

NOMINATION OF DAVID J. KAUTTER

HEARING

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

DAVID J. KAUTTER, TO BE ASSISTANT SECRETARY OF THE TREASURY
FOR TAX POLICY, DEPARTMENT OF THE TREASURY

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JULY 18, 2017
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**NOMINATION OF DAVID J. KAUTTER,
TO BE ASSISTANT SECRETARY OF THE
TREASURY FOR TAX POLICY,
DEPARTMENT OF THE TREASURY**

TUESDAY, JULY 18, 2017

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 11:12 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Enzi, Thune, Scott, Wyden, Cantwell, Menendez, Carper, Bennet, Casey, and McCaskill.

Also present: Republican Staff: Mark Prater, Deputy Staff Director and Chief Tax Counsel; Nicholas Wyatt, Tax and Nominations Professional Staff Member; Chris Armstrong, Deputy Chief Oversight Counsel; Tony Coughlan, Tax Counsel; Chris Hanna, Senior Tax Policy Advisor; Jay Khosla, Chief Health Counsel and Policy Director; Eric Oman, Senior Policy Advisor for Tax and Accounting; and Martin Pippins, Detailee. Democratic Staff: Joshua Sheinkman, Staff Director; Michael Evans, General Counsel; Ian Nicholson, Investigator; Ryan Abraham, Senior Tax and Energy Counsel; David Berick, Chief Investigator; and Tiffany Smith, Chief Tax Counsel.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. Now we are going to shift a little bit and we are going to consider the nomination of Mr. David Kautter to serve as Assistant Secretary of Treasury for Tax Policy.

Mr. Kautter, welcome to the Finance Committee. We appreciate your willingness to appear before us today. We also appreciate your willingness to serve in this capacity.

I am sure that the significance of this position at this crucial time is not lost on you. It is not lost on any member of this committee. Tax reform has been a major focus of our committee for some time now, and we are grateful to have you here to discuss your thoughts on these matters.

On a number of occasions, I have stated my view that presidential leadership will be a key component to any successful tax reform effort. Just last week I quoted President Obama. In a speech on the Senate floor back in 2012, he said things like “our current corporate tax system is outdated, unfair, and inefficient.”

The problem was that President Obama never really got around to truly leading on tax reform. I expect more from President Trump on tax reform. That expectation comes in large part because of knowing him and knowing the way he approaches things.

I have to say also that he and Secretary Mnuchin have been talking about it so much, but more than that, they have engaged with Congress and the public on these issues.

Mr. Kautter, I believe that your nomination is another way this President has further demonstrated his commitment to reforming our burdensome, job-killing tax code. Your experience as a practitioner tax expert will surely be a crucial part of this endeavor.

Now, before I finish up with my remarks, I also want to address another important issue, one that I want to stress with all nominees who come before the committee. Whether we are talking about tax reform or the administration of existing tax policy, it is critically important that we keep open lines of communication between both parties in Congress and the executive branch.

My hope today is that you will commit to providing timely and responsive answers to inquiries submitted by members, especially if they sit on this committee. That is the expectation, and, quite frankly, anything short of that is unacceptable.

With that, I want to thank you once again for being able to be here today. I will now turn to Senator Wyden for any remarks he cares to make.

[The prepared statement of Chairman Hatch appears in the appendix.]

**OPENING STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman and colleagues. Since this is a tax policy double-header for the Finance Committee, we are only at the halfway mark. I am going to be brief this morning.

Mr. Kautter has been nominated to serve as Assistant Treasury Secretary for Tax Policy. It is a very tough job, and it is especially challenging when the Congress is gearing up to work on major tax legislation. And I very much share Senator McCaskill's view on the importance of it being bipartisan.

In my view, the big challenge at the heart of tax reform is guaranteeing that everybody in America has a chance to get ahead, not just the fortunate few. If tax reform becomes a partisan exercise in slashing rates for just the wealthy and the biggest corporations, the American people will see this as a con job. That is because it will leave in place the root causes of the appalling unfairness in the tax code.

The fact is, the tax code in America today is really a tale of two systems. There is one system for cops and nurses, and it is compulsory, and it is strict, and basically their taxes come out of every single paycheck.

And then there is another system for the lucky few that says you can pay what you want and when you want to. And it goes without saying that the nominees for top jobs in tax policy need to have the knowledge and experience to fix this root unfairness. And it is also

vital to make sure nominees have not contributed to the problems in the first place.

Now, I have real concerns. Mr. Kautter and I have talked about several matters that took place during his time as director of national tax at Ernst and Young. The firm did a great deal of work setting up tax shelters for wealthy clients. In the process, there were employees who were convicted of fraud and obstruction for covering it up. Ernst and Young paid more than \$100 million in settlements with the Justice Department and the Internal Revenue Service over its tax shelter marketing.

In the vetting process for the nomination, it became clear that Mr. Kautter was regularly informed of decisions that allowed Ernst and Young to profit off tax gaming. Mr. Kautter has told me he had no direct role in the marketing of those tax shelters or in misrepresenting them to Federal auditors. Yet I remain troubled that he was at the top of a department that engaged in these practices. This issue is going to come up this morning, and I look forward to that discussion.

Finally, Assistant Secretary for Tax Policy is a job that requires close communication with both sides of this committee. Over the last few months, the administration has taken a lot of hits from Republicans and Democrats alike for its stated policy of ignoring questions that come from Democrats. I am pleased that Chairman Hatch has spoken out against this policy, as has Chairman Grassley.

I want to be clear that it is completely unacceptable—unacceptable—for an administration to just stonewall inquiries from members of Congress. Members of Congress do not do this for sport. We have an obligation on behalf of the millions of people we represent to ask tough questions. So I expect a commitment today to respond to questions from members of the committee regardless of whether they have a “D” or an “R” next to their name.

Mr. Kautter, thank you for being here. Thank you for visiting with me. I look forward to your testimony.

The CHAIRMAN. Well, thank you.

[The prepared statement of Senator Wyden appears in the appendix.]

The CHAIRMAN. Mr. Kautter, do you have any comments you would care to make?

STATEMENT OF DAVID J. KAUTTER, NOMINATED TO BE ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. KAUTTER. Yes, thank you, Mr. Chairman.

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Senate Finance Committee, it is an honor to appear before you today. I feel both privileged and humbled to have been recommended by Treasury Secretary Steven Mnuchin and nominated by President Trump to serve as the Assistant Secretary of Treasury for Tax Policy.

As a former tax staffer for a member of this committee, I have deep respect both for this committee and the institution of the Senate. I look forward to the opportunity, if confirmed, to serve this country again.

I would like to take a moment to thank my family, who have been a constant source of inspiration and support for me throughout my career—my wife, Kathy; my two children, Hilary and David. I would also like to express my thanks to those members and staff whom I have been able to visit with over the past couple of weeks.

If confirmed, I look forward to working with you in a bipartisan, collaborative, and collegial manner.

I grew up in a small town by the name of Plymouth in the anthracite coal mining region in northeastern Pennsylvania. My father worked as an accountant for the coal mines, and my mother was a high school teacher. I spent the majority of my career as a tax practitioner and leading accounting firm tax departments.

I am currently in charge of the accounting firm RSM's Washington National Tax Office. I also ran the American University Kogod Tax Center, where I taught in the business school. Prior to that, I spent over 30 years with Ernst and Young.

Finally, I am proud to say that I was Senator Danforth's tax counsel for over 3 years. I will always be grateful to Senator Danforth for the lessons I learned and the values he instilled in all of us on his staff. He set a standard for excellence in service that has been a source of inspiration for my entire career.

Through these career opportunities, I have worked on many aspects of the tax code. At American University, I focused on small business and middle-income individuals. My current firm, RSM, is focused on middle-market companies. At Ernst and Young, I specialized in employee benefits and compensation and witnessed firsthand the challenge of keeping American companies competitive internationally.

Comprehensive tax reform is the challenge before us. The current code is unnecessarily complex, anti-competitive, and picks winners and losers. Americans need a simpler system when filing their taxes, and the middle class needs a tax cut. U.S. businesses need a tax code that allows them to prosper domestically and in an international marketplace.

You have made great progress in identifying the policies that will achieve these goals. The magnitude of Congress's tax reform work in terms of the hearings, working groups, and legislative proposals is indeed impressive. As a result, America is on the verge of its first comprehensive tax code overhaul in a generation.

Treasury has an outstanding team of many of the most talented tax professionals in the world. Working together with you and your staffs, I believe we can get tax reform over the finish line.

If confirmed, it would be an honor to strive to do so. Thank you.

The CHAIRMAN. Well, thank you, sir. We are grateful that you are willing to serve.

[The prepared statement of Mr. Kautter appears in the appendix.]

The CHAIRMAN. I have some obligatory questions I am going to ask that I ask all nominees.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. KAUTTER. There is not.

The CHAIRMAN. All right. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. KAUTTER. No, sir.

The CHAIRMAN. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Mr. KAUTTER. Yes, sir.

The CHAIRMAN. Finally, do you commit to provide a prompt response in writing to any questions addressed to you by any Senator of this committee?

Mr. KAUTTER. Yes, Mr. Chairman.

The CHAIRMAN. Thank you, sir. You have been in the tax business for many years, from tax policy to tax consulting and compliance. You have worked with Congress and administrations, tax practitioners, academics, and other taxpayers. What is it that you would like to achieve as head of tax policy at the Treasury Department, and how have your years of experience and interaction with all facets of the tax community prepared you to do so?

Mr. KAUTTER. Well, Mr. Chairman, one of the things I have learned over the years is that taxes do impact decision-making, both by businesses and individuals. And I think having an Internal Revenue Code that is fair and simple should be a high priority, and having a globally competitive tax system is critically important for American businesses.

So, if confirmed, I would focus on increasing economic growth through the tax code, creating good-paying jobs, a middle-income tax cut, and simplicity.

The CHAIRMAN. What are some of the important things Congress can do to help Americans save their hard-earned time, and of course, their hard-earned money as well, complying with this overly complex tax code system?

Mr. KAUTTER. Senator, I think an Internal Revenue Code that has a broad base with low rates—which means eliminating certain tax deductions and preferences that exist today—would be very helpful. The Taxpayer Advocate has estimated that the Internal Revenue laws exceed 4 million words. No one can comprehend that. And so I think eliminating a lot of what we have today in terms of preferences, broadening the base, lowering the rate, is essential for Americans to feel good about the Internal Revenue Code.

I think none of us tends to trust things we do not understand. And most Americans have no understanding whatsoever of the tax laws and how they work. When 90 percent of the population either hires a tax return preparer or purchases software to prepare the returns, we have a problem. So I think we need to dramatically simplify the tax law as part of tax reform.

The CHAIRMAN. All right. The Trade Facilitation and Trade Enforcement Act of 2015 requires U.S. Customs and Border Protection, CBP, to promulgate regulations that the Treasury Department is responsible for approving. Some of these regulations have missed their statutory deadline.

Do I have your commitment to ensure that CBP's regulations would adhere to statutory deadlines going forward, including the

promulgation of the regulations necessary for simplified drawback procedures?

Mr. KAUTTER. Senator, that is not an issue I am familiar with, but my personal belief is that the responsibility of the executive branch is to execute fully and faithfully the laws that are passed by Congress and signed into law by the President. And, if confirmed, I would do everything within my power to make sure Treasury meets its required deadlines.

The CHAIRMAN. Now, you have interacted with and advised small and large businesses on a daily basis. What are these businesses telling you is most important to them as part of tax reform?

Let me ask a little bit more too. What are the major themes you are hearing from large and small businesses alike?

Mr. KAUTTER. Larger businesses tend to be more globally active, and so the focus tends to be more on a globally competitive tax system, including how foreign earnings of U.S.-headquartered businesses are taxed. Small businesses are less concerned, as a general matter, with the global competitiveness of the U.S. system. They are more concerned with simplicity.

One of the things that surprised me most when I moved to my current firm—which is focused on middle-market companies—is how few businesses in the middle market have a tax professional. Businesses with revenue of \$50, \$60, \$70 million have no one on their staff who focuses on the tax consequences of different decisions they make.

And so, I think having a simple, straightforward Internal Revenue Code for business that allows businesses to make decisions that make sense to them, without being unduly influenced by the tax law, would be a very good place to be.

So again, Senator, different concerns at different ends of the spectrum.

The CHAIRMAN. Thank you. The Base Erosion and Profit Shifting or BEPS project of the Organisation for Economic Co-operation and Development or OECD was intended to address concerns associated with perceived erosion of the countries' tax bases and profit shifting. It was intended that countries who signed onto the final reports would move forward together on these fronts.

However, not long after the reports were finalized, certain countries decided to go their own way and enact measures that went further than those measures described in the BEPS reports. For example, one of the reports dealt with the tax documentation that would be prepared on a country-by-country basis and privately shared with certain other governments.

However, there is a strong movement, currently, in some jurisdictions to make that information public. If countries collectively agree to do one thing, but then go off and do another, what do you see as the benefit to the United States of participating in these tax discussions at the OECD, besides, of course, attempting to achieve particular consensus?

If you think the United States should maintain a presence in these tax discussions, what thoughts do you have on actions that could be taken to encourage jurisdictions to not take actions that are contradictory to, or go further than, agreed-upon frameworks?

Mr. KAUTTER. Well, Senator, I think it is important for the United States to have a seat at the table in these discussions. And I also think it is important for the United States to make sure that those agreements we enter into are complied with. And so, how we would deal with each situation, I think would vary. But I do not know how we could have a globally competitive international environment with a level playing field when different players play by different rules.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman. And, Mr. Kautter, thank you, and thank you for meeting with me.

When you were director of national tax at Ernst and Young, you were responsible for tracking the amount of money employees in your department made for selling tax shelters that cost taxpayers billions of dollars. It was your job to count the money, and, as a partner of Ernst and Young, you benefitted financially as the money poured in.

You also had a hand in designing the process of reviewing tax opinions that allowed this. It was a process that led to people going to jail and a \$123-million fine.

Yet up to now, up to this morning, you have taken no responsibility for a very dark chapter at this firm. And, in effect, you said—we heard you out yesterday—“It was not my job to complain; not my job to blow the whistle.”

Now, it takes real courage to stand up when people around you are breaking the law. So the question I want to ask you is, in hindsight, at the least, do you wish you had handled this matter differently?

Mr. KAUTTER. Well, Senator, I was not involved in the decision to get involved in tax shelters. And I have never designed or drafted one myself.

Every time I think about Ernst and Young’s activity in the tax shelter area, I wish I had done things differently. I tried at the time—

Senator WYDEN. What would you have done differently? You were the head of the department. This is a key question for me.

Mr. KAUTTER. Sure.

Senator WYDEN. Because this was a big rip-off. And I would like to know what you would have done differently.

Mr. KAUTTER. At the time the firm agreed to get involved in the tax shelter business, I was not the director of national tax.

The firm set up a separate reporting structure with respect to tax shelters which did not involve the director of national tax. And when I took over, that was the system that was in place and continued until the tax shelter group was dissolved.

It was not until later, when I was designated as the primary point of contact for the firm with the Permanent Subcommittee on Investigations, that I had a chance to really review in detail the email of that group. What I saw greatly disappointed me, and I felt members of the group had abused the level of trust that the firm had placed in them.

Looking back, I should have been more active. I think I should have played a bigger role. I think I should have been more vocal.

I spoke up whenever I had the opportunities, but I did not speak up as forcefully as I wish I had. And I feel bad about that.

Senator WYDEN. Because I am just looking at all these documents that you were cc'd on; I mean, not one, but lots of them. And I am going to have to consider your answer as we go forward, because, when you look at what happened there and the fact that you were copied on all of this, and you were the head of the department—this was a major fraud. And I may need to talk to you some more about this.

Now, my next question is also on a matter that is very troubling to me. You said that you would respond to requests made by the committee. However, when you spoke with these people sitting behind me, you said that if the White House tells you not to respond to Democratic members, you would follow that directive and ignore our requests. So, which would it be? Are you going to be responsive to requests from committee Democrats even if directed not to do so by the White House, or are you going to break the pledge that you have made to the committee? It cannot be both. It has to be one or the other.

Mr. KAUTTER. Senator, I was—when I worked here years ago, I was bought up to believe that bipartisanship was the way in which the Senate worked. I still believe that today. I think Congress makes its best decisions when both parties work together.

The answer that I gave to the staff I stated improperly or not as accurately as I should have. What I meant to say and continue to believe—

Senator WYDEN. You are retracting what you said to the staff?

Mr. KAUTTER. What I said—

Senator WYDEN. That is a “yes” or “no” question.

Mr. KAUTTER. What I meant to say was, if there is a legal prohibition that prevents me from responding, that is all that will prevent me from responding. Other than that, I intend to fully and as quickly as possible respond to any inquiry from any member of this committee or the Senate from either side of the aisle.

Senator WYDEN. And one last question, if I can get it in. Again, when I think about the tax code, I think about two systems: one for cops and nurses—and it is compulsory, as I said—and the other is a kind of system that we saw at Ernst and Young where, in effect, people who are fortunate and have the kind of talent that you had there, can to a great extent decide what they are going to pay and when they are going to pay it.

So what do you see as your priorities to close these kinds of loopholes and get us to a system that gives everybody a chance to get ahead, rather than two systems that end up being particularly hard on working families? You have some expertise here, because Ernst and Young was doing it on your watch. So what would you do to stop those kinds of practices?

Mr. KAUTTER. Well, I would say two things, Senator. First of all, the activity by Ernst and Young in the tax shelter area was a small part. It always constituted less than 1 percent of the—

Senator WYDEN. The tax shelters are not a small part of the American economy today.

Mr. KAUTTER. But I will tell you what led to that is the complexity of the Internal Revenue Code. It is all of the gray that ex-

ists within the tax law, and Ernst and Young was not unique. I mean, there were many tax advisors who were engaged in similar activity, and it is the complexity that leads to that.

Senator WYDEN. My time is up. There is a lot more to this than blaming it on complexity. This is a question of whether, in this job, you are going to have the political will to take on these powerful interests that did so well at Ernst and Young and are still out there today. I am going to need to ask you some more questions about that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Grassley?

Senator GRASSLEY. Yes. Thank you, and congratulations on your nomination.

My first question deals with the whole issue of whether we ought to have lower rates or expensing, and which is more important. How do you see the trade-off between expensing or depreciation and lower rates? And I will give you an example. Do you view it as acceptable to lengthen depreciation to help finance a lower rate?

Mr. KAUTTER. Well, Senator, I think different businesses would prefer different things. So, professional service businesses with low investment in capital would prefer the lower rate. Capital-intensive businesses would prefer more rapid write-offs of their equipment.

I think some members of this committee have developed some very innovative proposals with respect to capital write-offs that are somewhere between current law and expensing. And I think trying to simplify the rules for expensing and writing off capital equipment would be a very good thing to do. They are exceedingly complicated, and I think simplifying them and consolidating some of the existing rules would be a very good thing to do.

Senator GRASSLEY. What, if any restrictions should be imposed on the ability to deduct interest? As you know, the House blueprint generally eliminates interest as a business expense in exchange for going to full expensing on capital assets. Do you view this as an acceptable trade-off, and should any restriction on the deductibility of interest be considered to finance lower rates or faster depreciation?

Mr. KAUTTER. I think as part of tax reform, Senator, everything should be on the table. I think we should look at the deductibility of interest. There is concern among many that the current treatment of interest deductibility leads businesses to excessive leverage.

If something is done with respect to the deductibility of interest expense, I do not think it would be wise to do it as a simple across-the-board change. I think there are some aspects of the economy that depend very heavily on interest, and it is critical that they have availability to interest to debt and to the deductibility of their interest expense.

Senator GRASSLEY. A key simplification of the individual income tax being considered is substantially increasing the standard deduction. For example, the administration proposed doubling it while generally only maintaining the deductions for charitable contributions and mortgage interest.

However, at the end of the day the increased standard deduction means that only around 5 percent of the taxpayers would itemize

to take advantage of either of these two remaining deductions. How should tax reform balance the important goals of simplification with the long-term policy goals of incentivizing charitable giving and home ownership?

Mr. KAUTTER. I think as part of tax reform—if we are going to do it right, Senator—each individual tax provision needs to be viewed in the context of a comprehensive Internal Revenue Code. So looking at every provision of the tax law, I think, makes sense. And figuring out a new Internal Revenue Code for the future which is substantially simpler with lower rates, I think, would benefit the economy and all of the taxpayers a great deal.

Senator GRASSLEY. There is a broad agreement that pass-through tax rates need to be lowered in conjunction with any reduction of the corporate tax rate. In your view, must the corporate tax rate and pass-through business rates be equal to provide a level playing field?

Mr. KAUTTER. Well, thank you, Senator. I have actually written on that and testified before the House Small Business Committee on that.

Over the years, I have spent a lot of time focused on pass-through businesses. And when I was at American University, the focus of the tax center I headed was on small businesses and middle-income taxpayers.

At the time, about 2 or 3 years ago, there was a lot of discussion about eliminating a broad array of business expenses, business deductions, and using that revenue to lower the corporate rate. My concern was that many of the flow-throughs are small businesses.

And so I proposed at the time that maybe what we should have is a single business rate structure for all businesses, for flow-throughs as well as C corporations. It could be a graduated rate structure, but I proposed a single-rate structure for all business entities.

At the time, I realized there are some significant problems with that. The biggest one probably is whether personal service income should be subject to those lower flow-through rates. I think that is a question on which people can differ, but I think that is significant.

If it is agreed that personal service income should be subject to that lower pass-through rate, I think we need ways to prevent individuals from converting wage income into pass-through income. But the biggest issue maybe, Senator, and maybe to get directly to your point, I think there has to be a realization that C corporations have two levels of tax, and pass-throughs only have one.

So, while I would like to see the pass-through rate as low as it could be, I think we have to take into account the fact that there is a second level of tax on C corporations that does not exist for pass-through entities.

Senator GRASSLEY. Is that saying that there would not be some—and this is my last question. What you just said in the tail end is, you are giving some consideration to a lower rate for pass-through income as opposed to salaries, or not?

Mr. KAUTTER. Yes, sir. But going back to my first point, I really think there is a serious question whether that lower pass-through income rate should apply to personal service income. In other

words, if there is a corporate attorney in a corporate tax department performing exactly the same services as an attorney with a law firm, it does not seem right to me that the attorney with the law firm pays at a lower rate of tax than the employee pays.

Senator GRASSLEY. Okay.

Mr. KAUTTER. Thanks.

Senator GRASSLEY. Thank you.

The CHAIRMAN. Okay.

Senator Casey?

Senator CASEY. Thank you, Mr. Chairman.

Mr. Kautter, we appreciate you being here. I note for the record that you are a Luzerne County native.

Mr. KAUTTER. Yes, sir.

Senator CASEY. Luzerne County, Pennsylvania. We do not have that happen very often around here, so it is good to see you.

I want to—I will have some questions for the record regarding the line of questioning that Senator Wyden pursued with regard to Ernst and Young. I want to ask you in particular, though, about the code and where we go from here.

In particular, I want to start with progressivity in the code. How do you preserve that? What are your views on that? And how do you view that issue, were you to be confirmed?

Mr. KAUTTER. Well, progressivity has been a part of the Internal Revenue Code since its original enactment. I think it is sound social policy. I think it is sound tax policy.

My focus, if confirmed, will be on a middle-income tax cut. I think reducing taxes for middle-income taxpayers, simplifying the law, encouraging economic growth, and generating good-paying jobs are what I would focus on. So I believe in progressivity, and I think progressivity should continue to exist after tax reform.

Senator CASEY. I hope that would be the perspective or the view of the administration, if they are going to focus on middle-class tax cuts. I am afraid that that might not be widely shared in terms of a goal, because we have seen over a number of years that when Congress enacts substantial, and sometimes—I would argue—grossly excessive tax cuts for the wealthy, other parts of our society pay. Other parts of the budget pay—schools pay, research investments pay. Cuts to NIH or limitations on the investment, everything from Meals on Wheels to other programs are now up for not just cuts, but elimination by the administration. So I hope the administration would adopt the view that the middle class should be the priority.

So let me just ask it this way in terms of the tax cuts for the wealthy: if the administration's tax plan is not deficit-neutral, how would you weigh unpaid-for tax cuts against programs and services that that revenue pays for?

Mr. KAUTTER. Well, Senator, my personal belief is that tax reform should be revenue-neutral. Saying that, I think we should take dynamic scoring into account as part of that. But I think adding to the deficit as part of tax reform is not the best way to go.

Senator CASEY. I might have a difference of opinion on dynamic scoring. We can get to that another day.

As you know, what we have from the White House so far is kind of a one-pager—

Mr. KAUTTER. Yes, sir.

Senator CASEY [continuing]. Which does not tell us much, but it does give broad outlines. Our sense is that the proposal the administration would move forward would be a repeal of all deductions, save three, right—just charitable, home interest, and retirement? This would result in a kind of above-the-line deduction being repealed.

So here are just some examples of what that could lead to. You have in that scenario, repealing deductions for higher education expenses like tuition. So, if the overall tax plan gives a tax cut to those making, say, over a million dollars, how is that an appropriate trade-off when it comes to a deduction that benefits those who need higher education?

Mr. KAUTTER. Sure. Well, I think the discussion so far has been primarily on itemized deductions, and education can pull into that. I think everything should be on the table as part of tax reform, and I would not rule anything in or anything out at this point. I think there are very many meritorious provisions in the code.

The challenge is, they create complexity. And I, if confirmed, would be glad to work with you and your staff on the issues that you are focused on.

Senator CASEY. Well, we could add to that list of subject areas where individuals would be impacted. Education is one, expenses for educators in our classrooms, travel expenses incurred by Army Reserve members, as well as others.

I am wrapping up, but I just will ask you one final question. Can you guarantee that, on average, there will be no absolute tax cut for the wealthy?

Mr. KAUTTER. I am not in a position at this point, Senator, to make that commitment. I will tell you that my focus is on the middle-income taxpayer. And that is why I agreed to take on this job, if confirmed. And I will give you my word, that is my primary concern.

Senator CASEY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Congratulations on your nomination. We had a chance, Mr. Kautter, to talk about how I look at tax reform in trying to best think about an information age. Obviously one of the things we want to harness is the level of innovation and continued development of new products and services, so we need to make sure that, as we look at tax reform, we are focusing on the era that we live in and how to best capitalize on that.

We also had the chance to talk about some of the challenges that come with that as well. And I mentioned two things—the apprentice programs and affordable housing—and wondered if you had a chance to think any more about those two issues and ways in which we might incentivize a more rapid uptake of worker training; that is, to incent companies to hire and train as opposed to the challenges that we face. So I do not know if you have had a chance to look at that.

Mr. KAUTTER. Senator, I have not developed my thinking on that any further, but if confirmed, I would look forward to working with you and your staff to try to develop something that we thought

made sense. I will say, I am sympathetic to that, as someone who was a university professor for part of my career and believes in the importance of education.

I am a believer that education can make a difference. And the apprenticeship programs, which I think you have focused on and pioneered in your home State, have made a difference in many lives, and I would like to see that extended.

Senator CANTWELL. And do you think that could be an applicable place for the tax code, given that part of our challenge is that people do not know where to go to spend their time and training? We are asking people to go make an investment, and change is happening in a much more rapid fashion, and people do not know where to make the investment. So, if we can short-circuit that by getting companies to hire and then train, we have taken a lot of consternation out of the system.

Mr. KAUTTER. I agree. I think that is a serious issue for the U.S. economy and for our competitiveness, and I would look forward to working with you to try to develop something we could put into the tax law that would not be unduly complicated and be effective and efficient to deal with that issue.

Senator CANTWELL. Thank you. And on the affordable housing issue, have you had any more opportunity to think about that in the context of the crisis in America now on affordable housing?

The low-income tax credit has been a great tool. I think the one thing that has been missing here is the discussion of how much we have been impacted as a Nation by the growth of Americans who now are in this unaffordable category, that we have had a shift in the context of how many Americans have retired and now are in the situation of looking for affordable housing—returning veterans, people who have fallen out of the economy in the downturn.

So we literally have a 60-percent increase in the number of people now paying more than 50 percent of their income for housing.

Mr. KAUTTER. The Low-Income Housing Tax Credit is not an issue I have spent a lot of time on in my career. From what I have seen, it works pretty well, and I think as part of tax reform we should take a look at whether it can be made more effective and more efficient. I think everything should be considered as part of the comprehensive tax reform effort.

And I understand the goal of the Low-Income Housing Tax Credit and I think it is a worthwhile goal that we should continue to—

Senator CANTWELL. And I think in this case what we are looking for is your feedback—and maybe you can think about it and give us something for the record. It is the tax credit that drives 90 percent of the affordable housing. So if you do not increase it, we are not going to increase the supply. So this is really more an analysis of the shift change in the population that is now experiencing these really dire situations and whether it is a worthy investment at this point to increase the amount of capital put behind the tax code.

And then I would put one other note into this, that the discussion of tax reform is actually suppressing the amount of capital going in at this point in time. So the discussion of tax reform is basically hurting us in this discussion, because people are just sitting on their capital instead of making the necessary investments.

Mr. KAUTTER. Senator, it may be possible to make the Low-Income Housing Tax Credit even more effective and efficient than it is today. And if confirmed, I would look forward to working with you and your staff to accomplish that.

Senator CANTWELL. Okay.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman.

Thank you, Mr. Kautter, for being willing to serve in this position. I enjoyed meeting with you and visiting and learning, and I appreciate your experience and am pleased that we have a nominee who understands the challenges that businesses face in this complex tax code—in fact, to even understand the tax code.

You have probably already noted that anyone with expertise coming through these committees has a lot of problems. There is a lot of background that can be looked at and picked apart.

I would like to mention that President Obama's Assistant Secretary for Tax Policy, Michael Mundaca, had these words to say about our nominee. "Beyond deep technical knowledge, which is essential, Dave would bring great leadership abilities and, perhaps most importantly, he would bring a calm, measured, thoughtful approach to controversial issues."

I cannot think of higher praise that somebody could get than that coming into this position. Now, I also noted that you talk about businesses with no financial expertise, that ones with \$50 to \$60 million a year do not have a CFO. And I would mention that we have a lot of agencies that do not have any CFOs as well.

I want to congratulate Superintendent Wenk of Yellowstone Park. I think he is the first Superintendent of a national park that got a chief financial officer instead of having a botanist check the box of having done that as part of his experience. I noticed in this morning's paper that Casper, WY is going to consider eliminating their Assistant City Manager for having a chief financial officer.

It does help to have somebody who can look through financial documents and figure them out. There are a lot of people who do not have that kind of expertise. You have that kind of expertise, and you have worked in taxes, actually done them.

Now, I am also the Budget chairman, and I know that our Nation is on an unsustainable fiscal path. So I appreciate your comments about having tax reform be budget-neutral.

The Congressional Budget Office has made it clear that if current laws governing taxes and spending do not change, the United States will face steadily increasing Federal budget deficits and debt over the next 30 years. In CBO's projections, debt rises to 86 percent of GDP in 2026 and 141 percent in 2046, exceeding the historical peak of 106 percent that occurred after World War II.

The prospect of such large debt poses substantial risks for our Nation and presents policymakers with significant challenges. We need to take steps to reform our broken tax code to lay the foundation for long-term prosperity for all Americans.

And as I have mentioned before, I have been working on international tax reform for some time so that we can be competitive overseas. If we do something in that international area, it will help

to right the ship by pulling our international system into the 21st century, making us more competitive overseas and having the possibility of bringing more revenue back to the United States to be invested in American businesses. I have been working with Senator Portman to make that happen.

From a broad perspective, can you explain what the administration believes is the appropriate way for reforming outdated international tax rules?

Mr. KAUTTER. Well, Senator, the administration is supporting a territorial tax system. More than that, I think the goal of the administration is to, through tax reform, develop a competitive international tax system.

In 1986, the Internal Revenue Code was state-of-the-art. Other countries admired what we had done. We had a broad base, we had low rates, and they went to school on what Congress had enacted in 1986, and they have broadened their bases and lowered their rates.

And they went a step further. In 1986, a worldwide system of taxation was state-of-the-art. Today, a territorial system is what most of our major trading partners have moved too.

With a worldwide system, U.S. businesses are at a competitive disadvantage. Now there are strengths and weaknesses of any system, whether it is a worldwide system, whether it is a territorial system, but the fact of the matter is, we are—at this point—out of step with the rest of the international community. And if we do not move to a similar system, a territorial system, I think we are going to be at a competitive disadvantage.

Senator ENZI. Thank you. Again, I appreciate your background and know that a simpler and less burdensome tax code will help American businesses and individuals to prosper. It is a thrill to have somebody who has hands-on accounting experience, and I appreciate you making it through some of the pretty tough stuff that you will have to go through. But I look forward to working with you.

Mr. KAUTTER. Thank you.

The CHAIRMAN. Thank you, Senator.

Before I call on Senator Thune, let me just make a couple of points here, and then Senator Wyden will close out the hearing.

It is important that we not cloud the record concerning Mr. Kautter's work at Ernst and Young. Let us restate the facts. Number one, for nearly 3 decades, David Kautter was a professional at Ernst and Young, and the committee has seen no evidence whatsoever that would call into question his honesty, his integrity, or his good judgment during his work there. Number two, the firm's tax activities were the subject of a Permanent Subcommittee on Investigation inquiry, including hearings and a report. No part of this inquiry found any hint of wrongdoing by Mr. Kautter or reflected negatively on him in any way.

Mr. Kautter has told the committee both in writing and in person that he had no involvement in creating or promoting alleged tax shelters. We have no reason whatsoever to doubt him.

I have to leave for a meeting with the Japanese Ambassador, but I want to thank everyone for their participation today. Today's

schedule was a bit more demanding than normal, and I want to thank everyone for their participation.

Mr. Kautter, I personally want to thank you for your professionalism and responsiveness. My hope is that we can process your nomination in short order and continue the important bipartisan work of this committee.

So, we will turn now to Senator Thune. When he is through, I understand the ranking member would like—

Senator WYDEN. Mr. Chairman, just before you leave, for 30 seconds, as Mr. Kautter has said today—and it is something I will be weighing in the days ahead—he would have handled the matter of what happened at Ernst and Young differently.

The CHAIRMAN. Yes.

Senator WYDEN. And I was taken by that statement. We are going to have to have some more discussion about it, but I wanted the record to note that.

The CHAIRMAN. Well, thank you. I think that it is good for you to point that out.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

The CHAIRMAN. Now, if you will excuse me. You will finish up.

Senator THUNE. Let me begin by thanking Mr. Kautter for appearing before the committee today, and for your willingness to serve as Assistant Secretary for Tax Policy. We appreciate your participation in this confirmation hearing. And obviously, the position to which you have been nominated is one of the most important roles in the executive branch as we press forward with tax reform. So thanks for your willingness to bring your expertise to this enormous undertaking.

I want to talk for just a minute about the continued growth of the so-called gig economy. The issue of worker classification has taken on greater importance.

Historically, the tax code and the IRS have had a bias toward classifying individuals as employees and against independent contractors. But that view really does not square with the increasing number of Internet platforms and apps that bring service providers together with people looking for those services and create much-needed jobs in this country.

So I introduced legislation last week to provide more certainty for these independent entrepreneurs who are really building the gig economy today. Do you share my belief that we cannot afford to continue looking past the worker-classification issue and that tax reform is the singular opportunity to modernize the tax code for traditional business models as well as the new models that are propelling the gig economy, the sharing economy, and whatever comes next?

Mr. KAUTTER. Senator, I would agree with that. I mean, the rules governing classification between employee and independent contractor have been uncertain for decades. The IRS issued a revenue procedure in the late 1980s which is sort of state-of-the-art for classifying. It has 20 factors. Some of those factors are incomprehensible.

And so I think bringing greater clarity to classifications between employees and independent contractors is an important thing to do. And I think tax reform is the right time to do it.

Senator THUNE. If you are confirmed, would you work with me to address this issue as part of tax reform?

Mr. KAUTTER. Yes, sir. I would look forward to that.

Senator THUNE. Thank you.

Mr. Kautter, we have a once-in-a-generation opportunity not only to modernize the tax code, but also to refocus it on sustained long-term economic growth in this country. I believe the two most powerful things that we can do in the tax code to achieve that goal are to lower business tax rates for both corporations and pass-throughs and to allow businesses to recover the cost of their investments as quickly as possible.

Both of these changes will allow companies to deploy capital and earnings into business growth, job creation, and better wages, rather than sending more tax revenues to Washington for government spending.

So I have two questions. One, do you agree with this view on lower business tax rates and faster cost recovery? And second, do you agree that these changes will have a macroeconomic effect on tax revenues that we should take into account as we develop tax reform legislation?

Mr. KAUTTER. Yes, sir. I do believe that both those changes would have a favorable effect on the economy. And I think trying to strike the right balance between lowering the rate and changing the depreciation rules by shortening them is an imprecise science, but I think we need to focus on both as part of tax reform. Both are very important.

Senator THUNE. Okay. Well, I do too. And I hope that as we get into the debate on tax reform, this committee and the full Senate will look at the macroeconomic impact that these policy changes could have on tax revenues as we develop that legislation, recognizing, again, that lower rates and faster cost recovery are the two things from which I think we get the biggest economic pop, and we want to do everything we can to grow the economy.

Mr. KAUTTER. I would agree with that.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN [presiding]. I thank my colleague.

Senator Menendez?

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Kautter, do you support the proposition in the President's proposal to eliminate State and local tax deductions?

Mr. KAUTTER. Senator, I think as part of tax reform we should look at every individual provision in the Internal Revenue Code. And I think that what we do should be viewed as a comprehensive package. So I think every provision of the code should be on the table.

Components of the tax reform package are interdependent, and so I think we should look at that.

Senator MENENDEZ. I appreciate that. I am asking you, specifically, about this one. I get the broad picture. It is all interrelated. What are your views on this one?

Mr. KAUTTER. I would say, Senator, that it should be considered. It is hard to answer that question, frankly, in isolation. I think it depends on what the comprehensive package looks like.

Senator MENENDEZ. Well, what is the purpose of the State and local property tax deduction?

Mr. KAUTTER. In my experience, one of the theories was that it was to avoid double taxation on the amounts paid into State and local governments.

Senator MENENDEZ. So in your view of “everything should be on the table,” should the foreign tax credit, which is basically a subsidy for U.S. corporations—the credit they receive against U.S. taxes reduces revenue to the Treasury—do you think that that one should be on the table as well?

Mr. KAUTTER. Yes, sir.

Senator MENENDEZ. And what are your views on it?

Mr. KAUTTER. Again, I would say—I would give you the same answer I gave you with respect to the State and local tax deduction. In isolation, I can see the benefit of a foreign tax credit. I can see the detriments of it. I think the key is how it fits into a comprehensive overall tax reform package.

Senator MENENDEZ. And let me express to you what I have expressed now to several nominees in different forums on different committees. It is a little difficult here to vote on someone, because I understand at the end of the day, anyone who is nominated by the administration will ultimately pursue what the administration decides is its policy. That is pretty clear.

But this is a very significant position, and you will have the ability to advocate internally at Treasury and in interagency processes, and it is hard to vote for someone if you cannot glean from them what it is that they will be advocating. So that is a problem with your answer.

Let me ask you a different thing. For multiple Congresses, many members of this committee on a bipartisan basis have urged the Treasury Department to withdraw IRS Notice 2007–55 in order to encourage more overseas investment into the U.S. commercial real estate market. In fact, 40 Senators cosponsored the Foreign Investment in Real Property Tax Act, or FIRPTA reform bill that I and others introduced in 2013, which would have repealed the notice.

These days, that is an almost unheard-of level of bipartisanship. Despite significant reforms that we passed in 2015, the notice still has a chilling effect on investments in commercial property. It stunts investments from foreign pension funds, sovereign wealth funds, regular foreign individual investors who want to invest in and develop American property. Since this was done as an executive action and not legislatively by Congress, you, if you are confirmed, are in the position to influence the potential repeal of this IRS notice.

Will you actively review the feasibility of withdrawing this notice after you are confirmed?

Mr. KAUTTER. Senator, it is not an issue I have focused on a lot in my career, but I would welcome the opportunity to take a close look at it and work with you and your staff.

Senator MENENDEZ. Okay. Let me ask you one last question. If you are confirmed, you would be the point person in the Treasury

Department for tax reform—and I share the views of many on the committee that it is both long-overdue and desperately needed. We have not updated the code in more than 30 years, so it is the right thing to do.

But do you believe that something as important and all-encompassing as tax reform should be done openly, transparently, for the public to see? Do you believe that the Finance Committee should hold legislative hearings and mark up something as important as tax reform? Is regular order preferable to reconciliation in order to obtain long-lasting reform?

Mr. KAUTTER. Senator, I believe that Congress does its best work when it works in a collaborative, collegial, across-the-aisle manner. When I worked here years ago, that was how we worked.

The Senator I worked for, Senator Danforth, required every tax bill that I worked on to have a Democratic sponsor. I thought it made the legislation stronger and better, and my personal fiber and commitment to you is that if confirmed, I will do everything I can to always have an open door and to work across the aisle and to give access to both sides.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Menendez.

I have a couple of additional areas, Mr. Kautter, I would like to get your thoughts on. The administration seems to think that tax cuts pay for themselves. That is, the folks who are there now. Do you share that view?

Mr. KAUTTER. Senator, I believe that taxes do affect economic behavior. I have seen it. And I think most economists believe that taxes do affect economic behavior.

There is a wide variety of views as to what that impact is in a complex economy. So, I do believe in dynamic scoring.

Senator WYDEN. But do tax cuts pay for themselves? The reason I am asking is, I happen to share the view that behavior is relevant.

I remember when Mr. Elmendorf was head of the Congressional Budget Office and I asked him about the proposal that you and I talked about, a bipartisan proposal that I had. And he said, “Yes, we will score thoughtful bipartisan proposals as generating growth in revenue.”

That is very different than the proposition of tax cuts paying for themselves. So staying with this issue that, in my view, is different than saying behavior is relevant with respect to activity in a private economy, do tax cuts pay for themselves?

Mr. KAUTTER. I guess I would say that I have never tried to resolve that issue in its full extent. I do believe that they affect behavior; I do not know that they pay for themselves. I just do not know.

Senator WYDEN. Okay. If you are confirmed, my guess is you are going to have to resolve that issue, because certainly the people whom you would join seem to share that view.

Let me ask you about another matter that we talked about, and that is who ought to get the lion’s share of tax relief. To me, making sure that the middle class gets most of the benefit in an economy where the middle class, the consumer, drives it, that should

be the central focus of tax relief. So in your view, should the middle class get the lion's share of the benefits from tax reform?

Mr. KAUTTER. I do believe the middle class should be the focus, the primary focus of tax reform. Yes, sir.

Senator WYDEN. Okay. I want it clear that I am not going to announce a Kautter Rule, because we have had the experience of having Mr. Mnuchin embrace the rule, and I am just going to hold you to it—

Mr. KAUTTER. Thank you, Senator.

Senator WYDEN [continuing]. Because that is what we talked about in the office. I think that is the clear reality. I do not know of any other place that you can go to drive the kind of growth that we want without zeroing in on the middle class. So you are being spared having a Kautter Rule that the middle class ought to get most of the benefits.

Mr. KAUTTER. Let me say, Senator, I am grateful for your forbearance.

Senator WYDEN. But we want it understood we are going to hold you to the fact that the middle class ought to be—in your words—the focus—

Mr. KAUTTER. Right.

Senator WYDEN [continuing]. Of tax relief, which frankly is not what we saw in the campaign. In the campaign, we saw lots of rhetoric, but then when you start adding up the numbers, it looked like most of the relief went to the fortunate few, and then we have this one-page proposal—which I call shorter than the typical drug-store receipt—where it is very detailed with respect to the fortunate few, and not very detailed with respect to the middle class.

Is there anything else you would like to add?

Mr. KAUTTER. No. Just to express my gratitude, again, Senator, for the time that you have given me, and I will say probably, in closing, I think some of the work that you and your staff have done over the years is some of the most creative and thoughtful work, and if confirmed, I would genuinely look forward to working with you and your staff.

Senator WYDEN. I appreciate that. We are going to have some more things we want to talk about in terms of the discussion today, but I appreciate your saying that, not just because I think that Judd Gregg and Dan Coats—I mean, they were really legislators who felt strongly about this and wanted to spend the time.

If you are confirmed, you are going to really be going in there and playing catch-up, because the reality is, in the 1986 tax reform—and I often talk to Bill Bradley about this—by this time in the year, they had a very extensive bipartisan effort underway where they were regularly bringing together Democrats and Republicans, and there had been a judgment that had been made that there was going to be a bipartisan bill, that it had to be bipartisan, and it reflects the comment you made about Jack Danforth—whom I also liked very much—feeling strongly about that.

But here we are sitting in July, and Senator McCaskill is asking, “When is there going to be some bipartisan discussion?” And when you opened up your *Wall Street Journal* last week, it basically had all of those described as the “Big Six” making all the tax decisions.

The reality is that you can probably find some opportunities to bully your way to a 51-vote strategy with reconciliation. It does not make it sustainable, and in the case of the area you want to work in, it will not bring the certainty and predictability we need for real growth, because what will happen is, if it is just a partisan bill, everybody is going to say, well, gee, that will just turn around, get repealed, the next time somebody else is in the majority.

So to get the certainty and predictability that you really need for private-sector growth, it has to be bipartisan, and it has to focus on the middle class and ending this tale of two tax codes—as I call it—because something is way out of whack when the cop and the nurse have their taxes taken in a compulsory way and people who are fortunate get handled very differently.

So, on behalf of Chairman Hatch, I want to make it clear for the record that any member of the Finance Committee—on either side of the aisle—who has written questions for the record, we would ask that they be submitted by close of business today.

And with that, the hearing is adjourned.

[Whereupon, at 11:03 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing entitled, “Consideration to Nominate David J. Kautter, of Virginia, to be an Assistant Secretary of the Treasury”:

I’d like to welcome everyone to this morning’s hearing.

Today, we will consider the nomination of Mr. David J. Kautter to serve as Assistant Secretary of the Treasury for Tax Policy.

Mr. Kautter, welcome to the Finance Committee. We appreciate your willingness to appear before us today. We also appreciate your willingness to serve in this capacity.

I am sure that the significance of this position at this crucial time is not lost on you. I know it’s not lost on any member of this committee. Tax reform has been a major focus of our committee for some time now, and we are grateful to have you here to discuss your thoughts on these matters.

On a number of occasions, I’ve stated my view that presidential leadership will be a key component to any successful tax reform effort.

Just last week I quoted President Obama in a speech on the Senate floor. Back in 2012, he said things like “our current corporate tax system is outdated, unfair, and inefficient.” The problem was that President Obama never really got around to truly leading on tax reform.

I expect more from President Trump on tax reform. That expectation comes, in large part, because he and Secretary Mnuchin have been talking about it so much. But, more than that, they have engaged with Congress and the public on these issues.

Mr. Kautter, I believe that your nomination is another way this President has further demonstrated his commitment to reforming our burdensome, job-killing tax code. Your experience as a practitioner tax expert will surely be a crucial part of this endeavor.

Now, before I finish up with my remarks, I also want to address another important issue, one that I try to stress with all nominees that come before the committee.

Whether we’re talking about tax reform or the administration of existing tax policy, it is critically important that we have open lines of communication between both parties in Congress and the executive branch. My hope today is that you’ll commit to providing timely and responsive answers to inquiries submitted by members, especially if they sit on this committee.

That is the expectation, and, quite frankly, anything short of that is unacceptable.

With that, I want to thank you once again for being here today. I’ll now turn to Senator Wyden for his opening comments.

PREPARED STATEMENT OF DAVID J. KAUTTER, NOMINATED TO BE ASSISTANT
SECRETARY OF THE TREASURY FOR TAX POLICY, DEPARTMENT OF THE TREASURY

Chairman Hatch, Ranking Member Wyden, and distinguished members of the Senate Finance Committee, it is an honor to appear before you today. I feel both privileged and humbled to have been recommended by Treasury Secretary Steven Mnuchin and nominated by President Trump to serve as Assistant Secretary of the Treasury for Tax Policy. As a former tax staffer for a member of this committee, I have deep respect both for this committee and the institution of the Senate. I look forward to the opportunity, if confirmed, to serve this country again.

I would like to take moment to thank my family who have been a constant source of inspiration and support for me throughout my career, my wife Kathy and my two children, Hilary and David.

I would also like to express my thanks to those members and staff whom I've been able to visit with over the past couple of weeks. If confirmed, I look forward to working with you in a bipartisan, collaborative, and collegial manner.

I grew up in a small town by the name of Plymouth in the anthracite coal mining region in northeastern Pennsylvania. My father worked as an accountant for the coal mines and my mother was a high school teacher.

I have spent the majority of my career as a tax practitioner and leading accounting firm tax departments. I am currently the partner in charge of the accounting firm RSM's Washington National Tax Office. I also ran the American University Kogod Tax Center, where I taught in the business school. Finally, I'm proud to say that I was Senator Danforth's tax counsel for over 3 years. I will always be grateful to Senator Danforth for the lessons I learned and the values he instilled in all of his staff. He set a standard for excellence and service that has been a source of inspiration for my entire career.

Through these career opportunities, I have worked on many aspects of the tax code. At American University, I focused on small businesses and middle-income individuals. My current firm, RSM, is focused on middle-market companies. At Ernst and Young, I specialized in employee benefits and compensation, and witnessed firsthand the challenge of keeping American companies competitive internationally.

Comprehensive tax reform is the challenge before us.

The current code is unnecessarily complex, anti-competitive, and picks winners and losers. Americans need a simpler system when filing their taxes and the middle class needs a tax cut. U.S. businesses need a tax code that allows them to prosper, domestically and in the international marketplace.

You have made great progress in identifying the policies that will achieve these goals. The magnitude of Congress's tax reform work, in terms of hearings, working groups, and legislative proposals, is impressive. As a result, America is on the verge of its first comprehensive tax code overhaul in a generation.

Treasury has an outstanding team of many of the most talented tax professionals in the world. Working together, I believe we can get tax reform over the finish line. If confirmed, it will be an honor to strive to do so.

Thank you.

SENATE FINANCE COMMITTEE

**STATEMENT OF INFORMATION REQUESTED
OF NOMINEE**

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names used): David J. Kautter; David John Kautter; Dave Kautter.
2. Position to which nominated: Assistant Secretary of the Treasury for Tax Policy.
3. Date of nomination: May 11, 2017.
4. Address (list current residence, office, and mailing addresses):

5. Date and place of birth: March 20, 1948; Wilkes Barre, PA.
6. Marital status (include maiden name of wife or husband's name):
7. Names and ages of children:
8. Education (list secondary and higher education institutions, dates attended, degree received, and date degree granted):
 - Plymouth High School; 9/1963–6/1966; high school diploma; June 8, 1966.
 - University of Notre Dame; 9/1966–5/1971; bachelor of business administration, with high honors; May 23, 1971. (Note: While at Notre Dame, I spent my sophomore year abroad at Sophia University, Tokyo, Japan, 9/1968–6/1969).
 - Georgetown University; 9/1972–5/1974; Juris Doctor; May 26, 1974.
9. Employment record (list all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):
 - Staff accountant; Coopers and Lybrand; Washington, DC; 9/1971–5/1974.
 - Tax staff; Arthur Young and Co.; Washington, DC; 9/1974–1/1979.
 - Legislative assistant; office of Senator John C. Danforth; Washington, DC; 1/1979–4/1982.
 - Partner; Ernst and Young LLP; Washington, DC; 4/1982–1/2010.
 - Consultant; self-employed; Washington, DC; 1/2010–12/2010.
 - Executive in residence and director, Kogod Tax Center; American University; Washington, DC; 1/2011–10/2014.
 - Adjunct professor, American University, Washington, DC, 10/2014–current.
 - Partner; RSM US LLP; Washington, DC; 10/2014–current.
10. Government experience (list any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above):

None.
11. Business relationships (list all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution):
 - Ernst and Young, partner (1982–2010).
 - Sole proprietor (2010).
 - RSM US LLP, partner (2014–current).
 - Tax Analysts; member, board of directors (2013–current).
 - Chair, Human Resources Committee (2014–current).
12. Memberships (list all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations):
 - American Institute of Certified Public Accountants; member (1985–present).
 - Strategic Implementation Task Force (2003–2004).
 - Tax Executive Committee (1995–1999).
 - Tax Legislation Liaison Committee, chairman (1994–1995).
 - Tax Division Administration Committee (1993–1994).
 - Employee Benefits Taxation Committee, chairman (1989–1992).
 - Tax Legislative Liaison Committee (1988–1989).
 - Taxation of Distribution from Qualified Plans Task Force (1988–1989).
 - Legislative Affairs Task Force (1986–1987).
 - Employee Benefits Taxation Committee (1985–1987).
 - District of Columbia Institute of CPAs; member (1991–present).
 - American Bar Association; member (1975–present).
 - District of Columbia Bar Association (1975–present).
 - Federal Bar Association; member (1984–2000).
 - Section of Taxation, officer (1988–2000).
 - Section of Taxation Report, editor (1989–1990).
 - Washington National Cathedral; member, Cathedral Chapter (board of directors) (2010–present); chair (2012–2016).
 - Protestant Episcopal Cathedral Foundation.
 - Member, board of directors (2012–2016).
 - Chair, Retirement Committee (2009–2011).

- American College of Employee Benefits Counsel; fellow (2001–present).
 - American Accounting Association (2009–2015).
 - American Tax Policy Institute, board of advisors (1992–1998).
 - American Society of Payroll Management, Government Relations Committee (1992–1998).
 - International Coaches Federation (2009–2012).
 - Westwood Country Club (1985–present).
 - Saint Luke Church (1988–present).
13. Political affiliations and activities:
- a. List all public offices for which you have been a candidate.
None.
 - b. List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
None.
 - c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

2007 Ernst and Young Political Action Committee	\$500.00.
2008 Ernst and Young Political Action Committee	\$500.00.
2009 Ernst and Young Political Action Committee	\$500.00.
14. Honors and awards (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievement):
- Beta Alpha Psi; honorary accounting fraternity, 1970–present.
 - Outstanding Teacher Award; American University; 2013.
 - Outstanding Service Award; American University; 2013.
15. Published writings (list the titles, publishers, and dates of all books, articles, reports, or other published materials you have written):
- Accounting Today*
- “20 Tax Tips for Small Businesses,” David J. Kautter and Donald Williams, 10/1/2013.
 - “Best Tax Practices for Small Businesses,” David J. Kautter and Donald Williams, 8/20/2013.
- American Bar Association (ASA) Section of Taxation Newsletter*
- “Tax Court Holds Income on Disqualifying Disposition of ISO Stock Is Wages for Research Credit Calculation,” David J. Kautter, 10/1995.
- Boardroom Report*
- “Compensation Planning 1995: Tax-Saving Opportunities for Companies for Employees,” David J. Kautter, 1/15/1995.
 - “Cut Compensation Costs With Fringe Benefits,” David J. Kautter, 10/1/1994.
 - “Shrewd Tax Planning . . . and Employee Benefits,” David J. Kautter and Leonard S. Hirsh, 6/1/1993.
 - “Shrewd Compensation Strategies . . . Under the New Tax Law,” James C. Godbout, David J. Kautter, and Rob Bennett, 11/1/1993.
 - “Executive Pension Planning After Tax Reform Changed the Rules,” David J. Kautter and Maria Stefanis, 6/1/1987.
 - “Compensation Strategies: How to Take Good Care of Key Executives After Tax Reform,” David J. Kautter and Maria Stefanis, 2/1/1987.
 - “Benefit Planning: Under the New Tax Law . . . New Breaks and New Pitfalls,” David J. Kautter, 9/15/1984.
 - “Compensation Planning—New Opportunities Under the New Tax Law,” David J. Kautter, 12/1997.
 - “Compensation Planning 1997,” David J. Kautter, 1/1997.
 - “Low-Cost Opportunities in Tax-Favored Fringe Benefits,” David J. Kautter, 3/1/1996.
- Bottom Line Personal*
- “New Retirement Planning: Inspired by Tax Reform,” David J. Kautter, 11/15/1986.
- Daily Tax Report (Bureau of National Affairs, Inc.)/ Daily Report for Executives (Bureau of National Affairs, Inc.)*

- “Return Preparers See Fees Increase but Say Tax Complexity, Government Shutdown Added to Pressures in 2013,” David J. Kautter, 11/21/2013.
- “Complexity, Expanded Filings, and the Economy Big Concerns for Tax Return Preparers,” David J. Kautter, 2012.
- “Survey Reveals Common Tax Reform Goals for Businesses of All Sizes: Uniformity of Views Could Buttress Legislative Prospects,” David J. Kautter, 2/8/2012.
- “Solving the ‘Flowthrough’ Entity Problem in Corporate Tax Reform,” David J. Kautter, 4/11/2011.

Employee Benefit News

- “Commuting Subsidy Benefits: A Hit for Suburbanites,” David J. Kautter, 8/1996.

FBA Section of Taxation Report Newsletter

- “Tax Years for Partnerships, S Corporations, and Personal Service Corporations: An Overview of Section 444,” Diane P. Herndon and David J. Kautter, Summer 1988.

GFOA Pension and Benefits Update

- “IRS Provides Some Guidance and Model Participant Notice on 20 Percent Withholding and Rollover Rules,” David J. Kautter and Joseph G. Metz, 11/12/1992.

International Fiscal Association, Cahiers de droit fiscal international Munich Congress

- “International Tax Aspects of Deferred Remunerations,” David J. Kautter, Volume 85b, 2000.

Institute of Management Accountants, New York Chapter Newsletter

- “IRS Releases Guidance on New Qualified Plan Distribution Rules,” David J. Kautter, Nov.–Dec. 1992.

Investment Dealers Digest

- “Tax Notes for Investment Professionals,” David J. Kautter and Glenn N. Eichen, 9/14/1982.

The Journal of Accountancy

- “‘SERPs’ Up: Retirement Benefits for Senior Executives,” David J. Kautter and Mark A. Weinberger, 11/1990.
- “Compensation After Tax Reform (Part 2): ESOPs, IRAs, and Others,” David J. Kautter, 12/1987.
- “Compensation After Tax Reform (Part 1): The TRA’s Two Waves,” David J. Kautter, 11/1987.

The Journal of Bank Taxation

- “What Type of Stock Option Is Best for a Bank?,” David J. Kautter, 12/1989.

The Journal of Taxation of Employee Benefits

- “Section 83(b) Election Offers Tax Planning Opportunities for Restricted Stock,” David J. Kautter and Lorraine Bell, 1996.
- “Prop. Regs. Eliminate Section 83 Deduction Withholding Requirement,” David J. Kautter, 1995.
- “Tax Treatment of Equity Substitutes Can Differ Dramatically,” David J. Kautter, 1994.
- “IRS Liberalizes Nonlapse Restrictions for Closely Held Companies,” David J. Kautter, 1993.

Kogod Now

- “Exorcising the Tax Code,” David J. Kautter and Jackie Zajak, Fall 2013.
- “How to Get Workers to Save for Retirement,” David J. Kautter, Spring 2013.
- “Employers: Save Money, Retain Talent with Commuter Benefits,” David J. Kautter, Fall 2012.
- “Golden Parachutes and Congress,” David J. Kautter, Spring 2012.

The Middle Market Index (RSM)

- “Tax Reform Likely to Occur in 2017,” David J. Kautter and Anne Bushman, January 2017.

The Tax Adviser

- “Tax Clinic, Practical Advice on Current Issues,” David J. Kautter, Jane Rohrs, Kirsten Simpson, Marjorie Rollinson, Steven Schneider, Robert Crnkovich, and Paul Manning, January 2005.

- “Court Decisions Clarify QDRO Rules for ERISA Plans,” David J. Kautter, 1997.
- “Rollover of Qualified Plan Benefits—Importance of Form,” David J. Kautter and Jennifer L. Wells, 1996.
- “Taxable Compensation or Medical Reimbursement?” David J. Kautter, 1996.
- “Bonus Payments to Key Employees Required to Sell ISO Stock Not Capitalized,” David J. Kautter, 1996.
- “Extended Risk of Forfeiture Delays Recognition of Income With Respect to Restricted Property,” David J. Kautter and Lorraine Bell, 1995.
- “Amounts Included in Income by Employees Under Section 83 Are Not ‘Received,’” David J. Kautter, 1995.
- “The \$1 Million Cap on Compensation Deductions,” David J. Kautter, June 1994.
- “Insurance Policy Covering a Promise to Pay Nonqualified Deferred Compensation Did Not Trigger Income,” David J. Kautter and Lorraine Bell, 1994.
- “Promise to Pay Compensation Secured by a Letter of Credit Ruled Currently Taxable Under Section 83,” David J. Kautter and Lorraine Bell, 1994.
- “Deferring Director Salaries May Save Social Security Taxes,” David J. Kautter and Lorraine Bell, 1992.
- “Employee Termination Payments and Payroll Taxes,” David J. Kautter and Joseph E. Marx, 1991.
- “Section 4980A: Excess Retirement Distributions and Accumulations,” David J. Kautter and Maria Stefanis, 3/1989.
- “IRS Interest Expense and Tax Dispute Expenses,” David J. Kautter, 1987.
- “Retroactive Limitation on Retirement Plan Contributions for Self-Employed Individuals,” David J. Kautter, 1986.
- “Purchased Computer Software,” David J. Kautter, 1984.
- “ERISA Developments,” David J. Kautter, 1983.

Tax Angles

- “Q&A Tax Forum: Keoghs, Estates, Depreciation,” David J. Kautter, 1987.

Tax Management Compensation Planning Journal

- “Employee Benefits: Statutory Simplification,” David J. Kautter, 3/2/1990.

Tax Notes

- “A Simplified Method of Accounting for Small Business,” David J. Kautter and Donald Williamson, 2/13/2012.

16. Speeches (list all formal speeches you have delivered during the past 5 years which are on topics relevant to the position for which you have been nominated):

“The Fiscal Cliff and the Future of Tax Reform,” CBIZ National Tax Conference, July 18, 2012.

“Tax Reform in 2013 and 2014,” CBIZ National Tax Conference, July 19, 2013.

“Key Retirement and Fringe Benefit Plan Trends for Small and Mid-Size Businesses,” CBIZ National Tax Conference, July, 15, 2014.

Capitol Hill Update/Tax Reform, RSM Tax Summits—During the spring and fall of each year, RSM sponsors a series of updates for its clients around the country. I started speaking at these updates in the spring of 2015 continuing through this spring (2017). I prepare a standard slide deck for these presentations, one for the spring sessions and one for the fall sessions. All slides for any presentations I deliver are taken from the slides in these decks. The decks for the following sessions have been provided to the committee.

- Spring, 2015.
- Fall, 2015.
- Spring, 2016.
- Fall, 2016—Pre-election.
- Fall, 2016—Post-election.
- Spring, 2017.

17. Qualifications (state what, in your opinion, qualifies you to serve in the position to which you have been nominated):

I have been a tax practitioner for the past 43 years. During that period, I have provided advice on a wide range of tax issues to a wide variety of taxpayers ranging from individual taxpayers to small businesses to mid-size businesses to large global multinational businesses. I have taught numerous courses in tax

law including as an executive in residence for 4 years at the Kogod School of Business at American University where I also ran a tax center focused on small businesses and middle-income taxpayers. Over the years, I have authored numerous articles on various aspects of Federal taxation. While at Ernst and Young, I provided advice to clients ranging from individuals to small businesses to large global multinational companies. For 20 of my years with Ernst and Young, although I provided advice on a wide range of tax issues, I was the leading tax specialist at the firm with respect to the taxation of compensation and benefits. I served as tax legislative counsel to Senator John C. Danforth from 1979 to 1982 during which time I worked on the Economic Recovery Tax Act of 1981 and other legislative matters including the Federal budget. As previously mentioned, I was an executive in residence at American University in the Department of Accounting and Taxation for almost 4 years where I also was the director of the Kogod Tax Center. The Tax Center was focused primarily on tax issues affecting small businesses and middle-income taxpayers. I joined RSM in October 2014 where I have focused primarily on tax issues affecting middle-market businesses. During the course of my career, I have also testified before various congressional committees on various Federal tax matters.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.
Yes.
2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.
No.
3. Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.
No.
4. If you are confirmed by the Senate, do you expect to serve out your full term or until the next presidential election, whichever is applicable? If not, explain.
Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.
Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Rochelle F. Granat, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.
2. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Rochelle F. Granat, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.
3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal Government need not be listed.

Testimony before Congress:

- “The Biggest Tax Problems of Small Businesses;” Statement of the Kogod Tax Center of the American University; Before the Committee on Small Business of the U.S. House of Representatives; 4/9/2014.
- “Tax Related Provisions in the President’s Health Care Law;” Statement of the Kogod Tax Center of the American University; Before the Subcommittee on Oversight of the Committee on Ways and Means of the U.S. House of Representatives; 3/5/2013.
- “Tax Filing Season: Improving the Taxpayer Experience;” Statement of the Kogod Tax Center of the American University; Before the Committee on Finance of the U.S. Senate; 4/26/2012.
- “The Tax Outlook for Small Business: What’s on the Horizon;” Statement of the Kogod Tax Center of the American University; Before the Committee on Small Business of the U.S. House of Representatives; 4/18/2012.
- “Tax Reform for Small Businesses and Pass-Through Entities;” Statement of the Kogod Tax Center of the American University; Before the Committee on Ways and Means Working Group of the U.S. House of Representatives; 4/12/2013.
- “Treatment of Closely Held Businesses in the Context of Tax Reform;” Statement of the Kogod Tax Center of the American University; Before the Committee on Ways and Means of the U.S. House of Representatives; 3/13/2012.
- “The Importance of Extending the 2011 Tax Provisions of Importance to Small Businesses;” Statement of the Kogod Tax Center of the American University; Before the Committee on Finance of the U.S. Senate; 2/1/2012.
- “How Business Tax Reform Can Encourage Job Creation;” Statement of the Kogod Tax Center of the American University; Before the Committee on Ways and Means of the U.S. House of Representatives; 6/2/2011.
- “The Employee Benefits Simplification Act (S. 2901);” Statement of the Federal Taxation Division of the American Institute of Certified Public Accountants; Before the Select Revenue Measures Subcommittee of the Committee on Ways and Means of the U.S. House of Representatives; 7/25/1991.
- “The Employee Benefits Simplification Act (S. 2901);” Statement of the Federal Taxation Division of the American Institute of Certified Public Accountants; Before the Subcommittee on Private Retirement Plans and Oversight of the IRS of the Committee on Finance of the U.S. Senate; 8/3/1990.
- “Simplification of Current Rules Concerning Private Pension Plans;” Statement of the Federal Taxation Division of the American Institute of Certified Public Accountants; Before the Subcommittee on Private Retirement Plans and Oversight of the IRS of the Committee on Finance of the U.S. Senate; 2/23/1990.

Testimony before Washington, DC government:

- “Tax Revision Proposals Adversely Affecting Small Businesses;” Statement of the Kogod Tax Center of the American University; Before the District of Columbia Tax Revision Commission; 12/4/2013.

4. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Rochelle F. Granat, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.

5. Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

My understanding is that these documents have been submitted to the committee.

D. LEGAL AND OTHER MATTERS

1. Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
No.
2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.
No.
3. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, provide details.
No.
4. Please advise the committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
None.

E. TESTIFYING BEFORE CONGRESS

1. If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?
Yes.
2. If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?
Yes.

QUESTIONS SUBMITTED FOR THE RECORD TO DAVID J. KAUTER
QUESTIONS SUBMITTED BY HON. DEBBIE STABENOW

Question. I strongly support incentives in our tax code for charitable giving, and have been proud to champion several of them. However, I am concerned that our current tax system can limit corporate charitable giving in an unintended way, especially among regulated industries that are frequently operating at a net operating loss. This can be the case because the carryforward period for charitable deductions is only 5 years, as compared to general business credits and deductions, which can be carried forward for 20 years.

Do you believe the carry-forward period for charitable deductions should be aligned with general business credits and deductions at 20 years, rather than the current 5-year period, to encourage companies to invest in local communities?

Answer. Charitable giving is a critical part of our society, and I'm pleased that President Trump chose to protect the charitable deduction in his tax reform outline. The wording of your question appears to indicate that a certain subset of the corporate community is disadvantaged by the 5-year carry-forward period. I am interested to learn who these companies are and how the current-law treatment impacts their giving. I would also like to better understand any past policy justifications for the 5-year period as compared to the 20-year period for other credits.

Question. I firmly believe that we cannot have a robust economy if we do not grow things here and make things here. Many businesses use credit financing to meet operating expenses, invest in equipment, supplies and to help bridge the gap during times of uncertainty or when trying to expand their operations. The current tax code supports businesses in making these investments by allowing them to deduct 100 percent of the interest paid on debt from their taxable income. This deduction is critical to many different types of businesses of various sizes and sectors. In Michigan, interest deductibility is critical to the agriculture and manufacturing sectors, and to small businesses, which frequently simply do not have the option of raising money from the equity markets.

What are your thoughts on eliminating or limiting interest deductibility?

What are some pros and cons to repealing or limiting interest deductibility?

Do you believe that full expensing is an acceptable substitute if interest deductibility is limited or eliminated?

Answer. Modifying the tax treatment of the ability of businesses to deduct interest expense is something that has to be considered in the broader context of tax reform. Whether to do so depends on how tax reform addresses other parts of the code, such as depreciation. There are legitimate policy arguments for revisiting interest expense. For instance, limiting its deductibility is one avenue for addressing the current code's preference for debt over equity. Any limitations on interest deductibility, though, need to be carefully considered, including the possible impact on different types of businesses and sectors taken into account. In addition, in order to avoid negative tax rates, a limitation on the ability to deduct interest also may be appropriate to the extent that the tax system allows full or partial expensing of capital investments. The downsides of interest limitations, including raising the cost of capital for some businesses, need to be weighed against that policy's benefits.

Question. I am one of the chief authors of a law that accelerated access to AMT tax credits for companies in lieu of bonus depreciation. This legislation is designed to allow companies to utilize their AMT credits—many of which are old and have been sitting on their books for years—to generate economic growth and create good-paying jobs. On August 5, 2016, the Office of the Chief Counsel of the IRS publicly released a memorandum stating that, upon redemption under this provision, these AMT credits will be fully subjected to sequester under the Balanced Budget and Emergency Deficit Control Act of 1985 and the Budget Control Act of 2011 (BCA). The memorandum also stated that the sequestered amounts cannot be carried over and therefore, would be permanently lost.

Unlike other business tax credits, AMT credits are the result of tax liability already paid to the Treasury by these businesses—often years ago in the case of old credits. Permanently denying companies a significant portion of their AMT credits contradicts congressional intent and denies these companies access to their own funds.

Do you believe it is appropriate for companies who elect this provision to be permanently denied access to their own pre-paid AMT credits?

Answer. I appreciate your raising this issue. If confirmed, I look forward to working with the professional staff at Treasury and IRS to gain a better understanding of this issue and how to properly address it.

Question. As you know, section 199 plays an important role in incentivizing domestic manufacturing. Unfortunately, the IRS has implemented this deduction in a manner that benefits domestic manufacturers that are vertically integrated (own and operate their own production facilities), but does not benefit most domestic manufacturers that use contract manufacturers here in the United States. This is the case even though both arrangements create jobs in the United States.

Indeed, since the enactment of section 199, there has been considerable confusion and numerous disputes between the IRS and taxpayers about whether a taxpayer who uses a contract manufacturer is entitled to take the section 199 deduction. This has created inconsistent results, litigation, and a lack of certainty.

In August 2015, Treasury proposed a new regulation that would specifically disallow the section 199 deduction for taxpayers who use U.S. contract manufacturers, citing a goal of reducing the complexity of administering section 199. This proposed regulation would also deny the section 199 deduction to most contract manufacturers, meaning that in many cases, neither party could take section 199.

Senators Portman, Brown, and I have introduced legislation here in the Senate to clarify the intent of section 199 and ensure that any party who makes a substantial contribution to the manufacture of domestic goods through the activities of its U.S. employees is eligible for the section 199 deduction based on its own income from the domestic goods. This would resolve the discrepancy under current law that exists between vertically integrated and non-vertically-integrated manufacturers.

Will you commit to reviewing the 2015 proposed regulation and considering taking appropriate action to ensure that going forward, the IRS will allow taxpayers to claim equal value from section 199 regardless of whether they are vertically or non-vertically integrated?

Answer. I recognize that there has been much litigation and uncertainty around this issue. I appreciate your willingness to pursue additional statutory clarity and, if confirmed, I look forward to reviewing and considering the positions taken in the 2015 proposed regulations in light of potential inequalities between vertically and non-vertically integrated manufacturers.

QUESTIONS SUBMITTED BY HON. CLAIRE McCASKILL

Question. The Base Erosion and Profit Shifting (BEPS) project developed by the Organisation for Economic Co-operation and Development (OECD) recommended international tax policy changes intended to increase tax collection from multinational corporations. What role should Treasury play at the OECD in representing the interests of U.S.-based multinational corporations that may be impacted by these changes in foreign tax laws?

Answer. I believe it is important for Treasury to represent U.S. interests in the OECD to ensure that efforts undertaken by the OECD, including the BEPS project, are not used by other countries to unfairly target U.S. businesses.

Question. For many years, in both Republican and Democratic administrations, the Treasury has released detailed tax reform proposals. If confirmed, do you pledge to partner with my colleagues on both sides of the aisle by offering detailed tax reform ideas to Congress?

Answer. If confirmed, I look forward to working with the professional experts in Treasury's Office of Tax Policy to generate useful tax reform proposals and working with both sides of the aisle in Congress to solve tax policy challenges.

Question. The business community requires certainty in our tax laws in order to accomplish effective long-range planning. What are your views on adopting temporary, short-term changes to the Internal Revenue Code, instead of permanent policy?

Answer. Avoiding temporary tax provisions that regularly are extended adds to policy certainty, is consistent with sound budgeting principles, and facilitates long-term planning. However, in certain cases truly temporary provisions can be appropriate.

Question. The Internal Revenue Code includes many tax provisions designed to spur investment in infrastructure. What tax policies should Treasury pursue to ensure that sufficient revenue is directed toward our country's infrastructure needs?

Answer. I understand that the administration is committed to rebuilding our country's infrastructure. If confirmed, I look forward to considering Federal tax incentives that support greater investment in critical public infrastructure, while giving due regard to Federal budget constraints.

Question. The burden of collecting revenue and enforcing our tax laws has only increased in recent years, and yet the Internal Revenue Service has struggled due to insufficient funding. Do you believe that ensuring appropriate funding of the IRS should be a priority of the administration?

Answer. The IRS should be provided appropriate funding for customer service and enforcement in a manner that makes prudent use of taxpayer dollars.

Question. After the Federal court decision in *Loving v. IRS*, the Internal Revenue Service was forced to repeal rules regulating tax preparers. Should Congress pass legislation to implement standards in the tax preparation industry? What role do you believe Treasury should play in this process?

Answer. The administration's FY 2018 Budget proposed that Congress enact legislation to allow IRS to regulate tax return preparers, and I support that proposal.

Question. When Congress passed the Trade Facilitation and Trade Enforcement Act of 2015, we expanded the ability of U.S. exporters to use drawback laws so they could obtain a refund of duties, taxes, and other fees paid for the importation of articles that are later exported or destroyed. If confirmed, will you support the duty drawback program so that U.S. manufacturers can continue to benefit from this policy?

Answer. If confirmed, I look forward to learning about this program and, if confirmed, ensuring that the drawback law is properly implemented.

QUESTIONS SUBMITTED BY HON. PAT ROBERTS

Question. Chairman Hatch asked me to lead a small group of Finance members in looking at tax reform and the agricultural sector. I have had my staff take a hard look at the tax code sections relating to agriculture. In this review, we determined that the most crucial features of the tax code for farmers and ranchers are the depreciation and accounting rules, and the various provisions relating to capital gains.

On depreciation, a lot of farmers benefit from bonus depreciation, which gets them pretty close to full expensing. My ultimate goal would be to get the AG folks to full expensing. Is that something that your department would support?

Answer. If confirmed, I look forward to working with you as part of tax reform to explore the possibility of full or partial expensing. I certainly am willing to discuss ideas about capital cost recovery with you and your staff.

Question. On capital gains, ag producers, as the saying goes, are land-rich but cash-poor. Land is their most important asset. Keeping a low rate for capital gains, and getting rid of the estate tax are critical goals of mine in tax reform. What are your views on this?

Answer. The administration has publicly supported pro-growth tax policies and estate tax relief. My views align with those expressed views and I see a low rate on capital gains as consistent with those views.

Question. One of the areas my staff is addressing in tax reform is the pass-through rate. It is critical in my State that pass-through companies, which make up the bulk of the businesses in Kansas, also benefit from reform. That is why I am pleased to see your support for a lower pass-through rate. In achieving a lower rate, we have been looking at a variety of options, both on how to define income and how to handle expenses. It's all very complicated, probably the most complicated aspect of a reform plan. How are you all looking at this? What help can we offer you in constructing a new pass-through taxation system?

Answer. I agree that taxing pass-throughs at a rate below that applied to other ordinary income raises a number of difficult issues. I look forward to hearing your ideas and working with you on these matters.

Question. The Department of Commerce is currently conducting two section 232 investigations on steel and aluminum. While the investigation is intended to address the national security implications of certain imports, broad trade remedies could have unintended negative consequences. We have already heard foreign governments plan to retaliate through duties on U.S. agriculture exports if the administration decides to restrict steel and aluminum imports. The agriculture economy is going through a rough patch and any retaliation on agriculture exports will be damaging and create more uncertainty.

How are you and the Department of the Treasury working with Secretary Ross to ensure that actions for steel and aluminum imports do not result in harm to U.S. agriculture, manufacturers, and consumers?

Answer. If confirmed, I look forward to working with the relevant trade experts at Treasury and with the Department of Commerce to address these issues as they may relate to tax policy.

 QUESTION SUBMITTED BY HON. MICHAEL B. ENZI

Question. Before 2007, in accordance with general provisions of tax law, liquidating distributions from a REIT or redemptions of REIT stock were generally considered a sale of the REIT's stock.

In 2007, the IRS issued Notice 2007-55 which revoked existing authority and concluded that, solely for foreign shareholders, these transactions should be treated as capital gain distributions subject to FIRPTA. Will the administration review the feasibility of withdrawing the notice?

Answer. If confirmed, I look forward to working with you and your staff to better understand the impact of Notice 2007-55, and working with the professional career staff at Treasury on reviewing whether this notice should be reconsidered.

QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

Question. As we previously discussed, I support comprehensive tax reform that encourages innovation and helps deal with the challenges that that innovation can create. While the administration has set an ambitious deadline for announcing a comprehensive proposal this September, I am increasingly concerned that we are running out of time this year, and critical tax policy issues could go unaddressed. This includes dealing with currently expired tax provisions like production tax credit for hydropower and the tax credit for biodiesel, both of which support hundreds of jobs in my State and many more across the country.

In the event that the administration is unable to enact comprehensive tax reform this calendar year, will you support moving forward on other timely tax policy priorities, including currently expired tax provisions, before the end of the year?

Answer. If confirmed, my first priority would be to ensure the success of the administration's tax reform proposals. I also support considering any other proposals that would increase economic growth and create jobs.

Question. I am concerned about proposals to eliminate or change the current law tax treatment of municipal bonds and the potential costs that could have to the 49 million consumers of public power in this country. Public power utilities rely on tax-free financing to build, maintain and improve their facilities that generate, transmit and distribute electricity in nearly every State across the country. I understand that if public power utilities had had to finance these improvements with taxable debt, they would be paying \$4.5 billion in additional borrowing costs ever year. As a result, changing the tax treatment of municipal bonds would undoubtedly raise electric utility rates for tens of millions of public power customers across the country.

Is the administration considering the impact that this type of change would have on electric bills of American families across the country?

Answer. I recognize the important role that the tax-exempt municipal bond market plays in financing our country's infrastructure, including the significant public power sector of that market. If confirmed, I will consider carefully the role of tax-exempt municipal bonds in supporting State and local financing of infrastructure and its impact on American families.

 QUESTIONS SUBMITTED BY HON. RON WYDEN

RESPONSIVENESS TO MEMBERS OF THE COMMITTEE

Question. The Trump administration has apparently given a directive to agencies to ignore requests for information or technical assistance from Democratic members of Congress. Mr. Kautter, when you met with committee staff, you were asked to commit to responding to both Democratic and Republican members of the Finance Committee. You responded that, while it was in your nature to be responsive, if you were directed not to respond, you would not respond.

During your confirmation hearing, you said you meant you would not respond if there was a legal reason not to.

Please explain what might qualify as a legal reason not to respond to Democratic members' requests?

Answer. I believe that responsiveness to congressional requests for information is critically important and I am committed to providing appropriate, useful responses to all members of Congress. There are of course circumstances in which the law places limitations on the disclosure of information. For example, with respect to tax information, restrictions on disclosure are imposed under section 6103 of the Internal Revenue Code. Another restriction appears in the Privacy Act.

Question. Would you consider a directive from the White House a legal reason not to respond?

Answer. The decision on how to respond to a request for information should always be governed by applicable law and privileges.

PROTECTING THE U.S. TAX BASE AND PREVENTING INVERSIONS

Question. In April, President Trump issued an executive order asking the Treasury Department to review and identify overly burdensome tax regulations created in the final 15 months of the Obama administration. I was very concerned that the

administration planned to weaken rules preventing corporate inversions, earnings stripping, and other tax-motivated transactions. That's why I wrote a letter to Secretary Mnuchin, along with Leader Schumer and eight of my Finance colleagues, on June 12th, in this regard. I have not received a response to my letter, but the Treasury Department did recently identify eight regulations for potential repeal. Two of these regulations, pertaining to section 367 and section 385, took specific aim at aggressive international planning techniques, often in combination with corporate inversions, to avoid U.S. taxation.

Do you agree that the tax law must have strong anti-base erosion rules to prevent earning stripping, corporate inversions, and other aggressive planning techniques designed to avoid or eliminate U.S. taxation?

Answer. I think that the tax law should have strong rules to prevent aggressive tax planning designed to avoid or eliminate U.S. taxation.

Question. As the head of tax policy for the Treasury Department, if the administration repeals or amends the regulations, especially up until Congress passes and the President signs comprehensive tax reform, what specifically will the administration do to prevent corporate inversions, earnings stripping, and other tax-motivated transactions?

Answer. Because I am not currently involved in Treasury's review of these regulations, I cannot opine on what action will be taken with respect to these regulations. However, if confirmed, I look forward to reviewing the regulations to determine the appropriate course of action. I do not believe that any changes should open up opportunities for inversions, earnings stripping, or other aggressive tax-motivated transactions.

Question. As part of tax reform, what will the administration do to prevent corporate inversions, earnings stripping, and other tax-motivated transactions?

Answer. If confirmed, my top priority will be working with Congress to enact tax reform that is fairer for Americans and increases the competitiveness of American businesses in the global marketplace. I believe that reforming our business tax system is a critical step in addressing incentives that encourage companies to engage in inversions and earnings stripping.

MAINTAINING A PROGRESSIVE TAX CODE

Question. Is the President committed to keeping the progressivity of the current tax code? Explain how repealing the 3.8% net investment income tax and the 0.9% additional Medicare tax maintains progressivity?

Answer. I believe that the tax code should be progressive and that progressivity is sound social and tax policy. While I cannot speculate on any specific proposals at this time, if confirmed, I look forward to working with Congress on a comprehensive tax reform package that delivers tax relief to the middle class.

Question. The President's tax reform plan proposes to expand the standard deduction, but remains silent on whether the plan keeps the personal exemption. Independent analyses of the President's campaign proposal (doubling the standard deduction, repealing the personal exemption, providing an above-the-line deduction for child care expenses) raised taxes on many middle-class families. Is the President still committed to a middle-class tax cut for everyone in the middle class? If so, how will his proposals achieve this result?

Answer. My priority in tax reform is to ensure that the economy grows, that good paying middle-class jobs are created and the middle class receives tax relief, and if I am confirmed, I look forward to working with the staff at Treasury and with Congress on analyzing the impact of any particular proposals and whether they benefit the middle class.

Question. What will the top rate on individuals be? What is top rate on corporations? What is the top rate on non-corporate businesses? Will this result in a more progressive tax code?

Answer. It is premature at this time to speculate on what the ultimate rates will be, however, I believe it is important that tax reform include tax relief and that middle-class Americans benefit from tax reform.

Question. Is the President committed to keeping the EITC and the refundable child tax credit as-is? If not, how would he propose to change these key work supports for low- and middle-income families?

Answer. I am not in a position to speak for the President at this time. I personally believe the EITC and the refundable child tax credit play a crucial role in our social safety net. I think it would be appropriate to look for ways to improve and strengthen the EITC and the refundable child tax credit.

Question. The President's FY18 budget claims that tax reform will produce 3 percent real, annual growth and pay for the cost of tax cuts. The Treasury Secretary has backed up this dynamic scoring of tax reform in testimony before the Senate Finance Committee and numerous statements in the press. However, as you know, the Joint Committee on Taxation is the arbiter of dynamic scoring for tax policies in the Congress and, based on past scoring of tax reform proposals, they are likely to score the dynamic effects of tax reform much more modestly than is indicated in the President's budget. Do you agree to respect the score produced by JCT/CBO on tax reform bills considered in the Congress?

Answer. There is no question that congressional scores are done by JCT and CBO. If confirmed, as an official within the executive branch, I would want Treasury's professional career economists to evaluate the economic impacts of tax reform as well. I don't believe these efforts would conflict, even if the modeling results differ as is often the case within the economic community.

FISCAL RESPONSIBILITY IN TAX REFORM

Question. Tax reform should focus on simplifying the code, making it fairer and more efficient. It should grow the economy to create good, middle-class jobs, and put the United States on an even playing field with our international trading partners.

Current plans from the Trump administration and Republicans in the House of Representatives are estimated to lose trillions of dollars. A recent report from the Tax Policy Center estimated that this kind of debt increase would severely hamper economic growth and job creation.

In a time when the United States faces annual budget deficits, Congress should not be pursuing large, unpaid for tax cuts. Nor should Congress repeat the mistake of the health care bill, which would have cut taxes for special interests, paid for by eliminating health benefits for working families.

Will you commit that you will push to ensure tax reform is revenue-neutral—fully paid for without spending cuts?

Answer. It is my understanding that the administration has indicated its intention to work with the Congress to attain deficit-neutral tax reform. If confirmed, I look forward to continuing to work toward such a goal.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU (TTB) FUNDING

Question. Between 2012 and 2016 the number of U.S. breweries has more than doubled, however, TTB funding has not kept pace. TTB is responsible for administration of Federal excise tax laws, as well as certain Federal alcohol and labeling regulations. Specifically, brewers are required to obtain TTB approval for beverage labels and formulas in certain cases. The brewing industry recognizes these regulations are crucial to ensure the integrity of the industry and fairness in the marketplace.

Due to resource limitations and the significant increases in the number of U.S. brewers, TTB has in recent years faced a significant backlog of formula and label approvals—sometime as long as 2 months. In 2015 Congress acted in a bipartisan, bicameral manner to address this backlog by appropriating \$5 million to streamline and accelerate formula and label approvals. In the FY 2017 appropriations bill passed earlier this year, Congress again, in a bipartisan, bicameral manner extended and enhanced appropriations for TTB's regulatory functions.

The TTB FY 2018 budget justification, which is part of the President's budget proposed to terminate these funding increases. In addition, the budget justification described this bipartisan, bicameral priority as an "earmark."

Please describe whether you believe the additional appropriation for formula and label approvals should be labeled as an "earmark." Do you believe Congress should continue the current level of funding for this important program?

Answer. I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning about TTB issues such as this.

Question. Please describe whether you believe this funding increase has been effective in reducing the backlog for TTB formula and label approvals. Please describe the change in the formula and label approval processing times since enactment of increased funding for this program.

Answer. I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning about TTB issues such as this and look forward to working with you and your office on this issue.

Question. Despite the President's budget's significant proposed cuts to TTB broadly and its proposals to undermine efforts to accelerate formula and label approvals, the TTB budget justification suggests that TTB "customer satisfaction" is expected to increase. Do you believe TTB funding should be maintained at current levels? Please describe whether you believe cutting resources for services to TTB-regulated entities will increase "customer satisfaction." Please explain your reasoning.

Answer. As stated previously, I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning more about these issues and would welcome the opportunity to work with you and your staff on this issue.

Question. On June 27, 2017, a majority of members of the U.S. House of Representatives sent a bipartisan letter to Secretary Mnuchin urging the administration to maintain the TTB as an independent bureau within the Treasury Department. Will you commit to preserving TTB as an independent bureau?

Answer. As stated previously, I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning more about these issues and would welcome the opportunity to work with you and your staff on this issue.

Question. On February 11, 2016, TTB issued TTB Ruling 2016-1 emphasizing TTB's intent to fully investigate and enforce trade practice violations under the Federal Alcohol Administration Act with respect to category management agreements. In addition, earlier this year Congress appropriated additional funds to TTB for enforcement of trade practice violations. Will you commit to this committee that the TTB will continue to fully enforce trade practice violations to ensure that our brewers, cider makers, distillers, and vintners have fair access to tap lines and store shelves?

Answer. As stated previously, I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning more about these issues and would welcome the opportunity to work with you and your staff on this issue.

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU (TTB) TOBACCO TAX ENFORCEMENT

Question. TTB is charged with collecting excise tax and regulating products including alcohol, tobacco, and firearms, collecting more than \$22 billion in tax annually. Tobacco diversion is a long-term tax enforcement challenge given the high profits to be gained from illegal activity, the relative ease of diversion, and the substantial revenue loss that it represents.

In 2014, the Finance Committee held a hearing on Federal tobacco tax evasion and avoidance and related market shifts within the tobacco industry. In its testimony, before the committee, the Government Accountability Office (GAO) found that industry practices resulted in up to \$3.7 billion in lost revenue since 2009. In addition, the National Academy of Sciences recently released a report finding that illicit tobacco represented between 8.5 and 21 percent of the U.S. market, resulting in between \$2.95 and \$6.92 billion in lost State and local taxes annually.

As this committee's record has demonstrated, TTB's enforcement funding levels are not sufficient to carry out the agency's important task. Specifically, the agency faces a backlog of enforcement cases and a significant lack of enforcement resources. TTB currently employs only 5 criminal enforcement agents to enforce alcohol, tobacco, and firearms violations across all 50 States. This concern is heightened by a dramatic decline in resources allocated to parallel tobacco investigations and enforcement by the Justice Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In a June 2014 report, GAO reported that less than one half of one percent of ATF's criminal investigations are now related to illicit alcohol and tobacco activities.

How do you plan to ensure TTB has sufficient resources to appropriately investigate and prosecute cases of tobacco tax evasion?

Answer. As stated previously, I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning more about these issues and would welcome the opportunity to work with you and your staff on this issue.

Question. Following tobacco excise tax changes as part of the 2009 passage of the Children's Health Insurance Program Reauthorization Act (CHIPRA), the roll-your-own market quickly shifted to labeling its products as lower taxed "pipe tobacco." And with a wink and a nod, pipe tobacco retailers and cigarette smokers were able to dodge \$22 per pound in tax by slapping phony pipe tobacco labels on bags full of cigarette tobacco. In 2010, TTB issued an advanced notice of proposed rulemaking to distinguish between the two products based on characteristics including cut, weight, moisture, curing method, and type of tobacco. In 2014 TTB Administrator Manfreda committed before this committee to finalize those regulations in a timely manner. I am concerned that TTB has taken no further action on this rulemaking since the comment period closed in 2011. Please describe what steps you will take to ensure TTB finalizes these regulations to close down this loophole.

Answer. As stated previously, I have little background with TTB and have not practiced in this area. If confirmed, I look forward to learning more about these issues and would welcome the opportunity to work with you and your staff on this issue.

PROHIBITION ON POLITICAL ACTIVITY BY CHARITIES

Question. Under present law, charities (including religious organizations) are prohibited from electioneering activity, including intervening in any political campaign on behalf of, or in opposition to, any candidate for public office. This protection ensures that charities are not used as conduits to avoid campaign finance rules, and prohibits charitable tax deductions from subsidizing political campaign expenditures. In addition, the charitable sector broadly views these rules as essential to ensure the integrity and independence of charities, and insulates these organizations, which receive more than \$130 billion in Federal, State, and local grants, from undue political influence. Earlier this year Congress received a letter signed by nearly 4,500 charities opposing any action that would weaken the prohibition on political activity. In addition, Congress received a letter from nearly 100 national faith organizations opposing any weakening of this prohibition, and more than 3,000 faith leaders from across the country have signed a petition to oppose any such change.

Please describe whether you believe Congress should "get rid of and totally destroy" the prohibition on political activity by charities (sometimes referred to as the "Johnson Amendment") as President Trump promised during a speech at the National Prayer Breakfast on February 2, 2017. Please describe how you interpret the phrase "get rid of and totally destroy the Johnson Amendment" in this context.

Answer. This is not an issue I have considered in any depth. If confirmed, I look forward to working with Congress and the administration to learn more about the Johnson Amendment and whether any reforms should be made in this area.

Question. In May of this year, the President signed an executive order titled "Promoting Free Speech and Religious Liberty" which directed the IRS to not enforce the prohibition on electioneering with respect to religious institutions, "to the greatest extent practicable and to the extent permitted by law." The prohibition in political activity in IRC § 501(c)(3) is not ambiguous, nor does it provide exceptions for IRS discretion. Please describe your interpretation of how IRS should apply this executive order in practice. Please describe whether you believe this executive order fulfills President Trump's commitment to "get rid of and totally destroy the Johnson Amendment" made on February 2, 2017.

Answer. If confirmed, I look forward to working with the professional legal staff at Treasury and the IRS to learn more about the rules governing section 501(c)(3) organizations and ensuring that the interpretation of the executive order is consistent with the laws enacted by Congress.

Question. Last week the House Committee on Appropriations passed its fiscal year 2018 Financial Services and General Government Appropriations legislation. section 116 of the legislation would implement a new, stringent process for enforcing the prohibition on political activity by churches, which appears intended to intimidate the IRS to prevent them from enforcing the statutory prohibition.

Please describe what you believe to be the intent of this appropriations rider.

Please describe how you believe this appropriations rider would be implemented if enacted.

Please describe whether you support the concept of overriding statutory Internal Revenue Code provisions via appropriations riders.

Answer. If confirmed, I look forward to working with Congress on determining the appropriate funding level for the IRS. I also look forward to learning more about the issues surrounding the current rules under section 501(c)(3) governing political campaign activities and how those issues should best be addressed.

EFFECTS OF CHARITABLE GIVING IN TAX REFORM

Question. On April 26, 2017, President Trump released a tax framework which would repeal the estate tax and slash tax rates for the wealthiest Americans. The Tax Policy Center estimated the effects on charitable giving of a previous version of the Trump tax plan, finding it would reduce charitable giving by between 4.5 and 9 percent in its first year—equal to a reduction in giving by as much as \$26 billion annually.

Would you describe charities as “winners” or “losers” under the Trump tax plan as presented April 26, 2017?

Answer. If confirmed, I look forward to working with the professional staff at Treasury and with Congress on determining the economic impact of any tax reform proposals on charities.

Question. Do you believe overall charitable giving should be increased as part of tax reform? Please describe whether you believe the President’s tax framework achieves that goal?

Answer. Charitable giving is a critical part of our society, and I support President Trump’s decision to protect the charitable deduction in his tax reform outline. If confirmed, I will be open to working with Congress to make incentives for charitable giving more effective.

Question. The nonprofit sector represents approximately 10 percent of the U.S. workforce. Given charities’ crucial role in our economy and communities, do you believe any tax reform framework should make clear how it intends to treat tax exempt entities and charitable giving?

Answer. I agree that it is critical that the tax code provide certainty to taxpayers, including donors and tax exempt entities.

CONSERVATION EASEMENT SYNDICATIONS

Question. Under present law, taxpayers may claim a charitable deduction for contributions of conservation easements preserving certain natural, recreational, educational, and historical property to a qualified charitable organization. The PATH Act of 2015 made permanent certain enhanced incentives for contributions of conservation easements. Since 2004, the IRS has identified certain syndicated conservation easement transactions as potentially abusive. Generally, these transactions include real estate developers claiming excessive deductions for inappropriately valued contributions of conservation easements. In addition, these transactions generally involve the real estate developer or a related party syndicating (*i.e.*, selling off) deductions to so-called “investors,” with investors receiving a tax benefit often as much as nine times the cost of the investment. The prevalence of these abusive transactions has grown exponentially in recent years, with conservation easement deductions increasing from \$971 million in 2012 to \$3.2 billion in 2014.

In response to the growth in abusive conservation easement syndication transactions, IRS issued Notice 2017–10 requiring participants and material advisors of certain potentially abusive syndicated conservation easement transactions to disclose the transaction to the IRS. Under these rules, syndicated conservation easement transactions involving one or more pass-through entities, which use marketing materials suggesting to prospective investors that they may be entitled to a charitable deduction of 250 percent or more of the amount invested must be reported to the IRS as a potentially abusive transaction. The new rules apply to transactions entered into on or after January 1, 2010.

Last week the House Committee on Appropriations passed its fiscal year 2018 Financial Services and General Government Appropriations legislation. Section 114 of

the that legislation would prohibit funds made available by the Act from being used to implement or enforce Notice 2017–10 with respect to transactions entered into before January 23, 2017.

Please describe how this appropriations rider could potentially impede IRS’s enforcement actions with respect to abusive syndicated conservation easement transactions.

Please describe whether you support appropriations riders overriding IRS enforcement actions in this context.

IRS recently provided the Finance Committee with a preliminary analysis of reported transactions under Notice 2017–10, which found that the average return on investment for these tax shelter schemes was nine to one. In other words, for each dollar placed into the tax shelter, participants received \$9 in tax benefits in return. Please explain whether you believe this abuse of the conservation easement program was within Congress’s intent when this provision was enacted.

Answer. As former tax legislative counsel for Senator Danforth, I have great respect for the legislative process. I appreciate the role of the appropriations and tax writing committees in the House and Senate. If confirmed, I look forward to working with members of these committees on important tax policy issues. I am not specifically familiar with this notice and would have to review it further if confirmed.

ESTATE TAX VALUATION DISCOUNTS

Question. Under present law, taxable estates in excess of \$5.5 million (\$11 million per couple) are subject to a 40-percent tax on the value of the estate in excess of the exemption amount. Strict rules govern valuation of an estate for tax purposes. Courts have held that a taxpayer may reduce the value of certain business interests due to lack of control and lack of marketability. As such, sophisticated taxpayers have developed tax planning techniques to artificially reduce the value of assets by placing them into a family partnership and claiming valuation discounts based on supposed lack of marketability and control. In response to these tax avoidance techniques, Congress enacted IRC §2704 in 1990 which excludes certain factors from valuation discount if they do not reflect a true economic decline in value, and provided the Secretary of the Treasury authority to designate additional factors for exclusion. Many of these rules pivoted around determinations of control under State partnership law. Since the original enactment of IRC §2704, limited liability companies have become more prevalent and have rendered the provision ineffective, as these entities are not subject to the strict partnership control rules. On August 4, 2016, the Treasury Department issued proposed regulations to address these new abuses, under explicit authority granted by IRC §2704.

Last week the House Committee on Appropriations passed its fiscal year 2018 Financial Services and General Government Appropriations legislation. Section 115 of the legislation would prohibit the Department of the Treasury from finalizing the August 4, 2016 rulemaking or any substantially similar amendments to such regulation. In addition, the IRS identified this proposed regulation as a regulation under review pursuant to Executive Order 13789.

Please describe whether you support the concept of overriding Treasury regulations via appropriations riders.

Please describe why the Treasury Department and IRS feel that a proposed regulation released less than a year ago is now unnecessary.

Please describe why you believe Congress granted the Secretary explicit authority to provide additional restrictions for valuation discounts under IRC §2704(b)(4).

Please describe whether you believe the proposed regulations under IRC §2704 impose an undue financial burden on U.S. taxpayers. Please explain your reasoning. In addition, please describe whether you believe paying tax legally owed constitutes “an undue financial burden” in the context of Executive Order 13789.

Please describe whether you believe the proposed regulations under IRC §2704 adds undue complexity to the Federal tax laws. Please explain your reasoning.

Please describe whether you believe the proposed regulations under IRC §2704 exceed the statutory authority of the Internal Revenue Service. Please explain your reasoning.

Answer. I believe that tax legislation is best left to the tax writing committees in Congress. If confirmed, I will work with Treasury’s professional staff and the ad-

ministration to understand the intended purpose of these proposed regulations and the concerns raised by taxpayers about these proposed regulations to help me determine what modifications I would recommend be made to these proposed regulations.

PRESERVING BIPARTISAN COMMITMENTS TO CLEAN ENERGY

Question. At the end of 2015, Congress passed a bipartisan extension and phase-down of the Production Tax Credit for wind power and the Investment Tax Credit for solar power. These longer-term extensions were meant to provide some certainty to these industries. Any attempted reduction or claw back of these extensions would be a retroactive tax increase.

Congressional leadership and members of the administration have noted a desire to maintain the extensions of the wind and solar credits.

Will you commit to preserving the wind and solar extensions, as agreed to in the PATH Act in 2015?

Answer. If confirmed, I look forward to working with the administration and with Congress to determine the most appropriate ways to continue to support and provide certainty to these industries.

OVERSIGHT

Question. In response to the committee's written due diligence questions concerning your role in overseeing the VIPER/SISG team, which developed and marketed tax shelter products for Ernst and Young (E&Y), you responded "(s)ince the group was part of the National Tax Department and led by the national director of personal financial counseling, the director of national tax was responsible for making sure that the firm's human resources, financial and administrative processes, such as completion of annual performance reviews, filing timesheets, and submitting travel expenses, were properly followed."

On July 17, 2001, the national director of personal financial counseling sent an email to the VIPER/SISG team with the subject heading "Important—Purge of All Key COBRA Documents," referring to one of the firm's major tax shelter products and directing recipients to immediately delete and dispose of paper and electronic materials in their possession regarding COBRA transactions. Company record-keeping policies and practices would normally be considered an "administrative process."

What, if any, personnel actions did you take with regard to the Director once you learned of his email? What procedures did you put in place following this incident to ensure that records regarding the VIPER/SISG group were retained and the integrity of firm records regarding the promotion of tax shelters was maintained?

Answer. This email was sent by Bob Coplan, who was then the head of the SISG Group. Mr. Coplan did not report to me with respect to his SISG activities, and any personnel action in response to this email was the responsibility of the chief operating officer of the tax practice to whom Mr. Coplan reported and the vice-chair of tax to whom the chief operating officer reported. I was not copied on this email and was not aware of it until I learned that the firm's general counsel had directed that it be rescinded. In discussing this matter with the firm's general counsel once I became aware of the email and its rescission, I was told that the matter was now under the jurisdiction of the general counsel's office and that they would handle any future communications.

Question. In response to the committee's written "due diligence" question concerning your knowledge of and response to the IRS examinations of E&Y's tax shelter promotion activities, initiated on or about January 30, 2002, you responded "I fully cooperated with the IRS examination in a truthful manner personally and made it clear to my colleagues that I expected them to fully and truthfully cooperate as well." The statement of facts accompanying the February 26, 2013 non-prosecution agreement between the Department of Justice and E&Y indicates that your colleagues did not fully and truthfully cooperate. The statement of facts notes that ". . . in implementing the sale of tax shelter products, certain members of SISG also prepared documents and correspondence that falsely and inaccurately reflected events or conversations, and that were designed to improperly influence the IRS's view of the merits of the transactions in the event of an audit. These activities continued into 2003 and 2004."

Following the initiation of the IRS examinations in 2002, and knowing of the prior efforts by the VIPER/SISG team to purge company documents related to the

COBRA tax shelter in 2001, what actions did you take to ensure complete and truthful cooperation by all members of that group and other firm employees with those IRS examinations? How did you make it clear that they were required to do so?

Answer. During this time period, I repeatedly instructed NTD staff that they should take this matter seriously and that I expected full and forthright cooperation with any request received by anyone with respect to the examination.

Question. As discussed during this morning's hearing, you were kept apprised of many of the VIPER/SISG activities. For example, emails show that you were informed of the COBRA shelter beginning in September 1999. Ultimately, in addition to a 2003 \$15-million settlement with the IRS concerning its examination of the E&Y's tax shelter promotion, E&Y reached a \$123 million non-prosecution agreement with the Department of Justice in 2013 after criminal convictions of E&Y employees, including the national director of the personal financial counseling cited above.

If you had it to do over again, what specific things would you have done differently with regard to your role as director of national tax in responding to E&Y's promotion of tax shelters and subsequent obstruction of IRS examinations?

Answer. As director of national tax, I did not have the ability to decide whether to proceed with offering particular tax shelters. Moreover, the decision to engage in tax shelter activity was made by the firm before I became director of national tax. Once I became director, I did not have full visibility into SISG's activities, but I nonetheless objected to the firm's involvement in the tax shelter activity on numerous occasions. Had I had a complete understanding of SISG's activities at the time, I would have insisted that the vice chairman of tax and chief operating officer direct SISG to cease its tax shelter activity. I also would have pushed to gain a complete understanding of what the group was doing despite the fact that it reported to someone else.

Question. If confirmed, you will be one of the lead administration officials on tax reform efforts, in addition to many other substantive tax policy issues. In part, this will require regular engagement with the House and Senate, particularly the Senate Finance Committee. You also made clear to the committee that given your past experiences at E&Y, you wish you would have been more vocal with respect to the tax shelter issue.

Looking ahead, if confronted with situations that raise issues from a policy, oversight, or ethical perspective (such as a directive instructing you not to respond to requests from all member offices), what actions do you plan to take?

Answer. I would consult with appropriate personnel within the Treasury Department concerning the best way to resolve novel policy issues in a manner consistent with all applicable laws and regulations. With respect to oversight matters, I strongly believe that the executive branch should provide useful, appropriate responses to all members of Congress, and if confirmed would make my views on this matter known to the Department as necessary. If confronted with a situation in which the law governing the performance of my official duties is unclear, I would consult with the Legal Division of the Treasury Department.

Question. How would you address those matters before you? Will you address instances of misconduct differently than you did when you served as director of national tax for E&Y? If so, how will you address such situations?

Answer. If confirmed, I will endeavor to perform my duties with the highest level of integrity and professionalism, as I have throughout my career. If I believe that I am in a position where I cannot perform my duties in an appropriate and ethical manner, I would resign.

CUSTOMS REVENUE COLLECTION OVERSIGHT

Question. The Homeland Security Act of 2002 (HSA) established the Department of Homeland Security (DHS) and dissolved the legacy U.S. Customs Service in the Department of the Treasury. Although certain functions were transferred from Treasury to DHS by the HSA, the customs revenue functions remained in Treasury. The HSA stated that Treasury could delegate, but not transfer, its customs revenue function to DHS. Treasury did delegate many aspects of the revenue function, with some exceptions.

The Trade Facilitation and Trade Enforcement Act of 2015, drafted by the Finance Committee and signed into law in 2016, required Treasury's Inspector General (IG) to conduct a review of Customs and Border Protection (CBP) revenue collection. When the IG undertook the first review, they told the committee that (1) they did not have the resources and competency to look into the issue; and (2) it was not clear whether Treasury retained adequate oversight over the authority it delegated to CBP to collect tariff revenue. Specifically, the report stated "[f]rom our review thus far, it does appear that Treasury's current role may not be in alignment with statutory requirements, as operational functions were delegated and not transferred."

What are your views on Treasury's role in overseeing the Customs revenue collection functions of CBP?

Answer. If confirmed, I look forward to learning about Treasury's customs revenue functions and working with Congress to ensure that Treasury plays an appropriate role in regulating international trade.

Question. If confirmed, will you review the report and take any action necessary to ensure that Treasury is exercising appropriate oversight of CBP's customs revenue function?

Answer. I look forward to learning more about the Inspector General's report and working with Congress to ensure proper oversight of customs revenue functions.

QUESTIONS SUBMITTED BY HON. ROBERT P. CASEY, JR.

Question. You have experience working at a firm that has been charged and where individuals were convicted of fraud and obstruction relating to the design and marketing of tax shelter products. This action allowed individuals to defer, reduce, or eliminate \$2 billion in aggregate tax liabilities. If confirmed, how will that experience inform your work as Assistant Secretary for Tax Policy?

Answer. If confirmed, one of my top goals in tax reform is to ensure that a revised code is simple and fair for all Americans. I believe that a simpler Internal Revenue Code will eliminate many opportunities for taxpayers to engage in aggressive tax planning.

Question. The White House has put forward a tax plan to repeal all deductions, except for three—charitable, home interest and retirement. This will presumably also result in the repeal of "above the line" deductions.

Do you believe it's reasonable to repeal the deduction for higher education expenses, like tuition?

Do you believe it's reasonable to repeal deductions for educators to purchase supplies for their classroom?

Do you believe it's reasonable to repeal deductions for travel expenses incurred by Army Reserve members?

Answer. I believe that everything should be on the table as part of tax reform. If confirmed, I look forward to working with Congress to take a look at every deduction and decide whether or not it belongs in the code going forward.

Question. If Democrats' stated goal is no absolute tax cut for the wealthy, and the President's stated goal is the same, can you guarantee that, on average, there will be no absolute tax cut for the wealthy?

Answer. If confirmed, my focus will be on providing tax relief to middle-income taxpayers. I look forward to working with you and your colleagues to create a tax reform package that stimulates economic growth and creates good paying middle-income jobs. As part of this process, I would be focused on developing family tax provisions that provide economic security to low- and middle-income Americans.

Question. You stated in the hearing that your primary objective is a middle-class tax cut. In your opinion, how does the current one-page tax reform outline stack up against the pledge to provide a middle-class tax cut? That is, do you believe the current proposal provides a tax cut for the middle class of the size and scope you would hope to see?

Answer. My understanding is that the President's tax reform outline contains high-level priorities but does not represent a complete set of proposals that can be analyzed for a precise impact on taxpayers. For example, although the President's

outline set forth three rates of tax, it does not provide where the rate brackets would begin or end. If confirmed, I look forward to working with the professional staff at Treasury and with Congress on determining what impact any tax reform proposal will have on the middle class in order to ensure that we are providing economic growth and benefiting middle-income taxpayers.

Question. According to analysis by the Tax Policy Center, under the White House proposal, almost 25 percent of those making \$48,000–\$86,000 would see a tax increase, of on average \$1,000 a year. For those who do see a tax cut, it would amount to around the equivalent of \$3.60 a day. Meanwhile, those making over \$1 million a year would get an average tax cut of almost \$200,000. Does this comport with your stated goal of providing a middle-class tax cut?

Answer. See my answer to the previous question.

Question. Do you think that fairness and equity should be principles by which tax reform proposals should be judged?

Answer. Fairness and equity are important principles in evaluating tax reform proposals. There are other principles that should also be considered in evaluating tax reform proposals such as simplicity and the impact of the proposal on economic efficiency and growth.

Question. Do you think that the tax proposal from the White House is fair and equitable for working families?

Answer. As noted previously, the Tax Reform Priorities contain high-level priorities but do not represent a complete set of proposals that can be analyzed for a precise impact on taxpayers. If confirmed, I look forward to working with you and your colleagues to create a tax reform package that stimulates economic growth and creates good paying jobs for middle-income taxpayers. As part of this process, I would be focused on developing family tax provisions that will provide relief to low- and middle-income Americans.

Question. The administration has been very detailed on the tax cuts they intend to provide to very high income earners, however, they have provided very little on how they are going to achieve tax cuts for the middle class. What would you hope to do in this space?

Answer. If confirmed, I look forward to working with you and your colleagues to create a tax reform package that promotes economic growth to increase employment and wages for all working families, and provides tax relief to middle-income taxpayers.

Question. Do you believe it is appropriate to amend taxes pertaining to Medicare and Medicaid, which will result in less coverage, on a strictly partisan basis?

Answer. I believe that all taxes should be reconsidered as part of comprehensive tax reform, and I look forward to working with both parties in Congress on determining the best way to provide tax relief to middle-income Americans.

Question. What guidance will you provide States regarding ABLE account balances for account holders who die? Specifically, should the balance be used to reimburse Medicaid or be converted to the account holder's heirs/family?

Answer. I look forward to working with Treasury staff to learn more about the possible intersection of ABLE accounts and Medicaid benefits to be sure that all relevant perspectives are fully considered.

QUESTIONS SUBMITTED BY HON. ROBERT MENENDEZ

Question. In the wake of the 2015 signing of a U.S.-Armenia Trade and Investment Framework Agreement, we witnessed a surge in U.S. commercial engagement in Armenia—including, as reported by our Ambassador, Richard Mills, upwards of \$500,000,000 in new American investments in Armenia's energy and mining sectors.

A new U.S.-Armenia Double Tax Treaty would establish a clear legal framework for investors and individuals that have business activities in both jurisdictions, preventing double taxation and facilitating the expansion of U.S.-Armenia economic relations—an American policy priority.

Are you, in principle, supportive of a new U.S.-Armenia Tax Treaty that will eliminate the threat of double taxation, removing a major barrier to the further growth of U.S.-Armenia economic relations?

Answer. If confirmed, I look forward to working with your staff to learn more about the barriers to U.S.-Armenia economic relations, and I also look forward to learning more from the professional staff at Treasury about the pros and cons of a tax treaty with Armenia.

Question. The only accord that even remotely speaks to U.S.-Armenia taxation issues is the outdated and obsolete 1973 U.S.-U.S.S.R tax treaty. Even by 1970s standards, this Soviet-era treaty was a limited agreement between two hostile superpowers. Armenia does not consider this accord in force, and its current legal status remains unclear.

Do you consider the 1973 U.S.-Soviet tax treaty adequate to the needs of the present-day U.S.-Armenia economic relationship?

Answer. If confirmed I look forward to working with your staff and the professional staff at Treasury as well as the State Department to learn more about this issue and what we can do to adequately address any impediments to U.S.-Armenia economic relations.

Question. Yerevan has repeatedly sought to replace this obsolete accord, and—in the interest of facilitating the negotiating process and easing the burden on our own Treasury Department—has expressed a willingness to start talks based on the current U.S. model tax treaty.

Do you welcome Armenia's willingness to enter into Tax Treaty negotiations based upon our current U.S. model tax treaty?

The lack of a working U.S.-Armenia Double Tax Treaty hinders the growth of U.S.-Armenia economic relations, perpetuating unnecessary legal uncertainty that deters potential U.S. investors, diverts investment flows, and disadvantages American businesses.

Answer. If confirmed I look forward to working with your staff and the professional staff at Treasury as well as the State Department to learn more about this issue and what we can do to adequately address any potential impediments to U.S.-Armenia economic relations.

Question. The U.S. has Double Tax Treaties with many small countries, including Estonia, Jamaica, Latvia, Lithuania, Malta, and Slovenia. Armenia, in turn, has Double Tax Treaties with many advanced countries, including Austria, Belgium, Canada, China, France, Italy, the Netherlands, Poland, Russia, and the United Kingdom.

Aside from bureaucratic consideration regarding staff resources and negotiating capacity, do you see any reason why we should not move quickly to eliminate the threat of double taxation as a barrier to the growth of U.S.-Armenia economic relations.

Answer. If confirmed I look forward to working with your staff and the professional staff at Treasury as well as the State Department to learn more about this issue and what we can do to adequately address any potential impediments to U.S.-Armenia economic relations.

QUESTIONS SUBMITTED BY HON. BENJAMIN L. CARDIN

Question. I believe that the only way we can get to strong bipartisan tax reform is by having a public and transparent tax reform process—and have been encouraged by past statements from Secretary Mnuchin and Director Cohn that the administration feels the same way.

If you are confirmed, will you coordinate with the Senate Finance Committee regularly on a bipartisan basis as you work out the details of the President's tax plan and other tax reform ideas?

Answer. If confirmed, I would welcome the opportunity to coordinate with all members of the Senate Finance Committee on tax reform proposals.

Question. Do you agree that additional public hearings would be helpful not only to building bipartisan consensus, but also to providing a transparent process for our constituents?

Answer. I do not think it would be appropriate for me to pre-judge Congress's processes, but as a general matter I think that a transparent process, potentially including public hearings, can be helpful to the process.

Question. Again, without this transparency and public buy-in, I do not think bipartisan tax reform is achievable. Secretary Mnuchin has not yet responded to a similar question I posed to him following his testimony before the Senate Finance Committee in May. I'd like to get your thoughts.

Answer. I believe that a transparent process, and getting public buy-in, is important for achieving tax reform.

Question. During my recent meeting with you, we spoke about our mutual interest in retirement and savings issues. I believe that significant, bipartisan work can be done to ensure that all Americans have a dignified and secure retirement, including by expanding saving opportunities through employer-based retirement plans, incentivizing increased savings accumulation, and encouraging lifetime income-oriented distributions.

Employer-based retirement plans like 401(k)s are a critical component of our Nation's retirement system. Over 60 million workers participate in these plans, the majority of whom are in lower- or middle-income households that need support in saving for retirement. Current tax incentives encourage employers to establish and maintain these savings plans as benefits for their workers, a critical decision factor, particularly for small business owners, who must balance a number of competing financial priorities.

Will you commit to expanding savings opportunities in any administration tax reform effort—including by protecting the tax deferral incentives currently in place?

Answer. I share your interest in encouraging retirement savings and agree that tax incentives play an important role in our retirement system—by providing incentives for employers to establish workplace retirement plans and by encouraging Americans to save. If confirmed, I would welcome the opportunity to work with you and other members of Congress to improve retirement security, whether that be through tax reform or other efforts.

Question. Working with Senator Blunt, Senator Schumer, and others, I was pleased that NMTC was extended for 5 years in the bipartisan PATH Act of 2015. Senator Blunt and I introduced the New Markets Tax Credit Extension Act of 2017 in February.

Since the credit was launched in 2001, \$38 billion in direct NMTC investments were made in businesses and these NMTC investments leveraged over \$75 billion in total capital investment to businesses and revitalization projects in communities with high rates of poverty and unemployment.

This financing has resulted in the creation of 750,000 jobs and the financing of commercial and industrial facilities, day care and health care centers, mixed use facilities and small business loans, all of which improve local economies and the quality of life in distressed neighborhoods.

In Maryland, some \$930 million in NMTC capital has leveraged more \$2.3 billion in other financing for a range of projects and created over 27,000 construction jobs and 7,600 permanent jobs.

The NMTC is working in some of the poorest, most economically distressed rural and urban communities in America—bringing private sector capital to neighborhoods left out of the economic mainstream. Even if Congress agrees to cut tax rates, these communities will still need assistance in creating jobs and business opportunities.

When I raised the NMTC with Secretary Mnuchin in January, he indicated that he was willing to work with our office to “ensure that the appropriate incentives (related to economic opportunities) are retained.” In April, funding for the administration of the NMTC was retained in the President's budget.

As the administration assembles its tax reform package, can you commit to retaining this very important infrastructure and economic development incentive?

Answer. If confirmed, I hope to work with Congress and with the administration to determine what incentives are appropriate to effectively encourage infrastructure and economic development.

Question. Another infrastructure and community development program that has seen great success and bipartisan support is the Historic Tax Credit.

The National Park Service's annual report on the economic impact of the HTC for 2016 shows that the HTC has leveraged more than \$131 billion in private invest-

ments over the program's history, about 5 times the \$25.2 billion in credits allocated by the National Park Service. Over the same period, the HTC has generated \$29.8 billion in Federal tax receipts, more than paying for the incentive on a dynamic basis. National Park Service data show that more than 42,293 buildings have been placed back into commerce. We know that historic rehab generates high-skilled, good-paying jobs (more than 2.4 million over the life of the program) that include specialty trades such as plastering, paint restoration, historic floor and roof restoration, fine woodworking and refinishing, historic window repair and wallpapering. We also know that HTC projects serve as the catalytic economic driver of whole neighborhoods and in some cases, entire cities and towns.

Working with Senator Collins, along with Senators Blunt, Cochran, Wicker, Cantwell, Stabenow, Brown, Leahy, and Peters, I've introduced legislation that would improve the credit to make it more accessible in small and rural communities and to make more buildings eligible. I would love to work with you to do the same.

In particular, our legislation make long overdue changes to the program to further encourage building reuse and redevelopment in small, midsize, and rural communities. It also makes the rehabilitation of community projects like theaters, libraries, and schools easier. Finally, the bill would make more historic properties eligible to use the credit by updating program requirements to reflect current industry practices. These reforms would be the first major changes to the HTC since the Tax Reform Act of 1986.

Given the administration's priorities regarding investments in economic development, can you commit to working with Congress to promote and strengthen the HTC's critical incentives in the administration's tax reform efforts?

Answer. If confirmed, I would look forward to working with you and your colleagues in Congress to determine the ways in which the tax code can most effectively continue to support important economic development priorities.

Question. Along with my colleague Senator Roberts, I have co-authored legislation that we are introducing this week that will encourage employee ownership and the creation of more ESOP (employee stock ownership plan) companies. Last Congress, the bill had 35 bipartisan cosponsors, including 12 from the Finance Committee. ESOP companies create good jobs, keep those jobs in local communities, while also providing meaningful retirement savings to their employee owners.

Will the Department of Treasury commit to working with Congress to promote employee ownership and ESOPs?

Answer. If confirmed, I would welcome the opportunity to work with you and other Senators to develop policies that create jobs and expand opportunities for retirement savings. I look forward to learning more about your proposed legislation to encourage employee ownership and ESOPs.

Question. One of the programs that the Treasury Department has a shared responsibility with the Department of Labor on is the Work Opportunity Tax Credit (WOTC). Academic research shows that by encouraging employers to hire stigmatized individuals, the WOTC program—even using very conservative analytical assumptions—saves the Federal and State governments far more in reduced public assistance spending than its tax cost to the Federal Treasury. In addition, the data also shows that individuals hired under WOTC often advance to better positions.

We hear a lot about the trend towards automation and its impact on reducing entry level jobs. Yet, at the same time, we encourage people to choose a life of work instead of dependency on public assistance programs. Wouldn't you agree that if we are going to have incentives to invest in capital equipment and automation, we also need to provide incentives to invest in human capital through the WOTC program? Will you work with our office to strengthen the WOTC program, which has bipartisan support in the Congress, in order to move many individuals into the workforce?

Answer. If confirmed, I would be happy to work with you and other Senators on proposals to encourage job creation in the United States.

Question. As you may know, drawback law is the refund of duties, taxes, and certain fees paid on importation of articles into the United States when those articles, or like-kind articles, are exported or destroyed. Drawback, and other duty deferral regimes, are a long-standing feature of U.S. law that enable U.S. manufacturers to compete on a "level playing field" with their foreign competitors. By refunding duties, taxes, and fees paid on imports when there is a similar-classed export, draw-

back strongly promotes U.S. exports, manufacturing, capital investment, and job creation.

Congress most recently expanded drawback privileges in 2016 with the passage of TFTEA, providing even greater opportunities for U.S. exporters to take advantage of this statutory benefit.

If you are confirmed as Assistant Secretary for Tax Policy, will you and your office support our U.S. manufacturers and workers by maintaining and enforcing legislation such as duty drawback and deferral programs in order to promote growth in U.S. manufacturing and exports?

Answer. I look forward to learning about this program and ensuring that the drawback law is properly implemented.

Question. President Trump has consistently mentioned infrastructure investment as a major priority for his administration. A key part of any effective infrastructure program should be improving our existing commercial and residential building stock. Energy efficiency provisions in the tax code, such as the energy efficient commercial buildings deduction (section 179D), have been shown to achieve this goal while creating jobs in the construction and design industry and improving the energy usage by buildings to the benefit of taxpayers.

Are you willing to work with me to ensure that energy efficiency measures are included in any infrastructure or tax reform plan?

Answer. If confirmed, I would welcome the opportunity to work with you and other Senators on infrastructure or tax reform proposals to encourage energy efficiency.

Question. There are many tax treaties and protocols pending before the Senate. These treaties are very important to many U.S. businesses, including companies in my home State of Maryland.

Do you support the timely ratification of these treaties?

Answer. I look forward to working with the Senate on any pending matters that would support U.S. job and economic growth and support their timely ratification.

Question. With Senator Collins, I have introduced two bills—the Volunteer Responder Incentive Protection Act (VRIPA) and the Length of Service Award Program Cap Adjustment Priority Act (LOSAP CAP)—that would simplify the tax treatment of nominal benefits that volunteer emergency responders receive as a reward for their service.

The economic challenges facing rural areas are making it much more difficult for public safety agencies to recruit and retain volunteer emergency responders, and VRIPA and LOSAP CAP are commonsense bills that would make it easier for local governments to offer incentives to their volunteers.

Both bills have bipartisan support in the Congress. I understand that helping rural America and simplifying tax administration are major priorities for this administration. Will you pledge to working with me on both of these bills in any tax reform effort to get them over the finish line for our volunteer emergency responders?

Answer. If confirmed, I would welcome the opportunity to work with you and other Senators to learn more about these bills and consider how we can best support volunteer emergency responders.

PREPARED STATEMENT OF HON. RON WYDEN,
A U.S. SENATOR FROM OREGON

Today is a tax policy double-header for the Finance Committee, and we're only at the halfway mark, so I'll keep my remarks brief and focus on just a few points.

Mr. David Kautter is nominated to serve as Assistant Treasury Secretary for Tax Policy. It is a tough job, and it's never tougher than when the Congress is gearing up to work on major tax legislation.

In my view, the big challenge at the heart of tax reform is guaranteeing that everybody has a chance to get ahead—not just the fortunate few. If tax reform becomes a partisan exercise in slashing rates for the wealthy and the biggest corporations, the American people will see right through it. That's because it will leave in

place the root causes of the appalling unfairness in the tax code today. It's the tale of two systems; one strict, compulsory system for the hard-working people who punch in and out of work every day, and another system for the lucky few that says you can pay what you want and when you want.

It goes without saying that nominees for top jobs in tax policy ought to have the knowledge and experience to fix that root unfairness. In my view, it's also vital to find nominees who haven't contributed to the problems in the first place, or made a career of allowing others to benefit from them.

I have real concerns about work Mr. Kautter did during his time as director of national tax at Ernst and Young. The firm did big business setting up tax shelters for wealthy clients, and employees were convicted of fraud and obstruction for covering it up. E&Y also paid more than \$100 million in settlements with the Justice Department and IRS over its tax shelter marketing.

In the vetting process for this nomination, it became clear that Mr. Kautter was regularly informed of decisions that allowed E&Y to profit off tax gaming. Even if he had no direct role in the marketing of those tax shelters or in misrepresenting them to Federal auditors, it remains troubling that he was at the top of a department that engaged in these practices at all. I'm sure this issue will come up today, and I look forward to hearing that discussion.

Finally, Assistant Secretary for Tax Policy is a job that requires close communication with both sides of this committee. Over the last few months, the administration has taken brickbats from Republicans and Democrats alike for its stated policy of ignoring questions that come from Democrats. Chairman Hatch has spoken out against this policy, as has Chairman Grassley.

And I want to be clear that it is completely unacceptable for an administration to stonewall inquiries from members of Congress. We don't do it for sport—we ask questions on behalf of the millions of Americans we represent. So I expect a commitment today to respond to questions from members of this committee regardless of whether they've got a "D" or an "R" next to their name.

Thank you for being here today, Mr. Kautter, and I look forward to your testimony.

