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The State Department has estimated that there are 7.6 million Americans living outside of the United States. If Americans overseas comprised a separate state of the Union we would be the 13th largest state by population. Our purpose at Republicans Overseas is to represent those millions of Americans living outside of the United States. It is in this capacity that we write today to highlight two specific issues that significantly harm Americans residing overseas and can be easily remedied. The examples and problems detailed in this submission have been provided by Americans living overseas who have been negatively impacted by the Foreign Account Tax Compliance Act (FATCA) and citizen based taxation (CBT).

Summary

1. Reporting of foreign bank accounts and financial assets as implemented by the Foreign Account Tax Compliance Act (FATCA) and the Report of Foreign Bank and Financial Accounts (FBAR or FINCEN form 114) violates the constitutional rights of 7.6 million law-abiding Americans overseas and results in the denial of financial services and professional opportunities to the detriment of the individual Americans. The ability of American enterprises to export goods and services is restricted or denied because foreign financial institutions are denying or revoking financial services preventing American enterprises to engage in business outside of the United States. FATCA and FBAR should be repealed.

2. The United States is the only developed country that taxes the global income of its citizens based on citizenship (Citizen based taxation or CBT) when they reside outside of the country. This means that American citizens residing outside of the United States pay taxes both to their country of residence and, additionally, pay further taxes to the IRS. Double taxation treaties do not prevent Americans from being subject to punitive double taxation because many countries tax their residents through mechanisms other than income tax (which are not creditable against U.S. income tax obligations) and America imposes additional taxes (such as capital gains tax and the 3.5% tax for the Affordable Care Act) for which no foreign taxes may be creditable.

3. The United States implementation of CBT results in lower employment for Americans, fails to raise significant revenue and deters successful businesspersons and entrepreneurs from becoming American citizens. It is far more cost effective for any business enterprise (both U.S. and non-U.S.) operating overseas to hire any

person other than an American. The extra cost of hiring an American worker hurts not just the employment of U.S. citizens but prevents U.S. enterprises from competing globally and limits any U.S. enterprise's ability to expand its operations outside of the United States. CBT should be repealed and replaced with RBT.

4. The Senate Finance Committee should investigate the true costs and benefits of FATCA and CBT so that the maintenance or repeal of these provision would be based on accurate information rather than faulty assumptions as to the intentions of Americans residing overseas.

I. Bank account and asset reporting and FATCA should be repealed.

1. FATCA and FBAR cause significant harm to Americans and America

The goal of locating and prosecute tax evaders is a very important goal and is a goal we at Republicans Overseas completely agree with. All citizens should pay all taxes which they owe. As the United States does not have a wealth tax, reporting of financial information by banks within the United States is limited to the reporting of income, namely, in the case of bank accounts, to interest income earned in any account. If the laws were amended to require all American citizens to report all of their bank account balances and financial assets to the IRS every year, America would erupt! Such a law would be an unconstitutional invasion of citizen's privacy because there is no justifiable government interest in the detailed financial asset levels of American citizens absent probable cause of tax evasion. Clearly, however, requiring all Americans to disclose all of their financial assets to the IRS could be very beneficial to catching tax evasion- just like allowing the warrantless search of everyone's home could be very beneficial to catching other criminals. But that is not how America works and is not consistent with the protections of the Constitution.

But this unconstitutional requirement to disclose all financial assets to the IRS is exactly what FBAR and FATCA require for American citizens residing outside of the United States. American citizens are denied their right to privacy based solely on the fact that they have chosen to reside overseas. It is very important that this fundamental freedom for all Americans is restored for Americans living overseas.

Not only do the asset and bank account reporting requirements strip away a fundamental American freedom of privacy, the effects of the reporting requirements, particularly as implemented by FATCA, result in the denial of financial services and professional opportunities for Americans residing overseas. As implemented, FATCA imposes significant reporting obligations and financial risks (including a 30% withholding tax and the risk of being shut out of the U.S. dollar clearing systems) on all banks around the world. Banks, being rational actors, are taking steps to minimize the cost to them of FATCA. Although 7.6 million Americans residing overseas would represent the 13th largest state of the Union, 7.6 million people is obvious a drop in the bucket of the non-US population of 7 billion. As a result, the vast majority of banks around the world are not focused on servicing the needs of the 7.6 million American, nor would those banks be so focused even if there were 20 million Americans residing overseas. Thus, when confronted with the significant additional burdens imposed by FATCA, most banks outside

of the United States have made a rational (but very unfortunate for us) decision to exclude United States citizens from their customers and counter parties. As one officer of a global bank reported, the banks are ridding themselves of the "U.S. Person pollution!" American citizens are being denied savings account, investment accounts, mortgages, credit cards and many of the basic financial services required to live and work in modern society, raise a family and to save for retirement. When an American living overseas is lucky enough to locate a bank willing to let her open a basic checking account, the American must expend huge time and effort to overcome many significant information and reporting requirements that effectively treat the American as a potential tax evading criminal required to prove that her heart and mind are pure. The experience is truly discomforting and utterly inconsistent with the expectation of a citizen of the most important country in the world.

The denial of basic banking services makes it very difficult for Americans to live outside of the United States. This is particularly true for the recent college graduates teaching English or the missionary on an overseas mission who does not have easy access to international choices for banking services. It is also very hard on an American who wants to run a business overseas because she cannot open a business account for a company owned by an American. Moreover the compliance challenges of FATCA and its related forms are, in many cases, simply overwhelming, particularly when running businesses in countries where the American may not speak the local language.

Why should the Senate care that Americans residing outside of the United States are being denied financial services? Firstly, these are American citizens and the effects upon these Americans should not be ignored when crafting appropriate laws. Secondly, Americans overseas are drivers in the export of U.S. goods and services. When American companies expand overseas they generally prefer to use American workers to do so. Unfortunately when Americans are unable to live and work overseas due to the impact of FATCA, companies must instead hire other workers or not pursue such expansion. Moreover, a great proportion of America's growth and employment comes from small business. Americans overseas have historically been very entrepreneurial and started many businesses. Because of the denial of financial services by many banks to Americans and the private companies owned by Americans, Americans are not able to start businesses, generate revenue and pay taxes. Americans overseas are frequently the best ambassadors of American culture and values and are a powerful contributor to the exports of U.S. goods and services. We should be encouraging our bright and talented to go abroad and expand Americans exports -- not punishing them when they try to do so. We should be encouraging Americans to get jobs wherever they can get them around the world so as to increase U.S. exports and lessen the challenges of unemployment in the United States.

FATCA and FBAR requirements deny professional opportunities to Americans overseas. Not surprisingly, persons and companies with no connection to America do not wish to provide the United States Internal Revenue Service (IRS) with financial information about their business. The obligations to report all bank accounts to the IRS when any American citizen has signing authority over such account result in companies, private equity firms and other non-US entities deciding that they do not wish to engage or partner with American citizens in their business endeavors. Americans are passed over for CFO positions in non-US companies. Americans are

not admitted to partnerships in firms. Americans are frequently treated as pariahs that will only be included when they are the only option. It goes without saying that this is very bad for Americans and for America when tax-paying citizens are denied these opportunities for professional advancement.

FATCA and FBAR reporting requirements cause significant damage to American citizen spouses of non-US citizens. Non-U.S. citizens do not wish their financial information to be shares with the United States IRS. As a result, many non-U.S. citizens are removing their American citizen spouses as joint account holders of bank accounts. In some circumstances, non-U.S. citizens have given ultimatums to their American citizen spouse that either the spouse need to be removed from all bank accounts or they will need to get a divorce. In situations where an American spouse has not pursued a career and thus is dependent on the non-U.S. citizen spouse this situation can be truly horrific.

FATCA and FBAR reporting conflict with attorney-client privilege and require disclosure of client accounts held by American citizens for benefit of non-U.S. citizens. Americans practicing law overseas have primarily non-U.S. citizens as clients. For certain transactions, particularly real estate transactions, attorneys generally hold funds on behalf of clients pending completion of the transaction or legal services. The attorney will need to have signing authority over these accounts and thus would need to disclose these accounts under the account reporting requirement, in violation of attorney client privilege. Non-U.S. citizen clients will not want to risk such disclosure and thus will generally stop using American citizen attorneys for such work.

The onerous reporting obligations and extreme penalties of FATCA and FBAR cause tax-paying American citizens to renounce their citizenship out of fear of mistakes and penalties. FATCA forms and reporting obligations are very complex, particularly when applied to businesses run by Americans. Penalties can be as high as 50% of the value of an account that is not properly reported (and that is applied for each year of incorrect filing, potentially resulting in penalties in excess of 100% of the value of an account even if no tax is owed). In Hong Kong a successful American woman who founded a small business in Hong Kong, Singapore and China was not able to sleep at night because of concerns that her complex filings were wrong because she had to rely so heavily on her Chinese speaking staff to confirm all of the information. As a result, she renounced her US citizenship so that she could pursue the American dream of running her own business! The US lost not just a good citizen (which in and of itself is a shame) but lost the future tax revenue that would result from the future success of her business.

FATCA as implemented exposes Americans overseas to substantial risk of hacking of their personal and financial details. The FinCen form required for a FATCA filing is probably the only form that includes not only a person's name, social security number and bank account details, but also includes the maximum value of the assets held in such bank account. These forms are a very attractive target for identity theft because they clearly identify high value targets. Given the extremely sensitive information on these forms we would hope that they would be treated very securely. Unfortunately the exact opposite is the case. Prior to 2014, reporting of assets could be done by paper filings sent securely to the United States. Commencing in 2014, however, the IRS requires that FATCA forms to be sent electronically using an outdated, unsecure from of Adobe pdf. For Americans residing in nations where cyber security issues are

rampant, such as China, sending the holy grail of personal information over the web using insecure software is very problematic. FATCA also entrusts the world's financial institutions along with the governments of all countries (including those considered to be unfriendly to the United States) with the most sensitive personal information of American citizens. The potential misuse of this data (whether intentionally or accidentally) is horrific to contemplate.

Finally, FATCA also drives non-U.S. financial institutions away from investing in U.S. assets and other U.S. dollar denominated assets. FATCA's primary mechanism for enforcing compliance of foreign financial institutions is a punitive withholding levy of 30% of any distributions (such as interest or dividend payments) on U.S. assets (such as U.S. Treasury securities), which creates a strong incentive for foreign financial institutions to divest (or not invest) in U.S. assets. In an era where the alternatives to U.S. assets continues to increase, FATCA only further decreases the demand for U.S. assets and decreases the value of the U.S. dollar. Concerns have been expressed that FATCA could accelerate the shift away from the U.S. dollar as the global reserve currency.

2. There is no evidence that FATCA raises additional tax revenue

A cost/benefit analysis of FATCA was never performed prior to adoption of FATCA in 2010. The IRS's Taxpayer Advocate Service stated in its 2013 Annual Report to Congress "The Congressional Joint Committee on Taxation estimates FATCA will generate additional tax revenue of approximately $8.7 billion over the next ten years. By way of comparison, industry sources believe that overall private sector implementation costs could equal or exceed the amount that FATCA is projected to raise." The $8.7 billion estimate was only a guess and was never substantiated. It clearly did not take into account how much tax revenue would be lost due to the high implementation and compliance costs on banks and their shareholders that pay United States income tax.

It has been estimated that FATCA compliance costs comprise roughly 10-15% of the general compliance costs for all banks. In general, among the top 24 banks in the United States (which make up the KBW Bank Index), compliance costs run around 0.1% of total assets annually. Thus, one can estimate that FATCA compliance will amount to around 0.01% of total banking assets. Total assets of all banks in the United States amounted to around $10 trillion as of the end of 2013. As a result, FATCA compliance would decrease earnings by around $1 billion per year, thus depriving the US of 35% (or $350 million) of that amount in tax earnings each year. This decrease of $650 million in annual bank profits will also result in annual lost dividends of the same amount and therefor a decrease in taxes on dividends of 25% of such amount, or $167 million per year. Moreover, greater compliance costs and lower earnings at banks will, all things being equal, decrease the stock price of the banks and therefore decrease capital gains of shareholders in banks. The KBW Bank Index trades at a P/E multiple of around 13. Thus $1 billion in decreased profit would represent a loss in value of approximately $13 billion, resulting in a one-time loss in capital gains taxes of 20% of $13 billion or $2.6 billion. This calculation would indicate that, when just looking at the assets of banks in the United States, FATCA would result in an annual decrease of $517 million in tax revenue for the US and a one-time loss of $2.6 billion. Over 10 years that would amount to $7.77 billion, almost the same as the estimate marginal revenue to be gained. This calculation does not take account of the significant increase

in costs at the IRS to implement FATCA (which appear to be increasing each year) as well as the lost productivity of Americans and American businesses as a result of complying with the complex FATCA requirements.

We would recommend that, at the very least, FATCA implementation and enforcement be immediately suspended pending a comprehensive, dynamic cost/benefit analysis which fully considers the negative effects on tax revenue, U.S. enterprises and American citizens.

If a cost/benefit/risk analysis had been done earlier, the negative revenue effects of current policy would have become obvious. A cost/benefit/risk analysis of FATCA is long overdue. In addition to studies, it is important for Congress to hear first-hand the effects of FATCA . So far, none of the 7.6 million U.S. citizens overseas have had any voice in the halls of their own U.S. government on an issue vital to them. Neither have their spouses nor business partners. It is time that the real effects of FATCA are heard from the American citizens directly affected.

II. The United States should repeal Citizen Based Taxation (CBT) and tax worldwide income of only those citizens resident within the United States.

The United States is the only developed country that taxes its citizens on their worldwide income regardless of where they are resident. This is known as citizen based taxation (CBT). All other developed countries tax only those citizens resident within their country – otherwise known as residence based taxation (RBT). This means that American citizens residing outside of the United States pay taxes both to their country of residence and, additionally, pay further taxes to the IRS. Double taxation treaties do not prevent Americans from being subject to punitive double taxation because many countries tax their residents through mechanisms other than income tax (which are not creditable against U.S. income tax obligations) and America imposes additional taxes (such as capital gains tax and then 3.5% tax for Obamacare) for which no foreign taxes may be creditable. Many countries do not tax capital gains or have significant exemptions from taxation of capital gains which do not exist in the U.S. tax code. Double taxation treaties also do not properly account for the situation where a government uses primarily non-tax mechanisms to raise significant revenue which significantly increases the daily cost of living in other non-tax related ways. For example, in Hong Kong a significant percentage of government revenue is raised through lease of land at extremely high prices (which are maintained because all land is owned by the government) which results in exceedingly high housing costs which are not creditable for U.S. income tax purposes.

CBT causes American workers to be uncompetitive for jobs around the world and thus decreases employment of Americans. Many countries around the world have lower effective income tax levels than the United States. When a company in Hong Kong, for example, which has a 15% salary tax, is seeking to hire an employee it will need to offer a higher salary to an American in order to result in that American having the same after tax income as an Australian or French worker. The American worker is subject to U.S. income tax as well as the Hong Kong salary tax, while the Australian or French worker is only subject to the Hong Kong tax. As a result, American workers cost up to 25% more (the difference between the top marginal US tax rate of 39.5% and the Hong Kong flat tax of 15%). In many cases this has resulted in a substantial drop

in the percentage of workers represented by Americans over the last two decades (as the competitiveness of other workers has caught up to Americans). Amidst the continuing global economic challenge it is particularly problematic for American workers to compete globally when they are significantly more expensive than other competitive workers.

CBT deters successful persons from becoming American citizens. America competes internationally to attract immigrants that can contribute to the future of America. When America was so much more attractive than other countries, CBT was less of an issue. Now that many other countries offer great opportunities for entrepreneurs, scientists and professionals,. CBT is a substantial deterrent to taking U.S. citizenship. Instead of offering citizenship to individuals that invests $500,000 in real estate in the United States we should eliminate CBT and adopt RBT and become the citizenship of choice for all successful global entrepreneurs, scientists and professionals who will be much more likely to contribute significantly to the growth of the U.S. economy, the employment of Americans and the increase in tax revenue.

CBT, and laws such as FATCA which implement CBT, drive successful Americans residing overseas to renounce their U.S. Citizenship. Americans overseas do not take advantage of most US government services but pay taxes on their worldwide income. Moreover, the onerous filing requirements imposed by FATCA drive U.S. citizens to abandon their U.S. citizenship. Once these persons abandon their citizenship they are driven to separate themselves as much as possible from the U.S. If instead, they could retain their citizenship while overseas and then re-connect with the U.S. later they would end up paying a much greater amount in taxes. Most Americans overseas would like to retain connections with the U.S., invest in U.S. property, start a business involving the United States, retire in the U.S. and contribute to consumption and investment in the U.S.

CBT creates significant problems for the children of Americans that have grown up overseas and have the option of another citizenship. American parents need to discuss with their children before age 18 whether the child should abandon their U.S. citizenship due to the heavy price to be paid for retaining it going forward. The teenage years should be a time for an American parent to foster a sense of pride and patriotism in America among their children. The teenage years should not be a time where an American parent needs to explain how expensive it is to remain a U.S. citizen and that if you do not renounce citizenship by age 18 it can be very difficult and expensive to do it later.

We should have policies that encourage successful Americans and their children to retain their American citizenship, rather than driving them away from America.

Respectfully Submitted,

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