (listing top 81 repatriating companies under the American Jobs Creation Act). These companies were also major players in the technology industry, one of the main beneficiaries of the AJCA.

[30] The Report does not make use of the data provided by Cisco Systems, because Cisco informed the Subcommittee that, after claiming a $1.2 billion dividend received deduction under the AJCA in 2006, it later amended its 2006 tax return and no longer took the $1.2 billion deduction. See Report Exhibit 2. Cisco told the Subcommittee that this action was the result of a larger settlement with the IRS of issues related to a 2002-2004 audit, which resulted in Cisco recharacterizing the $1.2 billion as previously taxed and therefore not subject to any additional tax. According to Cisco, since the funds were considered previously taxed, they were no longer considered a dividend.

[31] The survey results for the 20 corporations are set forth in Tables 1 through 5, in the Appendix at the end of this Report.

1. U.S. Jobs

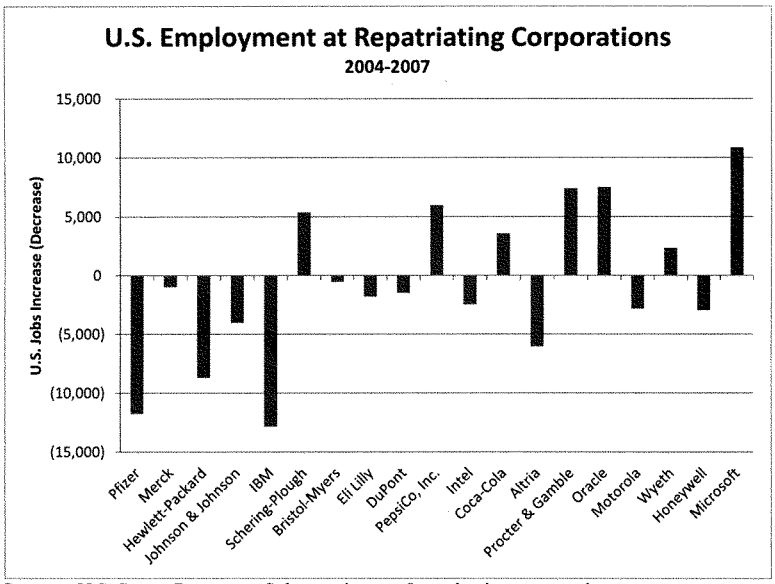
The Homeland Investment Act's repatriation provision was included in the American Jobs Creation Act primarily to increase U.S. jobs. The survey accordingly compared the level of repatriation at the corporations surveyed and the changes in the size of their U.S. workforce, considering both job gains and losses.

With respect to the top 15 repatriating corporations, 10 or 66% recorded U.S. job losses from 2004 to 2007, while five or 33% recorded job gains. Among all 19 of the Subcommittee's survey participants, 12 or 63% of the 19 corporations recorded U.S. job losses from 2004 to 2007, while seven or 37% recorded job gains. The following chart depicts the job losses and gains at each corporation. Overall, the U.S. job losses outweighed the job gains. The aggregate net job change figure among the top 15 repatriating corporations was a loss of 20,931 jobs in the United States from 2004 to 2007.[32] Using all 19 surveyed corporations, the net job change was the loss of 13,585 U.S. jobs over the same period. For both groups of corporations, the top 15 and all surveyed corporations, U.S. jobs decreased in 2005, the year in which the most funds were repatriated, rose less than a percentage point in 2006, and then decreased again in 2007.[33]

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[32] These figures are conservative, in that they do not reflect any reduction in Altria job totals after Altria spun off Kraft Foods Inc. in March 2007. See 2/18/09 Altria Response to Subcommittee Survey, Report Exhibit 3. Despite Altria disclosures indicating that its workforce dropped by nearly 40,000 due to Kraft's departure from the company, the domestic job count figures and charts in this section include Kraft's 2007 domestic job count in Altria's 2007 job total in an attempt to fairly present the number of jobs that stayed in the United States as opposed to jobs that were eliminated entirely.

[33] For the top 15 repatriating corporations, U.S. jobs increased 5.9% from 2002 to 2003, decreased 3.3% from 2003 to 2004, decreased 1.5% from 2004 to 2005, increased 0.1% from 2005 to 2006, and decreased 1.9% from 2006 to 2007. For all 19 surveyed corporations, U.S. jobs increased 3.9% from 2002 to 2003, decreased 4.0% from 2003 to 2004, decreased 1.0% from 2004 to 2005, increased 0.2% from 2005 to 2006, and decreased 0.9% from 2006 to 2007.

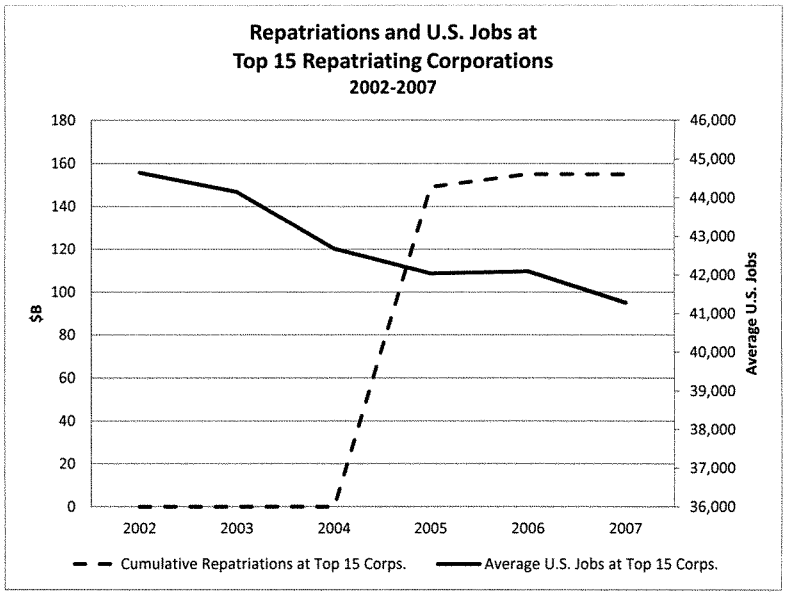


Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

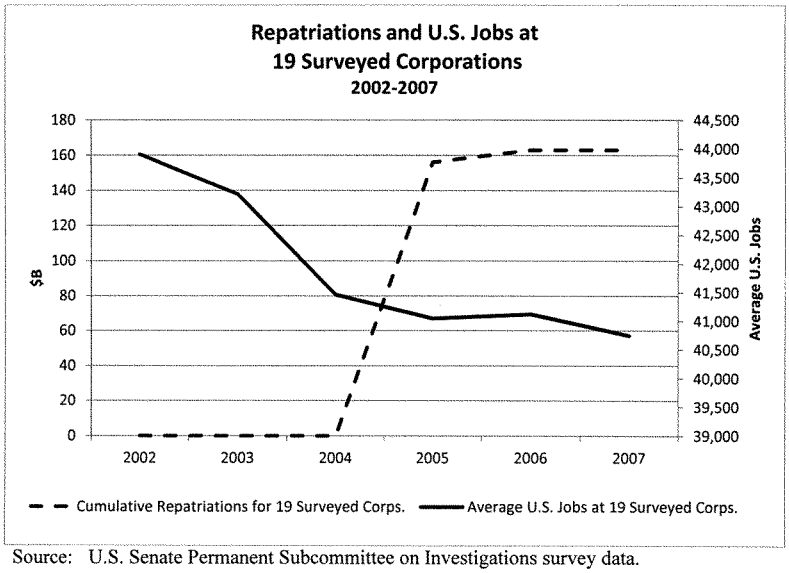
The corporation that repatriated the most foreign earnings, totaling $35.5 billion, for example, cut 11,748 jobs in the United States from 2004 through 2007.[34] Another corporation brought back $9.5 billion, yet cut 12,830 jobs.[35]

Overall, the top 15 repatriating corporations reduced their U.S. workforce despite repatriating large amounts that qualified for the lower tax rate. The charts below shows that these two developments, the increased repatriation of funds versus decreased U.S. employment, moved in opposite directions, contradicting the prediction that the lines would move in approximately the same direction in response to Congress' guidance that repatriated dollars be used to stimulate the creation of new U.S. jobs. The survey data shows that, overall, the biggest repatriation beneficiaries not only failed to increase U.S. jobs after repatriating billions of dollars subject to the lower tax rate, but actually reduced the collective size of their U.S. workforce.

[34] 2/17/09 Pfizer Response to Subcommittee Survey.
[35] 2/17/09 IBM Response to Subcommittee Survey.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

When the Subcommittee asked each of the 19 surveyed corporations for data showing the extent to which their repatriated dollars were used to increase the corporation's U.S. workforce, none of the corporations was able to quantify the amount of repatriated funds used for job creation or to document the amount of job increases, if any, that resulted. Of the seven corporations that increased domestic employment after enactment of

Section 965, only two even identified repatriated funds as a contributing factor to their U.S. job increases.[36]

Of those two corporations, one told the Subcommittee that its increased spending on U.S. employees was partly attributable to funds repatriated under Section 965, but was unable to detail the role played by the repatriated funds.[37] The second corporation, which reported the largest job gain among the top 15 repatriators, claimed an increase in the size of its U.S. workforce during the covered period in part due to its ability to use repatriated funds to acquire two other U.S. corporations.[38]

The remaining corporations told the Subcommittee that they had no data or records to indicate whether repatriated funds contributed to job increases or were ever used for that purpose. As one corporation put it: "We do not maintain data, and we have not made estimates, of how our U.S. jobs and U.S. research and development expenditures would have been different if amounts had not been repatriated under section 965."[39] Other corporations noted that, due to the fungibility of money, they were unable to identify whether repatriated dollars or other funds were used to increase jobs. One corporation made the broad statement that offshore funds repatriated at a lower tax rate would allow it to pursue unnamed "business opportunities" to "increase sales":

> "While it is difficult to point to a direct connection between repatriation and jobs and research and development, when a

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[36] The two companies were Oracle and Microsoft.

[37] 2/18/2009 Microsoft Response to Subcommittee Survey, Report Exhibit 4.

[38] 2/17/2009 Oracle Response to Subcommittee Survey, Report Exhibit 5 ("As noted in Oracle's DRP, a portion of Oracle's repatriated funds was used in FY 2005 for two key acquisitions critical to Oracle's long-term growth and competitiveness internationally. For example, repatriated cash enabled Oracle to outbid and acquire Retek Inc., a Minnesota-based provider of retail software and services. SAP AG had made an offer to acquire Retek, and stated publicly that it intended to move Retek's development jobs and intellectual property to Germany. Oracle's successful acquisition of Retek had the immediate effect of retaining all of Retek's jobs in Minnesota and Georgia. Since the Retek acquisition, Oracle has increased by 50% its Retek related employment in Minnesota and Georgia."). The two acquisitions referenced by Oracle involved its purchase of Retek Inc. and PeopleSoft Inc. Prior to being acquired by Oracle in 2005, Retek reported in its SEC filings that it had 531 worldwide jobs, while PeopleSoft reported that it had 8,748 employees in the United States. Oracle informed the Subcommittee that, in 2005, it increased its U.S. workforce by 4,440 jobs over the prior year. That 4,440 total, which reflects less than half the number of jobs brought to Oracle by Retek and PeopleSoft, indicates that, after acquiring the two companies, Oracle actually eliminated thousands of jobs previously held by U.S. workers. See, e.g., "Jobs Go at Oracle After Takeover," BBC News (1/15/2005) ("The cuts will affect about 9% of the 55,000 staff of the combined companies."); Todd Wallack, "Reality Soothes Layoff Fears / PeopleSoft, Oracle Share Firings Evenly at Bay Area Sites," San Francisco Chronicle (3/25/2005) ("But after the takeover, Oracle announced plans in January to eliminate 5,000 jobs worldwide, mostly from the PeopleSoft side of the company.").

[39] 2/13/2009 Coca-Cola Response to Subcommittee Survey, Report Exhibit 6. See also 2/26/2009 Proctor & Gamble Response to Subcommittee Survey, Report Exhibit 7 ("We have no way to determine what the levels of employment or R&D spending may have been in the absence of 965"); 2/18/2009 Schering-Plough Response to Subcommittee Survey, Report Exhibit 8 ("The Company does not have data that estimates the amount of U.S. jobs or U.S. R&D expenditures that would have increased absent the enactment of section 965.").

> company can access cash at a lower rate, it is placed in a much better position to capitalize on new business opportunities and investments in research and development to increase sales volumes."[40]

Despite that positive statement and repatriating $8 billion in 2005, that particular corporation reduced rather than increased its U.S. workforce over the following two years.[41]

The Report's finding that the repatriating corporations examined by the Subcommittee did not increase their American workforce overall is not unique to the corporations featured in the Subcommittee survey. Research has shown that, across all 840 repatriating corporations, the 2004 repatriation did not stimulate U.S. job growth. Analyses by the Congressional Research Service (CRS) in 2011, for example, concluded that the 2004 repatriation did not produce increased domestic employment.[42] The CRS study stated: "While empirical evidence is clear that this provision resulted in a significant increase in repatriated earnings, empirical evidence is unable to show a corresponding increase in domestic investment or employment by firms that utilized the repatriation provisions."[43] A 2009 study using data from the National Bureau of Economic Research concluded: "The ability to access an internal source of capital at a lower cost did not boost domestic investment, employment, or R&D."[44]

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[40] 2/24/2009 Johnson & Johnson Response to Subcommittee Survey, Report Exhibit 9.

[41] Johnson & Johnson reported having 47,386 U.S. employees in 2005, 47,765 U.S. employees in 2006, and 45,424 U.S. employees in 2007. Id.

[42] CRS Study, at 1. The CRS Study references empirical econometric studies by Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "The Unintended Consequences of the Homeland Investment Act: Implications for Financial Constraints, Governance, and International Tax Policy," an unpublished working paper (Sept. 2008) that has since been published at 66 Journal of Finance 753; and Roy Clemons and Michael R. Kinney, "An Analysis of the Tax Holiday for Repatriation Under the Jobs Act," 120 Tax Notes 759, at 759-768 (8/25/2008). The CRS reports that "these studies both found the repatriation provisions to be an ineffective means of increasing economic growth." CRS Study, at 7.

[43] CRS Study, at 1. The CRS study also pointed out that flexible exchange rates would likely have depressed any stimulative impact of any sizeable repatriation due to currency conversions and the resulting international trade flows. The CRS Study stated: "The stimulative effect of the reduced tax rate on repatriated earnings is expected to be muted by the international system of flexible exchange rates and, subsequently, by trade. This effect will occur, because as foreign denominated earnings of foreign subsidiaries are repatriated they are also converted to dollars. This result increases demand for dollars which leads to an appreciation, or increase, in the price of the dollar in foreign exchange markets. This stronger dollar makes U.S.-made exports more expensive and foreign imports less expensive. As a result, U.S. exports would temporarily decline, further straining the economy and at least partially offsetting any stimulative effect of the repatriated earnings." CRS Study, at 8.

[44] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 772 (June 2011).

2. Research and Development Expenditures

Under the AJCA, research and development (R&D) was another permitted, and encouraged, use of repatriated funds. The Subcommittee's survey data showed that, at the top 15 repatriating corporations, R&D expenditures increased from 2004 through 2007, but at slightly lower rates than occurred before repatriation. For the top 15 repatriating corporations, the average annual percentage increase in R&D spending ranged between 4% and 7% from 2002 to 2007.[45] Similarly, for the 19 surveyed corporations, the average annual percentage increase in R&D spending ranged from 3% to 7% from 2002 to 2007.[46]

In the graphs below, the line indicating R&D expenditures shows a smooth, consistent rise from the time period before repatriation (2002 to 2003) through the period in which funds were repatriated (2005 to 2006), and in the year after (2007). That is, even though the top 15 corporations collectively experienced an influx of $149 billion in repatriated funds in 2005, and another $6 billion in 2006, the rise in their collective R&D spending during those years is consistent with the gradual increase in R&D spending before repatriation. For the 19 surveyed corporations, there is a slight increase in the line showing increased R&D spending from 2003 to 2004, prior to the repatriation, but that increase is attributable to a single corporation which spent a relatively large amount during that period.[47] The line then levels out for a year before renewing its rise.

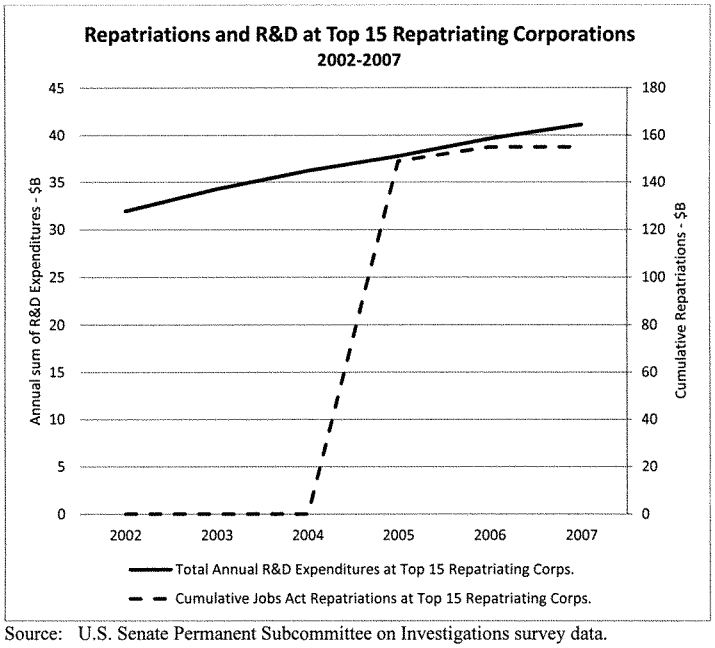
These graphs show that R&D expenditures did not appreciably increase beyond planned levels, and actually experienced a slight decrease in the rate of spending, after repatriation. They stand in contrast to the graphs below tracking expenditures for stock repurchases and executive compensation, which demonstrate marked increases during the repatriation period.

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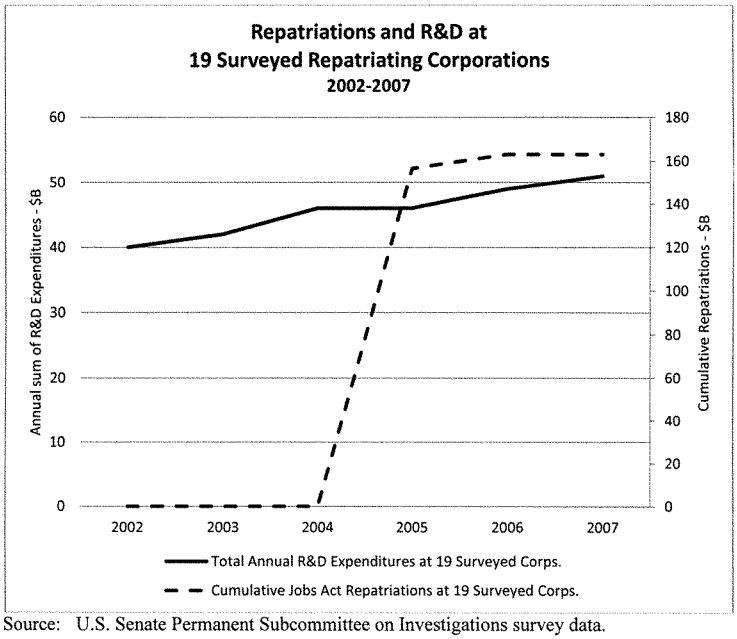
[45] The annual percentage increase in R&D expenditures for the top 15 repatriating corporations was 7.3% from 2002 to 2003, 5.7% from 2003 to 2004, 4.3% from 2004 to 2005, 4.9% from 2005 to 2006, and 3.7% from 2006 to 2007.

[46] The annual percentage increase in R&D expenditures for the 19 surveyed repatriating corporations was 6.5% from 2002 to 2003, 6.0% from 2003 to 2004, 5.1% from 2004 to 2005, 5.9% from 2005 to 2006, and 3.5% from 2006 to 2007.

[47] When the graph is recreated without that corporation's R&D expenditures to eliminate the skewed effect from its relatively large R&D outlay, the trend line of R&D expenditures shows a smooth increase, like the trend line for the Top 15 Repatriating Corporations graph.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

Since the 2004 statute did not require corporations to document their use of repatriated funds, combined with the fungibility of dollars, it is not possible to determine the extent to which repatriated funds contributed to

the corporations' R&D spending during the period 2005 to 2007. When asked, the surveyed corporations did not provide the Subcommittee with any evidence demonstrating the extent to which repatriated funds were actually used to finance R&D expenditures or spur increased R&D spending. The corporation that increased R&D expenditures the most among survey participants (77% from 2004-2007) reported to the Subcommittee that it "does not have data that estimates the amount of U.S. jobs or U.S. R&D expenditures that would have increased absent the enactment of section 965."[48] Another corporation which also made significant increases in its R&D expenditures during the covered period explained: "We do not maintain data, and we have not made estimates, of how our U.S. jobs and U.S. research and development expenditures would have been different if amounts had not been repatriated under section 965."[49] One corporation attributed its increased R&D spending in part to repatriated funds, though it was unable to explain how the repatriated funds boosted its spending.[50]

The Subcommittee's survey data is consistent with academic research studies examining the 840 repatriating corporations as a whole. Those studies generally concluded that there was no evidence that the 2004 AJCA repatriation led to increased R&D spending overall. While in one survey tax executives from repatriating firms told researchers that their firms spent nearly 15% of their repatriated funds on R&D,[51] other studies that did not rely on self-reporting by repatriating corporations, found no increase in R&D expenditures. A 2009 study using National Bureau of Economic Research data, for example, concluded: "[H]igher levels of repatriations were not associated with ... increased R&D expenditures."[52] Likewise, a 2009 study found no difference between the change in R&D between repatriating and non-repatriating corporations.[53]

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[48] 2/18/2009 Schering-Plough Corporation Response to Subcommittee Survey, Report Exhibit 8.
[49] 2/13/2009 Coca-Cola Company Response to Subcommittee Survey, Report Exhibit 6. See also 2/26/2009 Proctor & Gamble Response to Subcommittee Survey, Report Exhibit 7 ("We have no way to determine what the levels of employment or R&D spending may have been in the absence of 965.").
[50] 2/18/2009 Microsoft Response to Subcommittee Survey, Report Exhibit 4.
[51] John R. Graham, Michelle Hanlon, and Terry Shevlin, "Barriers to Mobility: The Lockout Effect of U.S. Taxation of Worldwide Corporate Profits," National Tax Journal, at 38, Fig. 2 (Dec. 2010).
[52] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 756 (June 2011). As reported above, the study also states: "The ability to access an internal source of capital at a lower cost did not boost domestic investment, employment, or R&D." Id., at 782.
[53] See Jennifer Blouin and Linda Krull, "Bringing It Home: A Study of the Incentives Surrounding the Repatriations of Foreign Earnings under the Jobs Creation Act of 2004," 47 Journal of Accounting Research 1027, Tables 2 and 3 (Dec. 2009).

3. Stock Repurchases

Federal regulations implementing the 2004 repatriation provisions explicitly prohibited using repatriated funds to pay for stock repurchases or dividends, determining that shareholder distributions were not a permitted use under the statute.[54] Yet subsequent research has shown a disturbing parallel between an increase in repatriated funds and an increase in share buybacks at the repatriating corporations.

Stock repurchase programs enable a corporation to reacquire its own stock. U.S. corporations may repurchase their own stock by distributing cash to existing shareholders in exchange for outstanding shares. Corporations then typically either retire the shares or keep them as treasury stock available for re-issuance. Corporations sometimes use repurchasing programs as a means to share corporate profits with shareholders. In addition, by repurchasing its own stock and reducing the supply of shares available in the marketplace, a corporation can increase its earnings per share (EPS) and may be able to boost its stock price. Higher EPS values and stock prices provide greater value to shareholders.[55] They may also boost executive compensation by increasing the value of stock and stock options held by executives or by justifying larger executive bonuses.

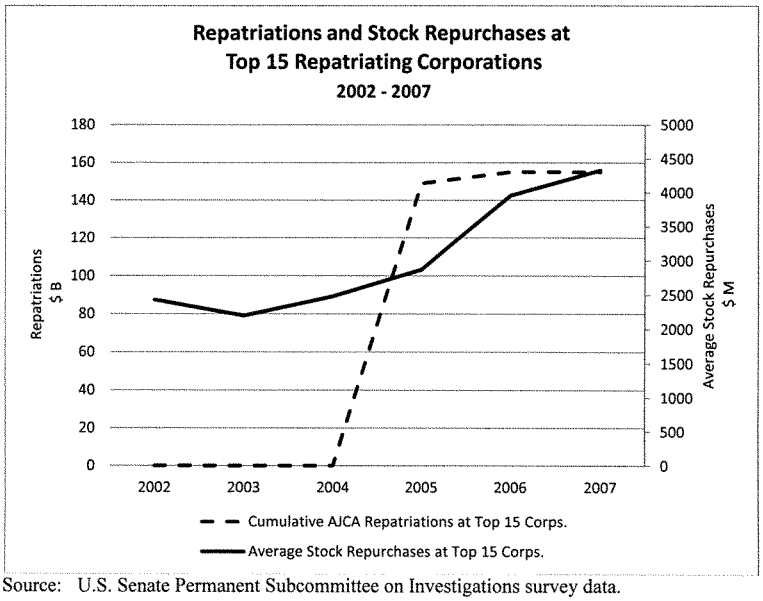
While stock repurchases benefit shareholders and executives, they reduce corporate cash holdings available for job growth, increased research and development expenditures, and capital investment. The American Jobs Creation Act, as its name suggests, intended repatriated dollars to be used to increase U.S. employment; its legislative history contains no reference to using repatriated funds for share buybacks. In addition, regulations under the law explicitly prohibit the use of repatriated funds to engage in share repurchases. The concern that corporations would use repatriated funds on stock repurchases to boost their EPS and stock price rather than increase jobs, research and development, or capital expenditures that would stimulate the economy, appears to have been well justified.

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[54] See Department of the Treasury, Notice 2005-10, "Domestic Reinvestment Plans and Other Guidance Under Section 965," at 26-27 (2005) ("*Dividends and Other Distributions With Respect to Stock* - Dividends and other distributions made by the taxpayer to its shareholders with respect to its stock, without regard to how such distributions are treated under section 301, are not permitted investments because they do not constitute investments by the taxpayer for purposes of section 965") ("The redemption of outstanding stock of a taxpayer or, through one or more steps as part of a plan, of a corporation related to the taxpayer (within the meaning of section 267(b)) without regard to whether such redemption is treated as an exchange in part or full payment for the stock under section 302(b), is not a permitted investment. As is the case with dividends, such expenditures do not constitute investments by the taxpayer for purposes of section 965."), http://www.treasury.gov/press-center/press-releases/Documents/repatriationnoticen200510.pdf.

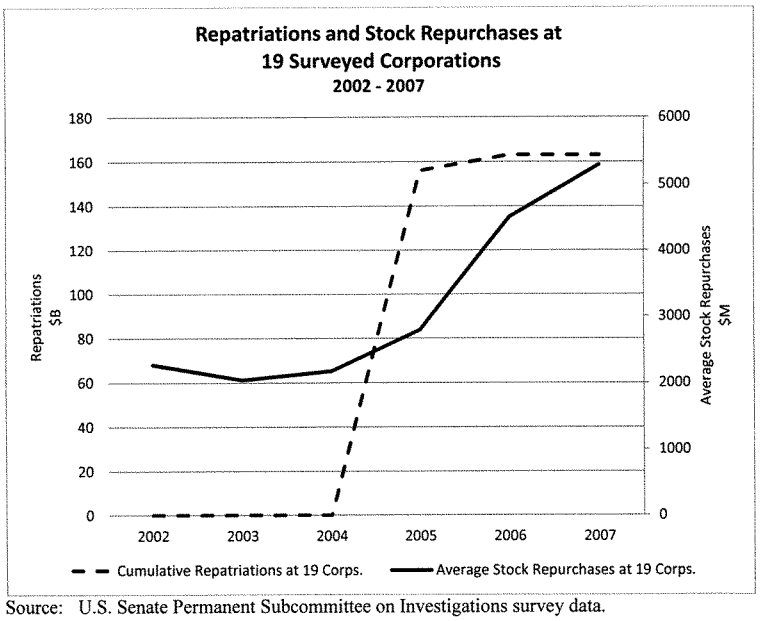
[55] CRS notes that "[i]n addition to stock repurchases, increasing dividends are a way of returning money to shareholders. Given the temporary nature of repatriation provisions, however, stock repurchases would be the expected vehicle to return money to shareholders, since they represent less of a commitment to ongoing distributions." CRS Study, at 7, n. 15.

Of the top 15 repatriating corporations, 12 or 80% of the corporations had increased their stock repurchases from 2004 through 2007, two had no stock repurchases, and one had decreased its repurchases. The results indicate that the rate of stock repurchases accelerated after repatriation, decreasing 10% from 2002 to 2003, then increasing 13% from 2003 to 2004, 16% from 2004 to 2005, rising the most, 38%, from 2005 to 2006, and 9% from 2006 to 2007. Likewise, of the 19 corporations surveyed by the Subcommittee, 16 or 84% of the corporations had increased their stock repurchases; two had no stock repurchases; and one had decreased its stock repurchases from 2004 through 2007.[56] The survey data shows that stock repurchases went up at an increasing rate after repatriation compared to the years before repatriation, with the steepest increase occurring between 2005 and 2006. Overall, as the chart below shows, in the years following the repatriation of offshore funds, the 19 surveyed corporations more than doubled the amount of their average stock repurchases, from about $2.2 billion in 2004 to $5.3 billion in 2007.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

[56] On average, for all 19 surveyed corporations, stock repurchases decreased 5% from 2002 to 2003, increased 6% from 2003 to 2004, 28% from 2004 to 2005, an additional 61% from 2005 to 2006, and an additional 17% from 2006 to 2007.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

The Subcommittee's survey results are consistent with other research showing a correlation between the 2004 repatriation and an increase in stock buybacks. A 2009 study using data from the National Bureau of Economic Research, for example, reported "that a $1 increase in repatriations was associated with an increase in payouts to shareholders of between $0.60 and $0.92," primarily through stock repurchases.[57] Another economic study, known as the Clemons and Kinney study, which was reviewed by CRS, showed that "the only significant increase in expenditures for participating corporations was on stock repurchases."[58] A third study estimated that, in 2005 alone, repatriating corporations increased stock repurchases by approximately $61 billion.[59] A fourth study, conducted by surveying tax executives at the repatriating corporations, found that 40% of the repatriating corporations reported

[57] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 63 Journal of Finance 753, 756 (June 2011) ("This estimate implies that a $1 increase in repatriations under the HIA spurred a $0.92 increase in payouts to shareholders. . . . This series of results suggests that the primary domestic impact of the repatriations under the HIA tax holiday was to increase share repurchases."). Id. at 770-71.

[58] See CRS Study, at 7, referencing Roy Clemons and Michael R. Kinney, "An Analysis of the Tax Holiday for Repatriation Under the Jobs Act," 120 Tax Notes 759 (8/25/2008). CRS notes that while stock repurchases were a prohibited use of repatriated funds under the AJCA, because of the fungibility of money, firms that used part of the repatriation to repurchase shares may not have been in violation of the law.

[59] Blouin, Jennifer, and Linda Krull, "Bringing it Home: A Study of the Incentives Surrounding the Repatriation of Foreign Earnings Under the American Jobs Creation Act of 2004," 47 Journal of Accounting Research 1027, at 1029 (Dec. 2009) ("We estimate that, after controlling for other predictors of repurchases, repatriating firms increase share repurchases during 2005 by $60.85 billion more than nonrepatriating firms.")

having used cash that was freed up by repatriated dollars to repurchase shares.[60]

Although Section 965's implementing regulations prohibited the use of repatriated funds on stock repurchases, corporations could have technically adhered to the law by spending repatriated dollars in budgeted areas allowed under the AJCA, and then using money that the repatriated sums freed up to repurchase shares.[61] In that case, corporations essentially distributed a portion of the repatriated offshore funds to their shareholders, without technically violating the law, but also making the repatriated cash unavailable for use in domestic job growth, R&D efforts, or other investments. Increased spending on stock repurchases violated the spirit of the law by directing the stream of repatriated funds to augment shareholder wealth, and likely executive wealth, instead of putting the funds toward Congressional priorities, such as hiring workers or increasing R&D spending. The research indicates that executives and shareholders got the benefit of the bargain in the AJCA at the expense of the overall economy.

4. Executive Compensation

Under the AJCA, use of repatriated funds to increase executive compensation was explicitly prohibited, however, all but one of the corporations that the Subcommittee surveyed[62] increased executive compensation from 2004 to 2007, in particular by increasing stock awards to senior executives. The fungibility of dollars and the law's failure to require corporate records tracing the use of repatriated funds make it difficult to determine the extent to which repatriated dividends, or funds freed up by repatriated dividends, contributed to the increase in executive pay. However, the empirical trends in repatriated funds and executive compensation show troubling parallels.

Overall, from 2002 to 2007, according to data supplied by the corporations, compensation for the top five corporate executives at the top 15 repatriating corporations increased the most after corporations repatriated offshore funds.[63] From 2002 to 2003, executive

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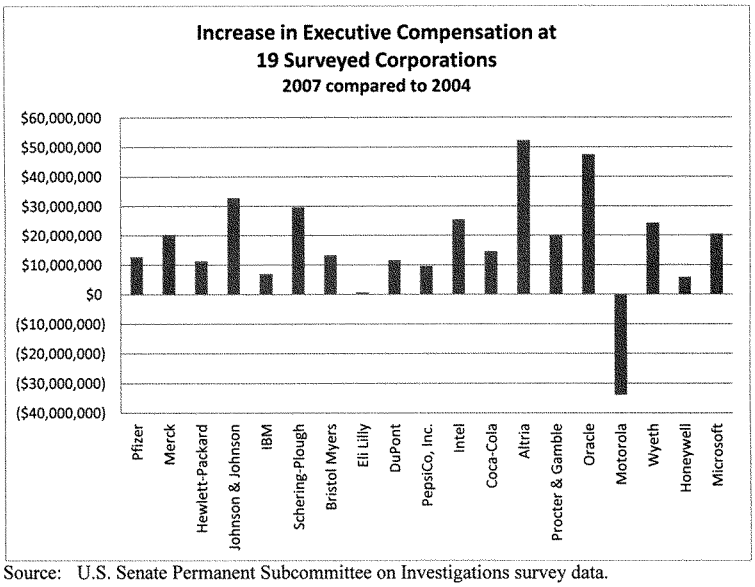
[60] John R. Graham, Michelle Hanlon, and Terry Shevlin, "Barriers to Mobility: The Lockout Effect of U.S. Taxation of Worldwide Corporate Profits," National Tax Journal, at 39 (Dec. 2010).

[61] For example, Starwood Hotels & Resorts Worldwide Inc. has publicly admitted that it engaged in this type of conduct. On the same day that Starwood approved a $1 billion stock repurchase plan, it announced it was repatriating $550 million. Its spokeswoman, Alisa Rosenberg, stated: "But what (the act) does is it brings money over to be used for those types of things, which frees up money that would have been used for hiring and training." See Roy Clemons and Michael R. Kinney, "An Analysis of the Tax Holiday for Repatriation Under the Jobs Act," 120 Tax Notes 759 (8/25/2008).

[62] Motorola was the only surveyed company to have decreased executive compensation from 2004 to 2007.

[63] The compensation reported here includes salary, stock awards, stock options, and other forms of compensation as identified in the companies' responses to the Subcommittee and their SEC

compensation at those firms decreased 9%, then increased 14% from 2003 to 2004, increased 27% from 2004 to 2005, increased the most, 30%, from 2005 to 2006, and increased 2% from 2006 to 2007. The trends for the 19 corporations surveyed by the Subcommittee were similar: executive compensation decreased 15% from 2002 to 2003, increased 14% from 2003 to 2004, increased 15% from 2004 to 2005, increased 35% from 2005 to 2006, and decreased 0.6% from 2006 to 2007. The 35% increase for the 19 surveyed corporations meant that, from 2005 to 2006, compensation for the top five executives collectively jumped from $36 million to $49 million in a single year.[64] In contrast, according to the U.S. Bureau of Labor Statistics, from 2002 to 2007, average worker pay in the United States increased only 5% each year on average.[65]



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

The charts below show that, as a whole, as the surveyed corporations increased their receipt of repatriated offshore funds under

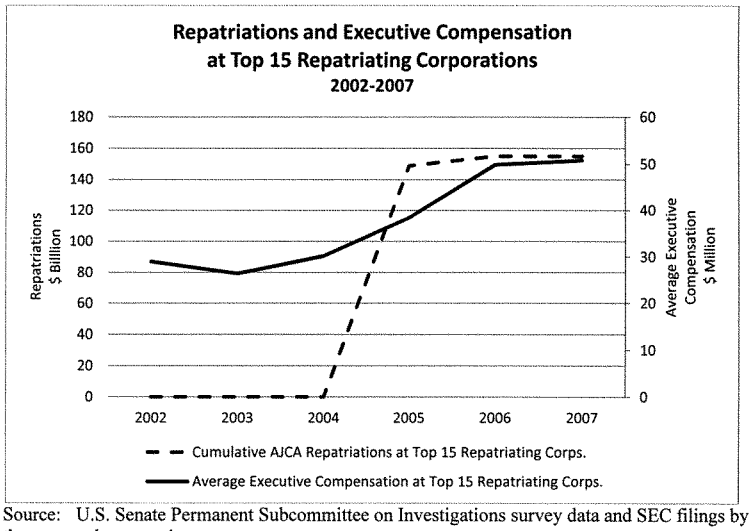
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filings.

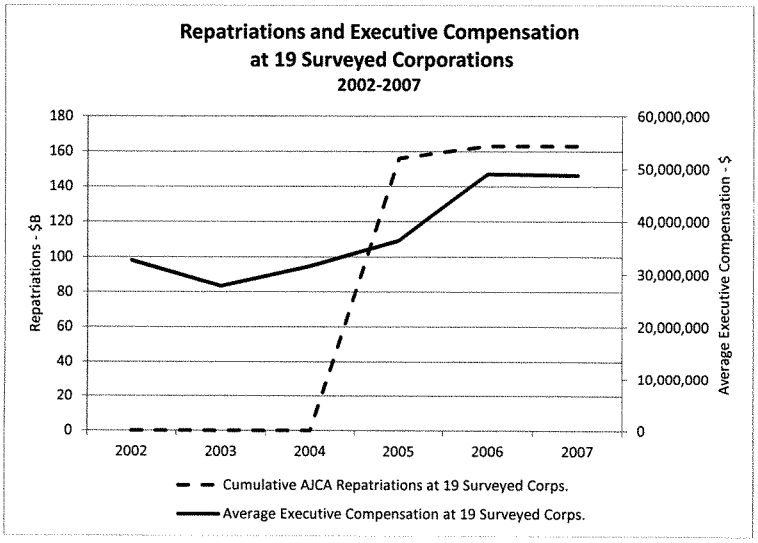
[64] The executive compensation figures were provided by the surveyed corporations and are summarized in Table 2 in the Appendix.

[65] Average worker salary increased 4% from 2003 to 2004, increased 2% from 2003 to 2004, increased 3% from 2004 to 2005, increased 11% from 2005 to 2006, and increased 4% from 2006 to 2007. See U.S. Bureau of Labor Statistics, Occupational Earnings in the United States, http://www.bls.gov/ncs/ncspubs.htm#Wages. Average worker pay was calculated using mean compensation per hour data for private sector employees assuming full time (40 hours/week) work.

Section 965, average executive compensation likewise increased.[66] At the same time they were increasing executive pay, the surveyed corporations were reducing the size of their U.S. workforce.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data and SEC filings by the surveyed corporations.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data and SEC filings by the surveyed corporations.

[66] Information on executive pay was taken from the Subcommittee survey results, which reflect both cash and non-cash amounts of compensation and the relevant corporation's annual report and proxy statements filed with the Securities and Exchange Commission (SEC).

As part of the increased compensation, the most senior executives at the repatriating corporations benefited from an increase in restricted stock awards in the year following the AJCA. Some of those awards represented significant increases.

In the two years following the AJCA, the top 15 repatriating companies made substantial restricted stock awards to senior executives, as shown in the table below. Senior executives at nine companies (Merck, Hewlett-Packard, Johnson & Johnson, Schering-Plough, Bristol-Myers, Eli Lilly, PepsiCo, Altria, and Procter & Gamble) received restricted stock awards of more than $1 million in 2005, while senior executives at ten companies (Pfizer, Merck, Hewlett-Packard, Johnson & Johnson, Schering-Plough, Eli Lilly, DuPont, PepsiCo, Altria, and Procter & Gamble) received restricted stock awards of more than $1 million in 2006. The CEO and President of Hewlett-Packard received restricted stock awards valued at more than $8.6 million in 2005 and $4.7 million in 2006; the Chairman and CEO of Schering-Plough received restricted stock awards valued at more than $4.1 million in 2005 and $10.2 million in 2006; the Chairman and CEO of PepsiCo received restricted stock awards valued at more than $4.9 million in 2005 and $6.2 million in 2006; and the Chairman and CEO of Altria received restricted stock awards valued at more than $7.7 million in 2005 and $9.2 million in 2006. Altogether, of the 19 surveyed corporations, 18 increased restricted stock awards to their senior executives over 2004 levels in either 2005 or 2006, the two years following the 2004 repatriation.[67]

[67] The two corporations that did not increase executive stock awards in 2005 or 2006 were Bristol-Myers and Cola-Cola. Coca-Cola's totals in 2006 include portions of prior year awards, so the new awards in 2006 did not exceed 2004 levels.

Restricted Stock Awards of Senior Executives
Top 15 Repatriating Companies, 2005-2006

Company	Name	Title	2005 (in $)	2006 (in $)
Pfizer	Henry McKinnell	CEO	0	8,315,642
Pfizer	Jeffrey Kindler	CEO	0	2,736,265
Merck	Richard T. Clark	CEO, President	1,932,923	2,359,616
Hewlett-Packard	Mark V. Hurd	Chairman, CEO, President	8,684,000	4,725,000
Johnson & Johnson	William C. Weldon	Chairman, CEO	2,200,001	2,041,054
IBM	Sal Palmisano	Chairman, CEO, President	990,674	495,283
Schering-Plough	Fred Hassan	Chairman, CEO	4,140,000	10,208,157
Bristol-Myers	P.R. Dolan	CEO	2,529,000	-815,462
Eli Lilly	Sidney Taurel	Chairman, CEO	3,689,918	5,400,000
DuPont	C.O. Holiday, Jr.	Chairman, CEO	0	2,494,199
PepsiCo	Steven Reinemund	Chairman, CEO	4,928,553	6,220,781
Intel	Paul S. Otellini	President, CEO	0	352,000
Coca-Cola	E. Neville Isdell	Chairman, CEO	0	12,128,912
Altria	Louis C. Camilleri	Chairman, CEO	7,730,000	9,291,095
Procter & Gamble	A.G. Laffey	Chairman, CEO, President	5,000,000	9,320,000
Oracle	Larry J. Ellison	CEO	0	0

Source: Corporate SEC filings. For more information on restricted stock awards at the surveyed corporations, see Table 4 in the Appendix.

The value of the restricted stock awards, as well as any stock option awards, given to the repatriating corporations' senior executives was likely further increased by the corporations' substantial stock repurchases, as explained above.

Together, this data indicates that, as funds were repatriated to the United States, stock repurchases and executive compensation climbed at the largest repatriating corporations, while hiring stagnated or declined. This finding was not replicated, however, in research that examined all 843 repatriating corporations; that research did not find a significant association overall between repatriation and increased executive compensation when considering data from the larger group.[68] The Subcommittee's survey results apply only to the 19 surveyed corporations which, together, brought back more than half of all the repatriated foreign earnings.

[68] See Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 756 (June 2011) (finding no correlation overall between the 843 repatriating firms and increased executive compensation).

5. Industry Sectors Benefiting from Repatriation

Analysis shows that the 2004 repatriation turned out to benefit only a narrow sector of U.S. multinational corporations. Altogether, 843 corporations, or 11.5% of the roughly 9,700 U.S. corporations with controlled foreign corporations (CFCs) in 2004, took advantage of the deduction.[69] Those 843 corporations represented only 0.015% of the 5,557,965 corporations that filed U.S. tax returns in 2004, many of which had no international operations.[70] Of the $312 billion in qualifying funds that were repatriated, IRS data indicates that $157 billion, or half, went to multinational corporations in just two industry sectors, the pharmaceutical and technology industries.[71]

IRS data indicates that, of the 843 filers that took advantage of the deduction, pharmaceutical and medicine manufacturing corporations comprised about 3% of the total, yet claimed almost one-third of the qualifying dividends. Altogether, the pharmaceutical industry repatriated nearly $106 billion and deducted $98.8 billion.[72] The computer and electronic equipment manufacturing industry represented about 10% of the 843 filers, yet repatriated about $57.5 billion, or 18% of the total qualifying dividends.[73]

The predominance of the pharmaceutical and technology industries among all repatriating corporations was reflected in the Subcommittee's survey, as shown in the chart below, broken out by the top 15 repatriating corporations. Of those top 15 repatriating corporations, all of which were surveyed by the Subcommittee, six were pharmaceutical[74] and four were technology corporations.[75]

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[69] CRS Study, at 3.

[70] Internal Revenue Service, Statistics of Income Bulletin, "2004 Corporation Returns – Basic Tables," http://www.irs.gov/taxstats/article/0,,id=170544,00.html, in Tax Year 2004.

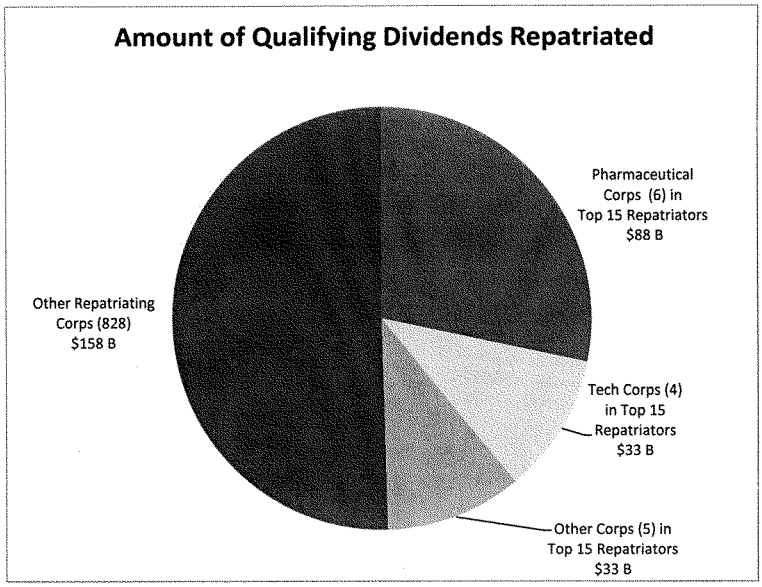
[71] See CRS Study, at 4 (reporting that $99 billion in repatriations was brought back by the pharmaceutical and medicine industry and $58 billion was repatriated by the computer and electronic equipment industry).

[72] IRS Data, at 103-105.

[73] Id.

[74] Bristol-Myers, Eli Lilly, Johnson & Johnson, Merck, Pfizer, and Schering-Plough.

[75] Hewlett-Packard, IBM, Intel, and Oracle. The Subcommittee also surveyed five additional corporations from the pharmaceutical and technology industries, Cisco, Honeywell, Microsoft, Motorola, and Wyeth.



Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

Because the repatriation tax break benefits only U.S. corporations with substantial offshore funds, the 2004 AJCA repatriation provision has been the subject of criticism by a number of domestic and small businesses.[76] A coalition that includes several small business groups, for example, opposes repatriation as an unfair tax benefit, explaining in a recent letter to Congress:

[76] See, e.g., "Offshore tax dodging hurts U.S. business," an opinion piece by Paul Egerman, a small business owner who started two health information technology companies, Michigan Midland Daily News (6/7/2011), Report Exhibit 10, ("As a businessman and entrepreneur, I believe it is myopic tax policy to force domestic enterprises to compete on an unlevel playing field against companies that use offshore tax havens to relocate profits. … And now, a coalition of global corporations is calling for a tax holiday so they can bring home over $1 trillion [in] profits that they parked offshore without paying the same corporate income rate that most domestic companies pay. Congress' Joint Committee on Taxation estimates this move would cost the U.S. $80 billion over ten years. … There are millions of U.S. business people in this country who work extremely hard to reach customers, provide better services, build better widgets – and pay their local, state and federal taxes. … The bills have to be paid – and no one should be able to opt out simply because they are politically connected and big."); "A Charlie Brown Congress?" an opinion piece by Frank Knapp, Jr., President and CEO of the South Carolina Small Business Chamber of Commerce, The Hill (6/29/2011), Report Exhibit 11, ("Giving U.S. multinational corporations another 'repatriation tax holiday' will encourage them to shift even more of their profits into offshore tax havens …. As a result, our country's deficit will increase when an estimated $79 billion more in corporate taxes is not collected over the next 10 years according to Congress' Joint Committee on Taxation. That means the rest of us will continue to pay more than our fair share for the essential services of government. These big corporations benefit immensely from all the advantages of being headquartered in our country. They need to start paying their taxes just as every citizen and small business does.").

> "When powerful large U.S. corporations avoid their fair share of taxes, they undermine U.S. competitiveness, contribute to the national debt and shift more of the tax burden to domestic businesses, especially small businesses that create most of the new jobs. A transparent corporate tax system that assures all companies – large and small – pay for the services upon which our businesses, our customers, our workforce and our communities depend, would help restore the economic vitality and domestic job creation we all seek."[77]

Even some multinational corporations, such as IBM,[78] Caterpillar Inc., Kimberly-Clark Corp., United Technologies Corp., and Zimmer Holdings Inc., have expressed a lack of support for a new repatriation effort.[79]

According to the Secretary of the U.S. Treasury, Timothy Geithner, 96% of U.S. corporations would not benefit from a new repatriation tax break.[80]

6. Source of Repatriated Funds

The data collected by the Subcommittee survey shows that a significant amount of the repatriated funds under Section 965 flowed from tax haven jurisdictions, including the Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Costa Rica, Hong Kong, Ireland, Luxembourg, Netherlands Antilles, Panama, Singapore, and Switzerland.[81] Of the 19 corporations surveyed, seven or 37%

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[77] "Letter to Congress: No Tax Holiday for U.S. Multinationals," Business for Shared Prosperity (6/14/2011) (letter to Members of Congress from a coalition of business groups, including Business for Shared Prosperity, American Sustainable Business Council, and American Made Alliance), http://businessforsharedprosperity.org/content/letter-congress-no-tax-holiday-us-multinationals, Report Exhibit 12.

[78] Tony Romm, "IBM Breaks with Peers on Repatriation," Politico (3/28/2011), http://dyn.politico.com/members/forums/thread.cfm?catid=24&subcatid=78&threadid=5258233; Bernie Becker, "IBM says tax holiday would be a distraction," The Hill, March 29, 2011 (IBM has asserted that such effort is a "distraction" from the more pressing need for comprehensive corporate tax reform.).

[79] See "Hearing on the Need for Comprehensive Tax Reform to Help American Companies Compete in the Global Market and Create Jobs for American Workers," House Committee on Ways and Means, Serial No. 112-11 (5/12/2011) (Witnesses testifying for Caterpillar, Kimberly-Clark and Zimmer Holdings all stated that a one-time corporate tax holiday is "a bad idea," preferring instead that it be part of comprehensive corporate tax reform.). The CFO of United Technologies stated: "I fear we'll have a repeat of 2004." See Andrew S. Ross, "Repatriation – a really bad idea makes a comeback," San Francisco Chronicle (7/7/2011).

[80] See Janie Lorber, "Tech Sector Fights for Repatriation," Roll Call (9/20/2011) (quoting Secretary Geithner: "It [a new repatriation tax break] costs between $20 [billion] and $80 billion to do that over 10 years, and if you're going to do that, you have to be able to pay for it, and how are you going to raise taxes on the 96 percent of companies across the country that don't benefit from repatriation?").

[81] See Appendix, Table 5, "Dividends from Tax Haven CFCs." Tax haven countries are identified by GAO.

repatriated between 90% and 100% of funds from tax haven jurisdictions, as indicated in the following chart.

Top 7 Repatriators of Cash from Tax Havens

Corporation	Repatriated Amount*	% of Dividends from Tax Haven CFCs
Schering-Plough	$9,617,126,443	100.0%
Microsoft	$1,113,952,221	97.0%
Merck	$16,686,797,535	96.1%
Oracle	$3,326,920,000	94.3%
Bristol Myers	$9,733,963,924	94.2%
Eli Lilly	$9,475,729,407	92.6%
PepsiCo, Inc.	$7,490,285,074	91.1%

* Total cash dividends that were repatriated.
Source: Data provided by corporations in response to Permanent Subcommittee on Investigations survey.
For data on all 19 surveyed corporations, see Table 5 in the Appendix.

Of the remaining 12 corporations surveyed by the Subcommittee, five repatriated from 70% to 89% of their funds from tax havens; three repatriated between 30% and 69% of their funds from tax havens; two repatriated around 7%; and two repatriated less than 1%.[82]

The Subcommittee followed up with several corporations to determine if the tax haven subsidiaries that were primarily responsible for repatriating these funds to the United States under Section 965 had any active operations. Most of the corporations told the Subcommittee that their tax haven subsidiaries that repatriated funds were holding companies designed primarily to hold funds or facilitate the movement of funds among a network of foreign subsidiaries. A number of those tax haven subsidiaries had no physical office and few or no full time employees in the tax haven jurisdiction.

The following corporations, for example, repatriated between 70% and 100% of their qualifying dividends from tax haven subsidiaries which had no apparent active business operations, such as a manufacturing plant. In each case, the repatriating tax haven subsidiary transferred billions of dollars to the United States.

- Coca-Cola repatriated nearly all of its qualifying dividends from a Cayman Island subsidiary which had no Cayman employees and functioned primarily, in the words of Coca-Cola, to fund its offshore operations and "provide[ ] legal insulation" for its U.S. assets.

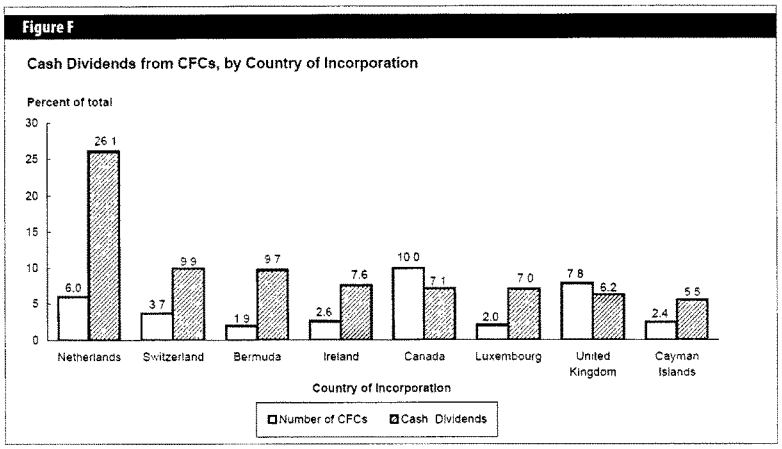
[82] Id.

- Eli Lilly repatriated most of its qualifying dividends from a holding company which was located in Switzerland and employed 86 employees among itself and 12 subsidiaries. The remaining portion of its qualifying dividends was repatriated from an investment holding company which had no employees and was located in the British Virgin Islands.
- Intel repatriated most of its qualifying dividends from a Cayman corporation that had no physical office and, according to Intel, "helped reduce the Irish tax on manufacturing operations in Ireland" and facilitated the flow of funds among its other offshore subsidiaries.
- Oracle repatriated nearly all of its qualified dividends from an Irish subsidiary which had no physical office and was designed, in the words of Oracle, to "[f]acilitate business operations outside of the U.S." Although the Irish company itself had no office and no full time employees in the jurisdiction, the four subsidiaries under it had a total of 500 employees.
- PepsiCo repatriated most of its qualifying dividends from a holding and finance company located in Bermuda with a single full time employee. According to PepsiCo, the Bermuda holding company held and managed funds generated by a network of its other international subsidiaries.
- Proctor & Gamble repatriated nearly all of its qualifying dividends from a Bermuda holding company that had no physical office and no full time employees in Bermuda. The holding company was located in Bermuda because, according to Proctor & Gamble, it was "[n]ot typically advantageous for a company to operate its non-U.S. businesses directly through U.S. subs because the deferral of U.S. taxes on non-U.S. source income permitted under U.S. law would thereby be unnecessarily terminated."

The Subcommittee's survey results are consistent with other research examining the 2004 AJCA repatriation. As one academic concluded after analyzing confidential corporate data from the Bureau of Economic Analysis, "[T]he largest tax savings from the DRD [Dividends Received Deduction] accrued primarily to countries categorized as tax havens."[83] Likewise, the 2010 CRS study found that, overall, across all 843 repatriating corporations, repatriated funds were heavily concentrated in low tax countries or tax havens.[84] An IRS study stated, as reflected in Figure F from the study, reprinted below: "Firms can be expected to park considerable shares of their earnings and profits in the Netherlands, Switzerland, Bermuda, Ireland, Luxembourg, and the

[83] Sebastien Bradley, "Round-tripping of Domestic Profits under the American Jobs Creation Act of 2004," at 25-26 (April 2011).
[84] CRS Study, at 3.

Cayman Islands, as these countries are known for their favorable tax policies."[85]



Source: IRS Data.

After examining the controlled foreign corporations (CFCs) that were the source of repatriated funds for U.S. affiliates, the IRS study determined that, overall, the CFCs incorporated in Europe were responsible for 62% of the total repatriated cash dividends.[86] Of those European CFCs, the IRS found that CFCs incorporated in the Netherlands represented 6% of the CFCs overall, but 26% of the cash dividends. The IRS study also determined that the next most popular source of repatriated funds were CFCs incorporated in Switzerland, Bermuda, Ireland, Canada, Luxembourg, the United Kingdom, and the Cayman Islands.[87]

7. Corporate Funds Held Offshore Post-Repatriation

Data indicates that, since the 2004 AJCA repatriation, most corporations that repatriated substantial sums under that law have built up their offshore funds at an even greater rate than before the AJCA.[88] According to one study, the rapid, post-ACJA accumulation of offshore funds by U.S. multinationals indicates that the AJCA repatriation "may have encouraged more shifting of profits than usual in preparation for another repatriation tax holiday."[89]

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[85] IRS Data, at 106.
[86] Id.
[87] Id., at 105-107.
[88] See, e.g., Lee A. Sheppard and Martin A. Sullivan, "Multinationals Accumulate to Repatriate," Tax Notes, 2009 TNT 11-11, at 295-298 (1/19/2009).
[89] Id., at 295.

The following chart displays the post-AJCA accumulated offshore funds of the top ten corporations that took advantage of the 2004 repatriation.

Top 10 Repatriating Corporations Post-AJCA Accumulation of Offshore Funds

Company	Repatriated Amount ($000)	Accumulated Undistributed International Earnings ($000)				
		2006	2007	2008	2009	2010
Pfizer	35,491,822	41,000	60,000	63,100	42,500	48,200
Merck	15,875,762	12,500	17,200	22,000	31,200	40,400
Hewlett-Packard	14,500,000	3,100	7,700	12,900	16,500	21,900
Johnson & Johnson	10,668,701	12,000	24,200	27,700	32,200	37,000
IBM	9,500,000	14,200	18,800	21,900	26,000	31,100
Schering-Plough*	9,399,626	4,200	5,800	7,500	na	na
Bristol-Myers	9,000,000	11,300	14,100	15,400	16,500	16,400
Eli Lilly	8,000,000	5,700	8,790	13,310	15,460	19,900
DuPont	7,730,209	7,866	9,644	10,101	11,279	12,631
PepsiCo, Inc.	7,383,801	10,800	14,700	17,100	21,900	26,600

* In 2009, Schering-Plough merged with Merck.

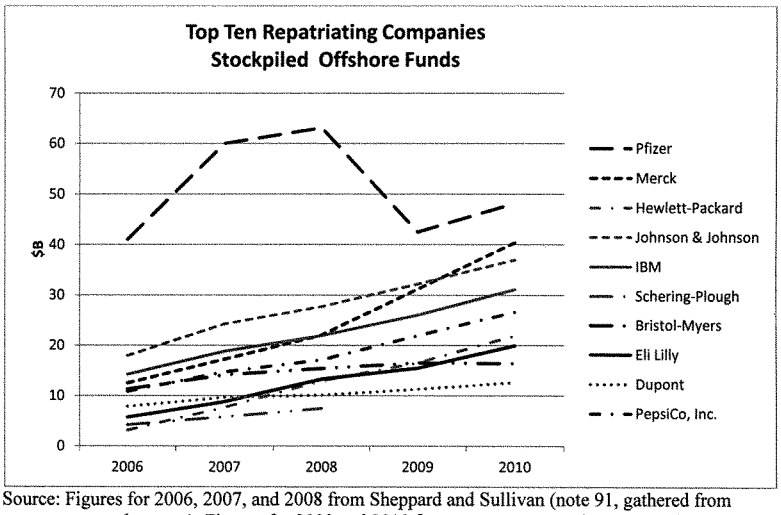
Top 10 Repatriating Corporations Pre-AJCA Accumulation of Offshore Funds

Company	Repatriated Amount ($000)	Accumulated Undistributed International Earnings ($000)				
		2000	2001	2002	2003	2004
Pfizer	35,491,822	14,000	18,000	29,000	38,000	51,600
Merck	15,875,762	9,700	12,400	15,000	18,000	20,100
Hewlett-Packard	14,500,000	11,500	13,200	14,500	14,400	15,000
Johnson & Johnson	10,668,701	9,500	12,100	12,300	14,800	18,600
IBM	9,500,000	15,472	16,851	16,631	18,120	19,644
Schering-Plough*	9,399,626	6,400	7,600	9,400	11,100	2,200
Bristol-Myers	9,000,000	6,000	8,800	9,000	12,600	16,900
Eli Lilly	8,000,000	5,200	6,400	8,000	9,500	2,800
DuPont	7,730,209	8,865	9,106	10,320	13,464	13,865
PepsiCo, Inc.	7,383,801			7,500	8,800	1,900

Source: Figures for 2000 through 2008 from Sheppard and Sullivan (note 91); Figures for 2009 and 2010 from corporate annual reports filed with the Securities and Exchange Commission. For all 19 corporations, see Appendix Tables 6 and 7.
*In 2009, Schering-Plough merged with Merck.

The possibility of a repeat repatriation tax break provides U.S. multinational corporations with an incentive to move more jobs, operations, and investments abroad, and keep substantial funds offshore, in order to take advantage of the next opportunity to bring corporate profits back to the United States at an extremely low tax rate. The empirical evidence indicates that corporations will benefit even more than before if another repatriation tax break occurs.

Data collected by the Subcommittee, as reflected in the following chart, shows that the ten corporations that repatriated the most money under the AJCA have, with one exception (Pfizer), stockpiled increasing amounts of offshore funds every year since taking advantage of the 2004 provision. The same pattern is evident among the remaining ten of the 19 corporations surveyed by the Subcommittee, again with one exception (Motorola).[90] Merck, for example, has reported accumulated undistributed foreign earnings in the years following the AJCA (2006 to 2010) totaling $40.4 billion. In a comparable time period prior to enactment of the AJCA (2000 to 2004), by comparison, Merck reported half that amount, with accumulated undistributed foreign earnings of $20.1 billion.



Source: Figures for 2006, 2007, and 2008 from Sheppard and Sullivan (note 91, gathered from corporate annual reports); Figures for 2009 and 2010 from corporate annual reports. Figures for all 19 surveyed corporations are available in the Appendix, Table 6.

The Subcommittee's survey results are consistent with other research. The 2011 CRS study, for example, found that, across all U.S. corporations, unrepatriated offshore funds have grown rapidly since 2005,[91] increasing since the 2004 repatriation by 72% for all corporations and by 81% for firms that repatriated under the AJCA.[92]

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[90] See Appendix Tables 6 and 7. Motorola, as the one exception, reduced its undistributed accumulated foreign earnings both before and after repatriation.

[91] CRS Study, at 4, citing Allen Sinai, "Macro Economic Effects of Reducing the Effective Tax Rate on Repatriated Earnings in a Credit- and Liquidity-Constrained Environment," Decisions Economics, Inc., Economic Studies Series, (12/11/2008); Lee A. Sheppard and Martin A. Sullivan, "Multinationals Accumulate to Repatriate," Tax Notes, 2009 TNT 11-11, at 295-298 (1/19/2009); and Thomas J. Brennan, "What Happens After a Holiday? Long-Term Effects of the Repatriation Provision of the AJCA," Northwestern Journal of Law and Social Policy, vol. 5 (Spring 2010) ("Brennan Study").

[92] CRS Study, at 5.

A 2010 study by Professor Thomas J. Brennan reached a similar conclusion.[93] It found that since the AJCA provision:

> "there has been a dramatic increase in the rate at which firms add to their stockpile of foreign earnings kept overseas. The long-term result has been an aggregate increase in new foreign earnings added to the overseas stockpile that is greater than the amount of funds repatriated [under the 2004 AJCA]."[94]

Because the stockpiles of offshore funds have continued to increase and currently outweigh the amount of funds repatriated under the AJCA, the Brennan study stated that "[t]he AJCA may have been a net failure in achieving the policy goal of returning foreign earnings to the United States."[95] It also stated that a "collateral consequence" of the AJCA provision was "the conditioning of firms to expect future such holidays and to arrange their affairs accordingly."[96] While noting that its findings demonstrated only a statistical correlation and not causation, the Brennan study concluded:

> "[T]he changes in patterns demonstrated [by the study] are sufficiently substantial in terms of dollar magnitude and statistical significance that they provide strong evidence of a conditioned behavioral change in firms created by the AJCA tax holiday."[97]

The Joint Committee on Taxation (JCT), whose tax expertise guides Congress, has also determined that the 2004 AJCA repatriation tax break has encouraged corporations to move funds offshore. In an April 2011 letter, JCT wrote that "it is also necessary to recognize that ... section 965 ... prospectively [ ] encourages investments and/or earnings to be located overseas."[98] JCT predicted that another repatriation tax break would make offshore locales even more attractive to U.S. corporations seeking to take advantage of extremely low corporate income tax rates. Due to its analysis that the effect of a repeat repatriation tax break would be to encourage corporations to move still more investments and funds offshore, when asked to estimate the cost of a repeat repatriation tax break, JCT calculated the total cost to the U.S. treasury in lost tax revenues over ten years would be $78.7 billion, assuming an 85% decrease in the tax rate.[99] For an alternative plan, assuming a 70% rate

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[93] Thomas J. Brennan, "What Happens After a Holiday? Long-Term Effects of the Repatriation Provision of the AJCA," Northwestern Journal of Law and Social Policy, vol. 5 (Spring 2010) ("Brennan Study").
[94] Brennan Study, at 2-3.
[95] Id.
[96] Id., at 17.
[97] Id.
[98] Letter from Thomas A. Barthold, Chief of Staff, U.S. Congress Joint Committee on Taxation, to U.S. Representative Lloyd Doggett (4/15/2011), http://doggett.house.gov/images/pdf/jct_repatriation_score.pdf.
[99] Id., at 2. JCT indicated that increased offshoring of funds was one of three major components

decrease were enacted, JCT calculated that the cost would be $41.7 billion over ten years.[100]

8. Current Domestic Cash Assets

Proponents of the 2004 repatriation tax break touted increased investment capital as one of the economic benefits of repatriation. The rationale was that money brought back to this country through repatriation and deposited in U.S. banks would provide increased funds to corporations for use in U.S. jobs and domestic investments. Research has since demonstrated, however, that many corporations did not use their repatriated funds for domestic investment, and some even returned the repatriated funds – after taking advantage of the extraordinarily low tax rate of 5.25% – to their offshore operations, which indicates they did not need the offshore funds for domestic use. Today, with U.S. corporations collectively holding even more abundant domestic cash assets in 2011 than in 2004, returning offshore cash to spur U.S. job growth and domestic investment offers an even less persuasive rationale to justify an expensive tax expenditure.

One recent study used Bureau of Economic Analysis data to review the relationship between AJCA repatriations and U.S. parent company infusions of cash into their offshore affiliates.[101] The study found a "significantly different" pattern in 2005 compared to other years studied, determining that U.S. corporations that repatriated $259 billion in 2005 also sent $104 billion to their offshore affiliates during the same period.[102] Since 2005 was the year that most corporations (86%) reported a repatriation tax deduction,[103] the study concluded that some U.S. parent corporations repatriated funds to take advantage of the lower tax rate, but then immediately returned the funds offshore, an action which it termed "round tripping."[104] Another study presented data suggesting that some U.S. parent corporations may have sent domestic funds to their offshore

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underlying the cost of another repatriation tax break, which JCT calculated would be $78.7 billion over ten years if an 85% decrease in the tax rate were enacted as occurred in 2004, or $41.7 billion over ten years if a 70% rate decrease were enacted instead. See also id. at 4 ("The final component of the estimates takes account of how each proposal would affect the prospective decisions of taxpayers about where to locate investment and/or income. . . . [E]ase of repatriation is one consideration in such decisions, and enactment of section 965 would be regarded by some taxpayers as altering the existing geographic location incentives.").

[100] Id., at 2.

[101] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 778-780 (June 2011).

[102] Id., at 778.

[103] IRS Data, at 103-04.

[104] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 782 (June 2011) ("Moreover, around the time of the HIA, repatriations were positively associated with parents sending capital to their foreign affiliates, suggesting that parent companies were round tripping capital in order to repatriate it at the lower tax rate.").

affiliates in advance of repatriation simply to take advantage of the 5.25% tax rate when the funds were subsequently returned.[105] In this form of round tripping, the U.S. parent corporation apparently repatriated funds that were already intended for domestic use. In both studies, the repatriating corporations apparently did not need offshore funds for domestic investments. Just as the 2004 repatriation led to corporations shifting foreign earnings offshore, the prospect of a repeat repatriation tax break raises the concern that corporations would again employ round tripping tactics to lower their tax bills without providing commensurate benefits through increased U.S. jobs or investment.

U.S. parent corporations have even less need for offshore cash today. The Federal Reserve Board has estimated that through the second quarter of 2011, the most recent period for which such data is available, U.S. corporations have domestic cash holdings of over $2 trillion.[106] The corporations that have the greatest domestic cash holdings are in the pharmaceutical and technology industries, the same industries advocating for another offshore tax break. In a recent survey of corporate cash holdings by different industries, for example, researchers analyzed the amount of cash in excess of what corporations needed to satisfy their contractual obligations: "Of the 138 companies with cash cushions of *more than two years*, 58 of them or 42% are in the Technology sector and 27 or 20% are from the Health Care sector."[107] By one estimate, ten of these corporations – Adobe Systems, Apple, CA Technologies, Cisco, Duke Energy, Google, Microsoft, Oracle, Pfizer, and Qualcomm – collectively have at least $47 billion in cash and liquid assets available for domestic investments, without incurring additional tax liability.[108]

Given these large cash holdings, the claim that a rate reduction on repatriated earnings will generate increased domestic investment "holds no water at all," according to Joel B. Slemrod, an economics professor at the University of Michigan and former senior tax counsel for President Reagan's Council of Economic Advisors. Professor Slemrod stated: "The fact that they have these cash hoards suggests that investment is not being constrained by lack of cash."[109]

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[105] Sebastien Bradley, "Round-tripping of Domestic Profits Under the American Jobs Creation Act of 2004," at 42-43 (April 2011). Prof. Bradley estimated that, at most, corporations engaged in approximately $32 billion of this type of round-tripping, an amount equal to roughly 10% of all qualifying dividends repatriated.

[106] Federal Reserve Board, "Flows of Funds Accounts of the United States," Second Quarter 2011, Table L.102, Line 41 (9/16/2011), http://www.federalreserve.gov/releases/z1/current/z1.pdf. The exact figure is $2.047 trillion.

[107] David Zion, Amit Varshney, and Nichole Burnap, Credit Suisse, "How Big is the Cash Cushion?" at 10 (5/31/2011) (emphasis in original).

[108] Chuck Marr and Brian Highsmith, "Tax Holiday For Overseas Corporate Profits Would Increase Deficits, Fail to Boost The Economy, And Ultimately Shift More Investment And Jobs Overseas," Center on Budget and Policy Priorities, at 9-10 (4/8/2011).

[109] Jesse Drucker, "Dodging Repatriation Tax Lets U.S. Companies Bring Home Cash," Bloomberg (12/29/2010) (quoting Professor Slemrod).

9. 2004 Repatriation Did Not Achieve Intended Stimulus Effect

Some supporters of the 2004 AJCA repatriation tax break contend that the repatriated funds had a stimulus effect on the U.S. economy, resulting in more jobs and domestic investment, but are unable to cite persuasive research to support those claims.

One study cited by some repatriation supporters to support a new round of repatriation tax breaks is a November 2008 study by economist Allen Sinai.[110] This study did not, however, examine actual economic data resulting from the 2004 repatriation; instead it used computer-generated economic simulations of repatriation provisions similar to those in AJCA to project the economic impact if a new repatriation tax break were to be enacted in 2009. Based on such simulations, the Sinai study concluded that a 2009 repatriation tax break would have improved the net cash flow of participating corporations by approximately $535 billion.[111] It also projected that a temporary reduction in the tax on repatriated funds would have increased domestic economic activity in the 2009 to 2013 time period, estimating that gross domestic product (GDP) would have increased by an average of $62 billion per year, and business capital spending and research and development by an average of $7 billion per year. The Sinai study also projected an increase in employment, peaking at 614,000 additional jobs in 2011.[112]

Critics of the Sinai study have noted several problems with its projections.[113] First, they have noted that the study relied on computer simulations rather than actual economic data to conduct its analysis. Second, they have observed that the assumptions underlying the 2008 Sinai simulation model did not incorporate detailed economic data from the 2004 repatriation. The absence of actual data on the impact of the 2004 repatriation on U.S. employment and economic activity, as documented by the 2010 CRS report and other independent studies, to calibrate the Sinai simulation model necessarily limits its predictive capabilities. Third, the economic conditions in effect when the simulations were run, which took place at the height of the 2008 financial crisis, differ markedly from current conditions, as recently noted by Mr. Sinai himself.

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[110] See Allen Sinai, "Macro Economic Effects of Reducing the Effective Tax Rate on Repatriated Earnings in a Credit- and Liquidity-Constrained Environment," Decisions Economics, Inc., Economic Studies Series (12/11/2008).
[111] CRS Study, at 5.
[112] Id., at 8.
[113] See, e.g., Robert Greenstein and Chye-Chin Huang, "Proposed Tax Break for Multinationals Would Be Poor Stimulus," Center on Budget and Policy Priorities, (2/3/2009), http://www.cbpp.org/cms/index.cfm?fa=view&id=2270.

In fact, when recently asked about his 2008 study, Mr. Sinai noted that the rationale for a second repatriation tax break was less compelling when, instead of facing credit and cash flow problems, U.S. corporations have large cash holdings. According to Mr. Sinai: "The case for it [repatriation] is not as strong because corporations are so cash rich."[114] He was also recently quoted as follows:

> "Many who want this policy try to advocate it as a jobs-creation program, but that is not what I found. ... What I found was that it would shore up the corporate balance sheets during the depths of the financial crisis and create some jobs. But the balance sheets are already so good that I don't think there's a rationale any longer that simply rebuilding the companies' finances will lead to hiring."[115].

The probability of Sinai's findings are further called into question by more recent research that uses actual economic data on the results of the 2004 repatriation rather than Sinai's computer simulations to reach its conclusions. For example, after reviewing detailed data from the 2004 repatriation, the 2010 CRS study concluded:

> "While the empirical evidence is clear that this provision resulted in a significant increase in repatriated earnings, empirical evidence is unable to show a corresponding increase in domestic investment or employment by firms that utilized the repatriation provisions."

In reaching this conclusion, CRS cited several empirical studies including, as indicated earlier, the Dharmapala study which concluded that repatriation had a statistically insignificant impact on domestic capital expenditures and jobs;[116] and the Clemons and Kinney study which found no evidence that investment increased in corporations that utilized the 2004 repatriation provisions.[117] CRS wrote:

> "Empirical analyses of the stimulative effects of the repatriation provisions in the American Jobs Creation Act also suggests a limited stimulative impact from these provisions. They conclude that much of the repatriated earnings were used for cash-flow purposes and little evidence exists that new investment was spurred."[118]

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[114] See Mike Zapler, "Experts: Tax holiday not a jobs fix," Politico (3/11/2011).
[115] See David Kocieniewski, "Companies Push for Tax Break on Foreign Cash," New York Times (6/19/2011).
[116] Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act," 66 Journal of Finance 753, 756 (June 2011).
[117] Roy Clemons and Michael R. Kinney, "An Analysis of the Tax Holiday for Repatriation Under the Jobs Act," 120 Tax Notes 759 (8/25/2008).
[118] CRS Study, at 6.

This Report's survey results are consistent with that research.

B. Conclusion

The Domestic Reinvestment Plans produced by the corporations that repatriated offshore funds under the AJCA describe how each planned to expend repatriated funds on hiring and training new employees. But the reality was that, instead of increasing jobs, the top 15 repatriators did not increase their U.S. workforces or their research and development expenditures overall, even after bringing back over $150 billion in offshore dollars subject to an extraordinarily low tax rate. At the same time, at those same corporations, stock repurchases and executive compensation climbed. These trends show that the 2004 repatriation not only failed to achieve its goal of increasing jobs and domestic investment in research and development, it did little more than enrich corporate shareholders and executives while providing an estimated $3.3 billion tax windfall for some of the largest multinational corporations. In addition, because Congress did not require corporations that took advantage of the tax break to track how repatriated funds were used, it left the U.S. Treasury without a mechanism to measure compliance or prevent misuse of the repatriated funds.

Even more disturbing is that the 2004 repatriation rewarded corporations that kept substantial funds offshore, and has created a new incentive for U.S. corporations to keep shipping jobs and diverting domestic funds offshore. Data shows that the 2004 repatriated funds flowed largely from tax havens, rewarding corporate behavior that moved funds to offshore locales rather than U.S. plants or manufacturing. The long term consequence of that policy is the current corporate stockpiling of offshore funds in anticipation of another repatriation tax break allowing multinational corporations to use a 5.25% tax rate in place of the top 35% rate that applies to domestic corporations. Such disparate tax rates punish small and mid-sized domestic corporations that don't do business offshore, by placing them at a competitive disadvantage, allowing their competitors to escape paying their fair share of taxes, and discouraging multinational corporations from investing in America. The AJCA's negative effects, in both the short and long-term, provide strong evidence that repatriation tax breaks create unfair tax advantages for a narrow sector of corporations with damaging economic impacts on the U.S. economy as a whole.

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APPENDIX

Table 1 - U.S. Employment

Company	Repatriated Amount*	U.S. Employment						
		2002	2003	2004	2005	2006	2007	Change**
Pfizer	$35,491,821,577	31,942	43,312	42,000	39,588	35,102	30,252	-11,748
Merck	$15,875,761,191	33,400	33,200	32,700	31,900	31,800	31,700	-1,000
Hewlett Packard	$14,500,000,000	70,513	62,905	60,763	51,951	51,038	52,041	-8,722
Johnson & Johnson	$10,668,700,798	49,647	47,984	49,486	47,386	47,765	45,424	-4,062
IBM	$9,500,000,000	142,576	140,544	139,336	133,188	133,838	126,506	-12,830
Schering-Plough	$9,399,626,443	13,500	13,500	12,000	13,700	14,300	17,400	5,400
Bristol Myers	$9,000,000,000	17,735	18,490	17,228	17,289	17,183	16,647	-581
Eli Lilly	$8,000,000,000	22,048	23,120	22,751	21,603	21,132	20,924	-1,827
DuPont	$7,730,209,120	43,300	42,900	34,300	34,500	33,500	32,800	-1,500
PepsiCo, Inc.	$7,383,801,188	61,000	60,000	60,000	62,000	63,000	66,000	6,000
Intel	$6,194,933,490	51,245	48,780	49,455	54,872	51,250	46,951	-2,504
Coca-Cola	$6,100,000,000	10,900	9,200	9,600	10,400	12,200	13,200	3,600
Altria	$6,005,600,000	65,066	62,294	59,205	56,786	53,665	53,135	-6,070
Procter & Gamble	$5,782,721,546	n/a	37,860	34,440	34,090	42,150	41,845	7,405
Oracle	$3,099,996,596	12,225	18,191	16,888	21,328	23,435	24,396	7,508
Motorola	$2,760,060,402	45,438	39,859	30,023	29,657	26,418	27,158	-2,865
Wyeth	$2,657,142,857	22,156	21,354	20,573	23,267	23,151	22,925	2,352
Honeywell	$2,119,308,476	63,000	61,000	60,000	58,000	56,000	57,000	-3,000
Microsoft	$780,000,000	34,600	36,500	37,000	38,304	44,298	47,859	10,859

* Cash dividends that qualified for deduction under Section 965.

** Denotes the gain/loss of U.S. jobs between 2004 and 2007.

Source: Data provided by corporations in response to U.S. Senate Permanent Subcommittee on Investigations survey.

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Table 2 – Stock Repurchases

Corporation	Stock Repurchases By Year ($000s)					
	2002	2003	2004	2005	2006	2007
Pfizer	4,995,000	13,037,000	6,659,000	3,797,000	6,979,000	9,994,000
Merck	2,091,000	2,034,000	975,000	1,015,000	1,002,000	1,430,000
Hewlett Packard	671,000	751,000	3,309,000	3,514,000	7,779,000	10,887,000
Johnson & Johnson	5,000,000	0	0	0	5,000,000	3,606,000
IBM	4,212,000	4,403,000	7,275,000	7,671,000	8,022,000	18,783,000
Schering-Plough	0	0	0	0	0	0
Bristol Myers	164,000	0	0	0	0	0
Eli Lilly	389,200	276,800	0	377,900	122,100	0
DuPont	470,000	0	457,000	3,504,000	280,000	1,695,000
PepsiCo, Inc.	2,100,000	1,900,000	3,000,000	3,000,000	3,000,000	4,300,000
Intel	4,000,000	4,000,000	7,500,000	10,600,000	4,600,000	2,800,000
Coca-Cola	695,790	1,455,608	1,737,823	1,995,500	2,473,131	1,750,740
Altria	6,390,000	1,149,000	688,000	1,175,000	1,175,000	190,000
Procter & Gamble		1,236,000	4,070,000	5,026,000	16,830,000	5,578,000
Oracle	2,793,200	2,653,033	1,498,500	1,342,981	2,064,476	3,980,956
Motorola	0	0	0	874,000	3,826,000	3,035,000
Wyeth	114	0	0	0	664,579	1,316,761
Honeywell	0	37,000	724,000	1,133,000	1,896,000	3,986,000
Microsoft	6,900,000	59,000,000	3,400,000	800,000	19,749,000	27,113,000

Source: Data provided by corporations in response to U.S. Senate Permanent Subcommittee on Investigations survey.

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Table 3 – Executive Compensation

Company	Executive Compensation*					
	2002	2003	2004	2005	2006	2007
Pfizer	$27,100,000	$24,600,000	$41,100,000	$31,200,000	$36,600,000	$53,900,000
Merck	$8,525,961	$12,446,830	$12,198,351	$15,854,455	$28,411,451	$32,545,900
Hewlett Packard	$34,324,939	$28,405,498	$23,773,204	$60,731,226	$73,073,788	$35,059,892
Johnson & Johnson	$26,476,542	$22,995,514	$30,774,359	$34,849,972	$64,790,547	$63,590,025
IBM	$51,000,000	$38,000,000	$40,000,000	$35,000,000	$42,000,000	$47,000,000
Schering-Plough	$32,828,610	$25,443,085	$30,787,239	$37,450,278	$64,939,277	$60,444,738
Bristol Myers	$20,146,019	$22,308,480	$20,541,707	$28,307,565	$22,414,320	$33,915,415
Eli Lilly	$3,288,433	$21,870,624	$36,895,760	$29,464,008	$39,345,385	$37,622,381
DuPont	$20,946,481	$14,788,625	$13,431,296	$13,015,057	$27,879,455	$25,102,236
PepsiCo, Inc.	$44,537,670	$36,011,022	$41,576,070	$34,142,147	$43,934,158	$51,177,719
Intel	$5,861,000	$6,889,000	$7,884,000	$23,065,000	$34,236,000	$33,514,000
Coca-Cola	$23,727,846	$25,332,803	$36,199,730	$37,205,615	$35,426,852	$50,804,159
Altria	$70,816,716	$73,474,436	$52,828,312	$119,884,559	$125,422,416	$105,048,436
Procter & Gamble	n/a	$22,782,000	$34,899,000	$30,946,000	$31,653,000	$55,144,000
Oracle	$36,536,194	$20,424,887	$30,050,275	$44,377,581	$77,621,789	$77,588,930
Motorola	$30,136,764	$28,867,434	$76,474,871	$46,125,606	$35,397,342	$42,451,887
Wyeth	$59,239,584	$25,709,625	$28,353,474	$28,111,225	$74,949,826	$52,731,463
Honeywell	$88,925,356	$32,372,068	$35,325,955	$36,867,023	$52,298,216	$41,249,949
Microsoft	$3,795,070	$45,141,521	$7,109,773	$5,132,567	$21,395,635	$27,672,926

* Dollar figures represent the value, as calculated by each corporation, of the cash and non-cash compensation provided to each corporation's five most highly compensated executives.
Source: Data provided by corporations in response to U.S. Senate Permanent Subcommittee on Investigations survey.

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Table 4 – Dollar Value of Restricted Stock Awards for Five Most Highly Compensated Executives at Surveyed Corporations

Company	Name	Title	2003	2004	2005	2006
Pfizer	Henry McKinnell	Chairman and CEO	0	4,292,181	0	8,315,642
	Karen Katen	Vice Chairman and President, Pfizer Human Health	326,840	2,326,218	0	4,061,804
	David Shedlarz	Vice Chairman	260,866	1,873,326	0	3,255,375
	Jeffrey Kindler	Vice Chairman and General Counsel	248,989	792,561	0	2,736,265
	John LaMattina	Senior VP; President, Pfizer Global Research and Development	199,303	1,024,154	0	2,235,835
Merck	Richard T. Clark	CEO and President	3,365,000	410,699	1,932,923	2,359,616
	Raymond Gilmartin	Chairman of Board, CEO	0	0	0	NA
	Judy Lewent	Executive Vice President, CFO	0	621,049	398,750	735,135
	Peter Kim	President, Merck Research Laboratories	0	1,490,299	2,126,677	1,697,749
	Per Wold-Olsen	President, Human Health Intercontinental	0	520,850	0	174,195
	Kenneth Frazier	Senior VP and General Counsel	0	911,760	1,629,548	NA

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Company	Name	Title	2003	2004	2005	2006
Hewlett-Packard	Mark Hurd	CEO and President	0	0	8,684,000	4,725,000
	Robert Wayman	Executive Vice President, CFO	0	330,150	0	0
	Vyomesh Joshi	Executive Vice President, Imaging and Printing Group	0	330,150	4,109,500	1,890,000
	Ann Livermore	Executive Vice President, Technology Solutions Group	0	330,150	3,057,000	2,110,500
	R. Todd Bradley	Executive Vice President, Personal Systems Group	0	0	2,385,000	NA
	Randall Mott	Executive Vice President, CIO	0	0	7,102,200	NA
	Carleton Fiorina	Former Chairman and CEO	0	660,300	0	NA
	Michael Winkler	Former Executive Vice President	0	330,150	0	NA
	Shane Robison	Executive Vice President and Chief Strategy and Technology Officer		330,150	3,688,500	1,575,000
Johnson & Johnson*	William Weldon	Chairman/CEO	0	0	2,200,001	2,041,054
	Robert Darretta	Vice Chairman/CFO	0	0	674,994	626,226
	Christine Poon	Vice Chairman/Worldwide Chairman, Medicines & Nutritionals	0	0	1,000,006	270,596
	Michael Dormer	Worldwide Chairman, Medical Devices	0	0	624,996	NA
	Per Peterson	Chairman, R&D Pharmaceuticals Group	0	0	624,996	579,841

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Company	Name	Title	2003	2004	2005	2006
IBM	S.J. Palmisano	Chairman, President and CEO	0	0	990,674	495,283
	N.M. Donofrio	Executive V.P. Innovation & Technology	0	0	594,423	225,004
	D.T. Elix	Senior V.P. and Group Executive	1,817,740	0	0	225,004
	M. Loughridge	Senior V.P. and CFO	0	0	0	232,763
	W.M. Zeitler	Senior V.P. and Group Executive	908,831	0	0	NA
Schering-Plough	Fred Hassan	Chairman of the Board and CEO	3,486,000	3,640,000	4,140,000	10,208,157
	Robert Bertolini	Executive Vice President and CFO	1,031,000	819,000	931,500	2,955,019
	Carrie Cox	Executive Vice President and President, Global Pharmaceuticals	1,850,000	1,274,000	1,573,200	3,569,386
	Cecil Pickett, Ph.D.	Senior Vice President and President, Shering-Plough Research Institute Division	297,024	728,000	852,840	2,144,331
	Thomas Sabatino	Executive Vice President and General Counsel	NA	1,215,900	724,500	2,485,453

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Company	Name	Title	2003	2004	2005	2006
Bristol-Myers	P.R. Dolan	CEO	2,644,000	2,491,432	2,529,000	-815,462
	L. Andreotti	Executive Vice President and President, Worldwide Pharmaceuticals	1,322,000	506,160	3,542,938	1,273,917
	A.R.J. Bonfield	CFO	925,400	531,159	477,703	NA
	J.L. McGoldrick	Executive Vice President	661,000	400,710	360,383	NA
	E. Sigal, M.D., Ph.D.	Chief Scientific Officer and President PRI	661,000	226,535	1,663,753	1,078,998
	D.J. Hayden, Jr.	Executive Vice President	1,322,000	515,524	421,508	NA
Eli Lilly	Sidney Taurel	Chairman of the Board and CEO	0	1,590,120	3,689,918	5,400,000
	John Lechleiter, Ph.D.	President and Chief Operating Officer	0	795,060	1,844,959	3,510,000
	Steven Paul, M.D.	Executive Vice President, Science and Technology	0	511,110	1,230,011	1,864,460
	Charles Golden	Executive Vice President and CFO	0	511,110	1,127,453	550,000
	Robert Armitage	Senior Vice President and General Counsel	0	318,024	768,785	1,394,053

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Company	Name	Title	2003	2004	2005	2006
DuPont	C.O. Holliday, Jr.	Chairman and CEO	0	0	0	2,494,199
	R.R. Goodmanson	Executive Vice President and Chief Operating Officer	0	590,760	573,750	766,992
	G.M. Pfeiffer	Senior Vice President and CFO	0	345,704	391,000	1,019,635
	S.J. Mobley	Senior Vice President, Chief Administrative Officer, and General Counsel	0	363,208	391,000	NA
	T.M. Connelly, Jr.	Senior Vice President and Chief Science and Technology Officer	NA	362,046	352,750	869,059
PepsiCo, Inc.	Steven Reinemund	Director, Chairman of the Board, CEO	0	4,157,150	4,928,553	6,220,781
	Michael White	Director, Vice Chairman - PepsiCo, Chairman and CEO - PepsiCo, International	0	6,033,121	1,033,505	2,519,696
	Indra Nooyi	Director, President and CFO	0	6,033,121	1,033,505	2,006,876
	Irene Rosenfeld	Chairman and CEO, Frito-Lay N.A.	0	1,289,400	6,890,021	NA
	John Compton	President and CEO, Quaker-Tropicana-Gatorade	0	494,991	633,766	1,108,620

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Company	Name	Title	2003	2004	2005	2006
Intel	Paul S. Otellini	President, CEO	NA	0	0	352,000
	Craig R. Barrett	Chairman of the Board	NA	0	0	47,700
	Andy D. Bryant	Executive Vice President and Chief Financial and Enterprise Services Officer	NA	0	0	117,300
	Sean M. Maloney	Executive Vice President, General Manager, Mobility Group	NA	0	0	87,100
	Arvind Sodhani	Senior Vice President and President, Intel Capital	NA	NA	NA	NA
Coca-Cola**	E. Neville Isdell	Chairman of the Board and CEO	NA	6,855,800	0	12,128,912
	Gary P. Fayard	Executive Vice President and Chief Financial Officer	0	0	0	2,056,278
	Irial Finan	Executive Vice President and President, Bottling Investment	NA	0	0	NA
	Mary Minnick	Executive Vice President and President, Marketing, Strategy and Innovation	0	0	2,120,000	1,535,033
	Jose Octavio Reyes	President, Latin America	0	0	0	1,693,724

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Company	Name	Title	2003	2004	2005	2006
Altria	Louis C. Camilleri	Chairman, CEO	12,960,500	6,956,250	7,730,000	9,291,095
	Roger K. Deromedi	Chief Executive Officer, Kraft Foods Inc.	2,008,799	6,426,000	4,957,473	NA
	Steven C. Parrish	Senior Vice President, Corporate Affairs	1,685,976	2,109,135	1,795,834	2,172,958
	Michael E. Szymanczyk	Chairman and Chief Executive Officer, Philip Morris USA Inc.	2,057,017	2,109,135	2,195,320	2,404,649
	Charles E. Wall	Senior Vice President and General Counsel, Altria Group, Inc.	1,753,371	2,109,135	2,195,320	2,415,375
Procter & Gamble	A.G. Lafley	Chairman, CEO President	0	0	5,000,000	9,320,000
	James M. Kilts	Vice Chairman of the Board – Gillette	NA	NA	0	2,226,000
	Susan E. Arnold	Vice Chairman - P&G Beauty & Health	0	0	0	1,048,000
	Bruce L. Byrnes	Vice Chairman of the Board - P&G Household Care	NA	NA	0	847,000
	Clayton C. Daley, Jr.	Chief Financial Officer	0	0	0	790,000
	Robert A. McDonald	Vice Chairman - Global Operations	1,500,000	0	0	1,147,000

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Company	Name	Title	2003	2004	2005	2006
Oracle	Lawrence J. Ellison	CEO	NA	0	0	0
	Safra A. Catz	President and Chief Executive Officer	NA	0	0	0
	Charles E. Phillips, Jr.	President	NA	0	0	0
	Keith Block	Executive Vice President and North America Sales and Consulting	NA	0	0	0
	Sergio Giacoletteo	Executive Vice President Europe, Middle East and Africa Sales and Consulting	NA	0	0	0
Honeywell	David M. Cote	Chairman of the Board and Chief Executive	0	0	0	1,440,909
	David J. Anderson	Senior Vice President and Chief Executive Officer	4,323,000	0	0	1,207,874
	Roger Fradin	President and Chief Executive Officer Automation and Control Solutions	0	229,230	1,964,000	687,992
	Peter M. Kreindler	Senior Vice President and General Counsel	0	0	0	520,618
	Robert J. Gillette	President and Chief Executive Officer Aerospace	0	0	1,710,500	391,000

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Company	Name	Title	2003	2004	2005	2006
Microsoft	Steven A. Ballmer	CEO, Director	0	0	0	0
	William H. Gates, III	Chairman, Director	0	0	0	0
	Kevin R. Johnson	Co-President, Platforms & Services Division; Group Vice President	326,264	0	0	0
	Jeffrey S. Raikes	President, Microsoft Business Division; Group Vice President	383,840	0	0	0
	Brian Kevin Turner	Chief Operating Officer	NA	0	0	8,227,000

* Johnson & Johnson Long Term Compensation Awards reported in Proxy Statements as Restricted Share Units and Options. Figures are Restricted Share Units.
** Coca-Cola reported stock awards in FY2006 to include 2006 awards and portions of awards over several years prior to 2006, so 2006 figures cannot be compared to prior years.
Source: SEC Filings.

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Table 5 – Dividends from Tax Haven CFCs

Company	Repatriated Amount*	% of Dividends from from Tax Haven CFCs**
Pfizer	$36,577,407,625	0.7%
Merck	$16,686,797,535	96.1%
Hewlett-Packard	$16,522,078,519	7.3%
IBM	$11,918,494,152	7.4%
Johnson & Johnson	$11,476,290,525	89.2%
Bristol-Myers	$9,733,963,924	94.2%
Schering-Plough	$9,617,126,443	100.0%
Eli Lilly	$9,475,729,407	92.6%
DuPont	$8,373,544,951	73.5%
Altria	$7,953,109,492	88.2%
Intel	$7,560,218,819	63.8%
Coca-Cola	$7,556,615,158	80.2%
PepsiCo, Inc.	$7,490,285,074	91.1%
Procter & Gamble	$7,027,682,103	78.8%
Motorola	$3,698,577,101	30.5%
Oracle	$3,326,920,000	94.3%
Wyeth	$3,155,532,199	0.1%
Honeywell	$2,560,960,094	38.5%
Microsoft	$1,113,952,221	97.0%

* Total amount repatriated by the corporations from their CFCs.

** Percent of dividends from tax haven CFCs versus total cash dividends from CFCs, 2004-2007; tax havens are identified using a list compiled by GAO in GAO-09-157, Table 1, "US Corporations with Foreign Subsidiaries," December 2008.

Source: Data provided by corporations in response to Permanent Subcommittee on Investigations survey.

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Table 6 – Post-AJCA Accumulated Offshore Funds, 2006-2010

Company	Repatriated Amount* ($000)	Accumulated Undistributed International Earnings** ($000)				
		2006	2007	2008	2009	2010
Pfizer	35,491,822	41,000	60,000	63,100	42,500	48,200
Merck	15,875,762	12,500	17,200	22,000	31,200	40,400
Hewlett-Packard	14,500,000	3,100	7,700	12,900	16,500	21,900
Johnson & Johnson	10,668,701	12,000	24,200	27,700	32,200	37,000
IBM	9,500,000	14,200	18,800	21,900	26,000	31,100
Schering-Plough	9,399,626	4,200	5,800	7,500	na	na
Bristol-Myers	9,000,000	11,300	14,100	15,400	16,500	16,400
Eli Lilly	8,000,000	5,700	8,790	13,310	15,460	19,900
DuPont	7,730,209	7,866	9,644	10,101	11,279	12,631
PepsiCo, Inc.	7,383,801	10,800	14,700	17,100	21,900	26,600
Intel	6,194,933	4,900	6,300	7,500	10,100	11,800
Coca-Cola	6,100,000	7,700	11,900	14,100	19,000	20,800
Altria	6,005,600	11,000	11,000	***	***	***
Procter & Gamble	5,782,722	16,000	17,000	21,000	25,000	30,000
Oracle	3,099,997	***	***	7,200	8,900	13,000
Motorola	2,760,060	4,000	4,100	2,900	2,400	1,300
Wyeth	2,657,143	9,420	12,060	13,322	na	na
Honeywell	2,119,308	2,900	4,100	4,700	5,100	6,000
Microsoft	780,000	na	6,100	7,500	18,000	29,500

* Cash dividends that qualified for deduction under Section 965.

** Reported accumulated foreign earnings for years 2006-2007 from Lee A. Sheppard and Martin A. Sullivan, "Multinationals Accumulate to Repatriate," Tax Notes, January 19, 2009. Reported accumulated foreign earnings for years 2008-2010 from public financial filings.

*** Data not available.

Note: In 2009, Schering-Plough and Wyeth merged with Merck and Pfizer, respectively.

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Table 7 – Pre-AJCA Accumulated Offshore Funds, 2000-2004

Company	Repatriated Amount* ($000)	Accumulated Undistributed International Earnings** ($000)				
		2000	2001	2002	2003	2004
Pfizer	35,491,822	14,000	18,000	29,000	38,000	51,600
Merck	15,875,762	9,700	12,400	15,000	18,000	20,100
Hewlett-Packard	14,500,000	11,500	13,200	14,500	14,400	15,000
Johnson & Johnson	10,668,701	9,500	12,100	12,300	14,800	18,600
IBM	9,500,000	15,472	16,851	16,631	18,120	19,644
Schering-Plough	9,399,626	6,400	7,600	9,400	11,100	2,200
Bristol-Myers	9,000,000	6,000	8,800	9,000	12,600	16,900
Eli Lilly	8,000,000	5,200	6,400	8,000	9,500	2,800
DuPont	7,730,209	8,865	9,106	10,320	13,464	13,865
PepsiCo, Inc.	7,383,801	***	***	7,500	8,800	1,900
Intel	6,194,933	4,200	5,500	6,300	7,000	7,900
Coca-Cola	6,100,000	3,700	5,900	6,100	8,200	9,800
Altria	6,005,600	4,700	5,600	7,100	8,600	11,800
Procter & Gamble	5,782,722	8,828	9,231	10,698	14,021	16,750
Oracle	3,099,997	851	1,408	2,300	3,100	4,800
Motorola	2,760,060	7,900	7,100	7,600	6,100	5,600
Wyeth	2,657,143	***	***	6,000	6,435	8,790
Honeywell	2,119,308	2,100	2,000	2,200	3,300	3,900
Microsoft	780,000	***	***	780	1,640	2,300

* Cash dividends that qualified for deduction under Section 965.
** Source: Lee A. Sheppard and Martin A. Sullivan, "Multinationals Accumulate to Repatriate," Tax Notes, January 19, 2009.
*** Data not available.
Note: In 2009, Schering-Plough and Wyeth merged with Merck and Pfizer, respectively.

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ADDENDUM

OFFSHORE FUNDS LOCATED ONSHORE
Majority Staff Report Addendum
December 14, 2011

I. EXECUTIVE SUMMARY

On October 11, 2011, the Permanent Subcommittee on Investigations Majority Staff Report, "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," was released. The Report presented the findings from a survey of 20 major multinational corporations, including the 15 corporations that repatriated the largest amounts of offshore funds to the United States in response to the 2004 repatriation tax provision of the American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357).

To gain a deeper understanding of the U.S. corporate funds that are currently offshore and might be repatriated if another repatriation tax break were enacted, a second survey was conducted of U.S. multinational corporations with major offshore earnings, including the corporations in the initial survey. This Report Addendum presents findings from that additional survey, which took a closer look at the nature and status of the undistributed accumulated foreign earnings of those corporations. That survey sought information about the amount of undistributed accumulated foreign earnings, their location, and the extent to which those earnings were invested in U.S. dollar assets, such as U.S. bank deposits, U.S. corporate stock, or U.S. government securities, including U.S. Treasury bonds. Additionally, the Subcommittee consulted with academic, banking, government, and other experts about the status of those offshore funds.

A. Report Addendum Findings

The Report Addendum makes the following findings of fact.

1. **Surveyed Corporations Had $538 Billion in Undistributed Accumulated Foreign Earnings.** The 27 U.S. corporations surveyed by the Subcommittee together had a total of $538 billion in undistributed accumulated foreign earnings at the end of FY2010, and of those, 18 corporations each had undistributed accumulated foreign earnings in excess of $10 billion.

2. **Almost Half of the Surveyed Corporations' Offshore Tax-Deferred Corporate Earnings Were Invested in U.S. Assets.** As of the end of FY2010, nearly half (46%) of the funds that the surveyed corporations identified as offshore and for which U.S. taxes had been deferred, were actually in the United States at U.S. financial institutions.

B. Report Addendum Recommendation

The Report Addendum recommends against enacting a second corporate repatriation tax break for an additional reason to those enumerated in the Report: because undistributed accumulated foreign earnings are not trapped offshore. U.S. corporations are already investing nearly half of those foreign earnings in U.S. assets without paying any U.S. taxes on them, allowing those corporations to reap benefits from the U.S. financial system without paying the tax dollars needed to support that system. Enacting still another corporate repatriation tax incentive would further exacerbate that tax unfairness.

II. BACKGROUND

Based on corporate filings with the U.S. Securities and Exchange Commission (SEC), U.S. corporations held an estimated $1.4 trillion in undistributed accumulated foreign earnings at the end of the first half of 2011.[119] The term "undistributed accumulated foreign earnings" is commonly used to describe the sum of the earnings added up over prior years of the foreign subsidiaries of a U.S. parent corporation that have not been distributed to the U.S. parent corporation as a dividend. The $1.4 trillion in total estimated foreign earnings of U.S. corporations is in addition to their domestic corporate cash holdings, which have been calculated at over $2 trillion.[120]

Under the U.S. tax system, the overseas income generated by foreign subsidiaries of U.S. corporations is subject to U.S. tax, but the tax is deferred until that foreign income is paid as a dividend to the U.S. parent corporation. In addition, U.S. tax law contains an explicit series of exceptions which allow U.S. corporations to invest their foreign income in certain specified U.S. assets without characterizing that income as having been repatriated and without triggering the tax that would otherwise be associated with the return of those funds to the United States.[121] By statute, some of the common investments that can be made with foreign income without triggering U.S. taxation include the deposit of foreign earnings with U.S. banks, the use of foreign earnings to purchase government securities like U.S. Treasury bonds, and the use of foreign earnings to purchase shares of stock of unrelated U.S. corporations.[122] In order to make purchases of U.S. government bonds and U.S. securities, foreign earnings must be converted to U.S.

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[119] See, e.g., Dane Mott, J.P. Morgan, "Accounting Issues: Show Us the Foreign Cash!" at 4 (9/12/2011) (estimating that aggregate global undistributed foreign earnings attributable to U.S. corporations are in excess of $1.4 trillion based on its survey of recently increased corporate financial disclosures).

[120] See Federal Reserve Board, "Flows of Funds Accounts of the United States," Second Quarter 2011, Table L.102, Line 41 (9/16/2011), http://www.federalreserve.gov/releases/z1/current/z1.pdf. The exact figure estimated by the Federal Reserve for domestic cash holdings is $2.047 trillion.

[121] See 26 U.S.C. § 956(c)(2) (defining exceptions to "United States property").

[122] See 26 U.S.C. § 956(c)(2)(A), (F).

dollars, which are typically deposited into a U.S. bank or securities account.

Advocates of a second repatriation tax break sometimes claim that foreign earnings of U.S. corporations are currently "trapped" abroad or "locked" overseas.[123] Such descriptions are misleading, however, because those funds may be returned to the United States at any time and placed in U.S. financial institutions or used in a range of U.S. investments without incurring any penalty or tax burden.

Prior to this research, virtually no data was publicly available on the extent to which U.S. corporations kept undistributed accumulated foreign earnings overseas or, alternatively, placed those foreign earnings in U.S. bank accounts or used them to purchase U.S. assets such as Treasury bonds or U.S. stock.[124] The Subcommittee undertook its survey to obtain that information from U.S. corporations known to have substantial overseas cash holdings.

III. SUBCOMMITTEE REVIEW

To gain a deeper understanding of the extent to which U.S. multinationals held their tax-deferred foreign earnings in offshore jurisdictions or in the United States, the Subcommittee conducted a survey of over two dozen U.S. corporations. The surveyed firms were: Adobe, Altria, Apple, Bristol-Myers Squibb, Broadcom, CA Technologies, Cisco, Coca-Cola, Devon Energy, Duke Energy, DuPont, Eastman Kodak, Eli Lilly, EMC Corporation, Google, Hewlett-Packard, Honeywell, IBM, Intel, Johnson & Johnson, Merck, Microsoft, Motorola, Oracle, PepsiCo, Inc., Pfizer, Procter & Gamble, and Qualcomm. Due to mergers and other data issues, the final survey results analyzed the foreign earnings of 27 U.S. multinational corporations.[125]

The survey was conducted from June to November 2011, through questionnaires sent to the selected corporations, followed by

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[123] See, e.g., Robert J. Shapiro and Aparna Mathur, "The Revenue Implications of Temporary Tax Relief For Repatriated Foreign Earnings: An Analysis of the Joint Tax Committee's Revenue Estimates," at 3 (August 2011); Douglas Holtz-Eakin, "The Need for Pro-Growth Corporate Tax Reform: Repatriation and Other Steps to Enhance Short- and Long-Term Economic Growth" (August 2011).

[124] Corporations generally do not disclose the total amount of undistributed accumulated foreign earnings of their foreign subsidiaries, though many do disclose the amount of undistributed accumulated foreign earnings that are deemed indefinitely reinvested under FASB standard ASC 740-30. Some corporations have also recently begun to disclose in their SEC filings the total amount of their foreign cash holdings.

[125] The Subcommittee did not seek to obtain separate survey information from two of the corporations that were the subject of the survey in the original Report, because they had merged with other firms among that original group (Schering-Plough which merged with Merck, and Wyeth which merged with Pfizer). In addition, a survey response from Altria indicated that it does not control or record earnings from its principal foreign investments until those earnings are returned as dividends, and therefore it had no data on the percentage of its foreign investments that were placed in U.S. assets. The final survey results, thus, do not include data from these three firms.

individualized inquiries to clarify the information received. The survey questions focused on the amount of foreign earnings that were kept overseas versus invested in the United States at the end of 2010. In most cases, corporations provided data on the status of their undistributed accumulated foreign earnings; in a few cases, corporations chose instead to present data on the status of their foreign cash holdings.[126]

Overall, U.S. corporations held an estimated $1.4 trillion in undistributed accumulated foreign earnings as of mid-2011.[127] As shown in the table below, the tax-deferred foreign earnings of the 27 surveyed corporations amounted to $538 billion as of the end of FY2010. Eighteen of the surveyed corporations each had total undistributed accumulated earnings in excess of $10 billion. The $538 billion in tax-deferred foreign earnings held by the surveyed corporations at the end of last year, thus, represents a significant portion of the undistributed accumulated foreign earnings held by all U.S. corporations.

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[126] Five corporations in the survey, while keeping track of U.S. dollar assets as a percentage of their foreign cash, told the Subcommittee that they were unable to break out the proportion of their U.S. dollar assets as a percentage of their undistributed accumulated foreign earnings. The Subcommittee accepted reports of their U.S. dollar assets as a percentage of their foreign cash, cash equivalents and investments as a substitute. In the survey results, these corporations are denoted with an asterisk (*).

[127] See Dane Mott, J.P. Morgan, "Accounting Issues: Show Us the Foreign Cash!" at 4 (9/12/2011).

Corporation	Undistributed accumulated foreign earnings as of FY2010 (in billions of dollars)
Hewlett-Packard	$ 55
Merck	$ 50
Pfizer	$ 48
Johnson & Johnson	$ 37
Microsoft	$ 34
Cisco	$ 32
IBM	$ 31
Procter & Gamble	$ 30
Apple	$ 29
PepsiCo	$ 27
Eli Lilly	$ 27
Coca-Cola	$ 21
Google	$ 18
Oracle*	$ 17
Bristol-Myers Squibb	$ 17
DuPont	$ 13
Intel	$ 12
Qualcomm	$ 11
Honeywell	$ 6
Devon Energy	$ 5
EMC	$ 5
Motorola	$ 5
Eastman Kodak	$ 2
Adobe	$ 2
Broadcom	$ 1
Duke Energy	$ 1
CA Technologies	$ 1
TOTAL	$ 538 Billion

* Oracle total reflects its total foreign cash, as opposed to its undistributed accumulated foreign earnings.
Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

The survey determined that while just over half of the $538 billion in tax-deferred foreign earnings held by the foreign subsidiaries of the 27 surveyed corporations was maintained and invested overseas, the remaining offshore funds were held and invested in the United States. Altogether, of the 27 surveyed corporations, on average, 46% of their tax-deferred offshore funds were held in U.S. bank accounts and invested in U.S. assets such as U.S. Treasuries or shares of unrelated U.S. corporations.[128]

[128] Five of these corporations chose to use foreign cash data to calculate the percentages of their foreign earnings held in U.S. versus non-U.S. assets. If these five corporations were eliminated from the data used to calculate the portion of corporate foreign earnings held in the United States, the data from the 22 remaining corporations would show that, overall, they held an average of 40% of their undistributed accumulated foreign earnings in U.S. bank accounts.

The survey also found that, while the overall average of undistributed accumulated foreign earnings invested in U.S. assets was 46%, individual corporations varied significantly in the extent to which they maintained those foreign earnings overseas versus placing them in the United States. As of the end of FY2010, the survey results showed that 9 of the 27 corporations, or 33%, had placed between three-quarters and all of their tax-deferred offshore funds in U.S. assets; 3 corporations had placed between half and three-quarters of those funds in U.S. assets; 4 corporations had placed between a quarter and half of those funds in U.S. assets; and 11 corporations, or nearly 41%, had placed up to one quarter of their tax-deferred offshore funds in U.S. assets. These figures show U.S. corporations have not taken a uniform approach, but have made a wide range of decisions about keeping some or all of their offshore funds in the United States.

Percentage of Undistributed Accumulated Foreign Earnings Held in U.S. Bank Accounts or U.S. Investments At the End of FY2010

0 - 25%	26% - 50%	51% - 75%	76% - 100%
Bristol-Myers Squibb	Coca-Cola	Oracle	Adobe*
CA Technologies	Devon Energy	Motorola	Apple*
Duke Energy	DuPont*	PepsiCo*	Broadcom
Eli Lilly	Intel		Cisco
Hewlett-Packard			Google
Honeywell			EMC
IBM			Microsoft
Eastman Kodak			Johnson & Johnson
Merck			Qualcomm*
Pfizer			
Procter & Gamble			

* Figures reflect their U.S. dollars and investments as a percentage of their foreign cash.
Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

The U.S. assets reported by the 27 surveyed corporations included U.S. dollar deposits in U.S. bank accounts; U.S. dollars invested in U.S. government and agency securities such as U.S. Treasury bonds; U.S. dollars invested in unrelated U.S. corporate notes and bonds; and U.S. dollars invested in U.S. mutual funds and unrelated stocks. Where tax-deferred foreign earnings are placed in U.S. assets, they are converted to U.S. dollars and nearly always deposited in U.S. financial accounts within the United States. In limited instances, smaller amounts of U.S. dollars may be held overseas in Eurodollar accounts or in exchange accounts denominated in U.S. dollars.

Multinationals invest in U.S. assets, including U.S. dollar deposits in U.S. bank accounts and U.S. Treasury bonds, because those U.S. assets are safe, keep their value, and are recognized as reliable and strong investments across the world. One of the surveyed corporations explained that the reason it held its foreign earnings in U.S. dollars was because of the safety and security of the U.S. currency, and because holding dollars "minimizes volatility."[129] Another corporation wrote that it "holds the majority of its cash in U.S. Dollars to mitigate against a potential accounting loss in its periodic U.S. GAAP financial statements from the translation of cash held in foreign currencies to U.S. Dollars."[130] Another corporation described how its global suppliers wanted to be paid in dollars, and purchasers required deals to be structured in dollars, because of the reliability of the U.S. dollar as a currency.[131]

IV. CONCLUSION

The survey results in the Report Addendum contribute to the debate over enacting a second repatriation tax break in at least two ways.

First, the survey results provide the first quantitative data on the proportion of undistributed accumulated foreign earnings that U.S. multinational corporations have chosen to place in U.S. banks and invest in U.S. assets, while avoiding the payment of any taxes on those earnings.[132] The data shows that, in many cases, the funds that corporations identify as being offshore are really onshore. The onshore percentage, 46% on average, represents nearly half of the surveyed corporations' undistributed accumulated foreign earnings. The presence of those funds in the United States undermines the argument that undistributed accumulated foreign earnings are "trapped" abroad, because nearly half of those funds are already located right here in the United States. In addition, the facts demonstrate that U.S. multinational corporations are already well aware that they can invest their offshore funds in U.S. assets, without those funds being deemed repatriated or taxed, because that is what they are doing with a significant amount of those funds. Because foreign earnings of those U.S. corporations are not "trapped" abroad, another tax break is not needed for those foreign earnings to be "returned" to the United States.[133]

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[129] 9/8/2011 response to Subcommittee inquiry.
[130] 8/18/2011 response to Subcommittee inquiry.
[131] 9/19/2011 response to Subcommittee inquiry.
[132] Under § 945(c)(2), undistributed accumulated foreign earnings invested in U.S. banks or U.S. assets are not taxed. Under Subpart F, however, corporations are required to pay taxes on any interest or other income derived from foreign earnings deposited in the United States. The Subcommittee's survey did not examine any issues related to the taxation of such income.
[133] Some have raised the argument that the tax code's deferral rules do not permit undistributed accumulated foreign earnings from being utilized on a tax-free basis by U.S. multinational corporations for their own investments, such as building new plants, increasing research and development, or creating new jobs. However, the 2004 repatriation shows, as discussed in the main body of the Report, that there is little evidence that repatriating corporations would use their offshore funds for such purposes anyway. In addition, U.S. corporations currently have

Secondly, the survey results and the ability of U.S. corporations to defer paying taxes on foreign income that is returned to and invested in the United States raise significant tax fairness issues. Surveyed multinational corporations are investing nearly half of their tax-deferred offshore funds in the United States now because they gain a host of benefits from doing so, including the ability to make safe and secure investments using a currency that maintains its value. U.S. tax dollars pay for the systems that produce those benefits, including an efficient and reliable banking system, regulated capital markets, a legal system that protects property rights, and a government that is steadfast in upholding the value of its currency. The surveyed corporations are enjoying those advantages of the American system by investing more than half a trillion dollars here while deferring payment of the taxes that support it. A new repatriation tax break would only exacerbate that existing tax unfairness.

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substantial amounts of domestic cash that could be used for those purposes, should they wish to make those types of investments.

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EXCERPT

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #1

JOINT COMMITTEE ON TAXATION
October 7, 2004
JCX-69-04

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 4520,
THE "AMERICAN JOBS CREATION ACT OF 2004"

Fiscal Years 2005 - 2014

[Millions of Dollars]

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
I. Provisions Relating to Repeal of Exclusion for Extraterritorial Income													
1. Repeal of exclusion for extraterritorial income [1]	ta 12/31/04	354	1,317	3,528	5,475	5,737	5,985	6,275	6,562	6,840	7,126	16,411	49,199
2. Deduction relating to income attributable to United States production activities	tyba 12/31/04	-2,054	-3,052	-4,396	-6,241	-6,722	-8,841	-10,741	-11,122	-11,525	-11,815	-22,465	-76,509
Total of Provisions Relating to Repeal of Exclusion for Extraterritorial Income		**-1,700**	**-1,735**	**-868**	**-766**	**-985**	**-2,856**	**-4,466**	**-4,560**	**-4,685**	**-4,689**	**-6,054**	**-27,310**
II. Business Tax Incentives													
A. Small Business Expensing - increase section 179 expensing from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and extend indexing of both the deduction limit and the phaseout threshold (sunset after 2007)	tyba 12/31/05	---	-3,814	-6,636	-488	3,786	2,416	1,665	1,116	609	249	-7,152	-1,095
B Depreciation													
1. 15-year straight-line cost recovery for qualified leasehold improvements (sunset after 2005)	ppisa DOE	-65	-147	-185	-181	-174	-158	-151	-159	-156	-149	-751	-1,523
2 15-year straight-line cost recovery for qualified restaurant improvements (sunset after 2005)	ppisa DOE	-141	-33	-40	-40	-40	-40	-40	-40	-40	-40	-294	-494
C Community Revitalization													
1. Modification of targeted areas and low-income communities designated for new markets tax credit	DMA DOE	*No Revenue Effect*											
2. Expansion of designated renewal community area based on 2000 census data	[2]	-35	-10	-10	-9	-9	[3]	8	9	9	8	-71	-37
3. Modification of income requirement for census tracts within high migration rural counties	[4]	*No Revenue Effect*											
D. S Corporation Reform and Simplification													
1. Treat members of family as one shareholder (6 generations; multiple families per S corporation) (includes interaction with line 2. below)	generally tyba 12/31/04	-1	-4	-6	-8	-9	-9	-10	-10	-10	-10	-27	-76
2. Increase in number of eligible shareholders to 100	tyba 12/31/04	-18	-43	-56	-66	-74	-79	-82	-83	-84	-84	-257	-669
3 Expansion of bank S corporation eligible shareholders to include IRAs	DOE	-23	-34	-36	-37	-39	-41	-43	-45	-47	-49	-170	-394
4. Disregard unexercised powers of appointment in determining potential current beneficiaries of ESBT	tyba 12/31/04	*Negligible Revenue Effect*											
5. Transfer of suspended losses incident to divorce	tyba 12/31/04	-1	-2	-2	-2	-3	-3	-3	-3	-3	-3	-11	-25

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Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
IV. Tax Reform and Simplification for United States Businesses													
1. Interest expense allocation rules	tyba 12/31/08	---	---	---	---	-908	-2,487	-2,586	-2,689	-2,797	-2,909	-908	-14,376
2. Recharacterize overall domestic loss	tyba 12/31/06	---	---	-57	-680	-713	-756	-793	-829	-862	-895	-1,450	-5,585
3. Apply look-through rules for dividends from noncontrolled section 902 corporations	tyba 12/31/02	-662	-51	-23	-6	-1	[14]	[14]	[14]	[14]	[14]	-743	-743
4. Base differences and reduction to 2 foreign tax credit baskets	[15]	-8	-13	-615	-900	-927	-1,002	-1,039	-1,078	-1,119	-1,161	-2,463	-7,862
5. Attribution of stock ownership through partnerships in determining section 902 and 960 credits	tyba DOE	-1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-13	-28
6. Foreign tax credit treatment of deemed payments under section 367(d)	ataro/a 8/5/97	-26	-5	-5	-5	-5	-5	-5	-5	-5	-5	-46	-71
7. United States property not to include certain assets of controlled foreign corporations	[16]	-3	-20	-21	-22	-23	-24	-25	-27	-29	-31	-89	-225
8. Translation of foreign taxes	tyba 12/31/04	*Negligible Revenue Effect*											
9. Eliminate secondary withholding tax with respect to dividends paid by certain foreign corporations	pma 12/31/04	-2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-14	-29
10. Provide equal treatment for interest paid by foreign partnerships and foreign corporations doing business in the U.S.	tyba 12/31/03	-3	-2	-2	-2	-2	-2	-2	-3	-3	-3	-11	-24
11. Treatment of certain dividends of regulated investment companies (sunset after 3 years)	[17]	-7	-59	-63	-57	---	---	---	---	---	---	-186	-186
12. Look-through treatment under subpart F for sales of partnership interests	[16]	-39	-91	-96	-101	-106	-111	-116	-122	-129	-137	-433	-1,048
13. Repeal of rules applicable to foreign personal holding companies and foreign investment companies, personal holding company rules as they apply to foreign corporations, and include in subpart F personal service contract income, as defined under the foreign personal holding company rules	[16]	-25	-65	-73	-81	-91	-102	-114	-128	-143	-162	-335	-984
14. Determination of foreign personal holding company income with respect to transactions in commodities	teia 12/31/04	-4	-10	-10	-10	-10	-11	-11	-11	-11	-12	-44	-100
15. Modify treatment of aircraft leasing and shipping income [18]	[16]	-33	-172	-98	-75	-76	-88	-98	-108	-118	-129	-454	-995
16. Modification of exceptions under subpart F for active financing income	[16]	*Negligible Revenue Effect*											
17. 10-year foreign tax credit carryforward; 1-year foreign tax credit carryback	[19]	-349	-271	-338	-500	-668	-779	-857	-942	-1,036	-1,191	-2,126	-6,931
18. Modify FIRPTA rules for REITs	tyba DOE	-2	-7	-10	-12	-14	-15	-17	-19	-21	-23	-45	-140
19. Exclusion of certain horse-racing and dog-racing gambling winnings from the income of nonresident alien individuals	wma DOE	-1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-12	-27
20. Reduce withholding tax applicable to dividends paid to Puerto Rico companies to 10%	Dpa DOE	-5	-7	-8	-9	-10	-10	-11	-12	-13	-14	-39	-99
21. Repeal the 90% limitation on the use of foreign tax credits against the AMT	tyba 12/31/04	-265	-395	-376	-361	-348	-338	-329	-323	-319	-317	-1,745	-3,371
22. Incentives to reinvest foreign earnings in the United States	[20]	2,788	-2,119	-1,267	-838	-553	-379	-300	-264	-192	-137	-1,989	-3,261

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515–6453

APR 15 2011

Honorable Lloyd Doggett
U.S. House of Representatives
201 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Doggett:

This is in response to your request of March 23, 2011, for revenue estimates of two proposals to modify section 965 of the Internal Revenue Code ("Code").

Description of the Proposals and Revenue Estimates

Section 965 provides an elective, temporary, 85-percent dividends-received deduction ("DRD") for certain dividends received by a domestic corporation from controlled foreign corporations, subject to a number of conditions and limitations. Included in these limitations are requirements that eligible dividends are: (1) in excess of a specified level of historical average repatriation; (2) no more than the greater of $500 million or the amount of overseas earnings identified for financial accounting purposes as permanently reinvested earnings ("PRE," which is discussed in detail below); and (3) reinvested in the United States pursuant to a dividend reinvestment plan approved by the management and board of directors of the electing corporation and meeting certain other criteria. An election under section 965 was available only for either the taxpayer's (i) last taxable year beginning before the date of enactment of section 965 (which was October 22, 2004) or (ii) first taxable year beginning during the one-year period beginning on such date of enactment.

It is assumed that your respective proposals would permit an election under section 965 for the taxpayer's first taxable year beginning after December 31, 2010, with appropriate changes to other dates and provisions necessary to adhere to the intent of section 965. The first proposal retains the 85-percent DRD already in section 965, while the second proposal permits a 70-percent DRD.[1]

[1] The 85-percent DRD results in a 5.25 percent U.S. tax rate (0.15 multiplied by the top statutory corporate rate of 35 percent) on the entire repatriation before taking account of foreign tax credits and expense disallowance, while a 70-percent DRD translates into 10.5 percent U.S. (0.30 multiplied by the top statutory corporate rate of 35 percent) tax rate before such items are taken into account.

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We estimate that the respective proposals would change Federal fiscal year budget receipts as follows, assuming that each would be enacted on June 30, 2011:

	Fiscal Years [Billions of Dollars]												
	Item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011-16	2011-21
1.	85 percent DRD.	3.4	12.5	9.6	-12.8	-13.5	-14.1	-14.1	-13.4	-12.7	-12.2	-11.7	-14.8	-78.7
2	70 percent DRD.	1.9	12.9	10.6	-8.5	-8.9	-9.1	-9.0	-8.5	-8.0	-7.7	-7.4	-1.1	-41.7

NOTE: Details do not add to totals due to rounding

Explanation of the Revenue Estimates

Our revenue estimates of these modifications of section 965 draw from the evidence on usage of section 965 in the 2004-2006 period, as well as evidence from other temporary reductions or holidays in areas such as sales taxation and the taxation of capital gain income.

Each estimate includes three major components.[2] The first and smallest component involves the tax reduction afforded under section 965 for certain dividends that taxpayers are predicted to repatriate in the budget period under present law even in the absence of enactment of the proposal.[3] For taxpayers that are predicted to be repatriating these dividends in years 2011

[2] Details on our estimating approach to the original enactment of section 965 can be found in Edward D. Kleinbard and Patrick A. Driessen, "A Revenue Estimate Case Study The Repatriation Holiday Revisited," *Tax Notes*, September 22, 2008, pp. 1191-1202.

[3] Over the last two decades except for the years affected by the enactment of the original section 965, annual dividend repatriations have ranged from $50 to $100 billion, and these repatriations tend to mix with other types of foreign source income, so it is difficult to measure U S residual tax on repatriated dividends alone. Because we assume present law for establishing baseline revenues for the purpose of evaluating the revenue effects of each proposal, it is assumed that the provisions in the Code permitting the deferral of earnings from certain financial activities under sections 953 and 954 of the Code, and the "look through" of certain payments between related parties for the purpose of determining eligibility for deferral under section 954(c) (6), are not extended past their expiration dates in 2012.

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and 2012 notwithstanding the proposals, the extent to which taxpayers elect section 965 is a U.S. tax "windfall" for them that reduces U.S. tax receipts.

The second major component of each estimate captures the U.S. tax effects associated with taxpayers changing their dividend repatriation amounts and/or timing in response to each proposal. Taxpayers would accelerate the repatriation of dividends to qualify for section 965: some of these dividends would be accelerated from within the budget period,[4] say from 2013 or 2015 into 2011, and other accelerated dividends qualifying for section 965 would not otherwise be repatriated in the budget period (nor perhaps for many years after that). There are several ways that these altered dividend payments affect U.S. tax receipts. First, dividends qualifying for section 965 would be 85-percent (or 70-percent) exempt, with foreign tax credits still permitted for the non-exempt portion. For example, a taxpayer may pay $4 of U.S. tax under the 85-percent DRD proposal or alternatively $8 of U.S. tax under the 70-percent DRD proposal (after accounting in each case for foreign tax credit and any expense disallowance required by section 965) on a $100 dividend in 2011 that, absent qualifying for section 965, would not have been repatriated in the 2011-2021 period.[5] Second, any dividend that is accelerated to qualify for section 965, but which would have otherwise been repatriated later in the budget period after section 965 expires, would avoid potential residual U.S. tax that would have been paid in the

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[4] Dividend payments from CFCs to related U.S. persons could also be delayed if there is a legislative window leading to an announcement effect that permits taxpayers to delay repatriation to maximize exemption under section 965.

[5] After the enactment of section 965 in 2004, there was interest in, and some confusion about, the U.S. tax receipts associated with the dividends qualifying for section 965. The 85-percent DRD enacted in 2004 translated into a 5.25 percent nominal U.S. tax rate on qualifying dividends. However, foreign tax credits are permitted against the non-exempt portion of qualifying dividends, and there may be some expense disallowance requiring the denial of certain domestic tax deductions. The data presented by Melissa Redmiles, "The One-Time Received Dividend Deduction," *IRS Statistics of Income Bulletin*, 27:4 (Spring 2008), pp.102-14, suggests that the applicable residual U.S. tax rate, or initial "toll charge," on all qualifying dividends after accounting for these other factors was somewhat below four percent. As suggested above, this toll charge is just one part of the estimate, because the source of the qualifying dividends has to be accounted for along with the change in potential tax receipts associated with the projected present law counterfactual activity as described below, and other taxpayer behavior that is not captured by the acceleration of repatriated dividends to qualify for section 965 must be accounted for.

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absence of section 965.[6] For example, a $100 dividend that would have been repatriated under present law in 2013, and would have resulted in a $25 U.S. residual tax at that time, would now instead incur $4 in U.S. tax under the 85-percent DRD proposal as it qualifies for section 965 in 2011. In addition, the uses by U.S. firms of the dividend payments that were induced or accelerated by section 965 would change the U.S. tax base. For example, a company may increase its dividend as a result of section 965, and as a result shareholders may be liable for additional individual taxes.[7]

The final component of the estimates takes account of how each proposal would affect the prospective decisions of taxpayers about where to locate investment and/or income. As discussed below, ease of repatriation is one consideration in such decisions, and enactment of section 965 would be regarded by some taxpayers as altering the existing geographic location incentives. If firms anticipate that future repatriation of foreign earnings to meet such needs could occur with little U.S. residual taxation, firms would be less constrained in their location decisions, and that behavioral effect of section 965 also is accounted for in the revenue estimates of your proposals.[8]

To summarize, the revenue estimates consider the U.S. tax implications of how each proposal: (1) affects repatriations that will occur under present law with no assumed change in amount or timing; (2) causes the acceleration of repatriated dividends from both outside and inside the 2011-2021 budget period in order to qualify for section 965; (3) affects the recognition

[6] As we discuss below, we expect that these repatriations will increase under the present law baseline during the fiscal year 2011-2021 period because of the tension between domestic needs and the growing stock of deferred overseas income.

[7] These tax base effects owing to the uses of repatriated funds depend upon whether funds would not have been repatriated in the budget period without section 965, as, for example, these tax base effects can be accelerated in the same ways that repatriated dividends can be accelerated. In addition, shareholders who receive an increased dividend, or have their stock repurchased, have discretion in managing their portfolios to achieve their own cash and investment needs. For example, an investor whose shares are bought back by Company A due to section 965 activity may respond by not selling his equity shares in Company B as he would have before Company A's share repurchase. In addition, it is difficult to determine what share repurchases or dividend increases would happen in the absence of section 965, as some companies would proceed with these activities by finding funding elsewhere.

[8] The term "location preference" is used broadly here to indicate opportunities that a firm has to generate foreign-source income, and as such the term is not restricted to the conventional notion of brick-and-mortar investment.

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for U.S. tax purposes of certain types of income as a result of projections of how companies will use qualified repatriations; and (4) changes the prospective investment and income location decisions by companies.

In preparing these estimates, we have examined the last two decades' tax, accounting, and other economic data with respect to investment location decisions of U.S.-based multinationals, deferral of foreign source income, and financial reporting decisions. The trend towards overseas location of highly profitable investment (some of it associated with the transfer or development of intangibles) continues,[9] as does the deferral and accumulation of foreign earnings (with the exception of the short-term drawdown of that accumulation caused by the enactment of section 965 in 2004). Some of this high overseas profitability is related to overseas marketing and production opportunities aimed at sales to third parties located overseas which is part of a secular movement that has been underway for many decades,[10] while some of it can be linked to U.S.-based activities such as research and development or third-party demand in the U.S. market.

It is clear that companies have some latitude with respect to prospective location decisions. Changes over the last two decades in Treasury Department regulations (some favorable to overseas investment, e.g., the check-the-box regulations in the 1990s, and some at least potentially restrictive on overseas investment, such as the recent cost sharing regulations addressing transfer pricing methodologies and the subpart F contract manufacturing regulations)[11] and the Code (e.g., the subpart F exception for active financing income which has been available over the last 15 years, and the provision in the Tax Increase Prevention Act of 2005 that allows taxpayers to avoid generating subpart F income from payments between related parties, known as the "CFC look through") have on balance facilitated the deferral of foreign

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[9] For details about business structures that may facilitate income shifting or the deficiencies in the application of transfer-pricing rules, see Joint Committee on Taxation, *Present Law and Background Related to Possible Income Shifting and Transfer Pricing* (JCX-37-10), July 20, 2010.

[10] For example, Mihir A. Desai and James R. Hines Jr., "Old Rules and New Realities. Corporate Tax Policy in a Global Setting," *National Tax Journal*, LVII:4, (December, 2004), show the globalization over time of U.S. corporate profits in Figure 1, page 939.

[11] While the Treasury Department has modified both its cost sharing and contract manufacturing regulations in recent years, we assume that taxpayers remain able to engage in planning to reduce their current income tax liability.

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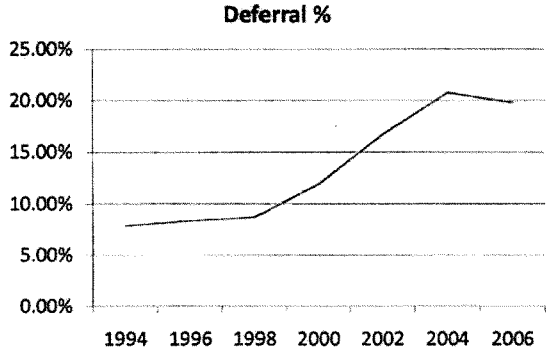
source income and reduction in the foreign taxes paid on such income. Potential U.S. residual taxation, while no doubt inhibiting the repatriation of the stock of deferred overseas earnings, also affects the prospective location decisions of firms to the extent that firms anticipate the need for repatriation of foreign earnings, as the investment location decision is linked to the repatriation decision.

Figure 1 summarizes the recent growth in deferral as context for evaluating the effects of your proposals. While the use of deferral has grown, companies continue to repatriate some dividends and as a result pay some residual U.S. tax in response to firm- or industry-specific exigencies.[12] There is continuing demand for repatriation as the enactment of section 965 and subsequent interest in renewing section 965 have demonstrated. We expect repatriations to rise in the 2011-2021 budget period under present law as a result of the tension between domestic needs and the growth in the stock of deferred income.

[12] In recent years not affected by the original enactment of section 965, annual dividend repatriations have ranged from $50 to $100 billion. The Government Accountability Office, *U.S. Multinational Corporations: Effective Tax Rates are Correlated with Where Income Is Reported*, GAO-08-950, (August 2008), found that the residual U.S. tax rate on all foreign source income, of which dividend repatriation comprises under 25 percent, was about four percent. This aggregate average tax rate (which significantly is affected, for example, by "crosscrediting", which is the netting of foreign taxes against foreign income across all foreign countries as permitted by the Code in certain circumstances), likely understates the potential U.S. tax collectible on marginal repatriations (which, for example, are less likely to be shielded from U.S. tax by cross-crediting).

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Figure 1. Deferral as Share of U.S. Corporate Worldwide Income*



* Source: Statistics of Income Division, IRS. This is a flow concept, showing the relative amount of corporate income deferred every two years from 1994 to 2006. Worldwide income is defined as total receipts minus deductions, plus constructive taxable income received from related foreign corporations, plus CFC deferred income. CFC data before 2004 included above was from a restricted sample based on U.S. parent size. CFC data is for CFCs with net earnings and profits, and is before foreign (and U.S.) tax. Corporate income includes all U.S. subchapter C corporations with net income, before tax. There may be some time lag between the CFC and U.S. corporate income data because of fiscal year reporting differences.

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Patterns in financial reporting also provide context for the revenue estimates, both technically (as a designation of permanently reinvested earnings, or PRE, is one way to qualify for exemption under section 965) and as a complement to the U.S. tax base changes presented above. A PRE designation is a book accounting assertion by a taxpayer that it will not be repatriating certain earnings back to the United States in the foreseeable future. This assertion often causes earnings for financial reporting to be larger than otherwise would be the case because after a PRE designation the taxpayer is not required to record the estimated U.S. tax charge that would accompany repatriation to the United States. A disadvantage for companies of a PRE designation is that it makes repatriation of the designated funds more difficult. The difficulty arises because a company that reverses a PRE designation reports to its shareholders a tax change reducing current year reported net income. (There is no commensurate reported increase in reported income because the company previously reported such income to its shareholders). Such a reversal may attract regulator and investor scrutiny.[13] While this accounting treatment creates a difficulty for the company's management, it does not make repatriation impossible. A taxpayer can override a designation under certain circumstances.[14] Taxpayers also have some flexibility in making PRE designations: for example, previous PRE designations do not restrict taxpayers' prospective choices about whether to repatriate or reinvest earnings generated in the future.

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[13] Because a company's auditor, in compliance with the U.S. Generally Accepted Accounting Principles ("GAAP"), is required to evaluate evidence compiled by management (as well as any other relevant evidence) regarding management's PRE assertion at each balance sheet date, a history of frequent PRE reversals may be considered negative evidence, thus hindering the auditor's approval of any future PRE assertions made by management with respect to its audited financial statements. Moreover, such frequent reversals of PRE assertions could invite scrutiny from the Securities and Exchange Commission ("SEC") because such reversals could be perceived as an attempt by management to manipulate its U.S. GAAP earnings through the income tax expense line item in its profit and loss statement. The result of such SEC scrutiny may be the issuance of an SEC comment letter, the required restatement of the company's financials, or other possible sanction.

[14] For example, in 2009 Pfizer reversed its PRE assertion with respect to $34 billion in earnings that it intended to repatriate as part of its acquisition of Wyeth ($20.6 billion of the funds had been so designated by Pfizer and approximately $13.3 billion by Wyeth), according to Pfizer's filing of Form 8-K on October 21, 2009, and Wyeth's filing of its 2008 Form 10-K on February 27, 2009. Although Wyeth disclosed that the residual U S. tax on Wyeth's historic PRE was $2.7 billion or 20.3 percent ($2.7 billion divided by $13.3 billion), no similar level of detail was available with respect to Pfizer's historic PRE. If one were to make the simplifying assumption that the U.S. residual tax rate was 20.3 percent on all $34 billion of the PRE designation that was reversed in this case, the accounting tax charge reflecting this PRE reversal would have been approximately $6.8 billion

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Our research finds PRE growth to have been very strong over the past decade. Cumulative PRE for 75 companies (chosen as the top 75 in a recent Fortune 100 list) showed this number growing from about $115 billion in 2000 to about $250 billion in 2005 (a number that would have been higher had it not been depleted by repatriations under section 965) and reaching over $700 billion by 2010.[15] It is possible that some of the PRE growth after the expiration of the original section 965 occurred in anticipation of, or preparation for, expected impending extension of section 965. In any event, increased PRE designations raise the baseline amounts used for the estimates, and the large increase in PRE conflicts with companies' public statements about the need to bring funds back to the United States that are now invested abroad. If companies keep adding to PRE but also continue to need those funds at home, then, in the absence of section 965 or some other exemption, one would expect that tension would resolve itself in favor of taxable dividend repatriations to the United States, as more income would be repatriated under present law[16] and/or the incentive to locate income and investment offshore diminishes.

As a result of the above considerations, the revenue estimate pattern for both proposals shows that, in the first three years after enactment of each proposal, the revenue received by the United States associated with the induced repatriated dividends exceeds the two negative effects associated with each proposal, which were: (1) the U.S. tax effects on dividends that would have been repatriated during the budget period in the absence of the proposal; and (2) the proposal's effect on prospective decisions about location of investment and income. However, the positive revenue associated with the application of section 965's reduced U.S. residual tax to dividends

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[15] This growth in PRE has been noted by others. Following up on the description of section 965 electors in Susan Albring, Ann Dzuranin, and Lillian F. Mills, "Tax Savings on Repatriations of Foreign Earnings Under the Jobs Act," *Tax Notes*, August 8, 2005, the authors Lee A. Sheppard and Martin A. Sullivan, "Multinationals Accumulate to Repatriate," *Tax Notes*, January 19, 2009, showed that accumulated PRE for 40 large companies had by the end of 2007 recovered from repatriation under section 965 during the 2004-2006 period to reach about 200 percent of the 2002 PRE amount. Rodney P. Mock and Andreas Simon, "Permanently Invested Earnings: Priceless," *Tax Notes*, November 17, 2008, found that, for a sample of 81 large companies, about one half of the reduction in PRE owing to section 965 was restored (meaning that accumulated PRE was replenished) right after section 965 was elected by these taxpayers.

[16] See discussion of Pfizer above for an example.

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that would not have been repatriated in the absence of each proposal fades as the other two effects, and particularly the location effects, manifest.[17]

For estimating purposes, we see enactment of section 965 on a stand-alone basis as affording taxpayers some of the benefits (but none of the potential detriments) of a dividend exemption system: (1) taxpayers that prefer present law are not required to elect section 965; (2) taxpayers that elect section 965 can still avail themselves of cross-crediting (cross-crediting generally is eliminated or inhibited in formal dividend exemption systems) by "filling up the base";[18] and (3) the exempt portion of dividends under section 965 is subject to only minimal disallowance of U.S. deduction of directly allocable expenses incurred in the United States.[19] Enactment of a stand-alone, temporary section 965 for a second time in a seven-year period likely signals to taxpayers that something like section 965 will become a periodic, if not a

[17] It may be helpful to provide some context regarding the internationalization of the U S tax base in the later years of the budget period with reference to the location effects. The U.S corporate tax in the later years of the budget period is anticipated to generate over $300 billion in net receipts per year, and foreign taxes credited against U.S. corporate taxes are projected to be between $75 and $125 billion annually. These magnitudes indicate both the globalization of U.S. companies, as noted above, and the scope of how a change in the treatment of foreign source income could alter U.S. corporate tax receipts.

[18] "Filling up the base" (where "base" refers to the historical average test for exemption under section 965) describes a taxpayer's opportunity to identify which specific dividends qualify for exemption (foreign tax payments associated with such exempted dividends are disallowed for the purpose of calculating foreign tax credits). This choice permits the taxpayer to "cherry pick" to ensure that the DRD applies to repatriated foreign dividends that attracted modest foreign tax, thus preserving the use of dividends (i.e., not applying section 965 and its concomitant reduction in foreign taxes eligible for the foreign tax credit) that attracted higher levels of foreign tax for cross-crediting against non-dividend income such as royalties and interest Evidence of the selectivity of filling up the base in Redmiles (2008, *op cit.*) shows that the overwhelming amount of qualified dividends came from foreign countries with low tax rates, which contrasts with the evidence that many section 965 electors were large U S. multinational companies (Mock and Simon, 2008, *op cit.*). These multinationals, according to their financial reports, tend to conduct activity in foreign countries with both low and high tax rates - thus, in the absence of the use of the permitted selectivity, one would have expected a more heterogeneous geographic (and perhaps industrial) mix in the character of the dividends that qualified for exemption under section 965.

[19] For 2004 through 2006, only about $600 million of expense was disallowed for deduction in the United States because it was directly allocable to the almost $300 billion of dividends qualified for exemption under section 965 (Redmiles, 2008, *op cit*) This comparison to a dividend exemption system assumes that such a system includes some meaningful expense disallowance rules. Many dividend exemption systems in place in foreign jurisdictions do not have such rules, while some impose an exemption "haircut" as a proxy for expense disallowance.

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permanent, feature of the Code. The foregoing aspects of your section 965 proposals would create a quasi-dividend-exemption elective system that would reside within the worldwide approach to taxation generally embodied in the present-law Code.

It is also important to consider some of the macroeconomic/stimulus issues related to extension of section 965. One would expect some positive U.S. tax base effects from the potential repatriation of about $700 billion for the 85-percent DRD proposal (of which about $200 billion is assumed by us to be accelerated repatriation that would have occurred in any case during the budget period under present law), or $325 billion in the case of the 70-percent DRD proposal (of which about $125 billion is assumed by us to be accelerated repatriation that would have occurred in any case during the budget period under present law),[20] that we anticipate for these reenactments of section 965 (coming after the $300 billion of qualified repatriation for the original enactment of section 965), even if the dividend reinvestment stipulation in section 965 does not restrict taxpayers very much. Indeed, as noted above, we have included some tax base effects reflecting the usage of qualified repatriations under your proposals. However, at least thus far, the research has shown little macroeconomic benefit from the original enactment of section 965: this may be due to the difficulty in measuring these effects, or it may be due to how the repatriated funds were used, or it may be that a $300 billion repatriation barely registered in a U.S. economy with more than $10 trillion in 2005 of Gross National Product ($15 trillion in 2011). Aside from the general issue of measuring the initial impact of section 965 with respect to these effects, it is also necessary to recognize that, while section 965 facilitates the return of the stock of deferred earnings to the United States, prospectively it also encourages investment and/or earnings to be located overseas, and thus enactment of a stand-alone section 965 may curtail one distortion (repatriation) while enhancing another distortion (investment and earnings location). As a result, it would be necessary to look at the long-term macroeconomic aspects of each proposal and not just the early effects associated with the initial repatriation influx.

We note three interconnected factors that cause these estimates to differ from prior estimates of similar proposals (with the most recent estimate, from early 2009, of -$28.6 billion

[20] This $200 billion for the 85-percent DRD proposal and the respective $125 billion for the 70-percent DRD proposal include some dividends that we assume would be repatriated under present law in the 2011-2021 budget period without any direct connection to a PRE reversal, and some dividends that we assume would be associated with PRE reversals we anticipate under present law in the 2011-2021 budget period.

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for the fiscal year 2009-2019 period for an 85-percent DRD proposal).[21] First, as noted above, PRE designations are reported to have increased significantly, particularly in the past few years. Second, the macroeconomic assumptions on which we base our estimates have improved as the recent recession has abated, and this added projected corporate profit growth has raised the baseline projections of domestic and foreign earnings and investment that would be affected by a reenactment of section 965. Third, evidence of PRE reversal suggests that it is not unrealistic to assume that, under present law, some companies may be compelled to access profits in the United States either by repatriation or by changing prospective location of income-generating activity to the United States.

Finally, it may be helpful if we consider the interaction of proposals like yours with some broader tax reform ideas. As noted above, it is our view that each of your stand-alone proposals creates a system within a system, contributing to the overall negative revenue results presented above. This systemic conflict would be absent from a broader reform proposal that might be coupled with something conceptually like section 965 (but perhaps mandatory and with more than minimal expense disallowance) as transition in a major overhaul of how the Code treats foreign source income. As a result, the revenue estimate for something like section 965 that is enacted as part of a broader reform likely is different from the revenue results presented above for two proposals for a stand-alone section 965.[22]

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[21] Statement by Senator Carl Levin, *Congressional Record-Senate*, February 3, 2009, page S1413

[22] If a broad reform is accompanied by an elective version of section 965, the character of the reform will affect the incentive for taxpayers to repatriate accumulated deferred earnings at the time of transition to the new system. For example, both a dividend exemption reform, and a reform that retains present law while repealing deferral, likely would, for different reasons, reduce the incentive of taxpayers to elect section 965 as compared to the stand-alone 965 that you proposed above. A territorial regime would reduce this incentive because taxpayers would anticipate the future stream of dividends that could be repatriated without U.S. taxation (and perhaps little or no denial of a tax deduction for domestic expenses linked to the prospective dividends) under a territorial regime, so there might be less need by companies to repatriate the accumulated stock of earnings deferred under the present law worldwide regime which is to be replaced by the territorial regime On the other hand, a reform that amends present law by repealing deferral also would permit taxpayers to repatriate, at no additional U.S. tax cost, prospective earnings that would already have been taxed by the United States as earned, and such repatriation of prospective earnings would, unlike repatriation under something like your proposals for a stand-alone section 965 with an 85-percent or 70-percent DRD as an increment to present law, incur no additional U.S. tax as repatriation of prospective earnings would by definition be considered by the United States to be previously taxed income

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JOINT COMMITTEE ON TAXATION
1625 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6453
(202) 225-3621
http://www.jct.gov

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

Thomas A. Barthold

Thomas A. Barthold

Excerpt from Cisco System, Inc.
Response To
Permanent Subcommittee on Investigations Survey
(2/18/09)

However, Cisco filed an amended return with the IRS for FY06 that reduces the section 965 dividends received deduction to zero. The reason for the reduction was to reflect agreed IRS audit adjustments from a prior IRS audit cycle (concluded subsequent to Cisco's filing of its original FY06 tax return) which had the effect of re-characterizing Cisco's FY06 $1.2 billion extraordinary CFC dividend as a distribution of previously taxed income under section 959(a)(1).

[redacted]

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[redacted]

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #2

Excerpt from Altria Group, Inc.
Response To
Permanent Subcommittee on Investigations Survey
(2/18/10)

[redacted]

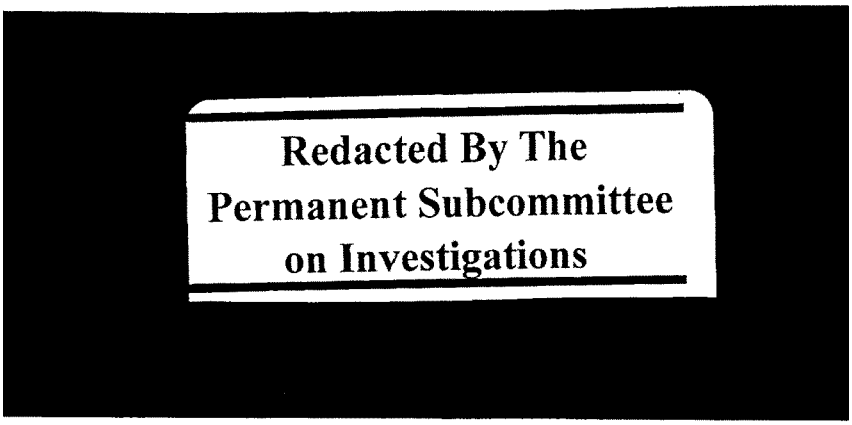
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[redacted]

Our data does not demonstrate that the repatriation resulted in a net increase in Altria Group's U.S. jobs or U.S. R&D expenditures. See Attachments 6 and 7 for the employment and R&D data. The reduction in the number of employees during this period is largely attributable to the spin-offs of Kraft and PMI.

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #3

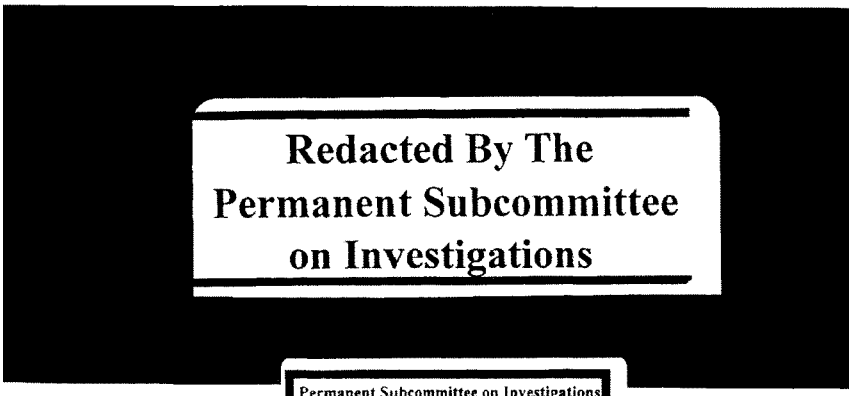
Excerpt from Microsoft Corporation
Response To
Permanent Subcommittee on Investigations Survey
(2/18/09)



17. Please provide any available data demonstrating how your corporation's amounts repatriated under section 965 have yielded a net increase in your corporation's U.S. jobs or a net increase in your corporation's U.S. research and development expenditures.

Response:

We repatriated $780,000,000 in the fiscal year ended June 30, 2006. The number of employees in the U.S. increased by 5,994, 3,561 and 5,507 in the fiscal years ended June 30, 2006, June 30, 2007 and June 30, 2008 respectively. The amount spent on research and development increased by [redacted] in the fiscal years ended June 30, 2006, June 30, 2007 and June 30, 2008 respectively. The increases in U.S. employees and research and development spending during this time period were partly attributable to amounts repatriated under Section 965.



Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #4

MICROSOFT CORPORATION

FY06 DOMESTIC REINVESTMENT PLAN

ARTICLE I
ESTABLISHMENT AND PURPOSE

The Microsoft Corporation FY06 Domestic Reinvestment Plan provides for the reinvestment of an amount equal to Cash Dividends (as defined below) received by members of the Microsoft Group during taxable year ended June 30, 2006 from Controlled Foreign Corporations with respect to which one or more members of the Microsoft Group is a United States Shareholder, and constitutes a domestic reinvestment plan within the meaning of Section 965(b)(4) of the Code.

ARTICLE II
DEFINITIONS AND CONSTRUCTION

Section 2.1. Definitions. The following words and phrases used in this Plan shall have the respective meanings set forth below, unless the context clearly indicates to the contrary:

"Board" means the Board of Directors of Microsoft Corporation, the parent company of the Microsoft Group.

"Code" means the Internal Revenue Code of 1986, as amended.

"Controlled Foreign Corporation" means a controlled foreign corporation within the meaning of Section 957 of the Code with respect to which one or more members of the Microsoft Group is a United States Shareholder (as defined below).

"Cash Dividends" means qualifying cash distributions from Controlled Foreign Corporations to United States Shareholders, as defined under Section 965 of the Code and Notices 2005-10, 2005-38, and 2005-64.

"Effective Date" means the date on which this Plan is approved by the chief executive officer of Microsoft Corporation.

"Microsoft" means Microsoft Corporation, a State of Washington corporation.

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"Microsoft Group" means the affiliated group of includible corporations filing a consolidated federal income tax return of which Microsoft Corporation is the common parent, within the meaning of Sections 1501 and 1504 of the Code.

"Plan" means the Microsoft Corporation FY06 Domestic Reinvestment Plan.

"United States Shareholder" means a United States shareholder, within the meaning of Section 951(b) of the Code, that is a member of the Microsoft Group.

Section 2.2 **Construction.** Unless the context otherwise requires, as used in this Plan i) "or" is not exclusive; ii) "including" means "including, without limitation"; iii) words in the singular include the plural and words in the plural include the singular; iv) the descriptive headings contained in this Plan are included for convenience of reference only; v) all references to amounts of money are to United States Dollars; and vi) any provision hereof that refers to or incorporates a provision or concept of Section 965 of the Code shall be interpreted consistently and in conformity with Section 965 of the Code (including Notices 2005-10, 2005-38, and 2005-64, as well as any subsequent regulations or other guidance issued under Section 965 of the Code).

ARTICLE III
APPLICATION OF BENEFITS AND CASH DIVIDEND LIMITATION

Section 3.1 Application of Benefits. Microsoft intends to apply the benefits of Section 965 of the Code with respect to $780,000,000 of Cash Dividends distributed from the Controlled Foreign Corporations for the taxable year ended June 30, 2006.

Section 3.2 **Cash Dividend Limitation.** The amount shown on Microsoft's certified financial statements for the taxable year ended June 30, 2002 as earnings permanently reinvested outside the United States is $780,000,000. Microsoft's June 30, 2002 financial statement is the "applicable financial statement," within the meaning of Section 965(b)(1) and (c)(1) of the Code, to which the Cash Dividend Limitation applies.

Section 3.3 **Other Distributions.** To ensure that the benefits of Section 965 of the Code apply to the entire $780,000,000 of Cash Dividends paid by the Controlled Foreign Corporations, such corporations will make additional distributions related to: (i) their respective amounts of previously taxed earnings as defined in Section 959(a) of the Code; and (ii) the base period amount as defined in Section 965(b)(2)(B) of the Code.

ARTICLE IV
RECEIPT OF CASH DIVIDENDS

Section 4.1. Payment. After the Effective Date and during the remainder of taxable year ended June 30, 2006, Microsoft anticipates that it (or other United States

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Shareholders that are subsidiaries of Microsoft) will receive $780,000,000 of Cash Dividends from the Controlled Foreign Corporations in one or more installments, and that such Cash Dividends will qualify under Section 965 of the Code. As required by Notices 2005-10, 2005-38, and 2005-64, dividends paid by a Controlled Foreign Corporation to an entity that is disregarded as separate from its owner for federal income tax purposes will be received in cash in taxable year FY06 by the United States Shareholder from the disregarded entity, and there will be no legal obligation for the United States Shareholder to repay the cash to the disregarded entity. Microsoft intends to reinvest an amount equal to the Cash Dividends in the United States in a manner consistent with the principles set forth under Section 965 of the Code and Notices 2005-10, 2005-38 and 2005-64.

ARTICLE V
REINVESTMENT OF CASH DIVIDENDS

Section 5.1 Plan Objectives. Microsoft currently operates seven primary business groups: Client, Server and Tools, Information Worker, Mobile and Embedded, MSN, Home and Entertainment, and Microsoft Business Solutions. The business groups are organized in three operating divisions. The company has historically sought to develop innovative and superior computer software technology for a broad range of software applications, including server technology, personal computer operating systems, document management technology, internet services and applications, and home entertainment technology. To sustain Microsoft's growth and maintain its success, Microsoft must continue to invest in the development of the next generation of software applications. Consistent with its plan to grow the business and increase profitability within the United States, Microsoft intends to reinvest an amount equal to $780,000,000 on permissible expenditures within the United States as prescribed by Section 965 of the Code, the legislative guidance thereunder, and Notices 2005-10, 2005-38 and 2005-64. Microsoft will reinvest an amount equal to the Cash Dividends in the Principal Investments detailed below in Section 5.2, and if necessary, in the Alternative Investments detailed below in Section 5.3, of this Plan. Microsoft will not reinvest the Cash Dividends on any Prohibited Expenditures described in Article VI of this Plan.

Section 5.2 Principal U.S. Investments. In accordance with the requirements of Section 965(b)(4)(B) of the Code and Notices 2005-10, 2005-38, and 2005-64, the Microsoft Group intends to invest $780,000,000, in cash, on various research and development projects. The amounts invested in research and development projects shall include expenditures that qualify as "research and experimental expenditures," as defined under Section 174 of the Code, and underlying Treasury Regulation Section 1.174-2. These expenditures will include: (i) employees' compensation, in the form of salaries, wages, and bonuses, and (ii) employees' benefits, in the form of health and welfare benefits, and funding of qualified plan within the meaning of Section 401(a) of the Code (in amounts in excess of the minimum funding obligation), accrued for the taxable years described under subparagraph (b) of Section 5.2. The research and development projects

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covered by this Plan have been or will be undertaken within the United States at Microsoft's research and development facilities located in Redmond, Washington.

(a) **Description of Research and Development Projects.** The research and development projects covered by this Plan undertaken by the Microsoft Group within its facilities located in Redmond, Washington, are: Client, Server and Tools, Information Worker, Mobile and Embedded, MSN, Home and Entertainment, and Microsoft Business Solutions.

(b) **Timing of Principal U.S. Investments.** The Microsoft Group intends to invest the amount described in Section 5.2 within the current taxable year ended June 30, 2006. To the extent that a total amount equal to $780,000,000 has not been invested as described in Section 5.2, within the current taxable year ended June 30, 2006, any remaining amounts will be invested in the same fashion in the following taxable year ended June 30, 2007.

Section 5.3 Alternative U.S. Investments. If following the approval of this Plan it becomes no longer practical for the Microsoft Group to invest, in whole or in part, an amount equal to $780,000,000 on the Principal U.S. Investment described in Section 5.2, the Microsoft Group will invest any remaining amounts on advertising and marketing expenditures made within the United States related to the Microsoft trademark, trade name, or brand name.

(a) **Description of Advertising and Marketing Campaigns.** The Microsoft Group intends to invest on advertising and marketing campaigns within the United States related to Client, Server and Tools, Information Worker, Mobile and Embedded, MSN, Home and Entertainment, and Microsoft Business Solutions.

(b) **Timing of Alternative U.S. Investments.** The Microsoft Group intends to invest any amount described in Section 5.3 on or before taxable year ended June 30, 2007. To the extent that a total amount equal to $780,000,000 has not been invested on the Principal Investments, described in Section 5.2, within the period described in subparagraph (b) of Section 5.2, any such remaining amounts shall be invested in advertising and marketing expenses as described in Section 5.3.

ARTICLE VI
PROHIBITED EXPENDITURES

Section 6.1 Prohibited Expenditures. Under no circumstances will the Microsoft Group use any portion of an amount equal to $780,000,000 of Cash Dividends for any of the following purposes:

(a) To pay executive compensation, as defined in Section 6.02 of Notice 2005-10, for services paid, directly or indirectly, to any employee or former employee for

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services, if the employee either is (i) directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security in Microsoft, or (ii) is a Director or Officer of Microsoft, as those terms are understood for purposes of applying Section 16a of the Securities Exchange Act of 1934 to an issuer of equity securities referred to in such Section;

(b) To pay for services performed outside of the United States;

(c) To pay for assets to the extent that they are located or used outside of the United States;

(d) To make payments to related persons, as defined in Section 5.01(b) of Notice 2005-10;

(e) To acquire a business entity other than as provided in Section 5.06 of Notice 2005-10;

(f) To acquire a debt instrument or other evidence of indebtedness within the meaning of Section 6.07 of Notice 2005-10;

(g) To pay U.S. federal, state, local or foreign taxes within the meaning of Section 6.08 of Notice 2005-10;

(h) To make payments that are not borne by Microsoft within the meaning of Sections 4.04 and 4.07 of Notice 2005-10;

(i) To make investments, other than in cash as required by Section 5.01(c) of Notice 2005-10; or

(j) Discretionary contributions to a qualified profit sharing or stock bonus plan as described within Section 10.11 of Notice 2005-64.

ARTICLE VII
OTHER PROVISIONS

Section 7.1 **Term of Plan.** This Plan shall commence on the Effective Date and shall continue until an amount equal to the total Cash Dividends received pursuant to Article III hereof have been reinvested in accordance with Article V.

Section 7.2. **Plan Implementation.** Microsoft will implement this Plan subject to the subsequent approval by the Board.

Section 7.3 **No Amendment or Termination.** After the Effective Date, this Plan may not be amended or terminated until all Dividends received pursuant to Article

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III have been reinvested in accordance with Article V, except to the extent permitted by Treasury Department guidance for purposes of compliance with such guidance.

ARTICLE VII

Approval by Chief Executive Officer. By his signature below, the chief executive officer of Microsoft Corporation hereby certifies his approval of this Plan on the date set forth below.

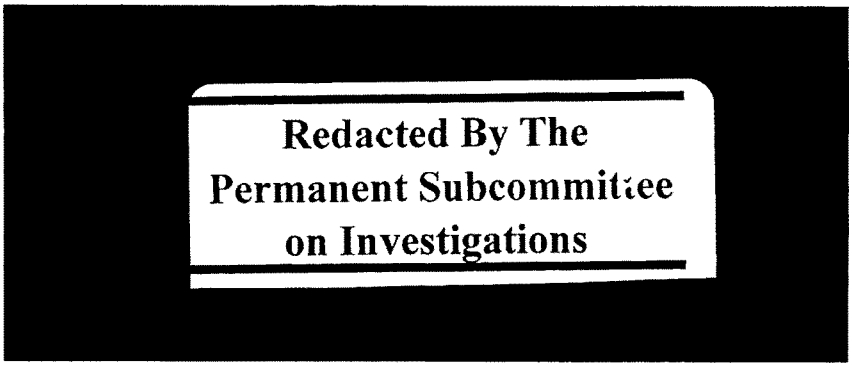
Steven A. Ballmer
Chief Executive Officer
Microsoft Corporation

Date of Approval: 5/25, 2006

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Excerpt from Oracle Corporation
Response To
Permanent Subcommittee on Investigations Survey
(2/17/09)



Q17.

Please provide any available data demonstrating how your corporation's amounts repatriated under section 965 have yielded a net increase in your corporation's U.S. jobs or a net increase in your corporation's U.S. research and development expenditures.

A17.

The answers to questions 11 and 12 show a positive correlation between amounts that Oracle repatriated and increases in Oracle's U.S. employment and research and development:

* In FY2004, the year before funds were repatriated, Oracle had 16,888 U.S. employees and spent approximately [redacted] in U.S. research & development.

* Four years later, Oracle had 26,581 US employees, a 57% increase, and spent approximately [redacted] in U.S. research and development, a 94% increase.

* Oracle's primary competitor in the software applications business is SAP AG (headquartered in Frankfurt, Germany). In FY2002, Oracle was 1/5th the size (measured by application sales) of SAP AG. By 2008, Oracle had closed the gap substantially and is now half the size of SAP AG.

As noted in Oracle's DRP, a portion of Oracle's repatriated funds was used in FY 2005 for two key acquisitions critical to Oracle's long-term growth and competitiveness internationally. For example, repatriated cash enabled Oracle to outbid and acquire Retek Inc., a Minnesota-based provider of retail software and services. SAP AG had made an offer to acquire Retek, and stated publicly that it intended to move Retek's development jobs and intellectual property to Germany. Oracle's successful acquisition of Retek had the immediate effect of retaining all of Retek's jobs in Minnesota and Georgia. Since the

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Retek acquisition, Oracle has increased by 50 percent its Retek related employment in Minnesota and Georgia.

Oracle's substantial net employment and research and development growth since FY2005 came at a time of significant growth in Oracle's sales internationally. Today, Oracle operates in 145 countries, and generates approximately 60% of its revenues from overseas license sales and support, contributing positively to the U.S. balance of trade.

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SCHEDULE A7

ORACLE'S DOMESTIC REINVESTMENT PLAN

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Schedule A7

ORACLE CORPORATION

SECTION 965 DOMESTIC REINVESTMENT PLAN

As of May 31, 2003, Oracle Corporation ("Oracle") had $3.1 billion of cumulative earnings indefinitely reinvested outside the United States ("2003 Cumulative Foreign Earnings"). Oracle's 2003 Cumulative Foreign Earnings are reflected in footnote 14 of Oracle's audited financial statements for the period ending May 31, 2003, which were certified by Ernst & Young LLP on June 12, 2003 (except for the second and fourth paragraphs of Note 17 and Note 18, which were certified on June 18, 2003), and filed with the SEC on June 24, 2003. In order to fund the objectives set forth in this Domestic Reinvestment Plan (the "Plan"), Oracle will cause Oracle Technology Company and Oracle Systems Hong Kong Limited, its wholly owned subsidiaries, to pay cash dividends equal to $3.1 billion during the fiscal year ending May 31, 2005 (the "Section 965 Dividends"). Oracle intends for the Section 965 Dividends to qualify for the Temporary Dividends Received Deduction under Section 965 of the Internal Revenue Code, enacted pursuant to the American Jobs Creation Act of 2004. This Plan is Oracle's plan to invest the Section 965 Dividends in the United States as required by section 965(b)(4).

Plan Objectives

During the period including Oracle's fiscal years ending May 31, 2005, May 31, 2006, May 31, 2007, and May 31, 2008, Oracle intends to use the cash proceeds from the Section 965 Dividends as a source of funding for the acquisition of U.S. capital investments. If Oracle later determines that it is not prudent to use the cash proceeds as a source of funding for capital investments, it will use the proceeds as a source of funding for (i) its U.S. payroll costs and/or (ii) its ongoing U.S. research and development efforts related to the development of software and related products and services.

Investments in the United States

Consistent with the Plan Objectives, Oracle intends to use the cash proceeds from the Section 965 Dividends as a source of funding for the following investments:

1. **Primary Investment in the United States**

United States Capital Investments. Oracle's Corporate Development group evaluates business opportunities for acquisitions of, and mergers with, other companies having complementary technology, products, and services. During the period including Oracle's fiscal years ending May 31, 2005, May 31, 2006, May 31, 2007, and May 31, 2008, Oracle plans to spend $3.1 billion on the acquisition of capital investments, including but not limited to the acquisition of PeopleSoft, Inc., which was completed on January 7, 2005, and the acquisition of Retek Inc., which was completed on April 12, 2005. The property acquired will include tangible assets located and used in the United States and/or rights to use intangible assets in the United States as supported by an

independent valuation of United States versus foreign assets. The acquisitions will be effected by direct acquisitions and/or indirect acquisitions through the purchase of 10% or greater interests in business entities that own such assets.

2. **Alternate Investment in the United States #1**

United States Payroll. During the period including Oracle's fiscal years ending May 31, 2005, May 31, 2006, May 31, 2007, and May 31, 2008, Oracle plans to spend $3.1 billion to compensate employees, agents, and contractors for services performed in the United States. Such costs include salaries, bonuses, commissions, and benefits, but do not include executive compensation and non-cash compensation. Such costs only include costs that are borne by Oracle.

3. **Alternate Investment in the United States #2**

United States Research & Development Program. During the period including Oracle's fiscal years ending May 31, 2005, May 31, 2006, May 31, 2007, and May 31, 2008, Oracle plans to spend $3.1 billion for research and development performed in the United States. Such costs only include costs that are borne by Oracle.

Implementation of the Plan

The Plan contains forward-looking statements that have not been publicly discussed as financial guidance with the investment community. Actual spending on each Plan Objective may vary from the anticipated spending.

The Plan will be implemented upon the receipt of approval from the Oracle Board of Directors.

* * *

Safra Catz, President

Date: 5/17/05

Excerpt from The Coca Cola Co.
Response To
Permanent Subcommittee on Investigations Survey
(2/13/09)

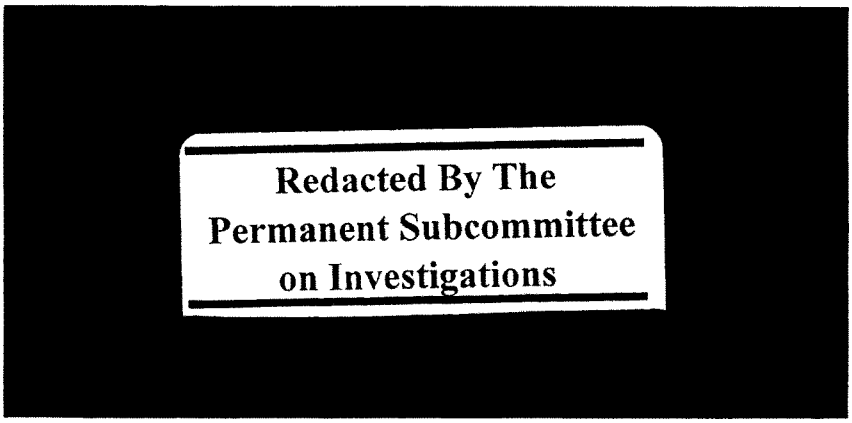
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Question 17:

We do not maintain data, and we have not made estimates, of how our U.S. jobs and U.S. research and development expenditures would have been different if amounts had not been repatriated under section 965. We note that employment increased from 2003 through 2007 and research and development increased in each of the years 2002 through 2007 except for 2005.

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #6

Excerpt from The Procter & Gamble Company
Response To
Permanent Subcommittee on Investigations Survey
(2/26/09)



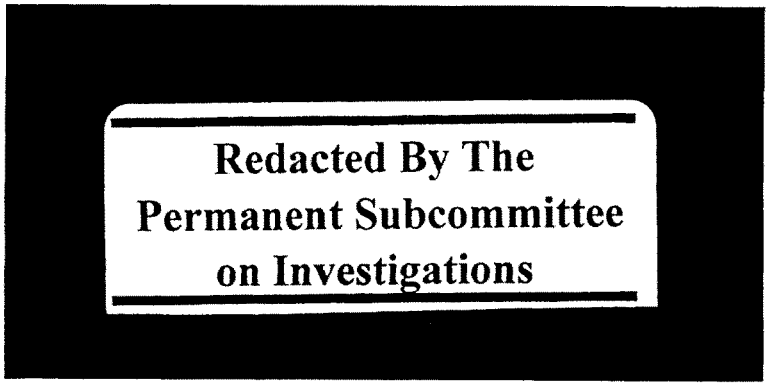
17. Please provide any available data demonstrating how your corporation's amounts repatriated under section 965 have yielded a net increase in your corporation's U.S. jobs or a net increase in your corporation's U.S. research and development expenditures.

Please refer to our responses to questions 11 and 12 above. We have no way to determine what the levels of employment or R&D spending may have been in the absence of 965. We did achieve our Domestic Reinvestment Plan significantly ahead of schedule.

We would note that P&G is not only a major engine of U.S. employment, but also a company that pays taxes in the United States at a level at least commensurate with the relative importance of the U.S. market to the company's worldwide business. For the fiscal year ended June 30, 2008, P&G's net sales in the United States accounted for approximately 40% of total net sales. No other individual country had net sales exceeding 10% of total net sales. The United States accounted for over 56% of P&G's book earnings before taxes. US taxes accounted for [redacted]% of P&G's worldwide income tax expense for the same year.

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #7

Excerpt from Schering-Plough Corporation
Response To
Permanent Subcommittee on Investigations Survey
(2/18/09)



17. **Please provide any available data demonstrating how your corporation's amounts repatriated under section 965 have yielded a net increase in your Corporation's U.S. jobs or research and development expenditures.**

Please see the answers to questions 11 and 12, which provide data on the increase in US jobs and US R&D spend over the period requested. The Company does not have data that estimates the amount of U.S. jobs or U.S. R&D expenditures that would have increased absent the enactment of section 965.

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #8

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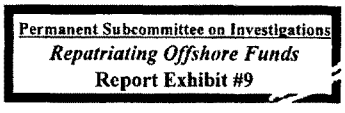
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Excerpt from Johnson & Johnson
Response To
Permanent Subcommittee on Investigations Survey
(2/24/09)

- While it is difficult to point to a direct connection between repatriation and jobs and research and development, when a company can access cash at a lower rate, it is placed in a much better position to capitalize on new business opportunities and investments in research and development to increase sales volumes. While we are not immune to changing market conditions, these investments enable our company to preserve jobs for the 43,000 U.S. people we employ today and to create new jobs for the future.

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[1]Unless otherwise indicated, all subsequent section references are to the Internal Revenue Code of 1986, as amended.



Offshore tax dodging hurts U.S. business

Michigan Midland Daily News
By Paul Egerman | Posted: Tuesday, June 7, 2011 7:00 am

When a company like General Electric pays little or no U.S. income taxes, it has troubling implications for domestic business and our entire society.

As a businessman and entrepreneur, I believe it is myopic tax policy to force domestic enterprises to compete on an unlevel playing field against companies that use offshore tax havens to relocate profits.

Our current upside down corporate tax system means that a U.S. manufacturer, insurance company, retailer, or technology firm must compete against another company based not on product quality and services, but on accounting gymnastics.

Many multinational companies use a gimmick called "transfer pricing," to represent that they've earned their profits at a subsidiary in an offshore tax haven nation like the Cayman Islands or Luxembourg, even though 99 percent of their operations and sales are not there.

This accounting game enables these shell subsidiaries to pay little or no corporate income tax, while the U.S. parent company represents to the IRS that they've lost money on their U.S. operations. A recent estimate of revenue lost due to this tax dodging dance is $90 billion a year, an amount approaching the total budget gaps of all U.S. states combined.

This is only one example of the exotic loopholes that U.S. multinational corporations utilize that put domestic employers at an unfair disadvantage.

It is simply wrong that a U.S-based multinational company is able to report profits to their shareholders and losses to Uncle Sam.

When General Electric or Boeing or Phizer deploy armies of accountants to game their tax bill down, it simply means the rest of us are left responsible for the bill.

And now, a coalition of global corporations is calling for a tax holiday so they can bring home over $1 trillion profits that they parked offshore without paying the same corporate income rate that most domestic companies pay. Congress' Joint Committee on Taxation estimates this move would cost the U.S. $80 billion over ten years.

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Repatriating Offshore Funds
Report Exhibit #10

Aggressive tax avoidance raises the question of what kind of country we want to have and who is going to pay for it.

To make our views public, hundreds of business owners and CEOs like me have signed a statement calling for the end of tax haven abuse. We welcome other business people and investors to sign at the website, www. businessagainsttaxhavens.org.

There are millions of U.S. business people in this country who work extremely hard to reach customers, provide better services, build better widgets - and pay their local, state and federal taxes. When times are lean, we don't look to our accountant to bring home the bacon.

Paying our fair share of business taxes is the price we pay not only to live in a civilized society, but also a reasonable levy to conduct business in a vibrant, regulated marketplace with property rights protections, public infrastructure, and the rule of law.

If companies like General Electric want to enjoy the fruits of this taxpayer funded business environment, then they should end their aggressive tax avoidance and take responsibility for paying their fair share.

The bills have to be paid - and no one should be able to opt out simply because they are politically connected and big. It undermines the entire system of government and is reprehensible that some corporations pay nothing toward the range of public goods that includes Centers for Disease Control, homeless shelters, and schools for our kids.

As a business owner and as an individual, I never resented paying taxes, as long as we had a relatively level playing field. The price we pay is not excessive.

In the 1970s, I paid a much higher percentage of my income than I do today. Even compared to President Reagan's 1980 tax reform, the effective rate of my personal income taxes is dramatically less today. At the same time, the share of U.S. taxes paid by corporations is at an historical low because of subsidies, loopholes and other tax avoidance strategies.

Congress should not allow a tax holiday for offshore tax dodgers and instead should pass legislation like the Stop Tax Haven Abuse law that would be a huge step toward leveling the corporate tax playing field.

Paul Egerman is a successful entrepreneur, based in Boston, who has started two health information technology companies, including eScription.

THE HILL

THE HILL'S Congress Blog
Where law makers come to blog

A Charlie Brown Congress?

By Frank Knapp Jr. - 06 [illegible] 11 02:10 PM ET

Lucy is at it again. "I'll hold the ball, and you come running and kick it," Lucy tells Charlie Brown.

We all know what to expect. Charlie Brown will run to kick the football and Lucy will pull it away...again. Charlie will fall flat on his back.

This gag is playing out right now in Congress. U.S. multinational corporations (aka Lucy) are holding hundreds of billions of dollars in profits overseas to avoid paying U.S. taxes. They want Congress (aka Charlie Brown) to let them bring those dollars back to the U.S. without paying hardly any taxes (Congress committing to kick the ball) in the belief they will invest them in production and hiring here at home (the football flying through the air instead of Charlie).

This process is called a "repatriation tax holiday" and, just as in the Peanuts cartoon, Congress has seen this before.

In 2004, most of the same multinational corporations made the same offer. Even the Bush administration thought it was a bad idea and said it would be unfair to companies who had "already paid their full and fair share of tax" and "would not produce any substantial economic benefits."

Still, Congress agreed to a "one-time-only" repatriation run at the ball. But instead of using their almost tax-free billions for hiring and investing here, companies like Hewlett-Packard, Pfizer, Ford Motor Company, Merck and Honeywell International gave big windfalls to their corporate owners and shareholders in stock buybacks and dividends while laying off tens of thousands of American workers.

The National Bureau of Economic Research found that the tax holiday did not increase domestic investment, employment or research and development. Instead, they found, a dollar increase in repatriated earnings was associated with an increase of almost a dollar in payouts to shareholders.

It's not that Congress has amnesia about this failed tax policy, as some have suggested. Charlie Brown remembers Lucy's trick all too well.

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Report Exhibit #11

"You must think I'm stupid," Charlie Brown tells Lucy in the Great Pumpkin episode. But Lucy persists, "This time you can trust me. See, here is a signed document testifying that I promise not to pull it away."

Tax holiday advocates say this time the legislation will really guarantee that the repatriated profits will be used to invest and create jobs in America.

Charlie Brown, in spite of all of us yelling, "Don't do it," gives in. "It's a signed document," he says. "I guess if you have a signed document in your possession, you can't go wrong. This year I am really going to kick that football."

"AAUGH!"

Lucy pulled the football away with the excuse the document wasn't notarized.

There's no foolproof way of writing legislation to stop corporations from behaving the way they did in 2005. And the reality is that the corporations don't really need the repatriated profits to invest and create jobs here. As conservatively calculated by the Center on Budget and Policy Priorities from company financial statements, the ten corporations doing the heaviest tax holiday lobbying (Adobe Systems, Apple, CA Technologies, Cisco, Duke Energy, Google, Microsoft, Oracle, Pfizer and Qualcomm) have at least $47 billion in cash and other liquid assets readily available for domestic investment and job creation right now.

When Lucy suckers Charlie Brown more than once, she knows that she can do it again and again.

Giving U.S. multinational corporations another "repatriation tax holiday" will encourage them to shift even more of their profits into offshore tax havens until the next time they trick Congress to try and kick the ball. As a result, our country's deficit will increase when an estimated $79 billion more in corporate taxes is not collected over the next 10 years according to Congress's Joint Committee on Taxation. That means the rest of us will continue to pay more than our fair share for the essential services of government.

These big corporations benefit immensely from all the advantages of being headquartered in our country. They need to start paying their taxes just as every citizen and small business does.

That's why Congress should listen to our raised voices: "Don't do it, Charlie Brown!"

Frank Knapp Jr. is the president and CEO of The South Carolina Small Business Chamber of Commerce.

Source:
http://thehill.com/blogs/congress-blog/economy-a-budget/169051-a-charlie-brown-congress

Letter to Congress: No Tax Holiday for U.S. Multinationals

June 14, 2011

Dear Senators and Representatives,

As business organizations with small business members throughout the United States, we call upon Congress to reject pleas by U.S. multinational corporations for short and long-term tax holidays on profits held offshore, and to instead close the tax loopholes that reward companies for transferring U.S. profits, jobs and investment abroad.

Too many corporations have turned their tax departments into profit centers, using aggressive accounting manipulation to disguise U.S. profits as foreign profits. This is done for the express purpose of avoiding tax payments. Now we find a coalition of corporate tax avoiders demanding a tax holiday in order to bring home the funds they shifted offshore to avoid paying taxes. This proposed "repatriation" would not be a win for America. It would cost the U.S. Treasury $80 billion according to the Joint Committee on Taxation and increase pressure to cut government spending on services our businesses depend on. We also oppose changing to a territorial tax system, which would accelerate the use of aggressive accounting techniques to shift domestic profits to overseas tax havens, permanently rewarding those who seek to avoid their taxpaying responsibilities.

Bloomberg Business Week recently illustrated examples of this tax avoiding behavior: Forest Laboratories "sells nearly 100 percent of its drugs in the U.S. – and cuts its U.S. taxes dramatically by attributing the bulk of its profits to a law office in Bermuda. ... Google reduced its income taxes by $3.1 billion over three years by shifting income to Ireland, then the Netherlands, and ultimately to Bermuda." We need to stop this irresponsible tax avoidance, which undermines the U.S. economy, and assure that all businesses play by the same tax rules.

There is simply no excuse for repeating a policy that's a proven failure. In 2004, a corporate "repatriation tax holiday" was passed with the promise of stimulating domestic investment and creating jobs in the United States. Instead, studies showed that the beneficiaries of the tax holiday used their repatriated earnings to give a huge windfall to corporate owners and shareholders – including many CEOs – in the form of stock buybacks and dividends. For example, the National Bureau of Economic Research found that *a dollar increase in repatriated earnings "was associated with an increase of almost $1 in payouts to shareholders."* In the wake of the tax holiday, U.S. multinationals eliminated more American jobs and shifted even more income and investment to offshore tax havens.

Corporate taxes, like individual income taxes, support the public services and infrastructure upon which all businesses depend. These include a publicly educated workforce, transportation systems, safe drinking water and sanitation, the judicial system, taxpayer-funded research (which played a crucial role in health advances and the creation of the Internet, for example), federal emergency response and so on. But, the public services and infrastructure underpinning a healthy economy are now being cut dramatically because of inadequate revenues.

When powerful large U.S. corporations avoid their fair share of taxes, they undermine U.S. competitiveness, contribute to the national debt and shift more of the tax burden to domestic businesses, especially small businesses that create most of the new jobs. A transparent corporate tax system that assures all companies – large and small – pay for the services upon which our businesses, our customers, our workforce and our communities depend, would help restore the economic vitality and domestic job creation we all seek.

Permanent Subcommittee on Investigations
Repatriating Offshore Funds
Report Exhibit #12

Sincerely,

Holly Sklar
Executive Director
Business for Shared Prosperity

Frank Knapp, Jr.
President and CEO
The South Carolina Small Business Chamber of Commerce

Sam Blair
National Director
Main Street Alliance

David Levine
Executive Director
American Sustainable Business Council

Wendy Rosen
Founder
American Made Alliance

Alisa Gravitz
Executive Director
Green America

Rudy Arredondo
President
National Latino Farmers and Ranchers Trade Association

Mike Lapham
Project Director
Responsible Wealth

Deborah Nelson
Executive Director
Social Venture Network

Mark McLeod
Executive Director
Sustainable Business Alliance

Alison Goldberg
Coordinator
Wealth for Common Good

Nate Libby
Director
Maine Small Business Coalition