Oklahoma Law Review

Volume 74 | Number 4

A Life's Work: In Memory of Professor Jonathan B. Forman

2022

Making a Life's Work

Roberta F. Mann

Recommended Citation

Roberta F. Mann, *Making a Life's Work*, 74 OKLA. L. REV. 691 (2022),
https://digitalcommons.law.ou.edu/olr/vol74/iss4/7

MAKING A LIFE'S WORK

ROBERTA F. MANN*

Abstract

Jonathan Barry Forman was a thoughtful and prolific scholar. Many of his policy recommendations bear reexamination in these most turbulent of times. This Article examines the past and future impact of three works by Professor Forman: first, his book *Making America Work*;[1] next, the article we wrote together, *Making the IRS Work*;[2] and finally, the last article we co-authored, *Borrowing from Millennials to Pay Boomers: Can Tax Policy Create Sustainable Intergenerational Equity?*[3]

In *Making America Work*, Professor Forman set forth his view of "how government policies should be changed to both encourage greater work effort and reduce economic inequality."[4] The book explored the interaction of government policies and market economic forces, looking at both the spending side and the revenue side of government action. While the statistics the book cited are outdated (the book was published in 2006), the recommendations are still vital, and some of them have been implemented. In the first part of the Article, I update some of the statistics, highlight the recommendations that have been implemented, and explore recent scholarship that expands on some of the other recommendations, such as a universal basic income.

---

* Mr. & Mrs. L. L. Stewart Professor of Business Law, University of Oregon School of Law; B.S. (Psychology), 1980, Arizona State University; M.B.A., 1982, Arizona State University; J.D., 1987, Arizona State University; LL.M., 1995, Georgetown University Law Center. From 1987 to 1997, Professor Mann served in various capacities at the National Office of the Internal Revenue Service Office of Chief Counsel. In 1997 and 1998, Professor Mann served on the staff of the Joint Committee of Taxation.

The author is grateful to Jonathan Barry Forman, for his insight, intellect, and friendship. He is sorely missed. Thanks are also due to Caleb Crahan, University of Oregon School of Law J.D. 2022, for his expert research assistance. This Article is dedicated to Lani Malysa, Jon's devoted wife.

1. JONATHAN BARRY FORMAN, MAKING AMERICA WORK (2006) [hereinafter FORMAN, MAKING AMERICA WORK].

2. Jonathan Barry Forman & Roberta F. Mann, *Making the Internal Revenue Service Work*, 17 FLA. TAX REV. 725 (2015) [hereinafter Forman & Mann, *Making the IRS Work*].

3. Jonathan Barry Forman & Roberta F. Mann, *Borrowing from Millennials to Pay Boomers: Can Tax Policy Create Sustainable Intergenerational Equity?*, 36 GA. ST. U. L. REV. 799 (2020) [hereinafter Forman & Mann, *Borrowing from Millennials*].

4. FORMAN, MAKING AMERICA WORK, *supra* note 1, at xiii.

In *Making the IRS Work*, Professor Forman and I focused on the problems faced by a resource-constrained Internal Revenue Service ("IRS") and made recommendations for improvement. We considered a variety of approaches that would make it easier for the IRS to raise and collect revenue. Our recommendations for legislative and administrative changes included simplifying the tax system, enhancing third-party reporting, and streamlining the tax filing and dispute resolution procedures. Many of the issues we examined persist, and the recommendations are still valid. In particular, the enactment of the Tax Cuts and Jobs Act of 2017 ("TCJA")[5] exacerbated many of the problems. In this part of the Article, I explain how legislative changes and the pandemic have impacted the IRS and how our recommendations could help solve some of the more recent issues.

In *Borrowing from Millennials*, Professor Forman and I considered the intergenerational aspect of the tax system in the United States. Noting that future taxpayers may be in a different situation than current taxpayers, both from increasing income and wealth inequality and from the anticipated increasing burden of government deficits, we considered how to use tax policy to create sustainable intergenerational equity. We did not limit our analysis to budget deficits but also considered how inadequate responses to the challenge of climate change and failing infrastructure may impact future generations. To update this Article, I explore how the recently enacted bipartisan infrastructure legislation and the proposed "Build Back Better" legislation might affect intergenerational equity.

I can think of no better way to honor Professor Forman's legacy than to carry it forward. At the time of his death, Professor Forman and I planned to write an article on how tax policy could facilitate remote work. I now plan to write that article with one of Professor Forman's recent co-authors, Caroline Bruckner. I think we will have to call it *Making Work from Home Work.*

I. Making America Work (Again)

Forman observed that

> [g]overnments influence the market's distribution of earnings and income through regulation, spending, and taxation. Government regulation defines and limits the range of markets and so influences the shape of the initial distribution of earnings and income, and taxes and transfers are the primary tools for

5. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

> achieving redistribution. . . . First and foremost, taxes reduce the incomes of those who are taxed; . . . at least a portion of the revenue collected from well-to-do taxpayers is redistributed to those who are less fortunate.[6]

It is still true that the federal government "raises virtually all of its revenue from the individual income tax, Social Security payroll taxes, the corporate income tax, estate and gift taxes, and excise taxes on selected goods and services."[7] However, since the book was published, the proportion of federal revenues raised from the corporate tax and the estate and gift taxes has declined significantly.[8] The TCJA made the most dramatic changes to the tax system.[9] The nominal corporate tax rate was cut from 35% to 21%, effective in 2018;[10] however, as in the past, corporations have ways of reducing their effective tax rates. In 2006, a taxpayer could transfer up to $2 million free of federal estate and gift tax, with estates exceeding that amount taxed at 46%.[11] Through some budget gimmickry, Congress fully eliminated the estate tax in 2010,[12] only to revive it in 2011 with an exemption of $5 million, with estates exceeding that amount taxed at 35%.[13] The TCJA increased the exemption to over $11 million, with estates exceeding that amount taxed at 40%.[14]

The top individual tax rate increased from 35% in 2006 to 37% in 2018, although in the interim, the top individual tax rate reached 39.6%.[15] An increase in the standard deduction reduced the number of middle-class

---

6. FORMAN, MAKING AMERICA WORK, *supra* note 1, at 57.

7. *Id.* at 58.

8. *Compare id.* (reporting an estimated $292 billion in corporate tax collected in 2001), *with* Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 810 (reporting $205 billion in corporate tax collected in 2018).

9. *See* Tax Cuts and Jobs Act of 2017 § 13001.

10. *See id.*

11. Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 521, 115 Stat. 38, 71 (excluding $2 million for estates of decedents dying in 2006); *id.* § 511 (taxing the excess at 46%).

12. *Id.* § 501.

13. *See* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 101, 124 Stat. 3296, 3298 (providing a temporary two-year extension of the estate tax through 2012); *see also id.* §§ 301–302.

14. *See* Tax Cuts and Jobs Act of 2017, § 11061 (increasing the exemption from $5 million to $10 million, indexed for inflation); *see also Estate Tax*, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax (Nov. 15, 2021) (noting an exemption of $12,060,000 in 2022).

15. *Historical U.S. Federal Individual Income Tax Rates & Brackets, 1862-2021*, TAX FOUND. (Aug. 24, 2021), https://taxfoundation.org/historical-income-tax-rates-brackets/.

taxpayers benefiting from itemized deductions, making those deductions primarily a benefit for wealthy taxpayers.

The COVID-19 pandemic that gripped the world in 2020 and 2021 (and appears to still be gripping the world as I write) spurred some temporary changes to the tax code that enhanced redistribution—without increasing revenues, however. Indeed, in 2006, the federal deficit was less than $500 billion.[16] A deficit occurs when federal spending exceeds federal revenues. The excess spending is primarily financed through debt.[17] In 2020, the federal deficit hit over $3 trillion due to COVID relief spending.[18]

Economists disagree on the impact of deficit spending. What effects do deficits have on the economy? Some economists promote a classical theory of deficits:

> According to the classical theory of deficits, budget deficits have the effect of increasing current consumption by government or consumers, but this is counterbalanced by a fall in investment. By definition, if consumption rises then savings must fall. A fall in savings raises interest rates, which then reduces investment. The phenomenon by which budget deficits increase interest rates and reduce investment is called crowding out.[19]

In contrast, economists who follow the Keynesian model (espoused by John Maynard Keynes) often support deficit spending, especially in times of recession.[20] They argue that, during a recession, the beneficial multiplier effects of increased spending far outweigh any concerns about crowding out.[21] Politicians also disagree on deficit spending—although their level of concern varies depending on which party holds Congress and the White

16. OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2006, at 364 (2005).

17. *Management's Discussion & Analysis*, BUREAU OF THE FISCAL SERV., https://www.fiscal.treasury.gov/reports-statements/financial-report/2017/government-financial-position-and-condition.html (June 3, 2019).

18. Jim Zarroli, *$3.1 Trillion: Pandemic Spending Drives the Federal Budget Deficit to a Record*, NPR (Oct. 16, 2020, 3:08 PM ET), https://www.npr.org/sections/coronavirus-live-updates/2020/10/16/924582156/-3-1-trillion-pandemic-spending-drives-the-federal-budget-deficit-to-a-record.

19. NATHAN PERRY, GLOB. DEV. POL'Y CTR., BOS. UNIV., DEBT & DEFICITS: ECONOMIC AND POLITICAL ISSUES: AN ECI TEACHING MODULE ON SOCIAL AND ENVIRONMENTAL ISSUES IN ECONOMICS 9 (2020), https://www.bu.edu/eci/files/2020/06/Debt-and-Deficits_Final-1.pdf (emphasis omitted).

20. *Id.*

21. *Id.* at 11.

House.[22] The issue of deficits is more fully discussed in the third section of this Article, when we consider the sustainability of the tax system.

As Forman noted, taxes influence work behavior.[23] Economists have described two countervailing impacts of taxes on work: the substitution effect and the income effect.[24] Under the substitution effect, if taxes reduce the economic benefit from working, workers might decide to substitute untaxed leisure.[25] Forman wrote, "The bottom line is that high marginal tax rates on earned income discourage people from working."[26] Forman cited the work of Edward Prescott, who found that Americans work 50% more hours than French or Italian workers.[27] He concluded that the differences in work effort were largely attributable to differences in marginal tax rates, with U.S. marginal tax rates lower than those in Europe.[28] Under the income effect, in contrast to the substitution effect, if taxes reduce the income required for a person's needs, that person might work more hours to obtain the necessary net income.[29]

Marginal tax rates are not the only tool in the government toolbox that can affect work behavior. As Forman described, the earned income tax credit, which as a refundable tax credit serves as a negative income tax, encourages work.[30] Similarly, providing tax credits for childcare also encourages work.[31]

As an expert in employment taxes, Forman also addressed some of the inequities of the payroll tax. The payroll tax applies at a flat rate to earned

---

22. *See* Albert Hunt, *Republicans Now 'Shocked, Shocked' That There's a Deficit*, HILL (Jan. 27, 2021, 11:30 AM ET), https://thehill.com/opinion/finance/536066-republicans-now-shocked-shocked-that-theres-a-deficit.

23. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 70–73.

24. *Id.* at 70.

25. *Id.*

26. *Id.* at 71.

27. *Id.* at 71–72.

28. *Id.* at 72.

29. *Id.* at 70.

30. *Id.* at 80–81 ("[T]he earned income tax credit has shown itself a great tool for encouraging work effort and alleviating poverty.").

31. Linda Smith & Kathlyn McHenry, *How Two Tax Policies Help Working Families Access and Afford Child Care*, BIPARTISAN POL'Y CTR. (Feb. 5, 2021), https://bipartisanpolicy.org/blog/how-two-tax-policies-help-working-families-access-and-afford-child-care/# ("[F]amilies frequently struggle with the high cost of care that in turn impacts their ability to find and keep stable employment . . . .") ("[H]elping parents afford the high costs of child care is such a critical component of their path to financial stability . . . .").

income up to a cap.[32] As such, it has a regressive impact because, in addition to having higher earned income, wealthier taxpayers have more income from investments. Effective in 2013, however, Congress enacted a 3.8% Medicare surcharge on net investment income of taxpayers with adjusted gross income exceeding a threshold amount.[33] As the chart in the next section shows, the revenues from the payroll tax have now exceeded those of the individual income tax.

A. Statistics

The payroll tax was estimated to be the largest source of government revenues, with the individual income tax close behind.[34] As noted above, the share of corporate tax and estate tax revenues has declined. Certain excise tax receipts are also declining—in particular, the gasoline tax revenues, which are dedicated to the highway trust fund, have declined because of increased automobile efficiency.[35]

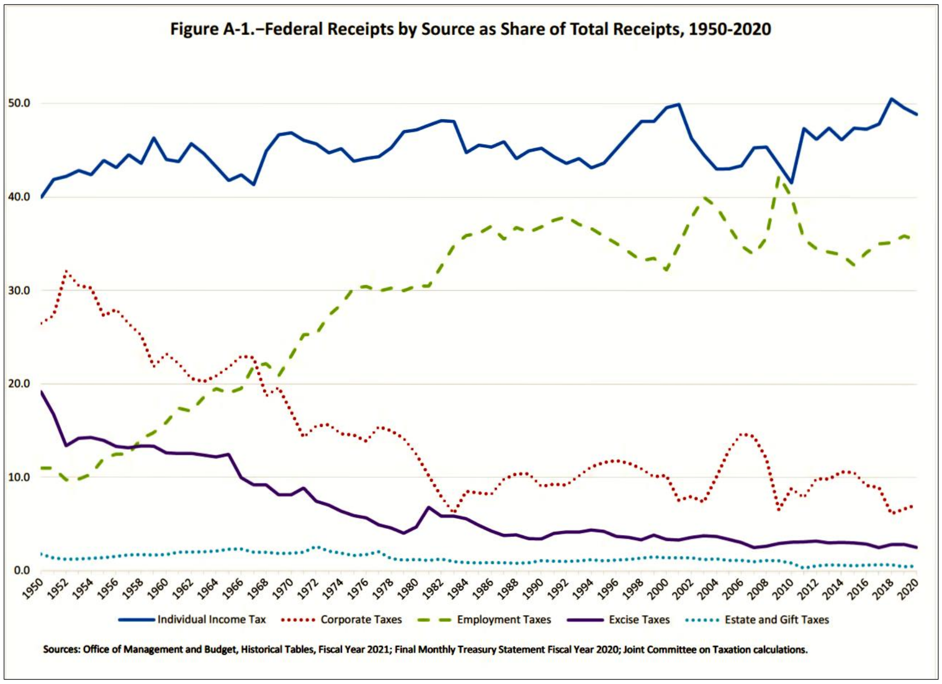
---

32. Julia Kagan, *Payroll Tax*, INVESTOPEDIA (Dec. 6, 2021), https://www.investopedia.com/terms/p/payrolltax.asp.

33. Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, § 1402(a)(1), 124 Stat. 1029, 1061 (codified at I.R.C. § 1411).

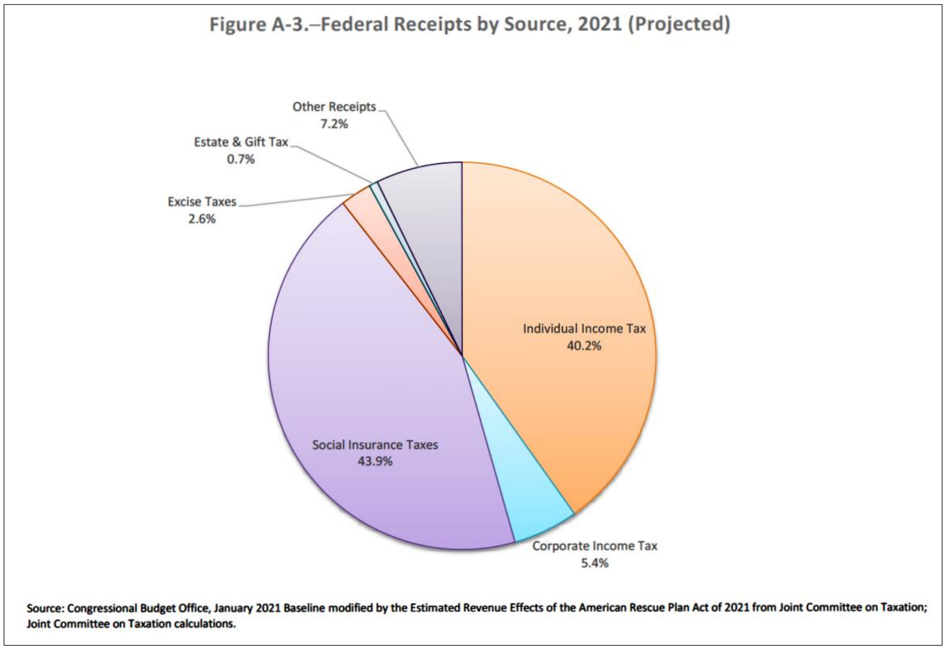
34. *See* JOINT COMM. ON TAX'N, PUB. NO. JCX-18-21, OVERVIEW OF THE FEDERAL TAX SYSTEM AS IN EFFECT FOR 2021, at 36 (2021) [hereinafter JOINT COMM. ON TAX'N, PUB. NO. JCX-18-21]. An updated estimate from Data Lab indicated that the individual income tax actually produced more revenue in 2021 than the payroll tax. *Sources of Revenue for the Federal Government*, DATA LAB, https://datalab.usaspending.gov/americas-finance-guide/revenue/categories/ (last visited July 9, 2022) (reporting 51% of revenues from the individual income tax and 31% from the payroll tax).

35. JOSEPH KILE, DIR. OF MICROECONOMIC ANALYSIS, ADDRESSING THE LONG-TERM SOLVENCY OF THE HIGHWAY TRUST FUND: TESTIMONY BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, UNITED STATES SENATE (2021), https://www.cbo.gov/system/files/2021-04/57110-highway-testimony.pdf.



Statistics from the Joint Committee on Taxation[36]

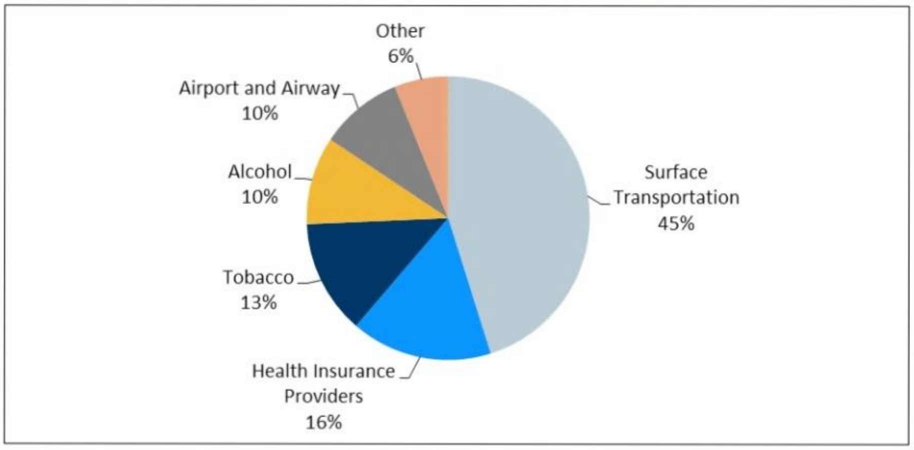
36. JOINT COMM. ON TAX'N, PUB. NO. JCX-18-21, *supra* note 34, at 34.



Statistics from the Joint Committee on Taxation[37]

37. *Id.* at 36.

Figure 4. Federal Excise Tax Revenue by Major Type, FY2020



Source: Figure created by CRS using data from Office of Management and Budget, Historical Table 2.4, at https://www.whitehouse.gov/omb/historical-tables/.

Notes: Excludes categories with negative receipts (meaning refunds exceed receipts).

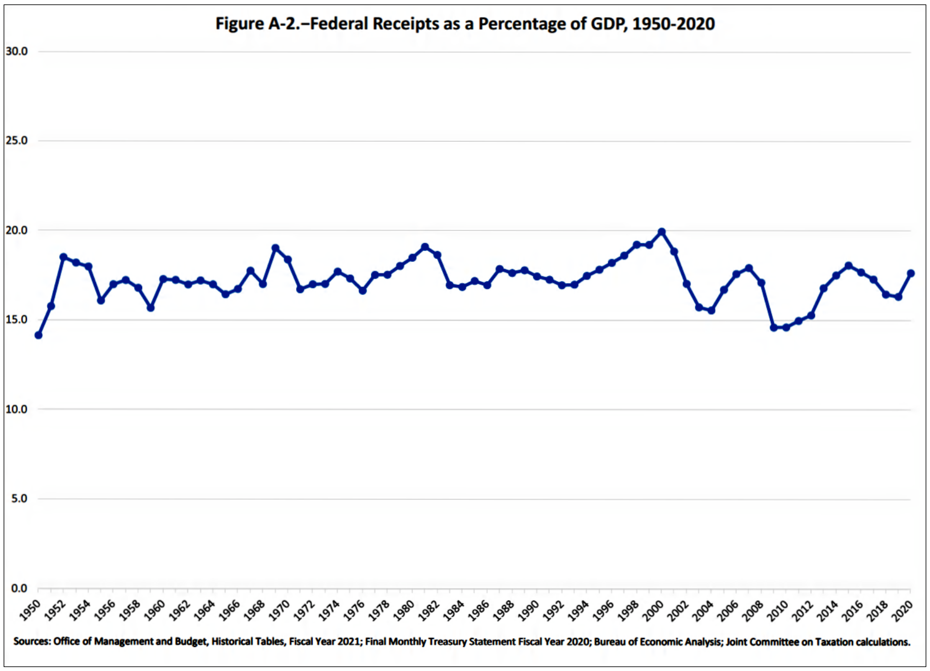
Statistics from the Congressional Research Service[38]

Federal revenues as a share of gross domestic product ("GDP") have fluctuated between 15% and 20% since 1950,[39] so they have not significantly changed since the book's publication.

---

38. ANTHONY A. CILLUFFO, CONG. RSCH. SERV., R46938, FEDERAL EXCISE TAXES: BACKGROUND AND GENERAL ANALYSIS 8 (2021).

39. *Briefing Book: Some Background*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government (May 2020).



Statistics from the Joint Committee on Taxation[40]

40. JOINT COMM. ON TAX'N, PUB. NO. JCX-18-21, *supra* note 34, at 35.

Finally, the table below compares the share of federal tax liabilities and average tax rates per income quintile in 2018 with the share of federal tax liabilities and effective tax rates per income quintile in 2003, as reported in the book.[41] Note that average federal tax rates may differ from effective tax rates, but the Congressional Budget Office has not published effective individual tax rates since 2005.

Income Category	Share of Federal Tax Liabilities 2003	Share of Federal Tax Liabilities 2018[42]	Effective Federal Tax Rate 2003	*Average* Federal Tax Rate 2018
Lowest Quintile	1.0	0.0	4.8	0.0
Second Quintile	4.5	3.6	9.8	8.1
Third Quintile	9.9	8.9	13.6	12.8
Fourth Quintile	18.6	17.5	17.7	16.7
Highest Quintile	65.7	69.8	25.0	24.4

B. Recommendations

As previously described, some statistics have changed, although generally following the same trends Forman observed in his book. In this section, I explore Forman's recommendations for improving the tax system to encourage work and note which ones have been accomplished in whole or in part, which remain unadopted, and which need a bit of updating.

41. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 66.
42. *Historical Shares of Federal Tax Liabilities for All Households*, TAX POL'Y CTR. (Sept. 20, 2021), https://www.taxpolicycenter.org/statistics/historical-shares-federal-tax-liabilities-all-households.

1. Accomplished (Temporarily): EITC and Child Tax Credit

Forman recommended restructuring the earned income tax credit ("EITC") as a way of reducing effective marginal tax rates on low-income workers.[43] Forman wrote "[i]f we are serious about increasing the rewards for low-skilled workers, it would make sense to stop taxing them."[44] The EITC is "the largest need-tested antipoverty program that provides cash to families."[45] If a taxpayer's EITC, as a refundable tax credit, is greater than what she owes in income taxes, the taxpayer will receive the part of the credit that exceeds her income tax liability as a tax refund.[46] A low-income taxpayer with no income tax liability will receive the full amount of the credit as a refund.[47] Households receive the EITC once a year as a lump-sum payment after filing their federal income tax returns.[48] In particular, Forman noted that while the EITC benefitted workers with children, many poor workers without children paid federal taxes:[49]

> Workers with qualifying children . . . receive the majority of EITC benefits. For 2018, 26.5 million taxpayers received a total of $64.9 billion from the EITC. Of that total, there were 6.9 million recipients without qualifying children (about 26% of the total) who received $2.1 billion (about 3% of the total dollars), receiving an average credit of $302.[50]

The expansion of the EITC in response to the COVID-19 pandemic implemented Forman's recommendation to expand the EITC for childless workers, although only temporarily. Prior to the enactment of the American Rescue Plan Act ("ARPA") for 2021, "the 'childless' EITC gradually phased in at a rate of 7.65% as earned income increased until earned income reached $7,100."[51] The EITC then remained at $543—its maximum level—until income equaled $8,880 for unmarried taxpayers or $14,820 for

---

43. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 129; *see* I.R.C. § 32 (Earned Income Tax Credit).

44. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 128.

45. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., IN11610, THE "CHILDLESS" EITC: TEMPORARY EXPANSION FOR 2021 UNDER THE AMERICAN RESCUE PLAN ACT OF 2021 (ARPA; P.L. 117-2) 1 (2021) [hereinafter CRANDALL-HOLLICK, THE "CHILDLESS" EITC].

46. *Id.*

47. *Id.*

48. *Id.*

49. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 128.

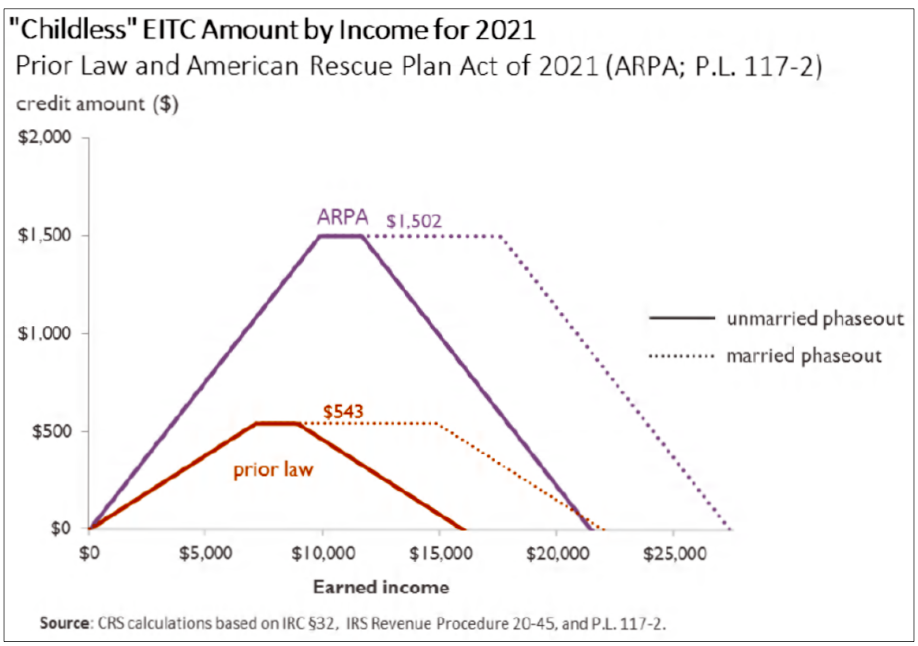
50. *See* CRANDALL-HOLLICK, THE "CHILDLESS" EITC, *supra* note 45, at 1.

51. *Id.*

married taxpayers.[52] If the taxpayer's income exceeded these levels, the credit would gradually decline until the credit was fully eliminated.[53] The EITC would reach zero for single filers with incomes at $15,980 or higher and for married filers with incomes at $21,920 or higher.[54] Before 2021, a childless individual could not receive the EITC before age twenty-five or after age sixty-four.[55]

For 2021, ARPA

> temporarily increase[d] the rate at which the credit phases in, from 7.65% to 15.3%; nearly triple[d] the maximum amount of the credit from $543 to $1,502; increase[d] the income level at which the credit beg[an] to phase out from $8,880 to $11,610 (and from $14,820 to $17,550 if married); and increase[d] the rate at which the credit phase[d] out from 7.65% to 15.3%.[56]



Statistics from the Congressional Research Service[57]

52. *Id.* at 2.
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.* at 3.
57. *Id.*

Forman also recommended making the child tax credit fully refundable.[58] The TCJA increased the child tax credit to $2,000 per child and raised the phase-out thresholds, effective from 2018 through 2025.[59] The credit is refundable up to $1,400 per child.[60] For 2021 only, ARPA increased the credit and made it fully refundable.[61] For 2021, the credit was $3,000 per child between ages six and seventeen, with an additional $600 for children under the age of six.[62] Unlike most credits, which taxpayers receive as a lump sum after they file their tax returns, taxpayers received half of their 2021 child tax credit via monthly payments from July through December 2021.[63] The Congressional Research Service ("CRS") estimated that the increases in availability of the expanded child tax credit among the lowest-income families would significantly boost incomes and cause the child poverty rate to fall by almost half, from 13% to 7%.[64] CRS estimated that the share of families with children that receive the credit will increase from 84% to 96%, with the largest increase in child credit receipt estimated to occur among the lowest-income families.[65] The proposed Build Back Better ("BBB") legislation would have made the expanded child tax credit permanent;[66] however, as the Senate did not consider this legislation before the end of 2021, the expanded child tax credit expired.[67] Analysis by the Center on Budget and Policy Priorities ("CBPP") found that the BBB's

---

58. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 129.

59. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, § 11022, 131 Stat. 2054, 2073; *see also* I.R.C. § 24(h)–(j).

60. I.R.C. § 24(h)(5).

61. *TAS Tax Tips: American Rescue Plan Act of 2021 Individual Tax Changes Summary by Year*, TAXPAYER ADVOC. SERV. (Apr. 2, 2021), https://www.taxpayeradvocate.irs.gov/news/tas-tax-tips-american-rescue-plan-act-of-2021-individual-tax-changes-summary-by-year/.

62. *See* I.R.C. § 24(i)(3).

63. *See Child Tax Credit*, U.S. DEP'T OF THE TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/child-tax-credit [https://perma.cc/K4X7-YLFW] (last visited June 18, 2022).

64. MARGOT L. CRANDALL-HOLLICK ET AL., CONG. RSCH. SERV., R46839, THE CHILD TAX CREDIT: THE IMPACT OF THE AMERICAN RESCUE PLAN ACT (ARPA; P.L. 117-2) EXPANSION ON INCOME AND POVERTY 12 (2021).

65. *Id.* at 6.

66. Chuck Marr et al., *Build Back Better's Child Tax Credit Changes Protect Millions from Poverty—Permanently: Expanded EITC Extended for Adults Without Children*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (2021), https://www.cbpp.org/sites/default/files/11-11-21tax.pdf.

67. *See* Ian Prasad Philbrick, *Why Isn't Biden's Expanded Child Tax Credit More Popular?*, N.Y. TIMES (Jan. 10, 2022), https://www.nytimes.com/2022/01/05/upshot/biden-child-tax-credit.html.

child tax credit expansions would be "expected to benefit more than 65 million children—nearly 90 percent of all children—across the country."[68] As of this writing, the BBB and the permanent expansion of the child tax credit are in limbo, held up by intraparty congressional wrangling.[69] Forman noted that making the child tax credit fully refundable would mitigate the negative impact on work caused by high phaseout rates.[70] Of course, it also has the benefit of lifting children from poverty.

2. Updated: Universal Grants

Forman recommended replacing personal exemptions and the standard deduction with universal grants, noting that universal grants preserved the incentive to work while providing needed income assistance.[71] The TCJA did temporarily eliminate personal exemptions, but it increased the standard deduction.[72] Forman noted several benefits of universal grants. First, universal grants paid via refundable tax credits would promote economic justice because refundable tax credits have an equal value to all individuals, while deductions provide a greater benefit to those in higher tax brackets.[73] Second, the EITC, as a negative income tax, is subject to phaseouts that increase marginal tax rates, and universal grants would not need to be phased out.[74] Therefore, the recipient's work incentive would not be reduced as much under universal grants as under a negative income tax, such as the EITC.[75] Finally, universal grants would be simple to administer.[76]

Universal grants have been most recently discussed under the term "universal basic income" or UBI. Although no country has yet adopted a UBI, several countries and a number of U.S. localities have tried pilot programs.[77] A 2020 World Bank publication lists pilot UBI programs in

---

68. *See* Marr et al., *supra* note 66, at 7.
69. *See* Philbrick, *supra* note 67.
70. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 129.
71. *Id.* at 131.
72. Robert McClelland, *Fixing the TCJA: Restore the Personal Exemption*, TAX POL'Y CTR.: TAXVOX (Mar. 21, 2019), https://www.taxpolicycenter.org/taxvox/fixing-tcja-restore-personal-exemption.
73. *See* FORMAN, MAKING AMERICA WORK, *supra* note 1, at 132.
74. *See id.*
75. *See id.*
76. *Id.* at 133.
77. WORLD BANK GROUP, EXPLORING UNIVERSAL BASIC INCOME: A GUIDE TO NAVIGATING CONCEPTS, EVIDENCE, AND PRACTICES 2 (Ugo Gentilini, Margaret Grosh, Jamele Rigolini & Ruslan Yemtsov eds., 2020).

countries including Brazil, Canada, India, Iran, the Netherlands, Spain, and Uganda.[78] In a 2017 paper, Ari Glogower and Clint Wallace examine several UBI theories.[79] They define UBI as a government program that distributes money to designated beneficiaries without conditions such as work status, income level, or personal characteristics.[80] A key part of the definition is that beneficiaries have no restrictions on the use of the money.[81] Glogower and Wallace note that the UBI concept is "centuries old," having been proposed by Thomas Paine more than two hundred years ago.[82] Glogower and Wallace assert that a UBI is not significantly different from a progressive income tax with personal exemptions and a standard deduction[83] but, like Forman,[84] note that "cash grants can achieve progressivity while avoiding the disincentive effects of increasing marginal rates."[85] The cash grant also facilitates periodic payments to beneficiaries, because it does not require information from the beneficiary to determine the distribution amount.[86]

Miranda Perry Fleischer and Daniel Hemel's 2020 article entitled "The Architecture of a Basic Income" goes into detail about the possible structure of a UBI.[87] They set out six building blocks for a UBI: the size of monthly payments; eligibility; uniformity (meaning equal benefits for all); assignability; payment mechanism; and funding mechanism.[88] They emphasize that UBI design choices must be informed by the philosophical foundations upon which a UBI rests, which could include welfarism, resource egalitarianism, and libertarianism.[89] Ultimately, Fleischer and Hemel propose a UBI that replaces much of the current welfare state, funded by a surtax on wealthy individuals.[90] It seems likely that Forman

78. *See id.* at 237–42.

79. *See* Ari Glogower & Clint Wallace, *Shades of Basic Income* 4–5 (NYU 70th Annual Conference on Labor; Ohio State Pub. L. Working Paper No. 443, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3122146#.

80. *Id.* at 1–2.

81. *Id.*

82. *Id.* at 5.

83. *Id.* at 10.

84. *See supra* notes 73–74 and accompanying text.

85. Glogower & Wallace, *supra* note 79, at 14.

86. *Id.* at 16.

87. Miranda Perry Fleischer & Daniel Hemel, *The Architecture of a Basic Income*, 87 U. CHI. L. REV. 625, 630 (2020).

88. *See id.* at 630–31.

89. *Id.* at 632.

90. *Id.* at 704.

would applaud the efforts of such scholars to add rich detail on his proposal. Collecting such a surtax would inevitably fall upon the IRS. As described in the next part, scholars, including Forman, have noted that the continued lack of funding for the IRS hampers its efforts to fairly collect all the taxes due.

To conclude this update of *Making America Work*, the individual income tax continues to dominate federal revenues, with corporate tax revenues and estate and gift tax revenues continuing to decline. The COVID-19 pandemic created the impetus for adopting a number of Forman's recommendations, albeit on a temporary basis. Scholars continue to discuss UBI proposals, and the IRS continues to suffer from restricted funding.

II. Making the IRS Work (Again)

As noted in Part I, the IRS collects the revenue that funds the federal government's activities. Obviously, the proper function of the IRS is critical to the functioning of the federal government. Nonetheless, Congress has limited the funds available to the IRS for many years. Recognizing that the IRS has suffered from a lack of resources, without a meaningful increase in funding since 2010, we wrote this article in 2015 to provide recommendations for how the IRS could operate more efficiently given restricted funding.[91] The article contains detailed information about the IRS funding challenges, including references to comments from the IRS Oversight Board, the Treasury Inspector General for Tax Administration, the IRS Commissioner, the National Taxpayer Advocate, the American Bar Association Tax Section, the American Institute of Certified Public Accountants, journalists, academics, and private practitioners.[92]

A. IRS Funding Shortfalls

While the IRS funding situation appeared dire at the time we wrote the article, it steadily got worse. The apparent improvement in 2020 included 2,145 full-time equivalent employees funded through the CARES Act for IRS COVID response.[93] The 2020 staffing level represents a roughly 20% decrease from 2010.[94]

---

91. *See* Forman & Mann, *Making the IRS Work*, *supra* note 2, at 763–64 (comparing operating costs from 2005 through 2014 in nominal and adjusted figures).

92. *Id.* at 763–72.

93. *Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1991–2020*, INTERNAL REVENUE SERV. (2020), https://www.irs.gov/pub/irs-soi/20dbs06t31cs.xlsx. [hereinafter *IRS Table 31*].

94. *See id.*

Fiscal Year	Operating costs (thousands of dollars)	Number of full-time equivalent employees	U.S. Population (thousands)
2014	11,591,007	84,133	319,263
2015	11,395,839	79,890	321,540
2016	11,707,422	77,924	323,784
2017	11,526,389	76,832	325,742
2018	11,746,448	73,519	327,407
2019	11,825,241	73,554	328,981
2020	12,316,275[95]	73,773	330,619

Statistics from the Internal Revenue Service[96]

Labor costs are about 70% of the IRS budget.[97] To cope with the declining appropriations, the IRS imposed a hiring freeze and other measures to reduce the workforce.[98] The Congressional Budget Office ("CBO") reported a 22% decline in the number of overall IRS employees and a 30% decline in the number of employees working in enforcement roles.[99] Unsurprisingly, both enforcement activity and customer service suffered at the IRS:

> The loss of 15,000 enforcement employees between 2010 and 2018 led to a significant reduction in the number of

95. The FY 2021 IRS budget appropriation was $11.92 billion. INTERNAL REVENUE SERV., BUDGET IN BRIEF: FISCAL YEAR 2022, at 3 (2021), https://www.irs.gov/pub/irs-prior/p5530--2021.pdf.

96. *See IRS Table 31*, *supra* note 93.

97. CONG. BUDGET OFF., PUBL'N NO. 56422, TRENDS IN THE INTERNAL REVENUE SERVICE'S FUNDING AND ENFORCEMENT 1 (2020), https://www.cbo.gov/system/files/2020-07/56422-CBO-IRS-enforcement.pdf.

98. *Id.*

99. *Id.*

> examinations and the number of follow-ups on discrepancies between returns and third-party data, as well as an increase in assessments that were not collected and unfiled returns that were not secured.[100]

The CBO noted that "[b]etween 2010 and 2018, the share of individual income tax returns [the IRS] examined fell by 46 percent, and the share of corporate income tax returns it examined fell by 37 percent."[101]

The National Taxpayer Advocate called the 2021 tax return filing season "the quintessential definition of a perfect storm—a particularly bad or critical state of affairs, arising from several negative and unpredictable factors—resulting in tens of millions of taxpayers experiencing hardship and uncertainty in trying to reach a live assistor."[102] In 2021, only 3% of callers to the most frequently called IRS line (the "1040 line") reached a customer service representative.[103] However, the National Taxpayer Advocate also noted that "in normal, pre-pandemic years," Congress funded the IRS at a level that would allow only six out of every ten calls to the IRS to be answered.[104] While the IRS provides face-to-face assistance to taxpayers at Taxpayer Assistance Centers located around the country, the IRS has closed forty-three Taxpayer Assistance Centers since 2011, with twelve closed in 2018 alone.[105] In 2020, the IRS temporarily closed all Taxpayer Assistance Centers due to the pandemic.[106]

---

100. *Id.* at 11.

101. *Id.* at ii.

102. NAT'L TAXPAYER ADVOC., OBJECTIVES REPORT TO CONGRESS: FISCAL YEAR 2022, at 10 (2021), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/06/JRC22_FullReport.pdf.

103. *Id.*

104. *Id.*

105. *Id.* at 19; TREASURY INSPECTOR GEN. FOR TAX ADMIN., U.S. DEP'T OF THE TREASURY, REF. NO. 2019-40-029, THE INTERNAL REVENUE SERVICE DID NOT FOLLOW CONGRESSIONAL DIRECTIVES BEFORE CLOSING TAXPAYER ASSISTANCE CENTERS; A DATA-DRIVEN MODEL SHOULD BE USED TO OPTIMIZE LOCATIONS 6 (2019), https://www.oversight.gov/sites/default/files/oig-reports/201940029fr.pdf [hereinafter TREASURY INSPECTOR GEN., IRS DID NOT FOLLOW CONGRESSIONAL DIRECTIVES]. In 2011, the IRS operated 401 Taxpayer Assistance Centers. TREASURY INSPECTOR GEN. FOR TAX ADMIN., U.S. DEP'T OF THE TREASURY, REF. NO. 2014-40-038, PROCESSES TO DETERMINE OPTIMAL FACE-TO-FACE TAXPAYER SERVICES, LOCATIONS, AND VIRTUAL SERVICES HAVE NOT BEEN ESTABLISHED (2014), https://www.oversight.gov/sites/default/files/oig-reports/TIGTA/201440038fr.pdf. As of the end of 2018, the IRS operated 359 Taxpayer Assistance Centers. TREASURY INSPECTOR GEN., IRS DID NOT FOLLOW CONGRESSIONAL DIRECTIVES, *supra*, at 1.

106. *Taxpayer Assistance Center Statement*, INTERNAL REVENUE SERV. (Mar. 20, 2020), https://www.irs.gov/newsroom/taxpayer-assistance-center-statement.

B. Tax Law Complexity

Plus Ça Change, Plus C'est la Même Chose[107]

As we wrote in our 2015 article, "Much of the complexity in tax administration comes from Congress constantly tinkering with, and adding to, the Internal Revenue Code."[108] In addition to inadequate funding, significant changes in tax legislation increased the IRS workload. In testimony to Congress, Janet Holtzblatt of the Urban Institute noted some of the legislative changes that have added to IRS responsibilities:

- administration of new tax credits for health insurance coverage and the enforcement of health coverage mandates (through the Affordable Care Act in 2010);
- processing of reports of financial assets held abroad by US citizens and related enforcement actions (through the Foreign Account Tax Compliance Act in 2010);
- acceleration of processing and matching of W-2s to tax returns combined with a delay of payments of certain refundable tax credits so that claimants' earnings could be verified (through the Protecting Americans from Tax Hikes Act in 2015);
- major changes to the tax code in the [TCJA] in 2017; and
- three rounds of economic impact payments (the Coronavirus Aid, Relief, and Economic Security Act and the Consolidated Appropriations Act, FY 2021, both in 2020, and the American Rescue Plan in 2021).[109]

---

107. This expression is originally credited to an 1849 work by French novelist and author Jean-Baptiste Alphonse Karr. The phrase translates into English as "the more things change, the more they stay the same." *Well-Known Expressions: The More Things Change, The More They Stay the Same*, BOOKBROWSE, https://www.bookbrowse.com/expressions/detail/index.cfm/expression_number/483/the-more-things-change-the-more-they-stay-the-same (last visited June 18, 2022).

108. Forman & Mann, *Making the IRS Work, supra* note 2, at 772.

109. Janet Holtzblatt, *The Effect of Tax Enforcement on Revenues*, TAX POL'Y CTR. 2–3 (June 10, 2021), https://www.urban.org/sites/default/files/publication/104363/the-effect-of-tax-enforcement-on-revenues_v2.pdf (statement presented at "Minding the Tax Gap: Improving Tax Administration for the 21st Century," a hearing before the Select Revenue

Holtzblatt concluded that "[a] decade of deep cuts to the Internal Revenue Service (IRS) budget has hindered its ability to administer an increasingly complicated tax code."[110] As we also noted in our 2015 article, "[l]ate-in-the-year tax legislation adds significant burdens on the IRS to prepare forms in time for the filing season."[111] The TCJA, called "the most sweeping tax law change in more than 30 years," was enacted on December 22, 2017.[112] According to a 2020 Government Accountability Office ("GAO") report,

> [M]any of the changes needed to implement TCJA were time sensitive and extensive. IRS determined it would need to revise or create nearly 500 tax forms, instructions, and publications to help taxpayers meet their new tax filing obligations. Also related to TCJA implementation, IRS officials said they would need to reprogram information technology (IT) software systems, hire more than 1,000 new employees, and train the IRS workforce.[113]

In 2019, the Tax Foundation, a conservative think tank, commented that the Treasury regulations implementing the TCJA exceeded one thousand pages.[114]

While Holtzblatt's list of the IRS's burdens from recent legislation is impressive, I should point out one additional change that significantly impacted both taxpayer compliance and IRS burdens. Our 2015 article noted the IRS's difficulty in auditing large partnerships. We wrote that "[p]artnerships are notorious for noncompliance and are difficult to audit effectively."[115] Income from pass-through entities, such as partnerships and S corporations, makes up the largest portion of the most recently

---

Measures Subcommittee and Oversight Subcommittee, Ways and Means Committee, U.S. House of Representatives).

110. *Id.* at 2.

111. Forman & Mann, *Making the IRS Work, supra* note 2, at 773.

112. *Fact Sheet FS-2019-2: Be Tax Ready – Understanding Tax Reform Changes Affecting Individuals and Families*, IRS, https://www.irs.gov/newsroom/be-tax-ready-understanding-tax-reform-changes-affecting-individuals-and-families (May 31, 2022); Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054.

113. U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-103, TAX CUTS AND JOBS ACT: CONSIDERABLE PROGRESS MADE IMPLEMENTING BUSINESS PROVISIONS, BUT IRS FACES ADMINISTRATIVE AND COMPLIANCE CHALLENGES 1 (2020), http://www.gao.gov/pdf/product/704836.

114. Garrett Watson, *Two Years After Passage, Treasury Regulations for the Tax Cuts and Jobs Act Surpass 1,000 Pages*, TAX FOUND. (Dec. 12, 2019), https://taxfoundation.org/treasury-regulations-for-the-tcja/.

115. Forman & Mann, *Making the IRS Work, supra* note 2, at 777.

determined underreporting tax gap.[116] In 2020, Chye-Ching Huang of the CBPP noted that "[t]he audit rates for both S Corporation and partnership returns have fallen by more than 40 percent since 2010, to just 0.2 percent."[117]

In our 2015 article, we explained that the partnership audit regime enacted in the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") streamlined the audit procedures for partnerships, allowing the IRS to audit the partnership rather than the individual partners, thereby easing the IRS's burdens.[118] However, shortly after publication of our article, the Bipartisan Budget Act of 2015 repealed the TEFRA partnership audit provisions, replacing them with the centralized partnership audit regime ("CPAR").[119] Commentators have been quite critical of CPAR, noting that it appeared to be hastily enacted without much consideration and stating "Congress abruptly abandoned TEFRA, effectively giving up due process and fairness in favor of revenue and administrative convenience."[120] It is far from clear, however, that CPAR has actually produced administrative convenience for the IRS. The same commentators noted that the statutory provision and the guidance produced by Treasury and the IRS is "exquisitely detailed, complex, and sometimes confusing."[121] CPAR became effective for tax years beginning in 2018.[122] "Over the summer of 2021, the IRS launched the Large Partnership Compliance (LPC) program, using data analytics to select 2019 tax year large partnership returns for audit."[123] It remains to be seen whether this change

---

116. Pass-through income constitutes 32% of the underreporting tax gap and "includes income from partnerships, S corporations, sole proprietors, estates, trusts, farms, and rents and royalties." *Depletion of IRS Enforcement Is Undermining the Tax Code: Testimony of Chye-Ching Huang, Senior Director for Economic Policy, CBPP, Before the House Ways and Means Committee*, CTR. ON BUDGET & POL'Y PRIORITIES 4 fig.2 (Feb. 11, 2020), https://www.cbpp.org/sites/default/files/atoms/files/2-11-20tax.pdf.

117. *Id.* at 4.

118. Forman & Mann, *Making the IRS Work*, *supra* note 2, at 780.

119. The Bipartisan Budget Act of 2015 became law on November 2, 2015. *BBA Centralized Partnership Audit Regime*, INTERNAL REVENUE SERV., https://www.irs.gov/businesses/partnerships/bba-centralized-partnership-audit-regime (Mar. 8, 2022); *see also* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584.

120. WILLIAM S. MCKEE ET AL., FEDERAL TAXATION OF PARTNERSHIPS & PARTNERS ¶ 10A.01 (2022).

121. *Id.*

122. *See BBA Centralized Partnership Audit Regime*, *supra* note 119.

123. Greg Armstrong et al., *IRS Launches Large Partnership Audits*, BLOOMBERG TAX (Nov. 3, 2021, 3:45 AM), https://news.bloombergtax.com/tax-insights-and-commentary/irs-launches-large-partnership-audits.

to the partnership audit rules will help the IRS to more efficiently collect taxes due from partnership operations.

C. Recommendations

1. Increase IRS Funding

Our first recommendation in our 2015 article was to increase funding for the IRS.[124] One measure of the IRS's effectiveness is the tax gap. "The gross tax gap is the difference between a taxpayer's true tax liability and the amounts paid on time," while the net tax gap reflects the additional tax collected by IRS efforts and can be defined as "the amount of true tax liability that is not paid on time and is not collected."[125] As of November 2021, the latest tax gap estimates are for tax years 2011, 2012, and 2013.[126] These estimates are substantially unchanged from those discussed in our 2015 article, which came from a 2006 analysis. The latest tax gap estimates show an average gross tax gap of $441 billion per year.[127] After factoring in late payments and enforcement efforts, the net tax gap was estimated at $381 billion.[128] The tax gap is comprised of three main components: non-filing, underreporting, and underpayment.[129] The non-filing tax gap is the tax not paid on time by those who do not file the required returns on time.[130] The underreporting tax gap is the net understatement of tax on timely filed returns.[131] The underpayment tax gap is the amount of tax reported on timely filed returns that is not paid on time.[132] As in prior years, the largest part of the tax gap was the underreporting element, constituting 80% of the gross tax gap.[133] Individual income tax constituted the largest portion of the underreporting tax gap at roughly 70%.[134] Income that is not

124. Forman & Mann, *Making the IRS Work*, *supra* note 2, at 781.

125. *Id.* at 749.

126. *The Tax Gap*, INTERNAL REVENUE SERV., https://www.irs.gov/newsroom/the-tax-gap (Nov. 2, 2021).

127. *Id.*

128. *Id.*

129. *Fact Sheet FS-2005-14: Understanding the Tax Gap*, IRS (Mar. 2005), https://www.irs.gov/pub/irs-news/fs-05-14.pdf.

130. *Id.*

131. *Id.*

132. *Id.*; *see also Primer: Understanding the Tax Gap*, COMM. FOR A RESPONSIBLE FED. BUDGET (June 17, 2021), https://www.crfb.org/blogs/primer-understanding-tax-gap#end2.

133. INTERNAL REVENUE SERV., PUBL'N 1415, FEDERAL TAX COMPLIANCE RESEARCH: TAX GAP ESTIMATES FOR TAX YEARS 2011–2013, at 11 (Sept. 2019), https://www.irs.gov/pub/irs-pdf/p1415.pdf.

134. *Id.* at 12.

subject to third-party information reporting constitutes a net misreporting percentage of 55% for individual income tax.[135] In light of Congress's continued failure to increase the IRS budget, it should come as no surprise that the tax gap remains stubbornly unchanged.

The BBB proposal discussed in Section I.B. would have added $80 billion in mandatory funding for the IRS over the next ten years.[136] While the BBB proposal, which aimed to increase IRS funding, passed the House in November 2021,[137] it did not pass the Senate, because one Democratic senator in the evenly divided chamber could not support the bill, in part due to its cost.[138] Lawmakers wanted to see the official CBO estimate of the BBB's cost[139] to compare it with the estimate made by the Office of Tax Analysis ("OTA") at the Department of the Treasury. OTA's estimate found that increasing the IRS's funding would generate a net $400 billion in new revenue due to investments in IRS enforcement targeted at high-income individuals, complex partnerships, and large corporations.[140] These investments would

> 1) provide a high direct return on investment; 2) generate increasingly more revenue over time; 3) have a beneficial effect on voluntary compliance when coupled with investments in technology and taxpayer services; and 4) have a large deterrent

---

135. *Id.* at 13.

136. *See* Letter from Phillip L. Swagel, Dir., Cong. Budget Off., to Sen. Lindsey Graham, Ranking Member, Comm. on the Budget, U.S. Senate (Nov. 18, 2021), https://www.cbo.gov/system/files/2021-11/57620-IRS.pdf [hereinafter Letter from Swagel to Graham].

137. *US House Passes the Build Back Better Act with Significant Tax Proposals*, MOSS ADAMS (Nov. 23, 2021), https://www.mossadams.com/articles/2021/11/build-back-better-act-passes-us-house; Build Back Better Act, H.R. 5376, 117th Cong. § 138401 (as passed by House, Nov. 19, 2021).

138. *See* Emily Cochrane & Catie Edmondson, *Manchin Pulls Support from Biden's Social Policy Bill, Imperiling Its Passage*, N.Y. TIMES (Dec. 19, 2021), https://www.nytimes.com/2021/12/19/us/politics/manchin-build-back-better.html.

139. *See* Letter from Ed Case et al., Reps., U.S. House of Reps., to Nancy Pelosi, Speaker of the House, U.S. House of Reps. (Nov. 2, 2021), https://www.politico.com/f/?id=0000017c-e238-d46d-affd-f27af44e0000.

140. Jean Ross & Seth Hanlon, *The Build Back Better Act's Investment in the IRS Will Substantially Reduce the Tax Gap*, CTR. FOR AM. PROGRESS (Nov. 17, 2021), https://www.americanprogress.org/article/the-build-back-better-acts-investments-in-the-irs-will-substantially-reduce-the-tax-gap/; *see also* Lily Batchelder, *Preliminary Estimates Show Build Back Better Legislation Will Reduce Deficits*, U.S. DEP'T TREASURY (Nov. 4, 2021), https://home.treasury.gov/news/featured-stories/preliminary-estimates-show-build-back-better-legislation-will-reduce-deficits.

> effect that is not included in many analyses of the revenue effects of IRS investment.[141]

But due to the CBO's scoring guidelines that prevent it from taking into account the indirect effect of the funding, the CBO's estimate only considered the $80 billion cost of additional funding.[142] In an informal analysis, the CBO found a net $127 billion increase in revenue resulting from the additional IRS funding.[143]

2. Simplify the Internal Revenue Code

After increasing the funding available for the IRS, our next recommendation was to simplify the tax code. We wrote that "[t]he complexity of the tax system increases the burdens on both taxpayers and the IRS. Complexity erodes voluntary compliance with the tax laws, creates a perception of unfairness for the system, and impedes the effective administration of the tax laws."[144] Despite increasing IRS workload and adding complexity to business and international taxes, the TCJA provided some simplification for individual taxpayers.[145] The TCJA temporarily increased the standard deduction for individuals and reduced their ability to take some itemized deductions.[146] Taxpayers have a choice: they may elect to itemize their deductions or take the standard deduction.[147] The standard deduction provides the same benefit regardless of the taxpayer's actual expenses; the amount of the itemized deduction depends on the taxpayer's qualifying expenses, such as home mortgage interest, state and local taxes, and charitable contributions.[148] Taxpayers will elect to itemize deductions if the total allowable itemized deductions exceed the standard deduction.

---

141. Ross & Hanlon, *supra* note 140.

142. *See* Scott Levy, Note, *Spending Money to Make Money: CBO Scoring of Secondary Effects*, 127 YALE L.J. 936, 941–42 (2018) (providing a detailed explanation of CBO's scoring guidelines, accompanied by analysis) ("Put . . . broadly, [CBO's] scoring guidelines skew congressional deliberations in such a way that important policy considerations, like efficiency and equity, fall by the wayside.").

143. Letter from Swagel to Graham, *supra* note 136.

144. Forman & Mann, *Making the IRS Work*, *supra* note 2, at 782.

145. Erica York & Alex Muresianu, *The Tax Cuts and Jobs Act Simplified the Tax Filing Process for Millions of Households*, TAX FOUND. (Aug. 7, 2018), https://taxfoundation.org/the-tax-cuts-and-jobs-act-simplified-the-tax-filing-process-for-millions-of-americans/.

146. *Id.*

147. *See* I.R.C. § 63(a)–(b).

148. The home mortgage interest deduction (I.R.C. § 163(h)(3)), the state and local tax deduction (I.R.C. § 164), and the charitable contribution deduction (I.R.C. § 170) are all non-miscellaneous itemized deductions under I.R.C. § 67(b). *See id.* § 67(b).

Because the TCJA doubled the standard deduction, it is less likely that a taxpayer's itemized deductions will exceed the standard deduction. Before the TCJA, approximately one-third of taxpayers elected to itemize deductions.[149] After the TCJA, only about 10% of taxpayers elected to itemize.[150]

In addition to increasing the standard deduction, the TCJA temporarily restricted the ability of taxpayers to take certain itemized deductions. Before the TCJA, homeowners could deduct the interest on "home equity debt," which was up to $100,000 of the principal amount of the debt secured by the equity in their home.[151] The loan proceeds could be used for any purpose.[152] The TCJA disallowed the deduction of interest on home equity debt.[153] Before the TCJA, home purchasers could deduct the interest on up to $1 million of acquisition debt, that is, a loan used to acquire, construct, or substantially improve the taxpayer's residence.[154] After the TCJA, the deduction is limited to the interest on $750,000 of acquisition debt. Before the TCJA, taxpayers could deduct all their state and local income and property taxes (the "SALT deduction").[155] After the TCJA, the SALT deduction is limited to $10,000 annually.[156] The TCJA expanded the availability of the charitable contribution deduction. Prior to the TCJA, the annual charitable contribution deduction was limited to 50% of the taxpayer's contribution limit, which is generally the taxpayer's adjusted gross income ("AGI").[157] The TCJA temporarily increased the limit to 60%

149. Scott Eastman, *How Many Taxpayers Itemize Under Current Law?*, TAX FOUND. (Sept. 12, 2019), https://taxfoundation.org/standard-deduction-itemized-deductions-current-law-2019/ (reporting 31.1% of taxpayers itemizing prior to the TCJA).

150. *Briefing Book: Key Elements of the U.S. Tax System – How Did the TCJA Change the Standard Deduction and Itemized Deductions?*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/how-did-tcja-change-standard-deduction-and-itemized-deductions (May 2020) [hereinafter *How Did the TCJA Change the Standard Deduction and Itemized Deductions?*].

151. *See id.*

152. Stephen Fishman, *When Home Mortgage Interest Is Not Tax Deductible*, NOLO, https://www.nolo.com/legal-encyclopedia/when-home-mortgage-interest-is-not-deductible.html (last visited June 9, 2022).

153. *Id.*

154. *Id.*

155. Jim Probasco, *Tax Deductions That Went Away, Starting with 2018 Taxes*, INVESTOPEDIA (Dec. 30, 2021), https://www.investopedia.com/tax-deductions-that-are-going-away-4582165.

156. *See* Eastman, *supra* note 149.

157. *See How Did the TCJA Change the Standard Deduction and Itemized Deductions?*, *supra* note 150.

of the taxpayer's contribution limit, provided that the taxpayer contributed only in cash.[158] The TCJA also created a permanent $300 (or $600 for married taxpayers filing jointly) charitable contribution deduction for non-itemizers.[159]

The TCJA also temporarily disallowed all miscellaneous itemized deductions.[160] Miscellaneous itemized deductions are deductions authorized by the Internal Revenue Code but not listed as an "above-the-line" deduction[161] or non-miscellaneous itemized deduction. Commonly used miscellaneous itemized deductions included unreimbursed employee business expenses[162] and the deduction for the cost of tax preparation.[163]

Most itemized deductions are considered tax expenditures by the Joint Committee on Taxation.[164] In our 2015 article, we noted that tax expenditures cost revenue and add to the IRS's administrative burden, stating that "[r]epealing tax expenditures or, at least, adding limits to them can also reduce the number of disputes between taxpayers and the IRS."[165] As the foregoing discussion illustrates, the TCJA temporarily repealed and limited tax expenditures.

In the case of the TCJA, the price of simplification may be inequality. Itemized deductions are also "upside-down subsidies."[166] The value of a tax deduction depends on the taxpayer's marginal tax rate; because a tax

---

158. *IRS Tax Reform Tax Tip 2018-176: Tax Reform Affects If and How Taxpayers Itemize Their Deductions*, IRS (Nov. 14, 2018), https://www.irs.gov/newsroom/tax-reform-affects-if-and-how-taxpayers-itemize-their-deductions.

159. I.R.C. § 170(p).

160. *See How Did the TCJA Change the Standard Deduction and Itemized Deductions?*, *supra* note 150.

161. "Above-the-line" deductions refer to those deductions allowed in determining adjusted gross income. *See* William L. Rudkin Testamentary Tr. v. Comm'r, 467 F.3d 149, 152 (2d Cir. 2006). *See generally* I.R.C. § 62.

162. I.R.C. § 62(a)(1) provides that trade or business deductions are considered in determining adjusted gross income "if such trade or business does not consist of the performance of services by the taxpayer as an employee." I.R.C. § 62(a)(1).

163. *Id.* § 212(3).

164. JOINT COMM. ON TAX'N, PUB. NO. JCX-23-20, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024, at 2 (2020) ("[T]ax expenditures include any reductions in income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers."); *see also id.* at 28 (showing that the deduction for mortgage interest will reduce federal revenues by $125.2 billion over the five-year period between 2020 and 2024).

165. Forman & Mann, *Making the IRS Work*, *supra* note 2, at 781.

166. *See, e.g.*, Victor Thuronyi, *Tax Expenditures: A Reassessment*, 1988 DUKE L.J. 1155, 1159 ("[T]ax expenditures often provide an 'upside-down' subsidy: benefits from tax expenditures tend to increase along with the recipient's wealth.").

deduction reduces taxable income, it reduces tax liability by the amount of the deduction multiplied by the taxpayer's marginal tax rate. For example, a $1,000 deduction for a taxpayer with a 22% marginal tax rate is worth $220, but for a taxpayer in the 37% tax bracket, the same $1,000 deduction is worth $370. While the use of itemized deductions has declined for most taxpayers after the TCJA, nearly the same percentage of taxpayers in the top 1% of the income distribution still elect to itemize.[167] The Institute on Economic Policy and Taxation estimated that in 2020, 72% of the tax cuts from the TCJA went to the richest 20% of taxpayers, with an average tax cut of $60 for the poorest 20% and an average tax cut of almost $50,000 for the top 1%.[168]

Although the TCJA simplified individual taxation, it complicated the taxation of businesses. A report from the Tax Policy Center ("TPC") found two main sources of complexity in the TCJA. The first source of complexity is the new international tax provisions (which go by the acronyms GILTI, BEAT, and FDII) that limit the ability of U.S. and foreign-based multinationals to shift reported profits from the United States to low-tax foreign countries by creating new categories of income and expenses that will take years for corporations and the government to sort out. The second source of complexity is the new distinctions that the TCJA created "between (a) tax rates on earnings and business income of individual taxpayers and (b) between profits of C corporations and pass-through businesses."[169]

The international tax provisions added by the TCJA are beyond the scope of this Article,[170] but the so-called pass-through deduction created a significant change in the taxation of the most common business entities. As the TPC report noted, the changes to corporate and pass-through taxation "will lead to significant tax planning costs as taxpayers try to figure out how to organize their employment status and business affairs to qualify for the 20 percent pass-through deduction and businesses try to determine

167. *See* Eastman, *supra* note 149 (reporting only a 2.5% decree in itemization for taxpayers in the 0% to 20% income group).

168. *TCJA by the Numbers, 2020*, INST. ON TAX'N & ECON. POL'Y (Aug. 28, 2019), https://itep.org/tcja-2020/.

169. WILLIAM G. GALE ET AL., TAX POL'Y CTR., EFFECTS OF THE TAX CUTS AND JOBS ACT: A PRELIMINARY ANALYSIS 17 (2018), https://www.brookings.edu/wp-content/uploads/2018/06/ES_20180608_tcja_summary_paper_final.pdf.

170. For a complete analysis of the international tax system for corporations, see JANE G. GRAVELLE & DONALD J. MARPLES, CONG. RSCH. SERV., R45186, ISSUES IN INTERNATIONAL CORPORATE TAXATION: THE 2017 REVISION (P.L. 115-97) (2021).

whether to change from pass-through to C corporation status."[171] In particular, the pass-through deduction, codified at § 199A of the Internal Revenue Code,[172] attracted significant criticism.[173] Professor and former Joint Committee on Taxation Chief of Staff Ed Kleinbard called it "Congress' worst tax idea ever."[174] Section 199A created a new temporary deduction for pass-through income as a companion to the TCJA's reduction in corporate tax rates from 35% to 21%.[175] In broad strokes, the § 199A deduction permits individuals, trusts, and estates with pass-through business income to deduct up to 20% of their qualified business income in determining their federal income tax liability.[176] If the pass-through business owner's taxable income exceeds a statutory threshold, the deduction will be limited by the owner's share of the business's W-2 wages and the original cost (or unadjusted basis) of the business's depreciable capital assets.[177] In addition, if the business is a "specified service trade or business" ("SSTB"), the deduction may be entirely phased out if the owner's taxable income exceeds the statutory limit.[178] An SSTB is any trade or business primarily engaged in "accounting, health, law, actuarial science, athletics, brokerage services, consulting, financial services, . . . the performing arts, . . . investing and investment management, trading, or dealing in securities, partnership interests, or commodities."[179]

The CRS's analysis of the § 199A deduction noted that it "has implications for the cost and complexity of tax administration and taxpayer

---

171. GALE ET AL., *supra* note 169, at 17.

172. *See* I.R.C. § 199A.

173. *See* Ari Glogower & David Kamin, *The Progressivity Ratchet*, 104 MINN. L. REV. 1499, 1522–23 (2020).

174. Edward Kleinbard, *Congress' Worst Tax Idea Ever*, HILL (Mar. 25, 2019, 9:00 AM ET), https://thehill.com/opinion/finance/434998-congress-worst-tax-idea-ever. Ed Kleinbard is another tax giant who we recently lost. *Esteemed Tax Scholar and USC Gould Professor Edward Kleinbard, 68: The Committed Educator and Influential Author Passed Away June 28*, USC NEWS (June 30, 2020), https://news.usc.edu/172628/edward-kleinbard-obituary-usc-gould/.

175. *See* GARY GUENTHER, CONG. RSCH. SERV., R46402, THE SECTION 199A DEDUCTION: HOW IT WORKS AND ILLUSTRATIVE EXAMPLES 1 (2020) (explaining that the § 199A deduction is available from 2018 to 2025) [hereinafter GUENTHER, THE SECTION 199A DEDUCTION]; GALE ET AL., *supra* note 169, at 5 ("TCJA reduce[d] the top corporate income tax rate from 35 percent to 21 percent . . . ."); *id.* at 12 (noting the TCJA provisions were temporary). The corporate rate cut, in contrast, is permanent. *See id.* at 1.

176. GUENTHER, THE SECTION 199A DEDUCTION, *supra* note 175, at 1.

177. *Id.* at 3, 11.

178. *Id.* at 3, 5.

179. *Id.* at ii.

compliance."[180] The report found that the IRS would likely face significant cost in administering the deduction because "[e]xtensive audits may be necessary to ensure that claims for the deduction are legitimate and correct in amount for the following reasons:

- the complexity of the deduction's final regulations . . . ;
- remaining uncertainties about the specific activities that do and do not qualify for it; and
- a lack of clarity among pass-through business owners about how the rules may affect them and the deduction's potential benefits."[181]

Using a framework for complexity developed by the Joint Committee on Taxation, the report concluded that the § 199A is a tax-complex provision because "[i]t is temporary (the deduction expires at the end of 2025); Congress has given the IRS broad authority to set rules for the deduction; and there is a lack of clarity in some of the rules governing the use of the deduction, impeding its uptake."[182] Concerns about the deduction's "uptake" might be misplaced, if not concerns about its complexity. A recent report by the CBPP found that the pass-through deduction's complex "guardrails" did not prevent more than 91% of pass-through business income from qualifying for the deduction.[183] Pertinent to the subject of our 2015 article, the CBPP report also noted that

> [§ 199A's] arbitrariness and potential for abuse weaken[s] the integrity of the entire income tax and add[s] new burdens to an already under-resourced IRS, which has suffered deep funding cuts since 2010. Tax noncompliance by pass-through businesses—in particular, underreporting of income—is the single largest source of the nation's tax gap.[184]

The § 199A deduction is not only complex but also inequitable. The aforementioned CBPP report noted that 61% of § 199A's estimated tax

180. GARY GUENTHER, CONG. RSCH. SERV., R46650, SECTION 199A DEDUCTION: ECONOMIC EFFECTS AND POLICY OPTIONS 7 (2021).

181. *Id.* at 8.

182. *Id.* at 10.

183. Samantha Jacoby, *Repealing Flawed "Pass-Through" Deduction Should Be Part of Recovery Legislation*, CTR. ON BUDGET & POL'Y PRIORITIES 5 (June 1, 2021), https://www.cbpp.org/sites/default/files/6-1-21tax.pdf.

184. *Id.* at 6.

benefit in 2024 would accrue to the top 1% of the income distribution, with less than 4% of the benefit accruing to the bottom two-thirds of the income distribution.[185] Another of Professor Forman's co-authors, Caroline Bruckner, analyzed the effect of the § 199A deduction on women-owned businesses.[186] Bruckner noted that half of women-owned businesses are concentrated in three industries that qualify as SSTBs: other services; health care and social assistance; and professional, scientific, and technical services.[187] As previously noted, the § 199A deduction is not allowed for owners of SSTBs with incomes exceeding the threshold.[188] Fortunately, perhaps, as almost 90% of women business owners ("WBOs") operate businesses that have revenues below $100,000, most WBOs will be able to claim some portion of the § 199A deduction.[189] That very fact, however, indicates the distributional inequities of the provision: as Bruckner notes, "only 1.7 percent of women-business owners have receipts of $1,000,000 or more," and by 2024, 52% of the benefit of the § 199A deduction will flow to businesses with receipts exceeding $1 million.[190] In short, I think Professor Forman would probably agree with Professor Kleinbard that the § 199A deduction was one of Congress's worst ideas ever.

To conclude this update of *Making the IRS Work*, much has remained the same. The workload of the IRS continues to increase, but its funding does not. Some portion of Congress has acknowledged that the economy would benefit from increasing IRS funding, but the Senate has not yet passed the BBB. There has been no significant progress on closing the tax gap. The TCJA temporarily simplified tax filing for individuals, but at the potential cost of fairness. The TCJA increased complexity for business and international taxpayers.

III. Making Sustainable Tax Policy (Borrowing from Millennials)

While our 2015 article focused on the IRS and its role in the tax system, our next article took a broader look at how to make tax policy writ large sustainable for future generations. We identified the issue as follows:

---

185. *Id.* at 1, 4.

186. Caroline Bruckner, *Doubling Down on a Billion Dollar Blind Spot: Women Business Owners and Tax Reform*, 9 AM. U. BUS. L. REV. 1, 21–28 (2020).

187. *Id.* at 11.

188. *See supra* note 178.

189. Bruckner, *supra* note 186, at 26.

190. *See id.* at 26–27.

> Despite a progressive tax rate structure, income and wealth inequality have significantly increased in the U.S. and other countries over the past thirty years. Future taxpayers may well be in a very different situation than current taxpayers, both from increasing income and wealth inequality and from the anticipated increasing burden of government deficits.[191]

We concluded that "to attain sustainable intergenerational justice, the current generation must ensure that future generations have adequate resources to sustain life and prosperity."[192] Moreover, we assumed that intergenerational justice "demands that future generations should be able to live at least as well as we do."[193] The article provided some tax design considerations that could help achieve that goal and covered three basic themes: (1) the effect of the budget deficit, (2) income and wealth inequality, and (3) the opportunities for future generations to thrive.

A. Budget Deficit

The deficit has increased since the article's 2020 publication, largely due to the COVID-19 pandemic. As noted in Part I, economists disagree about budget deficits.[194] What is clear, however, is that the budget deficit increased substantially in 2020 and 2021, amounting to $3 trillion in 2021.[195] The CBO noted that 2020's deficit was the largest since 1945.[196]

Because deficits represent current spending that must be repaid later, deficits are an intergenerational issue. In our analysis of the deficit in our 2020 article, we noted that "[a]lthough deficit spending can be beneficial in times of recession by creating a short-term economic stimulus, in times of robust economic growth, deficit spending can crowd out private investment."[197] However, since publication of our 2020 article, the U.S. economy peaked and began to decline, marking the end of the longest

---

191. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 801 (footnotes omitted).

192. *Id.* at 802.

193. *Id.* at 805.

194. *See supra* text accompanying notes 19–21.

195. *See* CONG. BUDGET OFF., ADDITIONAL INFORMATION ABOUT THE UPDATED BUDGET AND ECONOMIC OUTLOOK: 2021 TO 2031, at 5 (2021), https://www.cbo.gov/file-download/download/private/162587.

196. *Id.*

197. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 807.

recorded U.S. economic expansion.[198] The pandemic and resultant shutdowns created an unprecedented economic crisis.[199] GDP "recorded its steepest quarterly drop in economic output . . . in the second quarter of 2020."[200] In April 2020, the unemployment rate reached its highest number since recordkeeping began in 1948: 14.8%.[201]

Congress acted swiftly to provide relief. As a result, the COVID-19 recession lasted only two months before recovery began. The Family First Coronavirus Response Act ("FFCRA"),[202] enacted on March 18, 2020, provided up to ten weeks of paid family and medical leave for employees of certain small and midsize private employers, funded by employer tax credits.[203] FFCRA also expanded funding for food assistance.[204] The CARES Act, enacted on March 27, 2020,[205] provided forgivable payroll protection loans; larger unemployment benefits; an employee retention credit for small businesses; and direct cash payments, structured as advance tax refunds.[206] The Consolidated Appropriations Act, enacted on December 27, 2020,[207] extended prior COVID-19 relief provisions and provided additional funding for schools and universities.[208] The ARPA, enacted on March 11, 2021,[209] accomplished the following:

---

198. LAUREN BAUER ET AL., HAMILTON PROJECT, TEN FACTS ABOUT COVID-19 AND THE U.S. ECONOMY 2 (2020), https://www.brookings.edu/wp-content/uploads/2020/09/FutureShutdowns_Facts_LO_Final.pdf (noting that the expansion of the U.S. economy began in June 2009 and peaked in February 2020).

199. *Id.* at 1.

200. *Id.* at 2.

201. GENE FALK ET AL., CONG. RSCH. SERV., R46554, UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC 5 (2021).

202. Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020).

203. Jim Probasco, *What Is the Families First Coronavirus Response Act (FFCRA)*, INVESTOPEDIA (July 21, 2021), https://www.investopedia.com/what-is-the-families-first-coronavirus-response-act-4802576.

204. *Id.*

205. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136. 134 Stat. 281 (2020).

206. Sharon Parrott et al., *CARES Act Includes Essential Measures to Respond to Public Health, Economic Crises, but More Will Be Needed*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (2020), https://www.cbpp.org/sites/default/files/atoms/files/3-27-20econ.pdf; *FAQs: Employee Retention Credit Under the CARES Act*, INTERNAL REVENUE SERV., https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act (Dec. 27, 2021).

207. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182.

208. *Summary of the Higher Education Provisions in the Consolidated Appropriations Act of 2021*, AM. COUNCIL ON EDUC. 1–2 (Jan. 7, 2021), https://www.acenet.edu/Documents/

- "provide[d] a one-time direct payment of $1,400 per person to eligible households;
- temporarily expand[ed] the child tax credit for low- and moderate-income families, . . . the [EITC] for workers without qualifying children, . . . the child and dependent care credit for most taxpayers and . . . the exclusion for child and dependent care expenses;
- modifie[d] and extend[ed] the payroll tax credits for employer-provided paid sick and paid family leave;
- further extend[ed] the employee retention tax credit; [and]
- temporarily . . . expand[ed] eligibility for the health insurance premium tax credit."[210]

In total, by the end of 2021, the federal government had approved $4.5 trillion in COVID-related spending.[211]

The stimulus legislation, while increasing the deficit, has had positive economic results. As of May 2022, the unemployment rate dropped to 3.6%, more than ten percentage points lower than at the peak of the economic crisis.[212] The CBO projected real GDP growth at a robust 7.4% for 2021.[213] An extended economic recession would not have benefitted future generations, because it would have made it more difficult for them to find jobs. Moreover, the COVID-19 legislation has had a transformative effect on the economy, making it more resilient and future-proof, as discussed in Section C below.

Summary-Higher-Education-Provisions-in-the-Consolidated-Appropriations-Act-of-2021.pdf.

209. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

210. MOLLY F. SHERLOCK ET AL., CONG. RSCH. SERV., R46680, THE AMERICAN RESCUE PLAN OF 2021 (ARPA; P.L. 117-2): TITLE IX, SUBTITLE G—TAX PROVISIONS RELATED TO PROMOTING ECONOMIC SECURITY 1 (2021).

211. Charley Locke, *How the $4 Trillion Flood of Covid Relief Is Funding the Future*, N.Y. TIMES MAG. (Nov. 24, 2021), https://www.nytimes.com/2021/11/24/magazine/pandemic-aid.html.

212. *Databases, Tables & Calculators by Subject*, U.S. BUREAU OF LAB. STAT., https://data.bls.gov/timeseries/LNS14000000 (last visited June 9, 2022) (reporting a peak of 14.7% unemployment in April 2020).

213. CONG. BUDGET OFF., AN UPDATE TO THE BUDGET AND ECONOMIC OUTLOOK: 2021 TO 2031, at 3–4 (2021), https://www.cbo.gov/system/files/2021-07/57218-Outlook.pdf [hereinafter CBO, AN UPDATE TO THE BUDGET].

Concerns about inflation have moderated the positive economic outlook. Demand for goods and services exceeded supply in the second half of 2021, leading to the highest inflation rate since 1982.[214] CBO projects that inflation will moderate in 2022 as supply is anticipated to adjust to demand.[215] Analysis by the Brookings Institution explains why inflation is not as bad as it looks:

> Because prices fell in 2020, one-year changes from August 2020 to August 2021 overstate the increase in inflation since the pandemic began. Instead, focusing on the annualized rate of inflation since February 2020 shows that inflation through August 2021 (as measured by the core consumer price index) was 3.1 percent, substantially lower than the one-year trend but still higher than any annual increase since the early 1990s. There are two primary reasons why the rise in inflation is unlikely to persist. First, the significant shifts in demand and bottlenecks are a function of the recent, temporary pace of economic activity. . . . Second, as production is increased (with normalization of global supply chains) and growth in demand abates, inflation should slow overall.[216]

While the economic outlook is considerably improved, the impact of the pandemic was unevenly felt among Americans. Income inequality in the United States has been increasing since the 1980s, as our 2020 article discussed,[217] and the pandemic exacerbated that trend. As the next section discusses, income inequality limits opportunity for future generations.[218] The tax system could help reverse the trend.

214. Rachel Siegel, *Prices Climbed 6.8% in November Compared with Last Year, Largest Rise in Nearly Four Decades, as Inflation Spreads Through Economy*, WASH. POST (Dec. 10, 2021), https://www.washingtonpost.com/business/2021/12/10/inflation-november-cpi-fed-biden/.

215. CBO, AN UPDATE TO THE BUDGET, *supra* note 213, at 3.

216. MITCHELL BARNES ET AL., HAMILTON PROJECT, 11 FACTS ON THE ECONOMIC RECOVERY FROM THE COVID-19 PANDEMIC 2–3 (2021), https://www.brookings.edu/wp-content/uploads/2021/09/COVID-Facts-v3.pdf.

217. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 804.

218. *See id.* at 833 ("For example, Sweden is a country with relatively low poverty rates, a low level of economic inequality, and much better prospects for upward economic mobility than the U.S.").

B. Income and Wealth Inequality

Throughout our 2020 article, we referred to the problem of inequality.[219] As we noted, income inequality is linked to reduced life expectancy.[220] Increasing progressivity in tax rates can address income inequality, but progressivity in the U.S. tax system has decreased since 1979.[221] Because higher-income Americans more frequently access tax incentives for education and homeownership, these incentives may have exacerbated inequality.[222] We opined that "[i]t would be appropriate to curb the tax breaks for homeownership and redirect American spending towards investments that would lead to economic growth or to investments in sustainable assets like energy-saving windows and furnaces, or both."[223] Moreover, those incentives narrow the tax base. As we noted, "Exclusions, deductions, credits, and many other tax expenditures shrink each of these tax bases. As a result, tax rates must be higher on each taxable base to collect the revenues needed."[224] A broader tax base benefits future generations because more economic activity will be taxed, thereby allowing marginal tax rates to be lower and leading to "more economic growth and more economic resources for future generations."[225]

According to the OECD, countries with higher average levels of wellbeing tend to have greater equality between socio-demographic groups (such as by gender, age, or education).[226] In the United States, the top 20% of the income distribution earns 8.4 times more than the bottom 20% of the income distribution.[227] For comparison, the same statistic is 3.5 times for

219. *Id.* at 801, 804, 828–29, 833, 840–42.

220. *Id.* at 804.

221. *Id.* at 828–29.

222. *See id.* at 839–42.

223. *Id.* at 842.

224. *Id.* at 830 (footnote omitted).

225. *Id.* at 832.

226. *See* ORGANISATION FOR ECON. CO-OPERATION & DEV., HOW'S LIFE? 2020: MEASURING WELL-BEING 31 (2020), https://read.oecd-ilibrary.org/economics/how-s-life/volume-/issue-_9870c393-en#page1 [hereinafter HOW'S LIFE? 2020].

227. In its analysis, the OECD considered data obtained from 2017 for the United States. *Id.* at 65. The income-share ratio between the richest 20% and the poorest 20% was 8.4 in 2017; the most current data from 2019 still reports a ratio of 8.4. *Income Distribution Database*, OECD.STAT, https://stats.oecd.org/Index.aspx?DataSetCode=IDD (click "by country" under "Income Distribution Database" in the lefthand menu; then click "United States" from the dropdown in the "Country" field at the top of the table) (last visited June 18, 2022).

Iceland[228] and 5.4 times for the OECD average.[229] On wellbeing metrics, the United States surpasses the OECD average on environmental quality and in most knowledge and skills.[230] The OECD report has no data on life satisfaction in the United States,[231] but the United States scores lower than the OECD average on work-life balance, social connections, and safety.[232] The United States also has a lower life expectancy than the OECD average: 78.6 years for the United States compared to 80.5 years for a person born in 2017.[233] The United States also has a higher percentage of the population living in relative poverty: 18% in the United States[234] compared to the OECD average of 12%.[235]

The statistics cited above show that the United States has an inequality problem. However, the U.S. tax system exacerbates not only income and wealth inequality, but also gender and racial inequality. The tax system's disparate racial impact has been the subject of much recent research.[236] A

---

228. The OECD considered 2015 data for Iceland. HOW'S LIFE? 2020, *supra* note 226, at 65. In 2015, Iceland's income-share ratio between the richest 20% and the poorest 20% was 3.6. *Income Distribution Database*, *supra* note 227 (click "by country" under "Income Distribution Database" in the lefthand menu; then click "Iceland" from the dropdown in the "Country" field at the top of the table). The most current data—from 2017—reports a ratio of 3.5. *Id.*

229. The OECD average was obtained from the most recent data for each country at the time of publication. HOW'S LIFE? 2020, *supra* note 226, at 65.

230. *Id.* at 129–33 (environmental quality) (reporting levels below the OECD average for population exposure to PM2.5 above the World Health Organization threshold); *id.* at 116–26 (knowledge and skills) (reporting levels above the OECD average for reading and science skills of ages fifteen plus and for adult literacy proficiency but lower than the OECD average for ages fifteen plus math skills and adult numeracy proficiency).

231. *Id.* at 28.

232. *Id.* at 158–67 (work-life balance) (reporting levels below the OECD average for time off of those with full-time employment); *id.* 171–80 (social connections) (reporting levels below the OECD average for time allocated to social interactions); *id.* at 149–54 (safety) (reporting levels above the OECD average for homicide rates and road deaths).

233. *Id.* at 104–05.

234. The 2019 poverty rate after taxes and transfers for all age groups in the United States was 0.18. *Income Distribution Database*, *supra* note 227 (click "by country" under "Income Distribution Database" in the lefthand menu; then click "United States" from the dropdown in the "Country" field at the top of the table) (last visited June 18, 2022).

235. HOW'S LIFE? 2020, *supra* note 226, at 65–66. "Relative poverty" is defined as less than or equal to half of the national median income. *Id.* at 65.

236. *See, e.g.*, Vanessa Williamson, *Closing the Racial Wealth Gap Requires Heavy, Progressive Taxation of Wealth*, BROOKINGS (Dec. 9, 2020), https://www.brookings.edu/research/closing-the-racial-wealth-gap-requires-heavy-progressive-taxation-of-wealth/; DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT (2021); Aravind Boddupalli & Kim S.

sustainable tax system must be sustainable for all future generations, not just the currently economically privileged.

It is difficult to determine the racial impact of the Internal Revenue Code and tax enforcement because the Treasury Department does not track data by race.[237] The scholars who have written about the tax system's racial impact have had to extrapolate by combining census data on race and ethnicity with IRS data on income.[238] On his first day in office, President Biden signed an executive order requiring disaggregation of federal data by race.[239] On December 14, 2021, the Treasury announced its progress on equity analysis of tax policy by examining implementation of economic impact payments made during the pandemic.[240] The announcement noted that "[o]nce this work is completed, we plan to publish statistics on the composition of [economic impact payment] recipients, including estimates of race and ethnicity and other demographic characteristics."[241] The Treasury Department's Office of Tax Policy also announced that it is "attempting to develop a general and reliable empirical methodology for analyzing the racial/ethnic equity implications of tax policy and tax

---

Rueben, *How Income Taxes Interact with Racial Disparities*, TAX POL'Y CTR.: TAXVOX (Jan. 30, 2020), https://www.taxpolicycenter.org/taxvox/how-income-taxes-interact-racial-disparities; Steven M. Rosenthal, *Retirement Tax Benefits Exacerbate Racial Inequities*, TAX POL'Y CTR.: TAXVOX (Aug. 24, 2021), https://www.taxpolicycenter.org/taxvox/retirement-tax-benefits-exacerbate-racial-inequities-0; Jeremy Bearer-Friend, *Should the IRS Know Your Race? The Challenge of Colorblind Tax Data*, 73 TAX L. REV. 1 (2019).

237. Jeremy Bearer-Friend, *Colorblind Tax Enforcement*, 97 N.Y.U. L. REV. 1, 12 (2022).

238. *See, e.g.*, Martin A. Sullivan, *Measuring Disparate Racial Tax Outcomes Before and After the TCJA*, TAX NOTES (Mar. 15, 2021), https://www.taxnotes.com/featured-analysis/measuring-disparate-racial-tax-outcomes-and-after-tcja/2021/03/12/3k6b8 ("To examine the effects of the TCJA, we gathered from our data set of 27,000 the 400 ZIP codes with AGI growth rates closest to the national average of 5.7 percent (ranging from 5.6 percent to 5.8 percent). We then divided that data into 10 deciles, sorting them by size of the tax reduction from 2017 to 2018. . . . [I]n general, for ZIP codes with large racial minority populations, the percentage point reduction in tax rates was smaller than the reduction in predominantly white ZIP codes. For the lowest decile (37.1 percent racial minority), the effective rate reduction was 0.6 percentage points. For the highest decile (11.4 percent racial minority), the effective rate reduction was 2.3 percentage points. These results suggest that the TCJA provided more benefits as a percentage of AGI to white over racial minority taxpayers.").

239. *See* Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 21, 2021).

240. Wally Adeyemo & Lily Batchelder, *Advancing Equity Analysis in Tax Policy*, U.S. DEP'T OF THE TREASURY (Dec. 14, 2021), https://home.treasury.gov/news/featured-stories/advancing-equity-analysis-in-tax-policy.

241. *Id.*

administration questions, which could ultimately enable a better understanding of the effectiveness and equity of a variety of tax provisions."[242] This data could help support changes to the tax system that could improve fairness and provide future generations more opportunities to build wealth.[243]

C. Opportunities for Future Generations

As we noted in our 2020 article, the failure of the current generation to adequately invest in infrastructure, climate change mitigation, and education threatens the wellbeing of future generations.[244]

1. Infrastructure

As we noted, "Adequate infrastructure is essential for future prosperity."[245] The American Society of Civil Engineers agrees.[246] The CRS noted that "[e]conomists generally agree that infrastructure is a critical factor of economic well-being, enabling private businesses and individuals to produce goods and services in a more efficient manner."[247] While spending has not kept up with the needs of aging infrastructure, there has been some good news. The Infrastructure Investment and Jobs Act ("IIJA"), enacted on November 15, 2021, authorized $550 billion in new infrastructure spending over the subsequent five years.[248] The IIJA mandates new investment in infrastructure categories, including transportation, broadband, electric grid and power, and water.[249] "Transportation is one of the largest categories of investment and includes spending on roads and bridges, public transit, and Amtrak."[250]

---

242. *Id.*

243. The generational wealth gap between white and black Americans has been persistent and led to additional challenges for black Americans during the pandemic. *See, e.g.*, Christian E. Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap Is a Generational Challenge*, CTR. FOR AM. PROGRESS (Mar. 19, 2021), https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/.

244. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 821, 834–41.

245. *Id.* at 821.

246. *See* EBP & AM. SOC'Y OF CIV. ENG'RS, FAILURE TO ACT: ECONOMIC IMPACTS OF STATUS QUO INVESTMENT ACROSS INFRASTRUCTURE SYSTEMS 3 (2021), https://infrastructurereportcard.org/wp-content/uploads/2021/03/FTA_Econ_Impacts_Status_Quo.pdf.

247. LIDA R. WEINSTOCK, CONG. RSCH. SERV., R46826, INFRASTRUCTURE AND THE ECONOMY 3 (2021).

248. *Id.* at 14; Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021).

249. WEINSTOCK, *supra* note 247, at 14.

250. *Id.*

2. Climate Change Mitigation

The news continues to be dismal with respect to the U.S. response to climate change. While President Biden re-committed the United States to the Paris Agreement,[251] congressional action on climate change looks unlikely in the near future.[252] At the same time, data continues to accumulate showing that climate change will have dire effects on the economy into the future, with a predicted $23 trillion cost to the world economy by 2050.[253] The BBB Act, passed by the U.S. House of Representatives on November 19, 2021,[254] would have provided for refundable clean energy tax credits had it not died in the Senate.[255] By 2031, these tax credits would have reduced power sector emissions to below 2005 levels and increased the share of clean electricity generation from 40% up to around 60%.[256] In addition, BBB would have created an investment tax credit for transmission lines to facilitate the increase of renewable energy, as well as tax credits for electric vehicles and charging infrastructure.[257] In our 2020 article, we observed that carbon taxes, rather than tax credits for renewable energy, would more efficiently encourage sustainable energy use.[258] We concluded, however, that "[i]nefficient incentives might be better than no action at all given the urgency of climate change and its economic impact on future generations."[259] Unfortunately, at the time of this writing, it appears that we will have no action at all.

---

251. Elian Peltier & Somini Sengupta, *U.S. Formally Rejoins the Paris Climate Accord*, N.Y. TIMES (Feb. 19, 2021), https://www.nytimes.com/2021/02/19/world/us-rejoins-paris-climate-accord.html.

252. *See generally* John Cassidy, *Joe Manchin Kills the Build Back Better Bill*, NEW YORKER (Dec. 19, 2021), https://www.newyorker.com/news/our-columnists/joe-manchin-kills-the-build-back-better-bill.

253. Christopher Flavelle, *Climate Change Could Cut World Economy by $23 Trillion in 2050, Insurance Giant Warns*, N.Y. TIMES (Nov. 4, 2021), https://www.nytimes.com/2021/04/22/climate/climate-change-economy.html.

254. *See supra* note 137.

255. *See* Elise Gout et al., *Congress Must Pass Build Back Better to Combat Climate Change*, CTR. FOR AM. PROGRESS (Nov. 18, 2021), https://www.americanprogress.org/article/congress-must-pass-the-build-back-better-act-to-combat-climate-change/.

256. *Id.*

257. *Id.*

258. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 838.

259. *Id.* at 839.

3. Education

Future wellbeing closely correlates with education. In our 2020 article, we wrote that "by encouraging education, tax systems can increase human capital and thus promote economic growth."[260] The Social Security Administration data shows that there are substantial differences in lifetime earnings by educational achievement.[261] Some research also shows that college graduates are happier than those who did not attend college, but opinions are mixed.[262] On average, college graduates live longer. The OECD found that, on average, a twenty-five-year-old man who has completed college will live more than seven years longer than one who has not completed college.[263] For women, the life-expectancy gap for college education is almost five years.[264] As we noted in our 2020 article, "[T]ax preferences can . . . be used to encourage individuals to obtain more education."[265] The main tax benefits for higher education, available in 2021, are the American Opportunity Tax Credit ("AOTC")[266] and the Lifetime Learning Credit ("LLC").[267] The AOTC applies to the first four years of college,[268] while the LLC may apply to graduate education.[269] When Congress enacted the original tax credits for higher education in 1997, the credits targeted middle-income taxpayers and phased out at relatively low income levels.[270] As we noted in our 2020 article, in 2015 Congress doubled the threshold for phasing out the AOTC.[271] We further noted that

260. *Id.* at 809.

261. *See Research Summary: Education and Lifetime Earnings*, OFF. OF RET. POL'Y, SOC. SEC. ADMIN. (Nov. 2015), https://www.ssa.gov/policy/docs/research-summaries/education-earnings.pdf ("Men with bachelor's degrees earn approximately $900,000 more in median lifetime earnings than high school graduates. Women with bachelor's degrees earn $630,000 more. Men with graduate degrees earn $1.5 million more in median lifetime earnings than high school graduates. Women with graduate degrees earn $1.1 million more.").

262. Arthur C. Brooks, *A College Degree Is No Guarantee of a Good Life*, ATLANTIC (July 2, 2020), https://www.theatlantic.com/family/archive/2020/07/will-going-college-make-you-happier/613729/.

263. HOW'S LIFE? 2020, *supra* note 226, at 26.

264. *Id.*

265. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 840.

266. I.R.C. § 25A(b).

267. *Id.* § 25A(c).

268. *Id.* § 25A(b)(2)(C).

269. *See id.* § 25A(c)(2)(B).

270. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R42561, THE AMERICAN OPPORTUNITY TAX CREDIT: OVERVIEW, ANALYSIS, AND POLICY OPTIONS 2–3, 9 (2018).

271. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 840.

> [a]s a result, the American Opportunity Tax Credit is now more heavily used by higher income households than ever before. As children of higher income households were already more likely to attend college than those from low-income households, the 2015 expansion probably did little to reduce inequality, and many of the new tax benefits may have been wasted on higher income students who would have attended college anyway.[272]

We recommended that Congress make the AOTC fully refundable to encourage lower-income Americans to take advantage of the credit.[273] That has not happened, but the Consolidated Appropriations Act of 2021 doubled the phase-out threshold for the LLC, making it consistent with the threshold for the AOTC.[274] Following our prior analysis, this increase in the threshold will not likely encourage lower-income individuals to pursue higher education. In addition, the American Rescue Plan Act expanded the exclusion of student loan forgiveness from gross income through 2025.[275] It seems likely that higher education will largely remain the purview of the already privileged, which does not bode well for sustainable economic justice.

IV. Conclusion

While longer than originally intended, this Article does not encompass even a tithe of Professor Forman's contributions to tax policy. His ideas remain salient, even more so now than before the pandemic. While pandemic legislation has temporarily adopted some of his recommendations, and Congress has considered adopting more, we can only hope that his vision continues to inform future policy makers. It would truly make America a better nation and help to create prosperity for future generations.

---

272. *Id.* at 840–41 (footnotes omitted); *see also* George B. Bulman & Caroline M. Hoxby, *The Returns to the Federal Tax Credits for Higher Education* 30 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20833, 2015), https://www.nber.org/system/files/working_papers/w20833/w20833.pdf (concluding that the tax credits have little to no effect on college attendance).

273. Forman & Mann, *Borrowing from Millennials*, *supra* note 3, at 841.

274. MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R41967, HIGHER EDUCATION TAX BENEFITS: BRIEF OVERVIEW AND BUDGETARY EFFECTS 5 (2021).

275. In general, forgiven debt is included in gross income. I.R.C. § 61(a)(12). Section 108 of the Internal Revenue Code provides an exclusion from gross income under certain circumstances. *Id.* § 108(f) (excluding qualifying cancelled student loans debt).