

**WRITTEN TESTIMONY  
OF THE STAFF  
OF THE  
JOINT COMMITTEE ON TAXATION  
WITH RESPECT TO  
CERTAIN PROVISIONS OF H.R. 2292  
(the "Internal Revenue Service Restructuring  
and Reform Act of 1997")**

**Presented by**

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of the  
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**Before a Hearing of the  
Committee on Ways and Means**

**JCX-45-97  
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Mr. Chairman, I want to thank the Committee for inviting me to testify today in my capacity as Chief of Staff of the Joint Committee on Taxation. It is my pleasure to present the testimony of the staff of the Joint Committee on Taxation at this hearing concerning the proposals to restructure the Internal Revenue Service ("IRS") and improve Congressional oversight over the operations of the IRS. I have been asked to limit the scope of my remarks to those proposals that would alter or clarify the role of the Joint Committee on Taxation.

There are two principal proposals under consideration at this time. H.R. 2292, introduced by Reps. Rob Portman (R-OH) and Ben Cardin (D-MD), embody the recommendations of the National Commission on Restructuring the IRS. H.R. 2428, introduced by Reps. Charles Rangel (D-NY), William Coyne (D-PA), Steny Hoyer (D-MD), Henry Waxman (D-CA), and Robert Matsui (D-CA), would codify an Administration proposal implemented by the President through Executive order 13051. As H.R. 2428 contains no specific proposals impacting the operations of the Joint Committee on Taxation, my testimony will be limited to discussing the provisions of H.R. 2292 that affect the Joint Committee.

## **I. History of the Joint Committee on Taxation**

The Joint Committee on Taxation was originally created in 1926 to have a significant and ongoing role in the oversight of the entire Federal tax system, in general, and the administration of the Federal tax system by the IRS specifically. In fact, the history of the creation of the Joint Committee on Taxation provides some interesting background on why the Congress was concerned with this oversight. The Joint Committee on Taxation was originally created because of concerns in the Congress that the IRS was not properly administering the internal revenue laws and that the IRS was being improperly influenced by political appointees in the Treasury Department. In 1924, Senator James Couzens introduced a resolution in the Senate for the creation of a Select Committee to investigate the Bureau of Internal Revenue. At the time, there were reports of inefficiency and waste in the Bureau and allegations that the method of making refunds created the opportunity for fraud. One of the issues investigated by the Select Committee was the valuation of oil properties. The Committee found that there appeared to be no system, no adherence to principle, and a total absence of competent supervision in the determination of oil property values.

In 1925, after making public charges that millions of tax dollars were being lost through the favorable treatment of large corporations by the Bureau, Senator Couzens was notified by the Bureau that he owed more than \$10 million in back taxes.<sup>1</sup> Then-Treasury Secretary Andrew Mellon was believed to be personally responsible for the retaliation against Senator Couzens. At the time, Treasury Secretary Mellon was the principal owner of Gulf Oil, which had benefited from rulings specifically criticized by Senator Couzens.

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<sup>1</sup> According to Esquire magazine, the internal revenue commissioner personally handed to Senator Couzens a bill for \$10 million. Berendt, John, *The Tax Audit*, Esquire, February 1994, p. 18.

The investigations by the Senate Select Committee led, in the Revenue Act of 1926, to the creation of the Joint Committee on Internal Revenue Taxation.<sup>2</sup> The first Chief of Staff of the Joint Committee on Internal Revenue Taxation was L.H. Parker, who had been the chief investigator on Senator Couzens' Select Senate Committee. The Revenue Act of 1926 defined the duties of the Joint Committee on Taxation, which have remained essentially unchanged since that time.

## II. Duties and Powers of the Joint Committee on Taxation

Under the Internal Revenue Code, the Joint Committee on Taxation is required to (1) investigate the operation and effects of the Federal system of internal revenue taxes; (2) investigate the administration of such taxes by the IRS or any executive department, establishment, or agency charged with their administration; (3) make such other investigations in respect of the Federal system of taxes as the Joint Committee may deem necessary; (4) investigate measures and methods for the simplification of the Federal tax system, particularly the income tax, and to publish from time to time various simplification proposals; and (5) report, from time to time, to the Committee on Finance and the Committee on Ways and Means and, in its discretion, to the Senate and the House of Representatives, the results of its investigations, together with recommendations.<sup>3</sup> In addition, the Congressional Budget Act of 1974, as amended, provides that the revenue estimates of the Joint Committee on Taxation shall be the sole revenue estimates used by the Congress.<sup>4</sup>

Under present law, the Joint Committee on Taxation has broad powers under the Internal Revenue Code.<sup>5</sup> These powers include the power (1) to obtain data and inspect tax returns; (2) to hold hearings; (3) to require by subpoena (issued under the signature of the chairman or vice chairman) the attendance of witnesses and the production of books; (4) to administer oaths; (5) to take testimony; (6) to procure such printing and binding as it deems necessary; (7) to make such expenditures as it deems necessary; and (8) to secure information, suggestions, rulings, data, estimates, and statistics from the IRS or any other executive agency for the purpose of making investigations, reports, and studies relating to internal revenue taxation. The IRS, the Chief Counsel for the IRS, and all agencies are authorized and directed to furnish information, suggestions, rulings, data, estimates, and statistics to the Joint Committee (or the Chief of Staff of the Joint Committee) upon request.<sup>6</sup>

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<sup>2</sup> The name of the Joint Committee on Internal Revenue Taxation was changed to the Joint Committee on Taxation in the 1970's.

<sup>3</sup> IRC section 8022.

<sup>4</sup> Section 201(g) of the Congressional Budget and Impoundment Act of 1974.

<sup>5</sup> IRC section 8021 and 8023.

<sup>6</sup> IRS section 8023(b).

The Joint Committee is authorized to receive confidential taxpayer return information. The Chief of Staff of the Joint Committee is authorized to appoint agents to inspect such return information.<sup>7</sup>

### **III. Expanded Powers and Duties of the Joint Committee on Taxation**

#### **A. Expanded powers (sec. 401 of the bill)**

##### **In general**

H.R. 2292 purports to increase the powers of the Joint Committee on Taxation by (1) specifically authorizing the Joint Committee to procure the services of experts and consultants in accordance with section 3109(b) of title 5, United States Code, (2) providing that the Joint Committee shall review all requests (other than requests by a Committee or Subcommittee of the Congress) for investigations of the IRS by the General Accounting Office and approve such requests if appropriate; and (3) providing that the Joint Committee staff shall provide assistance for two annual joint hearings of certain members of Committees with jurisdiction over the IRS to review the strategic plans and budget for the IRS.

I have the following comments with respect to this expansion of Joint Committee powers under the Internal Revenue Code.

##### **Securing consultant services**

The Commission's report indicates that, as appropriate to fulfill its statutory duties, the Joint Committee should hire outside consultants. The bill incorporates this recommendation by providing specific statutory authority for the Joint Committee to hire such consultants. The purpose of this provision of the bill is to ensure that the Congress, through the Joint Committee, has access to experts in various fields that can aid the tax legislative process and oversight of the IRS. The bill reflects the intent that outside consultants be used where appropriate.

With respect to the authorization to procure the services of experts and consultants, I would note that the Joint Committee on Taxation has historically had the authority to retain the services of experts and consultants on any matter that the Joint Committee deems to be appropriate. In this regard, the Joint Committee appropriation typically includes approximately \$100,000 for other services, which includes the hiring of consultants for a variety of activities, including such things as computer assistance and data analysis. These consultants are hired to perform services that the Joint Committee does not have the time or the staff capability of performing. Thus, the hiring of consultants is not a new activity for the Joint Committee on Taxation.

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IRS section 6103.

Further, the provisions of section 3109(b) of title 5 of the United States Code apply to the securing of consultant services by an executive branch agency. Section 3109(d) provides that the Office of Personnel Management shall prescribe regulations for the administration of the provision. I do not know whether the application of an executive branch provision to a Committee of the Congress is unprecedented, but how it would apply and why it should apply are unclear. Given the fact that the Joint Committee's hiring of consultants has historically been governed by the legislative branch appropriations process, the application of section 3109(b) of title 5 would appear to limit, rather than expand, the Joint Committee's authority to hire consultants by imposing certain executive branch requirements that previously have not applied to the Joint Committee's use of consultants. If this is not intended, I would suggest that this provision of H.R. 2292 should be modified. I would like to work with the Committee to clarify the intent of the provision and to ensure that any change does not impair the ability of the Joint Committee to hire consultants.

### **Joint Committee review of requests for GAO investigations of the IRS**

The bill provides that all requests for investigations of the IRS by the General Accounting Office ("GAO"), other than requests from Committees and Subcommittees, must be approved by the Joint Committee. The Commission recommended that all such requests be approved by the Joint Committee. The purpose of this requirement is to reduce the number of investigations of the IRS, which can result in the diversion of IRS and GAO resources from other matters, and to focus such investigations on significant issues.

The Joint Committee already reviews those requests for GAO investigations relating to the IRS that require access to confidential taxpayer information. Under present law, the GAO does not have access to such information unless approved by the Joint Committee (or the Chief of Staff of the Joint Committee). The Joint Committee does not routinely approve the requests of the GAO for access to taxpayer information, but reviews the purpose for such access. The Joint Committee has denied access when there does not appear to be sufficient need for the proposed study to be performed or has modified the proposed investigation.

We believe that, in order to ensure appropriate allocations of resources, both of the IRS and the GAO, it is important to coordinate requests for investigations. The proposal can aid in this regard by indicating Congressional intent that there should be further scrutiny of investigations relating to the IRS. The purpose of the proposal is to expand the authority to the Joint Committee with respect to GAO investigations. I am concerned, however, that the statutory draft may be perceived as overriding existing Joint Committee responsibilities, and would like to work with the Committee to clarify that there is no diminution in current Joint Committee duties.

### **Staffing for annual joint hearings**

The provision of H.R. 2292 requiring Joint Committee staff to provide support with respect to two annual joint hearings of certain Members of the Committees with jurisdiction over

the IRS does not expand the powers of the Joint Committee so much as it formalizes the role of the Joint Committee staff with respect to the new joint hearings that will occur. The Joint Committee has a longstanding history of providing support to all Members of Congress who request it and the Joint Committee staff will continue to provide assistance to all Members whether or not this role is formalized.

With respect to this provision, I would note that H.R. 2292 adopts the approach recommended by the staff of the Joint Committee on Taxation. The Commission report suggested that Congressional oversight of the IRS be coordinated through the creation of a new entity (a joint committee on IRS administration). The Commission report stated that, as part of this arrangement, the Joint Committee staff would reassume its statutory role as the focal point for IRS oversight and stated that the staff of the Joint Committee should be expanded to meet this responsibility. The Joint Committee staff believes that the Commission's goals can be achieved through the existing Congressional Committee structure with the formalization of the concept of annual joint hearings on IRS oversight.

**b. Duties of the Joint Committee on Taxation (sec. 402 of the bill)**

H.R. 2292 clarifies the duties of the Joint Committee on Taxation with respect to reports to be provided to the Congress. In addition to the duties of the Joint Committee on Taxation under present law, the bill requires the Joint Committee to report:

(1) annually to the Senate Finance Committee and the House Committee on Ways and Means on the overall state of the Federal tax system, together with recommendations with respect to possible simplification proposals and other matters relating to the administration of the Federal tax system; and

(2) annually to the Committees on Finance, Appropriation, and Government Affairs of the Senate and to the Committees on Ways and Means, Appropriations, and Government Reform and Oversight in the House of Representatives with respect to the strategic and business plans for the IRS, progress of the IRS in meeting its objectives, the budget of the IRS and whether it supports its objectives, progress of the IRS in improving taxpayer service and compliance, progress of the IRS on technology modernization, and the annual filing season.

Although it is arguably within the present-law scope of duties for the Joint Committee on Taxation to report on many, if not all, of the matters listed above, the ability of the Joint Committee to report directly to Committees other than the Ways and Means and Senate Finance Committees is new. Since many of these matters are issues that are of relevance to Committees other than Ways and Means and Finance, it would appear that the direction to the Joint Committee to report to all of the Committees with jurisdiction over the IRS is appropriate. In this manner, the bill will assure that all of the Committees responsible for oversight of the IRS will receive consistent information on a regular basis. This type of approach should improve the decision-making capabilities of the Congress with respect to the oversight of the IRS.

I would note that the bill imposes upon the Joint Committee on Taxation specific responsibilities that must be performed at least once each year. Given the normal workload of the Joint Committee staff in responding to Member requests for revenue estimates and providing its regular assistance to the tax-writing Committees with respect to legislative proposals, it may be necessary to add additional Joint Committee staff to be responsible for preparing the annual reports required under the bill.

#### **IV. Role of the Internal Revenue Service (sec. 421 of the bill)**

H.R. 2292 provides that it is the sense of the Congress that the IRS should provide the Congress with an independent view of tax administration and that during the legislative process, the tax-writing Committees should hear from front-line technical experts at the IRS with respect to the administrability of pending tax legislation.

This provision in the bill indicates Congressional desire to hear directly from the IRS regarding administrative issues associated with present law and proposed legislation. The Joint Committee shares the view that the tax legislative process could be improved with more involvement of IRS personnel familiar with day-to-day administrative and enforcement issues and development of forms. IRS personnel are in a unique position to evaluate the measures that will be needed to ensure compliance, whether it is reasonable to expect a reasonable level of compliance under information reporting, and what changes in IRS forms or procedures would be necessary. In the past, IRS personnel were at the drafting table to provide such views on administration; more recently, however, such participation has not occurred. We believe that the Congress, Treasury, and the IRS would all concur that legislative proposals could benefit from more input from the IRS.

I personally have been concerned, as have many of my colleagues who have worked on Capitol Hill, with the diminished role of IRS staff in the legislative process over the last 10 years. In part, this diminution of role occurs as Congressional and IRS staff leave and long-term working relationships are severed.

Under present law, the Joint Committee has, in theory, the authority to require that the views of the IRS be presented on any particular issue. However, at times, this access to the IRS has been difficult to secure.

I believe that it is vital to the legislative process for the Congress to have the ability to consult with IRS officials with respect to pending legislative proposals. Thus, I believe that H.R. 2292 should be amended to assure that IRS staff are closely involved in working with the Congress on pending legislation. The IRS should be closely involved in the drafting of proposals, should provide analysis relating to the administrability of proposals, and should have unfettered access to Committee staff. In addition, the IRS should be invited to testify at Committee hearings on legislative proposals.

Reestablishing the role of the IRS in assisting in the development of legislation need not

and should not await the enactment of legislation. We would hope that the appropriate staff of the Congress and the Administration could work together to secure the direct participation of the IRS. Such a development could only aid the tax legislative process.

## **V. Tax Complexity Analysis (sec. 422 of the bill)**

The bill would require that the Joint Committee provide a tax complexity analysis for each tax provision in a bill, resolution, amendment, or conference report. A point of order would arise if the required tax complexity analysis were not included. The bill would provide that the tax complexity analysis must address, with respect to each tax provision, the following factors: (1) whether the provision is new, modifies or replaces existing law, and whether hearings were held to discuss the proposal and whether the IRS provided input as to its administrability; (2) when the provision becomes effective and corresponding compliance requirements on taxpayers; (3) whether new IRS forms or worksheets are needed, whether existing forms or worksheets must be modified, and whether the effective date allows sufficient time for the IRS to prepare such forms and educate taxpayers; (4) the necessity of additional interpretive guidance (e.g., regulations, rulings, notices); (5) the extent to which the proposal relies on concepts contained in existing law, including definitions; (6) the effect on existing record keeping requirements and the activities of taxpayers, complexity of calculations and likely behavior response, and standard business practices and resource requirements; (7) the number, type and sophistication of affected taxpayers; and (8) whether the proposal requires the IRS to assume responsibilities not directly related to raising revenue which could be handled by another Federal agency. The Commission report recommends that the tax complexity analysis, in addition to addressing these 8 factors, should also identify the kinds of complexity, the extent of that complexity and whether the provision could be recast to reduce complexity while still achieve its tax policy goals.

The Commission's recommendations are based on the Commission's finding that complexity of the tax laws is a major source of taxpayer frustration. I share the concerns regarding complexity of the Federal tax system and the view that it is one of the major issues of the present-law system. Complexity and frequent changes in the tax laws create new burdens for both the IRS and taxpayers. Failure to address complexity may ultimately reduce voluntary compliance. Complexity often increases taxpayer frustration, as it becomes more difficult for those who wish to comply with the laws to do so, at least without hiring tax advisors. Complex rules can increase disputes between taxpayers and the IRS because complexity makes it more likely that individuals will make honest mistakes, and that the IRS and individuals will come to different conclusions regarding the appropriate result in the same circumstances.

Complexity and frequent changes in the law also place significant burdens on the IRS. Tax law changes often require new forms and instructions, which often must be prepared with very little lead time. Tax law changes and complexity also may make it difficult to train IRS personnel so that they can properly explain and apply the new provisions.

The most effective way to address complexity is for the Congress and the Administration to make reducing complexity a priority when drafting tax legislation. As discussed more fully

below, it is unlikely that adding procedural rules, such as the proposed tax complexity analysis, will have an immediate impact on the complexity of the tax laws. Nevertheless, a tax complexity analysis may serve to focus greater attention on the need for simplification and may, over time, help to achieve greater simplification. In addition, such an analysis may help to educate the public and lawmakers as to the sources of complexity in the tax laws, and thereby foster a better understanding of why tax laws are complex, how to reduce complexity, and when other policy factors may outweigh the desire for simpler rules. The Administration should also be encouraged to provide a tax complexity analysis with respect to its legislative proposals.

The issues relating to the complexity analysis can be divided into two broad categories: (1) whether the complexity analysis is appropriate, and (2) design issues relating to what the analysis must contain.

With respect to the first issue, for the reasons set forth below, I believe it is unclear whether the complexity analysis will have much immediate impact on the tax laws.

First, the complexity analysis will not necessarily provide the Congress with additional information that it does not now receive. Contrary to the statement in the Commission report, there currently do exist mechanisms by which the Congress is made aware of potential complexities of proposed legislation. The hearing process provides comments on complexity. In addition, the Congress and their staffs meet with interested groups and taxpayers, many of which focus on the complexity of proposed legislation. One of the primary functions of the staff of the Joint Committee is to advise Members of complexities raised by legislative proposals, and to try to revise the proposals to reduce complexity while still achieving the policy result sought by the Member. The staffs of the House Ways and Means Committee, the Senate Finance Committee, and Legislative Counsel also provide such analysis, and many proposals are revised in accordance with the recommendations of the staffs in order to reduce complexity. I believe it unlikely that the complexity analysis will provide new information to the Congress, but it will serve to formalize the information already provided.

Second, complexity is only one of many issues involved in determining whether to adopt any tax legislative proposal and, in many cases, the Congress and the Administration determine that the complexity is outweighed by other factors. Other factors that are typically relevant include the effect of a proposal on the Federal budget, fairness, economic efficiency, and both tax policy and nontax policy objectives. For example, a proposal that makes the tax laws more complex may be adopted because the proposal provides a benefit to some taxpayers or makes the tax laws more fair. Often budgetary constraints require that a proposal be tailored to particular circumstances; such tailoring can result in complexity.

Third, the complexity analysis comes too late in the process to provide guidance with respect to the proposed legislation to which the analysis relates. If the Congress is going to address complexity, it must focus on that issue from the beginning of the legislative process, not wait until a bill is being considered on the floor.

Finally, in most cases much of the complexity of legislation arises during the conference on a bill, as compromises between the positions of the House and the Senate are made. Often, differing provisions must be melded together quickly, which often leads to unexpected complexity. It is difficult to address issues that arise during the final hours of preparing a bill, and the complexity analysis will have no effect in such cases.

Even though the complexity analysis may not have an immediate effect on the particular legislation being considered, it is possible that it will have an effect over time. Like the list of provisions subject to the Line Item Veto, the complexity analysis is likely to be made public and will be the subject of press reports and may focus the attention of the public more on complexity. This heightened public awareness may make the Congress and the Administration more sensitive to issues of complexity, and may result in differences in drafting and more simplification. In addition, it may make Members reconsider proposals out of concern that a provision will be identified as complex, or to reanalyze proposals to be sure that other policy objectives are of such importance that the added complexity is appropriate.

In order to increase the likelihood that the complexity analysis will help to reduce complexity and provide meaningful information to the Congress, I believe that some modifications to the proposal should be made. In general, my comments regarding the content of the study are aimed at developing a form of analysis that provides meaningful information, can be completed within the short time frame generally allowed for the completion of legislative action, and helps to ensure that the analysis does not merely result in additional boilerplate language that is simply disregarded. A carefully considered analysis can serve not only to focus more attention on the need for simplification, but can also increase understanding of the reasons for complexity. To this end, I would make the following suggestions for modifications to the proposal. In addition, I look forward to continuing to work with the Committee to further refine the proposal.

First, the requirement that the analysis be made for all the provisions in a bill would be practically impossible to fulfil in a large bill, would detract staff resources from the drafting of the bill, and would likely result in a very simple analysis that includes no more than whatever specific requirements are imposed. I believe the purpose of the bill would be better served by providing that the analysis applies to provisions that affect some threshold number of taxpayers. In addition, it may be appropriate to limit the number of provisions for which an analysis must be provided, such as the 20 provisions that increase complexity the most. The analysis could also include, if appropriate, a statement that there are other provisions in the bill that also add significant complexity.

Second, the statute should not specify exactly what the analysis must address, but should leave some flexibility to the Joint Committee to determine what should be included. Complexity arises for a variety of reasons, and no set of factors is likely to apply to all situations. The Joint Committee will be able to provide a more accurate and thoughtful analysis if the list of factors are only a guideline. An analysis that describes why a particular provision is complex will provide better guidance to the Congress than a mere recitation of specific factors. In addition, if

the requirements are too precise, it would increase the likelihood that the analysis will not meet the statutory rule due to administrative error, leading to the possibility of needless procedural delays.

Third, the factors that are to be taken into account in preparing the analysis should be modified. For example, the bill provides that the analysis must address whether the proposal uses existing definitions. However, a provision that relies on existing definitions will still be complex if the existing definitions or rules are themselves complex. As another example, almost any change of significance will require new forms, even if the change significantly simplifies the law. Whether a provision is new or modifies existing law has little bearing on whether or not it adds complexity. We would like to work with the Committee to determine an appropriate set of factors to guide the Joint Committee in its analysis.

Fourth, the analysis only address complexity, not provisions that simplify the law. In order for the Congress to gauge whether it is moving toward simplification, a discussion of the provisions in a bill that provide significant simplification should also be included in the analysis. Just as Members may modify provisions in order to prevent their discussion in the complexity analysis, they may be encouraged to include provisions that will be identified as furthering the goal of tax law simplification.

I would like to add that the requirement that the Commissioner provide the Joint Committee with information necessary to prepare the complexity analysis will be useful, as in many cases IRS personnel will be in the best position to determine the effect a provision will have on forms and administration of the laws.

## **VI. Compliance Burden Estimates (sec. 424 of the bill)**

H.R. 2292 requires the Joint Committee on Taxation to prepare a study of the feasibility of developing a baseline estimate of taxpayers' compliance burdens against which future legislative proposals could be measured. Such a compliance baseline might enable the Congress to evaluate the potential complexity of a legislative proposal as well as whether the costs of complying with a proposal outweigh the benefits that may result from the proposal. Although I do not specifically oppose the requirement that the Joint Committee prepare this study, I am highly skeptical that the Joint Committee staff will conclude that the development of a compliance baseline will be feasible.

Although it is theoretically possible to have a numerical estimate of the costs of compliance with a tax law provision, I suspect that there will be widespread debate as to whether any particular estimate is correct. There is no consensus among economists, public policy analysts, and the IRS as to how to measure the costs of compliance with the present-law Federal tax system. It would be difficult to develop a compliance baseline methodology that would be widely accepted. Any estimate of current compliance would have to be extraordinarily detailed in order to be of use as a baseline against which individual proposals are compared. Data necessary for such estimates do not currently exist. The collection of information of such a

detailed nature, in itself, would impose significant taxpayer burden.

If it were possible to devise an accepted compliance baseline, there would likely be a great deal of debate as to whether an estimate of the additional compliance burden imposed by any particular provision is reasonable. Each individual estimate would require the solution to unique data and methodological problems. Some of these problems would be more difficult than others. For example, if a legislative proposal provided broad regulatory authority to the Treasury Department to prescribe reporting and recordkeeping requirements, it would be difficult to assess the additional compliance burdens presented by the proposal without knowing what types of reporting and recordkeeping requirements the Treasury Department contemplated.

## **VII. Conclusion**

I thank the Committee for the opportunity to offer the testimony of the staff of the Joint Committee on Taxation with respect to certain provision of H.R. 2292 and look forward to working with the Committee in the consideration of this legislation.