Center for American Progress Action Fund

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MEMORANDUM
April 5, 2018

To: Interested Parties
From: Center for American Progress Action Fund
Re: New analysis shows that many Members of Congress cut their own taxes at their constituents' expense

An analysis of the public financial disclosure reports filed by Members of Congress reveals that many Members of Congress who wrote and voted for the new tax law will benefit substantially from it.

At the end of 2017, the Republican majority in Congress rushed through a sweeping, $1.5 trillion tax bill. They jammed the bill through in just seven weeks without holding a single public hearing on the legislation in either chamber, preventing thorough public scrutiny. One of the costliest provisions of the bill creates a special new tax preference for business income earned through passthrough entities, such as partnerships, S-corporations, and limited liability companies (LLCs). This new loophole will reduce revenues by more than $400 billion over the next decade, with the benefits flowing overwhelmingly to wealthy business owners. Along with the massive tax cuts for corporations, the passthrough deduction is also one of the major reasons the bill cuts taxes much more for billionaires and business owners than regular workers.

During the rushed and untransparent legislative process, the new passthrough tax break went through several changes. In the original bill emerging from the House Ways and Means Committee, the tax rate on passthrough income would have been capped – slashing the tax rate for top-bracket owners of passthrough entities from 39.6 percent to a maximum of 25 percent. The Senate bill transformed the passthrough tax break into a deduction against taxable income, effectively cutting the top rate on passthrough income to 29.6 percent.

The final legislation largely adopted the Senate's passthrough deduction, but with a significant change made at the last-minute in the conference committee that especially benefitted wealthy real estate investors. The Senate-passed version would have limited the benefits of the passthrough deduction according to a business's payroll (the "wages paid limit") – significantly restricting the benefit for businesses without substantial payrolls. But a last-minute change in the House-Senate conference committee provided an alternative limitation based mainly on the business's assets (the "wages paid and capital limit"), one that benefitted real estate firms in particular. This last-minute change was unveiled on a Friday evening, December 15, just days before the final votes, and became known as the "Corker Kickback" when Senator Bob Corker of Tennessee, who owns millions in real estate assets, suddenly switched his vote to support final passage of the tax bill. President Trump, himself an owner of a passthrough real estate empire, signed the legislation into law on December 22.

Regular workers who work as employees are not eligible for the passthrough deduction. Small business owners can potentially claim it but must navigate a thicket of confusing new rules. But the deduction will provide enormous windfalls for wealthy investors in passthrough entities.

A new analysis by the Center for American Progress Action Fund (CAPAF) reveals that many Members of Congress who promoted and voted for the tax bill stand to benefit substantially from the new passthrough tax break. Some of these Members played key roles in the development and passage of the bill, including:

- Several Members of the Committees that wrote the bill (House Ways and Means and Senate Finance), including Reps. Vern Buchanan (FL), Diane Black (TN), Kenny Marchant (TX), and Carlos Curbelo (FL), Tom Reed (NY), Mike Kelly (PA), Jim Renacci (OH), Tom Rice (SC), and Sen. Rob Portman (OH).
- Sens. Ron Johnson (WI) and Steve Daines (MT), who negotiated an increase in the passthrough tax deduction in exchange for their votes, which proved decisive in the passage of the Senate's bill.
- Sen. Bob Corker, who after promising to oppose any tax bill that added "one penny to the deficit," voted for final passage of the bill, which included the last-minute change making the passthrough deduction more generous for real estate investors like him – and which adds at least $1.5 trillion to deficits.

CAPAF's analysis is based on income reported on members' personal financial disclosures for 2016. The analysis identifies passthrough business income based on the name of the entity (for example, those identified as LLCs, partnerships, or S-corporations, or those that are identifiable as Real Estate Investment Trusts or Master Limited Partnerships) and type of income listed on the form (for example, "K-1" income, "partnership income," "S-corp income," "business income," or "rent"). It disregards income from entities that appear to fall within the category of "specified service businesses" under the new law – such as those that provide legal, medical, or financial services – since their owners are ostensibly ineligible for the deduction above certain income thresholds.[1] For members with income that would clearly place them in the highest tax bracket, CAPAF's analysis assumes they will receive 10 percentage point reduction in tax on passthrough income (from 39.6 percent to 29.6 percent); for other members who are more likely in lower tax brackets, the analysis assumes a 7.65 percentage point reduction (reflecting the average reduction in marginal tax rates on passthrough income in the middle tax brackets). Below, we estimate the Members of Congress's potential tax cut based on the high-end of the range on the financial disclosure.

The assets and income amounts reported on congressional financial disclosures indicate which Members of Congress stand to benefit from the new passthrough deduction and provide a range of the amount of their windfall. But Members of Congress typically do not disclose their tax returns - and without an individual's tax return and more complete information about their business interests, it is not possible to know precisely how much of a tax cut they stand to receive under the new legislation, for several reasons. First, the income amounts reported on the financial disclosure are mainly given as ranges, not precise amounts, and the amounts given are not necessarily the same as federal taxable income. This is especially the case for rental income from real estate assets, where financial disclosure filers are instructed to report gross income amounts.[2] The income that the Members of Congress reported for 2016 may, of course, be higher or lower in 2018 and future years. The analysis estimates the potential tax cut from the passthrough deduction, notwithstanding possible limitations on the deduction including from the wages paid and wages paid/capital limits.

Finally, this analysis focuses only on one central element of the tax legislation: the new passthrough deduction. It is also not possible to know how other changes in the bill would affect a particular individual's tax liability. In general, however, this would tend to underestimate the tax cut that wealthy Members of Congress receive, since wealthy and high-income individuals benefit disproportionately from other changes in the bill, including the corporate and estate tax cuts, the reduction in the top rate on ordinary income, the reduction in the Alternative Minimum Tax, and the changes to the Child Tax Credit (which now phases out above $400,000 of adjusted gross income for couples, up from $110,000) -- though other aspects of the bill could cut the other way. The median Member of Congress has a net worth five times that of the median American household, according to Roll Call's analysis of financial disclosures. Financial disclosures show that many Members of Congress own substantial amounts of corporate stock, and are therefore primary beneficiaries of the new tax law's massive corporate tax cuts, but we have not attempted to quantify the benefit to them.

Potential Tax Cut from Passthrough Business Deduction		
District/State	**Member of Congress**	**Estimated Tax Cut Based on Top of Reported Income Range**
AL-3	Mike D. Rogers	$15,300
AZ-4	Paul Gosar	$7,650
CA-1	Doug LaMalfa	$7,650
CA-10	Jeff Denham	$110,500
CA-21	David Valadao	$1,000,000
CA-42	Ken Calvert	$31,174
FL-15	Dennis A. Ross	$100,000
FL-16	Vern Buchanan	$2,131,750
FL-17	Tom Rooney	$600,250
FL-2	Neal Dunn	$19,316
FL-26	Carlos Curbelo	$106,500
GA SEN	Johnny Isakson	$17,500
GA-12	Rick W. Allen	$203,000
GA-9	Doug Collins	$7,650
IA SEN	Chuck Grassley	$9,121
ID SEN	James Risch	$14,153
IN-5	Susan W. Brooks	$106,500
IN-9	Trey Hollingsworth	$4,566,500
KS SEN	Pat Roberts	$8,798
KS-1	Roger Marshall	$128,100

MI-10	Paul Mitchell	$3,000
MI-11	Dave Trott	$640,000
MI-3	Justin Amash	$105,000
MO-4	Vicky Hartzler	$26,354
MT SEN	Steve Daines	$422,000
MT-1	Greg Gianforte	$20,100
NC-13	Ted Budd	$100,000
ND SEN	John Hoeven	$136,180
NV-SEN	Dean Heller	$4,991
NY-23	Tom Reed	$7,650
NY-27	Chris Collins	$446,500
OH SEN	Rob Portman	$69,550
OH-16	James B. Renacci	$330,100
OH-8	Warren Davidson	$100,100
PA-10	Tom Marino	$15,300
PA-11	Lou Barletta	$7,650
PA-12	Keith Rothfus	$7,650
PA-3	Mike Kelly	$15,100
SC-1	Mark Sanford	$12,049
SC-3	Jeff Duncan	$14,038
SC-7	Tom Rice	$230,250
TN SEN	Bob Corker	$704,883
TN SEN	Lamar Alexander	$110,349
TN-6	Diane Black	$1,045,000
TX-14	Randy Weber	$9,945
TX-21	Lamar Smith	$15,683
TX-24	Kenny Marchant	$108,271
WI SEN	Ron Johnson	$205,000
Addendum: House Speaker Paul Ryan based on 2011 Tax Returns[3]		
WI-1	Paul D. Ryan	$19,156

1. We note, however, that many owners of such firms are restructuring their businesses to exploit potential loopholes in the new law to obtain the lower passthrough or corporate rates. See, e.g., Ruth Simon and Richard Rubin, "Crack and Pack: How Companies Are Mastering the New Tax Code," Wall St. Journal, April 3, 2018, https://www.wsj.com/articles/crack-and-pack-how-companies-are-mastering-the-new-tax-code-1522768287; David Kamin et al, "The Games They Will Play: Tax Games, Roadblocks, and Glitches Under the New Legislation" (last revised Feb. 20, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3084187.

2. See the instructions for reporting real estate and ownership interests in privately-held partnerships, corporations, and other business entities. https://ethics.house.gov/sites/ethics.house.gov/files/Instructions.pdf. Senate instructions likewise call for reporting of gross income amounts, See: https://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=A7DF33C2-4B72-40D0-A3C9-25FAD4B04760.

3. https://twitter.com/SethHanlon/status/959885446867189761