

Opening Statement of Senator Tom Coburn
“Compliance with Tax Limits on Commodity Speculation”
January 26, 2012

I want to start by thanking Sen. Levin and his staff for keeping a vigilant eye on matters related to the tax code. Today’s hearing is a great opportunity to look at the tax treatment of mutual funds that invest heavily in commodities.

Over the years, this subcommittee has spent a lot of time looking at commodity investments, which is more relevant than ever. Everyday investors increasingly want commodities in their portfolios, and are looking to buy them in record amounts.

Commodities are so popular, in fact, that it’s hard to drive down the street without hearing commercials offering the chance to buy gold.

For its part, the market has responded by providing ways to do just that. There are now dozens of ETF’s and mutual funds that concentrate on commodities, with billions under management.

That reason for the interest in commodities is not a complete surprise. As an asset that generally grows at the rate of inflation, many invest in commodities as a hedge to protect what they’ve earned.

Moreover, inflation is becoming a very real and looming threat. It is a silent tax increase that eats away the value of our money and drives up the price of the things we buy.

Unfortunately, one of the main sources of inflation is our government. The Federal Reserve is printing trillions of dollars while Congress is adding \$1 trillion a year to the debt. Until we can take a substantial bite out of our \$15 trillion debt, inflation concerns are not going away. With it, interest in commodities is not likely to go away, either.

Our hearing today is focused on one of the most popular ways to buy commodities, and that is mutual funds.

Commodity mutual funds came under increased scrutiny after the IRS temporarily suspended its program for issuing private letter rulings this past summer. Private letter rulings are an ad hoc way for the IRS to approve of the various tax structures used to set up these funds. They have been necessary because Congress has failed to pass clear and simple tax reform for the past 25 years.

The private rulings effectively allow mutual funds to use creative structures to facilitate commodity investments that would otherwise not be allowed. And because of this some see these private rulings as a way to help mutual funds get around legal prohibitions. Even more, some are concerned that as these rulings let mutual funds increase these investments, it can lead to excessive speculation into commodities.

By calling a timeout, the IRS has given us a useful opportunity to talk about how to resolve these important matters. As we move forward, though, I would propose we keep in mind a number of points.

First, there is a difference between tax *avoidance* and tax *evasion*. Avoiding taxes is both legal and acceptable. Evading taxes is wrong and should be prosecuted. Under current law, the practices used by mutual funds are entirely legal, and even blessed by the IRS. This means we are left with a question of policy, not a question of compliance with the law.

Second, we still do not have a working definition of “excessive speculation.” While I believe that excessive speculation is a real problem, defining it is a challenge. Until we can do so with some accuracy, both Congress and the IRS should be careful in writing new rules restricting the private investments of ordinary Americans.

Third, we need to stay focused on the big picture. It is doubtful that we would be having this conversation if our federal budget was under control. The damage we have done, and continue to do, to our economy is driving people to seek even the small returns offered by commodities. If our economy was growing, money would quickly flow back into the capital markets. Unfortunately, too many decisions by the government seem to work against this.

For my part, I have offered a plan called *Back in Black* that would achieve \$9 trillion in savings over the next decade. They would go a long way toward solving issues like the one we face today.

Again, I believe this hearing is an important opportunity to discuss concerns about the tax treatment of commodity mutual funds. Hopefully we will be closer to a productive solution by the time we finish. I plan to keep an open mind as we consider various options.

I look forward to hearing from our witnesses.