

Levin Floor Statement on Cut Unjustified Tax Loopholes Act

Monday, February 11, 2013

Mr. President, today with Senator Whitehouse I am introducing the Cut Unjustified Tax Loopholes Act, or CUT Loopholes Act. This bill outlines what I believe is a crucial element to the solution to our fiscal problems. It would raise revenues to reduce our deficits and preserve critical programs by cutting loopholes in our tax code that allow multinational corporations and wealthy individuals to avoid paying their fair share of the tax burden.

We are just weeks away from sequestration, a collection of mindless, across-the-board cuts that will severely harm our economy, undermine our national security, and threaten our programs vital to seniors, children, middle class families, workers and businesses. These cuts will hurt every single American.

I have said repeatedly for more than two years now that any deficit reduction effort must pass the test of balance. Balanced deficit reduction requires three elements: cuts to discretionary spending, additional revenues, and entitlement reforms. So far, we have enacted \$2.4 trillion in deficit reduction. But the vast majority of the deficit reduction achieved so far – more than \$1.7 trillion – has come from spending cuts. So while further cuts may be necessary, we must renew our focus on the other two categories: additional revenues and entitlement reforms. The CUT Loopholes Act can help us produce the required revenue. According to estimates from the Joint Committee on Taxation, this legislation would yield at least \$189 billion in deficit relief.

I hope no member of this body doubts the damage sequestration would do to our nation and its people. The Congressional Budget Office warned us just last month that enactment of these cuts would likely reduce GDP growth by 1.25 percentage points. George Mason University economist Stephen Fuller has estimated that these cuts would, in this year alone, reduce GDP by \$215 billion and cost the jobs of 2.14 million American workers.

Tomorrow, the Armed Services Committee will meet to hear from Defense Department officials and the members of the Joint Chiefs of Staff on the potential effects of sequestration on our national security. Just last week, in his final appearance before our committee as Secretary of Defense, Secretary Panetta warned us of a “readiness crisis” that would impair our forces' ability to respond to crisis.

Sequestration also will prevent investments to protect us in emerging areas of concern such as cybersecurity. It will threaten our ability to keep faith with the most important national security asset we possess: the men and women of our military and their families.

And Secretary Panetta has pointed out that sequestration's ills will not be limited to defense. In a speech last week, he said, "It's not just defense, it's education, loss of teachers, it's child care. ... It's about health care, 700,000 women and children will no longer receive nutritional assistance. It's about food safety, it's about law enforcement, it's about airport safety."

I am introducing the CUT Loopholes Act today with Sen. Whitehouse to protect those and other important priorities.

Over the last fifty years, federal revenues have averaged approximately 18 percent of GDP. Over that time, our budget has been balanced only a handful of years. Each of those years with a balanced budget, revenues exceeded 19.5% of GDP. But in recent years, revenues have fallen off to about 15 percent of GDP.

One significant factor in our revenue shortfall is a massive plunge in the share of the tax burden borne by corporations. Corporate tax revenue amounted to as much as 7 percent of GDP in the 1950s, and 2.7 percent of GDP just seven years ago. In 2012, it amounted to just 1.2 percent of GDP.

Corporations today pay an average tax rate of just 12 percent. How is that possible, when the statutory tax rate on corporations is 35 percent? Through loopholes in the tax code.

One of the key abuses is when companies use various gimmicks and tax loopholes to shift their assets and profits offshore. The Permanent Subcommittee on Investigations, which I chair, has spent more than a decade investigating offshore loopholes. We have shown how companies such as Enron used offshore schemes to avoid billions of dollars in taxes. Just last year, we showed how companies such as Microsoft and Hewlett-Packard exploited tax rules to avoid taxes on billions of dollars in income – income even on products developed in the United States and sold in the United States to U.S. customers. They often do so by transferring intellectual property rights and other intangible property developed in the United States to wholly owned subsidiaries in tax havens, thereby avoiding U.S. tax.

How big is the problem? According to the Congressional Research Service, American multinationals in 2008 claimed to have earned profits in Bermuda amounting to 1,000 percent of Bermuda's GDP. Multinationals reported earning more than 40 percent of their offshore profits in five tax haven countries, despite the fact that just 4 percent of their overseas workforces and 7 percent of offshore investments were located in those five tax havens.

The CUT Loopholes Act would end abuse of so-called "transfer pricing" agreements that allow companies to transfer revenue from products developed in the United States to tax haven countries. It would strengthen enforcement tools so that our tax authorities can investigate and rectify tax avoidance offshore. It would end the taxpayer-funded subsidy to corporations for expenses in moving jobs and operating facilities overseas. It would stop corporations from manipulating rules on foreign tax credits to avoid taxes. It would end the "check the box" loophole that allows multinationals, by the stroke of a pen, to cloak offshore income from taxation.

Here at home, the CUT Loopholes Act would eliminate a loophole that allows large corporations to exploit what is in effect a federal subsidy that helps pay for the compensation awarded to their executives. When companies award stock options to their top executives, they are allowed under law to record that expense in two different ways. They report one amount to their investors on their annual financial reports. But they can report a much larger expense – often orders of

magnitude larger – to the IRS, and claim a tax deduction for that much larger claimed expense. One company, Facebook, used this loophole as part of its initial public offering last year. Facebook will use this loophole to claim a \$16 billion tax deduction. It then would seek a half-billion dollar tax refund for taxes paid in past years, and then avoid taxes for up to many years into the future. That's just one company.

This legislation also would end two Wall Street tax loopholes. It would end the derivatives blended rate loophole, which gives preferential tax treatment, in the form of the long-form capital gains rate, for speculative trades in certain derivatives, derivatives sometimes bought and sold in fractions of a second. It would also close the carried-interest loophole, which allows hedge fund managers to pay a lower capital gains rate on the compensation they receive for managing money, while everyone else must pay the higher ordinary income tax rate on pay for the work they do.

Another loophole the CUT Loopholes Act would address is in the energy sector. Because of a three-decade-old IRS decision, oil produced from tar sands, as opposed to traditional oil extraction, is not subject to the tax that funds the Oil Spill Liability Trust Fund. If spilled into the environment, oil produced from tar sands is just as damaging as oil produced by other means, as residents along the Kalamazoo River in Michigan learned in 2010. Cleanup of that oil spill is still under way nearly three years later. Surely producers of oil from tar sands should help contribute to the costs of cleaning up these spills—just like producers of other oil must do.

The CUT Loopholes Act also would tighten rules that combat tax-shelter promoters, stiffen penalties on those who aid companies or individuals who seek to shirk their fair share of the tax burden, strengthen our ability to collect taxes from tax avoiders when we catch them, and modernize the IRS tax lien process.

I know these issues can be complicated. But the American people are seeing through that complexity.

According to a survey completed just last month, two thirds of Americans believe corporations need to bear a larger share of the tax burden. Eight in 10 say closing corporate tax loopholes should be an important priority for Congress. Seventy-three percent approve of efforts to stop corporations and individuals from avoiding taxes by shifting income offshore. Sixty-three percent approve of ending the stock-option loophole. Not only do the American people want us to close these loopholes, but they know where the revenue we gain should go. Eighty-three percent want such revenue to go to deficit reduction and public investments, compared to just 11 percent who think it should be used to reduce corporate tax rates. Americans of all political persuasions hold that view, including nearly eight in 10 Republicans.

Americans support these reforms not just because of the great fiscal challenges before us. People recognize that these loopholes are not fair. They are wrong in every sense that a policy can be wrong – wrong fiscally, wrong economically, wrong ethically.

Even if one disagrees with the American people, and sees these egregious loopholes as somehow justified, how can one argue that preserving them is more important than avoiding the damage of

sequestration? How are these loopholes more important than preventing a recession caused not by the ups and downs of the economic cycle or by the reckless behavior of financial speculators, but by sequestration?

I offer these ideas in the genuine belief that they can help bridge the gap, and in the urgent belief that we cannot leave that gap unbridged. I urge my colleagues to adopt them for the good of the millions of Americans whose prospects will dim if we cannot reach agreement.