

# United States Senate

WASHINGTON, DC 20510

October 2, 2023

The Honorable Janet Yellen  
Secretary  
Department of Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

The Honorable Daniel Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Secretary Yellen and Commissioner Werfel,

We write to urge the Treasury Department (Treasury, The Department) to proactively use its rulemaking authority to close tax loopholes that create inconsistency and unfairness in our tax system and threaten our government's ability to raise important revenue.

We commend the Treasury Department for taking action to implement President Biden's legislative achievements – including the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act – which lower costs and invest in America while making our tax code fairer. However, to build on these successes and continue to strengthen tax fairness, the Treasury Department should also use the full extent of its existing rulemaking authority and address inequities in implementation of other parts of the tax code. We urge the Biden Administration to lay out a clear, proactive regulatory agenda to advance his commitment to making the tax system fairer, beyond the critical work taking place to implement recently-enacted legislation.

The Biden Administration has taken important actions to increase tax fairness. For decades, thanks to intense corporate lobbying for tax cuts and loopholes, the largest and most profitable corporations have paid less in taxes than small business and middle-class families, or even paid nothing at all.<sup>1</sup> With the IRA, President Biden and Congressional Democrats took a stand against this corporate welfare by requiring all corporations that report at least \$1 billion in profits to pay a minimum federal income tax rate of 15 percent, establishing a tax on corporate stock buybacks, and providing significant funding for the Internal Revenue Service to go after wealthy and corporate tax cheats.<sup>2</sup> As a result, this monumental legislation is already funding critical investments that will rebuild the country's infrastructure and lower costs for American families. Clean energy tax credits passed in the IRA, for example, are cutting energy bills for families and igniting a clean energy boom that is on track to create over 1.5 million American jobs and

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<sup>1</sup> Institute on Taxation and Economic Policy, "55 Corporations Paid \$0 in Federal Taxes on 2020 Profits," Matthew Gardner and Steve Wamhoff, April 2, 2021, <https://itep.org/55-profitable-corporations-zero-corporate-tax/>.

<sup>2</sup> The Inflation Reduction Act, H.R. 5376, 117<sup>th</sup> Congress, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/5376>.

significantly reduce greenhouse gas emissions.<sup>3</sup> We appreciate the Treasury Department’s diligent work to implement the significant tax reforms in the IRA and other recent legislation.

In addition, the Biden Administration continues to advance bold tax proposals to ensure the wealthy and large corporations pay their fair share, including closing tax loopholes for billionaires,<sup>4</sup> reversing the giveaways in the 2017 Trump tax cuts,<sup>5</sup> and establishing a 15 percent global minimum tax to address giant multinationals who offshore jobs and profits.<sup>6</sup>

These are important steps to ensure our tax code works for everyone, not just those at the top. But while Congressional Republicans continue to obstruct these important tax reforms and instead clamor for even more tax giveaways for the wealthy, the administration should focus on additional tools at its disposal to strengthen tax fairness. Administrative action is critical for implementation of new tax laws, but it should also be used to improve the implementation of previously-passed legislation and eliminate loopholes. For instance, after passage of the 2017 Trump tax cuts, corporate lobbyists swarmed Washington and secured “creative” corporate-friendly regulations that lacked sound statutory basis and added new loopholes worth tens of billions of dollars for giant multinational corporations and their wealthy shareholders.<sup>7</sup> The Treasury Department has clear authority to revisit prior rulemaking to ensure the law is correctly implemented and the wealthy do not receive further unmerited tax giveaways. Actions that the Treasury can take to improve tax fairness using its existing statutory authority include:

- Regulations and other guidance to address abuses for ultra-wealthy families and dynastic wealth, including to police valuation games, perpetual dynasty trusts, and transfers of foreign assets;<sup>8</sup>
- Regulations and other guidance to ensure that large multinationals pay their fair share on the subsidiaries’ passive earnings;<sup>9</sup> and
- Regulations and other guidance to ensure that fund managers and other business owners pay their fair share of payroll taxes.<sup>10</sup>

<sup>3</sup> The White House, “WHAT ARE THEY SAYING: One Year Anniversary of the Inflation Reduction Act,” August 17, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/17/what-they-are-saying-one-year-anniversary-of-the-inflation-reduction-act/#:~:text=The%20law%20has%20already%20created,to%20estimates%20by%20outside%20groups>.

<sup>4</sup> Center for American Progress, “Biden Tax Proposals Would Correct Inequities Created by Trump Tax Cuts and Raise Additional Revenues,” Jean Ross, April 14, 2023, <https://www.americanprogress.org/article/biden-tax-proposals-would-correct-inequities-created-by-trump-tax-cuts-and-raise-additional-revenues/>.

<sup>5</sup> *Id.*

<sup>6</sup> The White House, “Statement by President Joe Biden on Today’s Agreement of 130 Countries to Support a Global Minimum Tax for the World’s Largest Corporations,” July 1, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/01/statement-by-president-joe-biden-on-todays-agreement-of-130-countries-to-support-a-global-minimum-tax-for-the-worlds-largest-corporations/>.

<sup>7</sup> The New York Times, “How Big Companies Won New Tax Breaks From the Trump Administration,” Jesse Drucker and Jim Tankersley, December 30, 2019, <https://www.nytimes.com/2019/12/30/business/trump-tax-cuts-beat-gilti.html>.

<sup>8</sup> Letter from Senator Elizabeth Warren to Treasury Secretary Janet Yellen, March 21, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.03.20%20Letter%20to%20Treasury%20re%20Trusts.pdf>.

<sup>9</sup> Institute on Taxation and Economic Policy, “What the Biden Administration Can Do on Its Own, Without Congress, to Fix the Tax Code,” Steve Wamhoff, March 25, 2022, <https://itep.org/what-the-biden-administration-can-do-on-its-own-without-congress-to-fix-the-tax-code/>.

<sup>10</sup> Internal Revenue Service, “LB&I Concept Unit Knowledge Base – Partnerships,” [https://www.irs.gov/pub/irs-utl/pst\\_c\\_366\\_01\\_01\\_01.pdf](https://www.irs.gov/pub/irs-utl/pst_c_366_01_01_01.pdf); Taxnotes, “Hedge Fund Giant Takes IRS to Court on Limited Partner Exception,”

We appreciate the Treasury Department’s work to implement recent tax legislation and to continue to advance new legislative tax proposals that address these loopholes and strengthen tax fairness; however, the agency can also help advance these goals through its existing statutory rulemaking authority. In doing so, the Department would build on the administration’s already-strong history of using its executive authority to push policies that help American families and increase economic fairness, including providing relief to student borrowers, strengthening worker protections, banning junk fees, and lowering prescription drug costs.<sup>11</sup> With Congressional Republicans determined to defend and expand tax breaks for the wealthy and large corporations, the Biden Administration must use all its existing statutory authority to make our tax code fairer. To ensure attention to this matter, we respectfully request that you provide us with a staff-level briefing on the Treasury’s authority to act to make the tax system fairer and its rulemaking agenda for doing so by November 2, 2023.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



Chris Van Hollen  
United States Senator



Bernard Sanders  
United States Senator

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August 15, 2023, <https://www.taxnotes.com/tax-notes-today-federal/employment-taxes/hedge-fund-giant-takes-irs-court-limited-partner-exception/2023/08/15/7h2v9?highlight=SECA>.

<sup>11</sup> Brookings, “Tracking regulatory changes in the Biden Era,” September 19, 2023, <https://www.brookings.edu/articles/tracking-regulatory-changes-in-the-biden-era/>.