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NOTES

THERE’S NO PLACE LIKE HOME: PROJECTIONS ON THE FATE OF THE HOME MORTGAGE INTEREST DEDUCTION AND THE ALTERNATIVE MINIMUM TAX IN LIGHT OF CONSUMER BEHAVIOR

KRISTEN McGOVERN PAINTER*

"THE HARDEST THING IN THE WORLD TO UNDERSTAND IS THE INCOME TAX."1

INTRODUCTION

April 15th is a day that many American citizens approach with a feeling of impending doom. Although it is also the day that the

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Titanic sank, chances are it more often comes to mind in another context. On that day, the anguish of filing income tax returns is felt across the country, and in most homes citizens express complaints and dissatisfaction regarding some, if not many, aspects of the taxation system. Amendments to the Internal Revenue Code in 2006 evince changes that reflect the federal government’s response to a growing concern for the state of the environment and the need for alternative sources of energy. Nevertheless, there remain many other areas in which reform is necessary. Recently, President Bush’s Advisory Panel on Federal Tax Reform proposed several federal taxation reforms concerning home ownership and the alternative minimum tax (hereinafter “AMT”). An analysis of human behavior and preferences will help legislators reach results that will satisfy the greatest number of people, but it will require innovation and compromise.

This note begins with a general overview of the federal income taxation system. Next, it explains the history and current state of the law surrounding the home mortgage interest deduction and the AMT. The next section of this note analyzes the changes in these areas proposed by the tax panel and explores the likelihood of their enactment. In addition, this note emphasizes the importance of understanding the interaction between human behavior and taxes when deciding tax policy. Finally, this note offers proposals that aim to satisfy the interests of as many as possible.

I. HISTORICAL SETTING AND BACKGROUND

A. Calculating Tax Liability - Follow the Yellow Brick Road

On February 25, 1913, the 16th Amendment was ratified, giving Congress the “power to lay and collect taxes on incomes, from whatever sources derived...”2 As ironic as it may currently seem, at the time the amendment was ratified, the House Report stated that “all good citizens...will willingly and

2 U.S. Const. amend. XVI. The amendment in its entirety provides:
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.
Id.
cheerfully support and sustain this, the fairest and cheapest of all taxes."\textsuperscript{3} The importance of the federal income tax cannot be overemphasized as it is the most productive source of revenue for the federal government.\textsuperscript{4} In light of its prolific nature, Congress has attempted to draft the tax system in a way that serves both economic and social goals.\textsuperscript{5} Contrary to how it may feel to taxpayers, a pervasive theme of the federal income taxation structure is fairness, evident in the tax system's focus on a person's "ability to pay."\textsuperscript{6} Many economists assert that the structure of the federal income tax is the fairest of all taxes due to its progressive nature.\textsuperscript{7} In order to determine whether non-economist citizens would agree with this statement, it is important to understand how the income tax system operates.

The basic structure of the federal income tax requires taxpayers to first total their income for the appropriate taxable year from whatever source derived, i.e., from all taxable sources.\textsuperscript{8} Next, taxpayers can subtract applicable deductions, resulting in
a subtotal that is referred to as adjusted gross income. Taxpayers then subtract personal exemptions which apply to themselves and their dependents. At this point, taxpayers determine whether to itemize their deductions or to take the standard deduction. Once taxpayers subtract the appropriate deduction, they have determined their taxable income, the amount to which the applicable tax rates are applied. The resulting value at this point is the regular tax liability. After determining their tax liability, taxpayers can subtract tax credits, i.e. dollar for dollar reductions that may be available. Taxpayers then have to determine possible AMT tax liability using the alternative minimum taxable income calculations. If applicable, taxpayers must then pay any tentative AMT liability in excess of regular tax liability.

9 See REPORT, supra note 6, at 24 (referring to these deductions as “above-the-line” deductions); see also PECHMAN, supra note 4, at 65 (naming several above-the-line deductions which include payments into self-employment and individual retirement accounts and alimony).

10 See generally I.R.C. § 151 (West 2006) (allowing deduction for personal exemptions which are phased out as adjusted gross income exceeds applicable threshold amount provided in statute); see also PECHMAN, supra note 4, at 81 (discussing justification for personal exemptions and ramifications of taxing people “below minimum levels of subsistence”).

11 See I.R.C. § 63(d) (West 2006) (defining itemized deductions as those deductions allowable under Code other than above-the-line deductions and deduction for personal exemptions); see also REPORT, supra note 6, at 24 (noting that taxpayer will want to choose larger of two deductions).

12 See I.R.C. § 63(a) (West 2006) (explaining taxable income as adjusted gross income minus standard deduction or itemized deductions and minus deduction for personal exemptions); see also PECHMAN, supra note 4, at 65 (affirming that taxable income is computed by calculating two sets of deductions).

13 See I.R.C. § 1 (West 2006) (delineating applicable tax rates for each taxpayer based on graduated system); see also REPORT, supra note 6, at 24 (emphasizing that tax rates differ based upon taxpayer’s filing status and character of income).

14 See I.R.C. § 55 (West 2006) (referring to AMT as tax equal to excess of tentative minimum tax over regular tax liability); see also REPORT, supra note 6, at 24 (distinguishing regular tax liability from AMT liability).

15 See, e.g., I.R.C. § 25A (West 2006) (providing Hope and Lifetime Learning credits for qualified tuition and related expenses); see also REPORT, supra note 6, at 26 (analogizing tax credit to coupon at supermarket because it is applied after taxpayer’s tax liability is calculated).

16 See Ventas, Inc. v. United States, 381 F.3d 1156, 1158 (Fed. Cir. 2004) (summarizing briefly alternative minimum tax calculations required under I.R.C. §§ 55-58); see also REPORT, supra note 6, at 24 (mentioning that alternative minimum tax requires taxpayer to start tax liability calculations over but this time using alternative minimum tax base to start).

17 See Ventas, 381 F.3d at 1158 (affirming that if tentative minimum tax exceeds regular tax liability, then taxpayer is required to pay this AMT liability in addition to his/her regular tax liability); see also Stewart S. Karlinsky, A Report on Reforming the Alternative Minimum Tax System, 12 AM. J. TAX POL’Y 139, 149 (1995) (confirming that
B. The Need for Reform of the Tax System as a Whole - Maybe the Wizard Can Help

Many Americans find the task of calculating their income tax liability a bit daunting, what with trying to choose between a 1040, 1040A, or 1040EZ form for example or deciding whether or not to e-file. In fact, economists, financiers, and politicians are expressing their disdain for the complexity of the tax system. Perhaps Steve Forbes summarized the situation best when he testified before the President's Advisory Panel prior to the release of its recommendations by stating:

There isn't a human being alive who knows what's contained in the federal tax code. To put it in perspective: Abraham Lincoln's Gettysburg Address, which defined the American nation, is 272 words in length. Our Declaration of Independence is some 1,300 words. The Bible, which spans several thousands of years of human history, is 773,000 words. But the federal tax code, with all of its attendant rules and regulations, is 9 million words and rising.

Not only is the content of the Code complex, but there has been a significant increase in the amount of time required for tax preparation in order to adequately comply with its many idiosyncrasies. The current tax system is undoubtedly more complex than necessary, and yet it is important to remember that tax systems by their very nature are inherently intricate taxpayers whose tentative alternative minimum tax liability exceeds their regular tax liability must pay this excess amount in addition to paying their regular tax liability).


20 Forbes, supra note 19, at 31.

21 See 152 CONG. REC. 19, S1323 (daily ed. Feb. 15, 2006) (statement of Sen. Wyden) (estimating that in 2006, $140 million will be spent on tax preparation); see also Forbes, supra note 19, at 31 (stressing that Americans spent 6.6 billion hours preparing their tax forms in 2005).
and thus difficult to understand. Changes in one area of the tax code have ramifications in many other areas, often unintended. The President's Advisory Panel was well aware of this unsettling complexity when it assumed the task of drafting recommendations. The Panel's proposals encompass two separate plans, but for purposes of this paper it is only important to note that under both, the proposed treatment of the home mortgage interest deduction and the alternative minimum tax are the same.

C. History of the Home Mortgage Interest Deduction and Current State of the Law – Click Your Heels Three Times

Since 1913, taxpayers have been able to deduct the interest they pay on their home mortgage through one tax provision or another. Over time, the home mortgage interest deduction has served to further increase the tax benefits that are conferred upon those who choose to become homeowners. As a result, this

22 See Coenen, supra note 18, at 992 n.136 (affirming inherent complexity of tax systems); see also John S. Nolan, The Erwin N. Griswold Lecture: The Merit of an Income Tax Versus a Consumption Tax, 12 AM. J. TAX POLY 207, 212 (1995) (referring to how existing income tax system has become far more complex than necessary).

23 See GOODE, supra note 3, at 9 (mentioning that decisions regarding tax policy should take into account not only the consequences changes in tax policy could have on other taxes but also on the budget and government expenditures); see also DANIEL SHAVIRO, WHEN RULES CHANGE: AN ECONOMIC AND POLITICAL ANALYSIS OF TRANSITION RELIEF AND RETROACTIVITY 1-11 (William M. Landes & J. Mark Ramseyer eds., University of Chicago Press 2000) (discussing how changes in tax policy and other political areas often have retroactive effects).

24 See REPORT, supra note 6, at xiii (discussing the task that they as Panel faced and admitting that the tax system is complex, unstable, and unpredictable); see also Samuel L. Braunstein & Carol F. Burger, Tax Reform Panel Offers Sweeping Changes, THE NATIONAL PULSE, 4 NO. 50 A.B.A. J. E-Report 5 (Dec. 16, 2005) (analyzing the two plans that the Panel proposed, mentioning how Panel could not discuss all aspects relating to the tax system such as payroll taxes or excise taxes, and suggesting that if the recommendations become law there would be major changes and ramifications).

25 See REPORT, supra note 6, at xvii (depicting how under both the Simplified Income Tax Plan and the Growth and Investment Plan, treatment of alternative minimum tax and home mortgage interest deduction is the same); Braunstein & Burger, supra note 24 (stating that both plans are substantially identical with regard to individuals).

26 The tax code currently allows taxpayers to deduct interest on up to $1.1 million when the debt is secured by a residence. See I.R.C. § 163 (h)(B)(i) (West 2006). The individual income tax in 1913 allowed a deduction for all interest payments, thus encompassing the home mortgage interest deduction. See Roberta F. Mann, The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction, 32 ARIZ. ST. L.J. 1347, 1351-52 (2000).

27 See REPORT, supra note 6, at 70 (mentioning provisions in Code in addition to the home mortgage interest deduction that benefit homeowners, such as the ability to deduct state and local property taxes and to exclude some or all of the capital gain on the sale of a primary residence); see also John G. Steinkamp, A Case for Federal Transfer Taxation,
deduction has served as an incentive to take advantage of a significant tax break by seeking to buy a home. As purchasing a home is a costly undertaking, it is usually the wealthier segments of society who choose to embark on this feat, and thus the home mortgage interest deduction has predominantly been understood as a benefit primarily available for the wealthy. However, with the availability of numerous banks and mortgage companies, it has become easier to find a willing lender and many people have decided to take advantage of the deduction. In fact, it is likely that “the home mortgage interest deduction is America’s favorite itemized deduction.”

In order to appreciate its attractiveness, one must understand how the home mortgage interest deduction operates. Under section 163 of the Internal Revenue Code, a taxpayer can take a deduction for qualified residence interest. A qualified residence includes a taxpayer’s principal residence and one other residence selected by the taxpayer. Qualified residence interest is the interest paid on either acquisition indebtedness or home equity indebtedness. Acquisition indebtedness is the debt which is secured by the residence and is incurred in acquiring,
constructing, or substantially improving any qualified residence of the taxpayer. A taxpayer can deduct interest on acquisition debt with a principal amount of up to one million dollars. Home equity indebtedness is debt which is secured by the qualified residence to the extent that the aggregate amount of the debt does not exceed the fair market value of the qualified residence reduced by the amount of acquisition indebtedness on the residence. A taxpayer can deduct interest on up to one-hundred thousand dollars home equity debt and can use the loan proceeds for any purpose, so long as the loan is secured by a qualified residence. As a result, a taxpayer can deduct interest on one million dollars of acquisition indebtedness and interest on one-hundred thousand dollars of home equity indebtedness. In effect, a “taxpayer may reduce his tax liability by paying [his] home mortgage interest.”


Just this year, Senator Ron Wyden referred to the AMT as a “crushing tax for millions of middle-income people.” In 2006, this does not seem like an odd statement since the AMT is widely known to be a thorn in the side of middle-America. However, at the time of its enactment, the AMT was intended to target the truly affluent portions of society. In 1969, Congress enacted an

39 See I.R.C. § 163(h)(3) (noting that qualified residence interest which is paid or accrued during taxable year on acquisition indebtedness or home equity indebtedness is deductible within the appropriate limits); see also Uslu v. Commissioner of Internal Revenue, 74 T.C.M. (CCH) 1376 (T.C. 1997) (explaining the operations of I.R.C. § 163(h)); see also Wagnon v. Prairie Band Potawatomi Nation, 126 S. Ct. 676, 685-86 (2005) (stating that even though a taxpayer can “reduce his tax liability by paying his mortgage interest, . . . that entitlement does not render the taxable event anything other than the receipt of income by the taxpayer”).
40 Wagnon, 126 S. Ct. at 685.
42 See REPORT, supra note 6, at 10 (branding the alternative minimum tax as a “complex, unfair, and inefficient burden on millions of Americans.”); see also Janet Novack, Tax Planning in the Dark, FORBES, Dec. 12, 2005, at 12 (noting that millions of Americans are currently “menaced by the Alternative Minimum Tax.”).
43 The AMT as it is known today first came into effect in 1982, and the threshold for liability was set at $49,000, which would equate to $82,000 today when adjusted for inflation. See REPORT, supra note 6, at 9. Government felt that people who could take
individual add-on minimum tax because it had determined that in the preceding years, many wealthier taxpayers had not paid any federal income tax.\textsuperscript{44} In light of the underlying policy of ability to pay, Congress took action and chose to implement the minimum tax system which was targeted at the wealthy.\textsuperscript{45} The minimum tax that was initiated in 1969 went through several changes over the years until 1986 when the current AMT system was established.\textsuperscript{46} Because the AMT has not been properly adjusted for inflation,\textsuperscript{47} it now serves to plague larger than intended sections of society, including the twenty-one million taxpayers who were affected by it this year.\textsuperscript{48}

In order to empathize with those who detest the AMT, it is necessary to understand how it operates. It is easiest to start advantage of favored tax treatment through certain transactions should be kept in check by ensuring that they paid at least a minimum tax. See Karlinsky, supra note 17, at 141.

\textsuperscript{44} See Edwin S. Cohen, \textit{ATPI Roundtable on the Alternative Minimum Tax: An Opening Overview}, 12 \textit{AM. J. TAX POLY} 133, 135 (1995) (remarking that one of the original goals of the minimum tax was to eliminate the possibility of persons with adjusted gross incomes over $200,000 paying no federal income tax); Karlinsky, supra note 17, at 140 (stating that the "genesis" of the 1969 tax was that 155 individual taxpayers with adjusted gross incomes over $200,000 had not paid federal income tax in 1967).

\textsuperscript{45} BOB ERICKSON, \textit{THE ABC'S OF THE ALTERNATIVE MINIMUM TAX}, IRS 2005 NATIONWIDE TAX FORUM (June 28, 2005), available at http://www.irs.gov/pub/irs-util/section01-abcsoftheamt.pdf (stating that Congress enacted the minimum tax to "ensure high-income individuals would not escape payment of tax by using tax preferences"); see GOODE, supra note 3, at 18 (noting that the ability-to-pay policy is appealing because even critics of the policy agree that "people with income below a certain level should not be expected to pay taxes"); see also PECHMAN, supra note 4, at 209 (asserting that in context of income taxes, the measure of one's ability to pay is income, thus it follows that those with more income have a better ability to pay).

\textsuperscript{46} See ERICKSON, supra note 45 (delineating the history of the AMT); Karlinsky, supra note 17, at 140-47 (tracking history of AMT); see also PECHMAN, supra note 4, at 128 (noting that the 1969 add-on tax was replaced by alternative minimum tax in 1983).

\textsuperscript{47} See Albert B. Crenshaw, \textit{America Runs on AMT}, \textit{THE WASH. POST}, May 29, 2005, at F01 (discussing how the AMT was not adjusted for inflation); Perry Bacon, Jr., \textit{Costly Alternatives}, \textit{TIME}, Dec. 19, 2005, at 26 ("The AMT is not adjusted for inflation, and recent cuts have lowered rates under the traditional tax code, making many middle-class people subject to the AMT."); Press Release by Rep. Philip English, \textit{House Passes Bill to Preserve Tax Cuts for America's Middle Class Families}, U.S. FED. NEWS (Dec. 7, 2005), available at http://www.house.gov/list/press/pa03english/amtl2005.html (noting that the "dollar amount triggering the AMT rate was never adjusted for inflation, so more and more individuals are being subject to the AMT").

\textsuperscript{48} See REPORT, supra note 6, at 9 (discussing the projected 21.6 million tax payers to be affected by the AMT in 2006, and estimating that it will affect 52 million taxpayers in 2015); see also Linda Sugin, \textit{Sustaining Progressivity in the Budget Process: Commentary on Gale & Orszag's An Economic Assessment of Tax Policy in the Bush Administration, 2001-2004}, 45 B.C. L. REV. 1259, 1271-74 (2004) (commenting on the importance of indexing the AMT for inflation in conjunction with other aspects of the system that need to be overhauled).
with calculating alternative minimum taxable income. Alternative minimum taxable income is the taxable income of the taxpayer for the taxable year that is determined with adjustments in sections 56 and 58 of the Internal Revenue Code, and increased by the amount of tax preferences in section 57. Sections 56 and 58 require taxpayers to treat certain property differently than they would under their regular tax calculation. For example, alternative minimum taxable income, unlike regular taxable income, does not allow for any miscellaneous itemized deductions. These two sections primarily serve to lessen the benefits of which the taxpayers can take advantage. Section 55 requires the taxpayer to increase her alternative minimum taxable income by the amount of the items listed in section 57. Once the taxpayer has determined the amount of her alternative minimum taxable income, she needs to determine the exemption amount. The exemption amount is a figure provided in section 55(d), which varies depending upon the status of the taxpayer, e.g. whether the taxpayer is filing jointly or perhaps is married but filing separately. The taxpayer can determine whether she has a taxable excess, which means the

49 See I.R.C. § 55(b)(2) (West 2006) (defining alternative minimum taxable income and providing the sections of the internal revenue code which are necessary for its determination).
50 See id. (listing sections 56, 57 and 58 as those sections necessary to determine one’s alternative minimum taxable income and describing how they apply).
51 See I.R.C. § 56(a) (West 2006) (stating that the adjustments in § 56 are used to determine the amount of the alternative minimum taxable income in lieu of the treatment applicable for purposes of computing the regular tax); I.R.C. § 58 (West 2006) (specifying the denial of certain losses).
52 See I.R.C. § 56(b)(1)(A)(i) (West 2006) (“In determining the amount of the alternative minimum taxable income of any taxpayer . . . the following treatment shall apply . . .: [n]o deductions shall be allowed for any miscellaneous itemized deduction”).
53 See I.R.C. § 56(b)(1)(C)(iv) (West 2006) (stating it does not allow for the deduction of interest incurred on home equity indebtedness); I.R.C. § 58 (explaining denial of specified losses).
54 See I.R.C. § 55(b)(2)(B) (West 2006) (requiring the items of tax preference described in § 57 to be added to the alternative minimum taxable income); Ventas, Inc. v. United States, 381 F.3d 1156, 1158 (Fed. Cir. 2004) (explaining AMT calculations and stating that items in § 57 serve to increase the amount of the alternative minimum taxable income for the year).
56 See I.R.C. § 55(d) (West 2006) (listing options for single and joint returns under the “exemption amount” category).
amount (if any) of the alternative minimum taxable income that exceeds the exemption amount.\textsuperscript{57} At this point, the taxpayer must calculate the tentative minimum tax, which is the sum of 26\% of the taxable excess up to $175,000 and 28\% of the taxable excess over $175,000.\textsuperscript{58} Finally, section 55(a) of the Code lays out the general rule that if there is an excess of the tentative minimum tax for the taxable year over the regular tax for the taxable year, then there will be a tax imposed that is equal to the amount of such excess.\textsuperscript{59} Remembering that this calculation is in addition to the regular tax calculation, one begins to understand the frustration that many taxpayers experience every year.\textsuperscript{60}

As the Code does provide for several deductions and/or credits for certain expenses based on consumer preferences, there are often several ways for taxpayers to benefit and reduce their tax liability.\textsuperscript{61} However, because the government relies so heavily on the revenue from the income tax,\textsuperscript{62} it seeks to ensure that these people who do take advantage of the tax preferences still contribute to this revenue pool.\textsuperscript{63} Some argue that the deductions

\textsuperscript{57} See Hearing, supra note 55, at 6 (noting the taxpayer must compute his/her taxable excess after calculating the exemption amount); see also I.R.C. § 55(b)(1)(A)(ii) (West 2006) (defining taxable excess).

\textsuperscript{58} See I.R.C. § 55(b)(1)(A)(i)(I) (West 2006); see also Hearing, supra note 55, at 6 (noting computation of the tentative minimum tax as the step after calculating taxable excess).

\textsuperscript{59} See I.R.C. § 55(a) (West 2006); see also Hearing, supra note 55, at 6 (explaining that the AMT is equal to the excess of the taxpayer's tentative minimum tax, if any, over his regular tax liability).

\textsuperscript{60} See Ventas, Inc. v. United States, 381 F.3d 1156, 1158 (Fed. Cir. 2004) (affirming that if tentative minimum tax exceeds regular tax liability, then taxpayers are required to pay this AMT liability in addition to his or her regular tax liability); see also Karlinsky, supra note 17, at 149 (asserting that taxpayers must pay any tentative alternative minimum tax liability that exceeds their regular tax liability).

\textsuperscript{61} See Hearing, supra note 55, at 9 (stating that Congress wants to preserve tax-favored capital gains treatment under the "AMT regime" and that capital gains are taxed for regular tax purposes at lower rates than the AMT rates); Katie Brenner, Alternative Minimum Tax 101 (Nov. 10, 2005), http://money.cnn.com/2005/11/09/pf/taxes/amt_101/index.htm (discussing the different rules for AMT deductions, and explaining that some deductions, including mortgage-interest and charitable donations, still stand).


\textsuperscript{63} The purpose of the AMT is to ensure that "no taxpayer with substantial economic income [is] able to avoid all tax liability by using exclusions, deductions, and credits." Ventas, Inc., 57 Fed. Cl. at 412 (quoting S. Rep. No. 97-494, at 108 (1982)). The "floor
that are disallowed today include preferences that the AMT was originally not designed to limit. As a result, the AMT structure is unfairly denying taxpayers access to the benefits which the regular tax system provides. Courts have made clear that it is not their responsibility but rather the onerous duty of Congress to make the necessary changes.

II. EXPLANATION OF THE TAX ADVISORY PANEL’S PROPOSED CHANGES

A. Proposed Changes for the Home Mortgage Interest Deduction - Hang on to Your Ruby Slippers, Dorothy

When examining the current state of the tax system, the President’s Advisory Panel noted that the deduction for home mortgage interest was available only to those taxpayers who chose to itemize their deductions, as opposed to taking the standard deduction. The Panel suggests removing the home mortgage interest deduction and replacing it with a Home Credit. The Home Credit would be equal to 15% of mortgage interest paid on a home mortgage.

concept” of the AMT serves to prevent a profitable taxpayer from reducing his/her tax liability below that floor amount. See Karlinsky, supra note 17, at 146.

64 See Cohen, supra note 44, at 136 (referring to denial under AMT of deduction for miscellaneous itemized deductions and state and local property and income taxes, which he claims were not originally intended under AMT); see also Pechman, supra note 4, at 129 (mentioning deficiencies of AMT system and how it does not follow underlying progressive nature of regular tax system).

65 For instance, taxpayers can deduct interest on home equity indebtedness under the regular tax system, but not under the AMT system. See I.R.C. § 56(e) (2006). Furthermore, only those taxpayers who qualify for the home mortgage interest deduction typically choose to take advantage of the other itemized deductions, such as the deduction for state and local property taxes, thereby limiting the benefits of these deductions to the wealthier individuals in society. See REPORT, supra note 6, at 25.

66 See Hukkanen-Campbell v. Comm’r, 274 F.3d 1312, 1315 (10th Cir. 2001) (stating that “Congress, not [the] court, must correct any shortcomings in the AMT’s application”); see also Snap-Drape, Inc. v. Comm’r, 98 F.3d 194, 201-202 (5th Cir. 1996) (discussing treatment of dividends for AMT purposes, remarking that any changes to calculations are a matter for Congress and not the courts).

67 See REPORT, supra note 6, at 72 (commenting on how typically taxpayers who itemize tend to be in higher-income groups); see also I.R.C. § 163(h) (2006) (falling under category of itemized deductions, home mortgage interest can only be usefully deducted when taxpayers opt to itemize as opposed to taking standard deduction).

68 See REPORT, supra note 6, at 73 (emphasizing availability to all taxpayers as important feature of proposed Home Credit); see generally Jeff Schnepper, At Risk: Your Home-Mortgage Deduction, MSN Money (Nov. 2, 2005), http://moneycentral.msn.com/content/Taxes/P131174.asp (analyzing likelihood of Panel’s proposals being enacted into law).
interest paid and it would thus be available to all taxpayers as a credit whereas the current deduction is not.\textsuperscript{69} In addition, instead of the $1.1 million maximum limit currently in place,\textsuperscript{70} the mortgage limit from which the 15\% interest credit could be taken would be limited to the average regional price of housing.\textsuperscript{71} The Panel's suggested limits would be county-based and range from $227,000 to $412,000.\textsuperscript{72} Furthermore, the Panel recommends completely eliminating the deductions for interest on mortgages on second homes and on home-equity loans.\textsuperscript{73}

In arriving at its recommendations, the Panel analyzed the tax benefits the housing sector currently receives under the Code.\textsuperscript{74} Supporters of the Panel's proposal argue that the Code is encouraging home ownership at the expense of investments in the business sector, which causes an adverse impact on society by decreasing productivity in the workplace.\textsuperscript{75} Others point out that

\textsuperscript{69} See REPORT, supra note 6, at 73-74 (noting driving force behind transition to a Home Credit is to make home ownership available to more Americans); see also Schnepper, supra note 68 (analyzing advantages and disadvantages transition to a credit would have depending upon which tax bracket particular taxpayers fall under).

\textsuperscript{70} See I.R.C. § 163(h) (2006) (placing $1,000,000 limitation on amount of acquisition indebtedness and $100,000 limitation on amount of home equity indebtedness that can qualify for interest deductions); see also REPORT, supra note 6, at 70 (discussing housing tax benefits under current law and stating in particular that "[t]axpayers are allowed to deduct interest paid on up to $1 million of mortgage debt secured by the taxpayer's first or second home" and that "homeowners may deduct interest on home equity loans of up to $100,000.").

\textsuperscript{71} The Panel explained that the Home Credit limit would be based on the average cost of housing within the taxpayer's geographic area. See REPORT, supra note 6, at 73. The average cost of housing would be determined using data from the Federal Housing Administration (FHA). See id. Analysts have expressed skepticism about this approach as it may end up causing more complexity than simplicity. See Schnepper, supra note 68. It may be more inconvenient and confusing to require separate limits for each county that would have to be recalculated annually. See id.

\textsuperscript{72} See REPORT, supra note 6, at xvii (noting that taxpayers with mortgages above maximum limit could utilize credit on value of loan up to that amount).

\textsuperscript{73} See REPORT, supra note 6, at 73 (specifying changes that would be made regarding home mortgage interest deduction and recommending elimination of preferential treatment given to interest paid on second home mortgages and home equity indebtedness); see also Schnepper, supra note 68 (affirming that Panel would eliminate deduction for interest payments on home-equity loans as well as on second home mortgages).

\textsuperscript{74} See REPORT, supra note 6, at 70 (referring to Code provisions in addition to home mortgage interest deduction that benefit homeowners, such as deductions for state and local property taxes and exclusions for some or all capital gain on sale of a primary residence); Mann, supra note 26, at 1348-49 (describing how taxation supports the American Dream through "the home mortgage interest deduction, the property tax deduction, and the exclusion of imputed rental income from owner-occupied housing").

\textsuperscript{75} See REPORT, supra note 6, at 71 (positing that perhaps higher rate of tax on business investment leads to proportionately less investment in business, causing domino effect on equipment and technologies industries); see also Andrew Chamberlain, The Case Against the Home Mortgage Interest Deduction, THE TAX FOUNDATION, Sept. 24, 2005,
the benefits conferred on home ownership unfairly discriminate against renters.76 Supporters also emphasize that limiting the deduction would provide a large amount of revenue to the federal government, considering that taxpayers claim hundreds of billions of dollars in home mortgage interest deductions each year.77 In addition, although encouraging home ownership supports the notion of the American Dream, some argue that it has only served to increase the prices of homes, making the dream harder to attain.78 The Panel suggests that the Code should aim to support home ownership, not necessarily ownership of luxury homes or boats that could be considered residential.79 Furthermore, it is typically the wealthier in society who are able to take advantage of the home mortgage interest deduction as a product of foregoing the standard deduction and itemizing.80 As a result, it is only those taxpayers who are able to

available at http://www.taxfoundation.org/blog/show/1081.html (supporting elimination of home mortgage interest deduction because of its negative impact on assets such as factories and equipment that are more productive and benefit more aspects of society, including workers and wages).


77 See Schnepper, supra note 68 (connecting elimination of AMT with limitation on deduction for home mortgage interest, and noting that in order to allow for elimination of AMT, government would need to obtain this lost revenue from somewhere such as from revenue home mortgage interest limitation would provide); see also Under Attack, supra note 76 (positing that elimination or at least limitation of the current home mortgage interest deduction would generate much needed revenue for the federal government).

78 Median home values adjusted for inflation nearly quadrupled from 1940 to 2000. See U.S. CENSUS BUREAU, HISTORICAL CENSUS OF HOUSING TABLES: HOME VALUES, available at http://www.census.gov/hhes/www/housing/census/historic/values.html (last visited Nov. 12, 2006). The average price of a home in the United States in 2000 was $119,600, whereas in 1940 it was $30,600. See id. Increasing housing costs have caused problems for those whose incomes do not rise as well. See Mann, supra note 26, at 1367-68.

79 See I.R.C. § 163(h) (2006) (allowing for deduction of interest on qualified second residence, which could even include a boat if it is residential); see also REPORT, supra note 6, at 73 (suggesting that Home Credit would serve society better because it would encourage home ownership, not necessarily ownership of luxury or vacation homes).

80 See REPORT, supra note 6, at 25 (noting that wealthier taxpayers tend to be the ones who itemize and the value of a deduction is worth more to a taxpayer in a higher income bracket); see also Mann, supra note 26, at 1362 (asserting that benefits of home mortgage interest deduction will continue to favor the wealthy).
itemize that receive the advantages, thereby barring the lower income taxpayers from partaking in these benefits as well.\textsuperscript{81}

On the other hand, supporters of retaining the current home mortgage interest deduction have not responded well to the Panel’s recommendations.\textsuperscript{82} It is possible that home ownership would be significantly discouraged and consumer spending would decrease.\textsuperscript{83} Moreover, the Panel’s suggested regional limits will most likely prevent residents of wealthier areas to fully deduct interest payments on the mortgage they would need in order to purchase a home because the housing prices would be well above the suggested limit.\textsuperscript{84} Even a home that was considered average in price might be over the limit, thus the middle-income taxpayer would be adversely affected as well as the affluent.\textsuperscript{85} Organizations such as the National Association of Realtors have written to the Panel expressing their dissatisfaction with the

\textsuperscript{81} See REPORT, supra note 6, at 9 (affirming that many deductions under regular tax system are not available under AMT system); Mann, supra note 26, at 1365 (indicating that home mortgage interest deduction not only favors the wealthy but also discriminates against minorities as they are typically less likely to partake in those activities that receive tax preferences).

\textsuperscript{82} See Mann, supra note 26, at 1348 (predicting that if Congress suggested a repeal of the home mortgage interest deduction there would be “howls of protest from all quarters”); see also National Association of Realtors, Defending the Home Mortgage Interest Deduction, available at http://www.realtor.org/government_affairs/mortgage_interest_deduction/index.html (last visited Nov. 12, 2006) [hereinafter Defending] (expressing concern for housing industry if home mortgage interest deduction were repealed).

\textsuperscript{83} See Defending, supra note 82 (warning that even the mere mention of reducing tax benefits available for home ownership could cause property values to decline, especially in high cost areas); see also Under Attack, supra note 76 (expressing dissenters’ concerns that proposal could hurt economy by causing decline in consumer spending).

\textsuperscript{84} See Under Attack, supra note 76 (noting that residents of high-priced markets such as New York and San Francisco might not be able to adequately deduct interest payments on high mortgage that they would require if the current average limits were used as a guide); see also 2000 Census: Home Values, NEWSDAY, available at http://www.newsday.com/business/realestate/ny-census-homevaluesearch.cdbresult?PageURL=ny-census-homevaluesearch.cdbresult&Lib=turbine_cdb_lib%3Aresult_doc_id+result_doc_rank+document_id+cdb_num+cdb_01_txt+cdb_02_txt+cdb_03_txt+cdb_04_txt+cdb_05_txt+cdb_06_txt+cdb_07_txt+cdb_08_txt+cdb_09_txt+cdb_10_txt+cdb_11_txt+cdb_12_txt+cdb_13_txt+cdb_14_txt+cdb_15_txt+cdb_16_txt+cdb_17_txt+cdb_18_txt+cdb_19_txt+cdb_20_txt&SortBy=COMPOSITE_RANK+desc%2C+cdb_02_txt&PageSize=50&P  age=1&MinCoarseRank=500&QueryType=CONCEPT&turbine_cdb_lib+cdb_02_txt=nass au+county (last visited Nov. 14, 2006) (referring to a 2000 census depicting home values that vary in Nassau County, Long Island, which would indicate that significant numbers of people would be above the average limit set for the county, and thus unable to make total use of the Home Credit).

\textsuperscript{85} See REPORT, supra note 6, at 74 (highlighting that under the proposed Home Credit, lower income taxpayers would do best, thus middle to upper would suffer); see also Under Attack, supra note 76 (noting that in high-priced areas, median priced homes could be difficult to purchase and thus middle income families would suffer).
proposal, and join with others arguing that the Panel’s recommendations would eliminate the pursuit of the American Dream. In addition, current homeowners have relied upon the existence of the home mortgage interest deduction in choosing to purchase homes and argue that they may unfairly end up being liable for more tax dollars than expected.

B. Proposed Changes for the AMT – It’s a Twister! It’s a Twister!

Apparently the Panel believes it is a time to drop a house on the AMT, as its recommendation is to eliminate the AMT system completely. In reaching this recommendation, the Panel noted the following flaws of the AMT: (i) it is not indexed for inflation, (ii) it contains steep marriage penalties, and (iii) it does not provide for an adjustment for family size because personal exemptions are not allowed. Not only would eliminating the AMT allow millions of taxpayers to save tax dollars, but it would also allow these same taxpayers to either save money in tax preparation assistance or save themselves from needless aggravation.

86 See Letter from Al Mansell, President of National Association of Realtors, to Connie Mack & John Breaux, Chairman & Vice-Chairman of the President’s Advisory Panel on Tax Reform (Oct. 14, 2005), available at http://www.realtor.org/government_affairs/mortgage_interest_deduction/tax_reform_letter.html (expressing his concern on behalf of National Association of Realtors that changes to home mortgage interest deduction must take into account the importance of home ownership in American society as well as the fragility of the housing industry as a whole); see also Press Release, Mortgage Bankers Association, MBA Opposes Tax Reform Proposals Impacting Homeowners (Nov. 1, 2005), available at http://www.mortgagebankers.org/NewsandMedia/PressCenter/33174.htm (publicizing the Mortgage Bankers Association’s dissatisfaction with the Panel’s proposed reforms).

87 See REPORT, supra note 6, at 238 (outlining the suggested five-year transition period over which the deduction would phase out and the credit would phase in, attempting to give taxpayers advance notice of the probable increase in their tax liability due to their current mortgage payments).

88 See REPORT, supra note 6, at 85 (stating that its recommendation is to repeal the AMT); see also Schnepper, supra note 68 (praising Panel’s suggestion to eliminate the AMT system entirely).

89 See REPORT, supra note 6, at 9 (explaining major negative aspects of AMT system as compared to regular tax system); see also I.R.C. §§ 55-58 (West 2006) (explaining how AMT system operates as its own parallel system of calculations and determinations that are different from regular tax system).

90 See 152 CONG. REC. 19, S1323 (daily ed. Feb. 15, 2006) (statement of Sen. Wyden) joking on the complexity of AMT system and saying that “[i]f anybody who is not a CPA can figure out the first line of the AMT, I urge them to call me’); see also REPORT, supra note 6, at 86 (going through possible forms and worksheets a taxpayer may have to comply with in order to calculate AMT liability).
Although there are few who oppose the Panel's recommendation to eliminate the AMT, there are several causes for concern which must be examined. Although the AMT primarily serves as a giant headache for most, it provides tremendous revenue for the federal government. For the government to accomplish the complete elimination of the AMT in a revenue-neutral manner, it will need to recover this loss of funds from other sources, which connects the fates of the AMT and the home mortgage interest deduction. The Panel realized that the elimination of the AMT will hurt the federal government and attempted to compensate for this loss with suggestions like limiting the home mortgage interest deduction, which is designed to raise revenue. Although the proposed elimination of the AMT is a step in the right direction, the Panel's recommendations are not sufficiently taking into account the values of current American society. In order for Congress to enact policies that will provide the greatest benefit to the greatest number, it is necessary for the legislature to focus on consumer behavior and the values that drive it.

91 It is important to note that the AMT is a large source of revenue which could alone produce more funds in the next decade than the regular tax system. See REPORT, supra note 6, at 87. Moreover, when discussing changes to the AMT system, it is important to remember that the original policy goal behind it was to ensure that every taxpayer who has the economic ability pays a certain minimum amount of tax. See Karlinsky, supra note 17, at 150.

92 See REPORT, supra note 6, at 43 (estimating that AMT will generate over $1.2 trillion in tax revenue over the next ten years); see also Schnepper, supra note 68 (explaining that plans must be implemented to provide for the large amount of revenue that will be lost if AMT is eliminated).

93 See REPORT, supra note 6, at 42 (realizing that preserving revenue neutrality requires many uncertain projections about future policy and behavior); see also Schnepper, supra note 68 (explaining that the Panel suggests limiting the deduction for home mortgage interest because it needs tax dollars to pay for large cuts like the elimination of the AMT).

94 See REPORT, supra note 6, at 74 (attempting to counteract the fact that taxpayers would receive less of a tax subsidy with Home Credit by pointing out that they would no longer have to pay tax under the AMT); see also Boat Owners Association, Tax Reform Panel Proposes Major Change in Deductions, BOAT/U.S. MAG., Jan. 1, 2006, at 6(1) (mentioning that current home mortgage interest deduction costs $69 billion annually).

95 See Nolan, supra note 22, at 210 (stating "Owner-occupied housing [is] the single most important investment asset held by most Americans"); see also Shaviro, supra note 23, at 144 (referring to home mortgage interest deduction as "sacrosanct").
III. LIKELIHOOD OF THE TAX PANEL’S SUGGESTED REFORMS BEING EFFECTIVELY RECEIVED AND ENACTED

A. Examination of Consumer Behavior and Taxes – Are You a Good Witch or a Bad Witch?

Although it is not something that people necessarily like to admit, every society is stratified in some way, for example, American society can be broken down into various classes based on level of income. Max Weber, a “classical sociological thinker,” distinguished class from status or prestige groups. Weber viewed the significance of a class as being the “life chances” that are given to an individual, i.e. the opportunities that are bestowed upon a person because of his/her economic situation in life. Also, according to Weber, people in similar classes may not necessarily identify with each other. Instead, the recognition of one’s place occurs when individuals view themselves according to a status or prestige group. The key element of a prestige group is “the kind of lives they can lead as consumers of goods and services, which reflect their prestige

96 See REPORT, supra note 6, at 49 (discussing significant growth in the inequality of wealth in America); see also Harold Greenberg, Introduction to SOCIAL ENVIRONMENT AND BEHAVIOR 315, 315 (Harold Greenberg ed., Schenkman Publishing Company, Inc. 1971) (asserting that there is no non-stratified modern society).

97 See I.R.C. § 1 (West 2006) (outlining the various levels of income brackets within each category of taxpayer); see also Linda M. Beale, Congress Fiddles While Middle America Burns: Amending the AMT (and Regular Tax), 6 FLA. TAX REV. 811, 829 (2004) (confirming the income disparity that continues to pervade American society).


100 See Greenberg, supra note 96, at 317 (discussing correlation between better societal class and better “life chances,” regarding schools, health services, life expectancy, etc.); Max Weber, supra note 99 (providing Weber’s belief that one’s social class, social status, and political affiliation were consequential for his/her “life chances”).

101 See Greenberg, supra note 96, at 317 (clarifying the distinguishing qualities of a class versus a status group); Max Weber, supra note 99 (summarizing how Weber’s idea of status was “based on non-economical qualities like honour, prestige, and religion”).

102 See Greenberg, supra note 96, at 317 (emphasizing the importance people place on their status position in society and noting that people are “highly conscious” of this position and know where they belong); see also Max Weber, supra note 99 (noting that the status element of stratification focuses not only on prestige, but on honor as well).
level.” This status recognition, or “life style” as Weber noted it, was one of the key components that Weber saw as determining stratification in society.

Even though the individuals that make up the various income strata have very different personalities, Americans as a whole tend to share some similar values and want to be accepted by others. Individuals often view themselves through the eyes of others, placing an emphasis on the view others in society hold of them. Impacting on this perception is “the kind of lives [individuals] can lead as consumers of goods and services, which reflect their prestige level.” Throughout all strata, the economic source of power is the ownership of goods, because one's level of income is often indicative of one's level of prestige or status in society. Perhaps tax policy is best understood when society is analyzed in terms of a stratification that organizes individuals into status groups, focusing on a perception of prestige.

103 Greenberg, supra note 96, at 317.
104 See id. at 317-18.
105 See id. (noting that status, class, and party were the three distinct dimensions of stratification in Weber's view); see also Max Weber, supra note 99 (affirming Weber's three-component theory of stratification).
106 See Greenberg, supra note 96, at 317 (suggesting that, although individuals with similar market positions possess similar life chances, it would be a mistake to assume that those individuals have similar personalities); see also Max Weber, supra note 99 (finding no such relationship between an individual's economic status and personality).
107 See Greenberg, supra note 96, at 64 (stating that “[e]very society has forms of behavior which apply to all members as well as those reserved for particular members in given situations”); see also Karin Scherner-Kim, The Role of the Oath of Renunciation in Current U.S. Nationality Policy – to Enforce, to Omit, or Maybe to Change?, 88 GEO. L.J. 329, 343 (2000) (noting the definition of citizenship to include “a set of public values about governance and law that are widely shared by those within it”) (quoting Peter H. Schuck, Plural Citizenship, in CITIZENS, STRANGERS, AND IN-BETWEENS 217, 246-47 (1998)).
108 See Greenberg, supra note 96, at 320 (highlighting the relationship between status and prestige); see also Francis E. Merrill, The Self and the Other: An Emerging Field of Social Problems, in SOCIAL ENVIRONMENT AND BEHAVIOR 79, 80 (Harold Greenberg ed., Schenkman Publishing Company, Inc. 1971) (suggesting the social self aspect of each individual to be developed though his or her interactions with others, “as the individual looks at himself through others' eyes”).
109 Greenberg, supra note 96, at 317 (referring to Max Weber's analysis regarding societal stratification).
110 See ROBERT H. FRANK & PHILIP J. COOK, THE WINNER-TAKE-ALL SOCIETY 57-58 (Martin Kessler Books ed., The Free Press 1995) (discussing the power of "positional goods" in society); see also Max Weber, supra note 99, (declaring social class to be based upon one's "economically determined relationship to the market").
111 Max Weber discussed the organization of society in such a way that individuals are highly focused on their placement. See Max Weber, supra note 99. Status “is the relative ranking of an individual in his society measured against all other individuals in the society.” See also Greenberg, supra note 96, at 320.
B. The Importance of Saving – Auntie Em & Uncle Henry Would Like to Retire

In order to be able to purchase goods, individuals must obtain the necessary finances, which is often achieved through active saving. It is almost impossible to empirically define how savings and tax policy interact. Nevertheless, many provisions in the Code reflect the belief that having the capacity to save, and thus choose to consume goods and services as desired, is vitally important to American society at all levels. For example, Congress has often attempted to structure the tax system in a way that enables the poorer in society to keep their money, thus making an effort to enable these individuals to raise themselves up in the eyes of society. In addition, the structure of the Code allows for deferral of some taxes in order to enable taxpayers to take advantage of interest earned, by retaining that income for a longer period of time. However, not all taxpayers would agree that the Code has been so accommodating. For instance, it is frustrating for those taxpayers in the higher income brackets to

112 See Aaron & Pechman, supra note 5, at 18 (referring to the analysis of savings behavior in the United States as an “elusive” problem for economists); see also Arthur Cockfield, Income Taxes and Individual Liberty: A Lockean Perspective on Radical Consumption Tax Reform, 46 S.D.L.REV. 8, 33 (2001) (asserting that impact of tax policy on savings behavior to be unclear).

113 See I.R.C. § 1221 (West 2006) (allowing for preferential tax rate treatment on capital gains); see also REPORT, supra note 6, at 114 (evidencing the Panel’s recognition of the importance of saving and its resulting search for ways of removing impediments to saving).

114 See I.R.C. § 1 (West 2006) (depicting a progressive tax rate structure allowing lower rates to apply to lower income levels); see also U.S. Government Accountability Office, Understanding the Tax Reform Debate: Background, Criteria, and Questions, at 27 (Sep. 2005), available at http://www.gao.gov/new.items/d051009sp.pdf [hereinafter Tax Reform Debate] (explaining how the ability to pay principle encompasses economic well-being); see also PECHMAN, supra note 4, at 62-63 (discussing the progressive tax system in light of the ability to pay principle and how tax rate structure factors the taxpayer’s context into its rate determinations).

115 There are entire websites devoted to educating taxpayers on ways to manipulate the Code in order to find loopholes that allow for tax deferral. See Estate Street Partners, LLC, Tax Strategies, http://www.taxdeferrals.com/strategies.htm (last visited Apr. 15, 2006). For example, IRA’s are a useful vehicle for deferring taxes, because the Code allows taxpayers to deduct the income that is placed into these accounts and thus not pay taxes on them at that time. See Terry Savage, IRA’s a Great Way to Save Money, Defer Taxes, CHICAGO SUN-TIMES, Mar. 25, 2004, at 65.

116 See Marvin A. Chirelstein, The Day, Berry & Howard Visiting Scholar: Taxes and Public Understanding, 29 CONN. L. REV. 9, 9 (1996) (affirming the public hostility toward the federal income tax system); see also Marjorie E. Kornhauser, The Rise of Rhetoric in Tax Reform Debate: An Example, 70 TUL. L. REV. 2345, 2357-59 (1996) (examining studies that have shown the progressive tax system to discourage taxpayers from saving, while mentioning other studies that conclude differently).
reconcile the importance of saving with the progressive nature of the regular income tax system.\textsuperscript{117} The progressive tax structure causes those who have earned and saved more to pay a higher rate of taxation.\textsuperscript{118} This is one of the reasons that some economists have lobbied for the advancement of a consumption tax, which would tax people on the amount that they spend rather than what they earn and attempt to save. Furthermore, it is also difficult for taxpayers to accept the AMT because of its adverse effect on the capacity to save.\textsuperscript{119} The AMT does not follow the progressive tax rate structure of the regular income tax system, but rather functions as a separate tax over and above what taxpayers must already pay, thus frustrating those who have attempted to save throughout the year.\textsuperscript{120} Although these circumstances reflect the underlying policy of ability to pay, Congress needs to redraft these Code provisions to better appease society.\textsuperscript{121} For example, if Congress repealed the AMT, many taxpayers would most likely complain less about their ordinary tax rates, even if they were in the higher brackets, because at least then they would not feel as though they were being doubly burdened by the tax system.

\textsuperscript{117} See Cockfield, supra note 112, at 54 (portraying the view that progressive income tax system is a "straight-out discrimination against the rich"); see also Susan Pace Hamill, An Argument for Tax Reform Based on Judeo-Christian Ethics, 54 ALA. L. REV. 1, 47-48 (2002) (noting that the progressive income tax system tends to hinder the savings incentives particularly for those in the higher income brackets).  
\textsuperscript{118} See I.R.C. § 1 (West 2006) (portraying higher tax rates for higher income brackets); see also Ken Adelman, Not Real Simple, WASHINGTONIAN, Apr. 2006, at 33-37 (analyzing discord between progressive income tax system and saving). 
\textsuperscript{119} See Beale, supra note 97, at 837 (explaining that the superrich have a larger capacity to save just by the nature of their wealth, whereas lower income taxpayers typically are forced to spend all of their after-tax savings; consequently, having to pay the AMT liability further frustrates their efforts); see also James Lange & Glenn Venturino, 2002 Year-End Tax Planning Strategies, 4 LAWYERS J. 7, 14-15 (2002) (warning that vulnerability to AMT can significantly decrease a taxpayer's savings). 
\textsuperscript{120} See I.R.C. § 55 (West 2006) (stating that AMT liability is the excess, if any, over the regular tax liability); see also Daniel S. Goldberg, To Praise the AMT or To Bury It, 24 VA. TAX REV. 835, 840 (2005) (noting that the AMT system uses virtual flat tax rates as opposed to progressive rates of regular tax system).  
\textsuperscript{121} The ability to pay principle is the underlying rationale for both the progressive tax system and the AMT because both were intended to ensure that taxpayers with a higher economic well-being would bear the larger burden of providing tax funds. See Tax Reform Debate, supra note 114, at 27. The purpose for which the AMT was enacted, i.e., ensuring a tax system that was fair to all levels of society, was merit-worthy. See Goldberg, supra note 120, at 839. However, the AMT has not yet progressed in form sufficient to satisfy its original policy goal of making sure that the highest income taxpayers pay a fair share of the income tax. See id.
Another important aspect of saving is the value placed in American society on the importance of saving today to plan for the future, such as saving to provide for a child's education or for retirement. See Office of Investor Education and Assistance of the Securities and Exchange Commission, The Facts on Saving and Investing, at 7-8 (Apr. 1999), available at http://www.sec.gov/pdf/report99.pdf (stating that "[e]xperts estimate that 55 to 64 percent of Generation X have already begun to save for retirement, primarily because of the prevalence of 401(k)s in the workplace today, which makes it easy for young people to start saving for retirement, and concerns about the future of Social Security as a source of retirement income"); see also James Fanto, We're All Capitalists Now: The Importance, Nature, Provision and Regulation of Investor Education, 49 CASE W. RES. L. REV. 105, 148 (1998) (emphasizing the need to educate citizens on the importance of saving and competent financial planning).

"Income, education, and age" are three of the most significant factors that influence whether consumers have any long-term savings or investments. See Utilizations of Tax Incentives for Retirement Savings: An Update, U.S. FED. NEWS, Feb. 1, 2006 (recapping a report issued by the Congressional Budget Office stating that participation in IRA accounts has increased over the past few years); see also Pamela Yip, More Need to Join IRA Bandwagon, THE DALLAS MORNING NEWS, Feb. 20, 2006, at 1D (quoting Fidelity Investment's January 2006 report of a 50% increase in new individual retirement accounts, and a 24% increase in IRA current-year contributions).

For example, the 529 plan has recently emerged which allows individuals to establish a college fund for their children by setting aside funds for their education. See AARP, CONSUMER BEHAVIOR, EXPERIENCES, AND ATTITUDES: A COMPARISON BY AGE GROUPS 33 (Princeton Survey Research Associates 1999).

AARP, supra note 124, at 32 (noting that the lower a consumer's annual income, the more likely it is that he/she has no long-term savings); see also U.S. FED. NEWS, supra note 123 (affirming that typically the older and wealthier are more likely to engage in long-term investments such as retirement savings plans).


See Fidelity Investments, Fidelity Managed 529 Plans, http://personal.fidelity.com/planning/college/content/fidelity_managed_529_plans.shtml?refp=pr&ct=A7 (last visited Nov. 24, 2006) (attracting individuals by promoting flexibility of 529 education plans); see also Timothy Middleton, Study Up for the Best College-Saving Deal, MSN MONEY (Jan. 1, 2006), http://moneycentral.msn.com/content/P104967.asp (positing that "[i]t's no better way to save for college than a 529 plan").
and reflect the values placed upon saving today to plan for tomorrow, e.g. the Code provides a deduction for funds that are placed into retirement accounts.\textsuperscript{128} When drafting tax policy, Congress not only needs to focus on notions of economic efficiency but also retain the values emphasized in American society.\textsuperscript{129} The tax code should not hinder prudent taxpayers but rather assist these diligent individuals in retaining sufficient after-tax income to not only meet their tax liability responsibilities but also feel free to contribute to long-term investment projects. The Panel recognized this need when it stated:

Planning for the future – how much to save, for example – would no longer be complicated by the code’s current set of elaborate rules. In addition, there would be fewer unpleasant surprises each April because taxpayers would not be caught off guard by phase-outs and the AMT that force them to pay more taxes than anticipated.\textsuperscript{130}

C. The Attainability of the American Dream – We’re Not in Kansas Anymore

Another core value in American society is the ability to own a home.\textsuperscript{131} Indeed, a prevalent view is that the most important asset an individual can purchase is a home.\textsuperscript{132} Throughout the economic strata, home ownership is desired, respected, and prided, but most especially in the lower levels.\textsuperscript{133} Home


\textsuperscript{129} See \textit{Tax Reform Debate, supra} note 114, at 43-44 (focusing on key aspects of formulating tax policy, including efficiency costs and social goals); see also PECHMAN, \textit{supra} note 4, at 134 (mentioning “equity, simplification, and better economic performance” as goals of adequate tax policy reform).

\textsuperscript{130} See \textit{REPORT, supra} note 6, at 114.

\textsuperscript{131} See Chris Ayers, \textit{Why the Property Panic? Perhaps Dubya’s Going to Take His Gift Away}, THE TIMES (LONDON), Mar. 14, 2006, at 19 (quoting President Reagan in 1984 as saying “I want you to know that we will preserve the part of the American Dream which the home-mortgage-interest deduction symbolises [sic]”); see also Mann, \textit{supra} note 26, at 1348 (referring to homeownership as American Dream).

\textsuperscript{132} See Mansell, \textit{supra} note 87 (highlighting America’s passion for homeownership); see also Nolan, \textit{supra} note 22, at 210 (stating that owner-occupied housing is “single most important investment asset held by most Americans”).

\textsuperscript{133} See George W. Bush, \textit{Faith, Compassion, and the War on Poverty}, 16 NOTRE DAME J.L. ETHICS & PUB. POLY 329, 333 (2002) (“Owning a home is a source of dignity for families and stability for communities – and organizations like Habitat for Humanity
ownership can benefit neighborhoods by promoting camaraderie, improving the quality of the residential buildings, and increasing the local property values. Those who own their homes have a greater financial interest in attaining and preserving a quality neighborhood because of how invested they are in their homes. Furthermore, owner-occupied housing produces residential areas in which neighboring structures are benefited by an increase in value in another neighboring structure. This value reciprocity furthers the occupants’ interests in retaining the desirable quality of the neighborhood, which in turn benefits local businesses. Because of its many benefits, home ownership has been viewed by most as a respectable policy sought to be achieved through the tax system.

Recognizing this value, the Code has attempted to encourage home ownership for the good of society. An important provision in the Code that benefits homeowners is the deduction make that dream possible for many low income Americans... The budget I submit to Congress next year will propose a three-fold increase in this funding – which will expand home ownership, and the hope and pride that come with it.”; see generally Greenberg, supra note 96, at 326-34 (comparing values across upper, middle, and lower income brackets, noting that home ownership is valued in all).

See Bush, supra note 133, at 333 (affirming that home ownership instills stability into communities); see also GREENE, supra note 76, at 6 (listing benefits that result from homeownership such as encouraging neighborhood stability, promoting civic responsibility, and improving maintenance of residential buildings).

See Aaron & Pechman, supra note 5, at 316-17 (focusing on economic factors pertaining to owner-occupants); see also Cassandra Netzke, Current Public Law and Policy Issues: Rethinking Revitalization: Social Services in Segregation and Concentrations of Poverty, 23 HAMLINE J. PUB. L. & POLY 145, 175 (2001) (discussing negative implications lack of prevalent home-ownership can have on neighborhoods).

See Aaron & Pechman, supra note 5, at 316 (pinpointing resulting benefits that home improvements can have on neighboring homes); see also Julia Patterson Forrester, Mortgage the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing, 69 TUL. L. REV. 373, 406-08 (1994) (analyzing positive benefits that home ownership bestows upon entire communities).

See Forrester, supra note 136, at 407 (discussing benefits conferred upon greater community at large due to increased home ownership); see also GREENE, supra note 76, at 8 (remarking on widespread effects of home mortgage interest deduction, i.e. spurring “the goal of providing a ‘decent home’ and a ‘suitable living environment’ for all Americans”).

See REPORT, supra note 6, at 72 (indicating that incentives for home ownership should be retained through manners that makes them available to more people, thus supporting home ownership as one policy goal); see also Mark Andrew Snider, The Suburban Advantage: Are the Tax Benefits of Homeownership Defensible?, 32 N. KY. L. REV. 157, 187 (2005) (stating that “spurring homeownership is a laudable policy goal.”).

See Forrester, supra note 136, at 397-98 (analyzing various advantages that tax laws bestow upon those who choose to purchase homes in order to advance societal benefits); see also Snider, supra note 138, at 173-76 (discussing a plethora of results the Code aims to achieve, including neighborhood preservation and stability, improved quality of life, and enhanced educational systems).
for home mortgage interest.\textsuperscript{140} In addition, the Code allows those who itemize to deduct state and local property taxes.\textsuperscript{141} Moreover, the Code provides for the exclusion of capital gain income on the sale of a primary residence.\textsuperscript{142} It is evident that individuals have chosen to take advantage of these options as there has been an increase in home ownership since such tax benefits were enacted.\textsuperscript{143} As discussed above, there are those who are opposed to the current benefits bestowed upon homeowners in the Code and feel that change is necessary.\textsuperscript{144} Though their arguments deserve reflection, they should only be used to reach a satisfying compromise and not to eliminate such benefits, because the value that owning a home holds in American society is too important to be overlooked.\textsuperscript{145}

\textsuperscript{140} See Forrester, supra note 136, at 397 (referring to home mortgage interest deduction as "the most notable" federal income tax provision that promotes home ownership); see also Jeff Schnepper, Home: The Mother of All Tax Shelters, MSN MONEY (Oct. 17, 2005), http://moneycentral.msn.com/content/Taxes/Taxshelters/P41831.asp (discussing availability of avenues that enable taxpayers to make use of home mortgage tax shelter).

\textsuperscript{141} See I.R.C. § 164 (West 2006) (referencing § 164(a)(1) which allows the deduction for state, local, and foreign real property taxes); see also Forrester, supra note 136, at 397 (affirming purpose of this deduction is to further promote home ownership).

\textsuperscript{142} See I.R.C. Reg. § 1.121-1(b)(1) (West 2006) (defining residence broadly to include not only houses but house trailers, house boats, stock in co-ops, and any other dwelling place); see also Forrester, supra note 136, at 397 (explaining prevention of recognition of gain on sale of principal residence if another residence is purchased within two years).

\textsuperscript{143} See REPORT, supra note 6, at 72 (emphasizing that tax benefits for housing are larger than entire budget of Department of Housing and Urban Development); see also GREENE, supra note 76, at xii (referencing studies done in late 1970's indicating that as much as one-third of owner-occupied housing in United States at that time would not have been built if tax code did not decrease after-tax costs of purchasing homes).

\textsuperscript{144} See Mann, supra note 26, at 1351 (connecting home mortgage interest deduction to negative occurrence and spreading of suburban sprawl); see also SHAVIRO, supra note 23, at 144 (claiming that tax scholars condemn home mortgage interest deduction as defective).

\textsuperscript{145} See Mann, supra note 26, at 1354 (referring to Fannie Mae survey indicating that majority of Americans who do not own their own homes wish that they did); see also Rep. Kelly Continues Effort to Stop Proposed Elimination of Homeowners Tax Deductions, U.S. FED. NEWS, Feb. 3, 2006, available at http://suekelly.house.gov/News.asp ?ARTICLE3316=17951 (enforcing view that elimination of tax benefits to homeowners would have severe negative and unfair repercussions to current residents of owner-occupied homes and to small businesses).
D. Structuring Tax Policy to Influence Consumer Behavior –
Even Toto Tags Along

It is apparent that the federal government attempts to use tax policy as an instrument to influence human behavior.\textsuperscript{146} Changes in tax policy affect the allocation of resources and the distribution of economic activity.\textsuperscript{147} Individual taxpayers respond to changes in the tax code by altering the number of hours that they work, which in turn affects the labor supply and various industries.\textsuperscript{148} The exact extent to which changes in the Code affect citizens' motivations to save and invest are difficult to quantify or qualify but it is apparent that taxes loom large in the back of most people's minds.\textsuperscript{149} Some have questioned whether or not taxes should be used as means to make particular activities more or less attractive to people.\textsuperscript{150} Moreover, it has been suggested that tax policies act as a form of discrimination, encouraging certain activities or lifestyles while discouraging others.\textsuperscript{151} Nevertheless,

\textsuperscript{146} See Aaron & Pechman, supra note 5, at 1 (referring to Congress' use of tax laws to influence private behavior as "aggressive"); see also Jennifer C. Root, The Commissioner's Clear Reflection of Income Power under §446(b) and the Abuse of Discretion Standard of Review: Where Has the Rule of Law Gone, and Can We Get it Back?, 15 AKRON TAX J. 69, 82-83 (2000) (emphasizing importance of taxpayer notice and awareness of tax legislation if legislation is to be effective in promoting certain types of behavior or furthering specific policies).

\textsuperscript{147} See Aaron & Pechman, supra note 5, at 1 (listing circumstances in which taxes affect the allocation of resources including the labor supply, the stock market, and housing); see also Pechman, supra note 4, at 5 (explaining that one of the goals of taxation is to promote economic growth through the movement of resources).

\textsuperscript{148} See Aaron & Pechman, supra note 5, at 2-3 (noting that some evidence shows that changes in income taxes might affect males and females differently); see also Pechman, supra note 4, at 74 (asserting the role of the federal income tax as a stabilizer in the economy, mentioning the tax effects on a taxpayer's disposable income).

\textsuperscript{149} See Aaron & Pechman, supra note 5, at 23-25 (cautioning readers to remember that there are many variables that factor into analyzing the effects of tax policy on behavior, indicating that it is difficult to reconcile the various areas simultaneously); see also Jeff Schnepper, Tax Lessons for College Students, MSN Money (Mar. 22, 2006), http://moneycentral.msn.com/content/Taxes/Cutyourtaxes/P144991.asp (explaining that even college students must consider how taxes affect their lives).

\textsuperscript{150} See Jed Graham, An Outside-the-Box Economist; Dollars and Sense: Martin Feldstein Pointed Out the Pitfalls of High Taxes, INVESTOR'S BUSINESS DAILY, Jun. 10, 2005, at A03 (referring to economist Martin Feldstein's initiative to state that taxes can actually have an adverse effect on human behavior); see also Michael W. Spicer, On Friedrich Hayek and Taxation: Rationality, Rules, and Majority Rule, NAT'L TAX J., Mar. 1995, at 103 (expounding Hayek's position that it is too difficult to use tax policy to intentionally encourage particular types of economic behavior).

\textsuperscript{151} See Mann, supra note 26, at 1365 (asserting that the home mortgage interest deduction discriminates against minorities because its structure systematically disfavors the financial status of most minorities who tend to have lower incomes than Caucasians); see also Prepared Testimony of Senator Pete V. Domenici Before the Committee on Ways and Means, S.722 – The USA Tax, FED. NEWS SERV., June 7, 1996 ("When an activity is
it seems impossible to avoid the societal reflex that occurs when changes are made to the Code.\textsuperscript{152} Regardless of whether it should or should not occur, it is apparent that tax policy does affect human behavior.\textsuperscript{153} One example of how tax policy drives consumer choice is reflected by the preferential treatment given to the automobile in the Code.\textsuperscript{154} Through various provisions, the Code has indirectly supported the automobile as the dominant form of transportation and taxpayers have responded.\textsuperscript{155} In fact, "[i]n 2002, US workers made 77% of trips to work by driving alone."\textsuperscript{156} Whether or not it is always directly intended, tax policy can provide various impetuses for people to either act or refrain from acting in particular ways.\textsuperscript{157}

Congress recently connected the preference for the automobile with society's concerns about preserving energy and stimulating the industries providing alternative sources of energy.\textsuperscript{158} In order penalized in the tax code, it influences behavior. Taxpayers do less of those disfavored activities. And the current code is doing a good job of discouraging saving. Americans are only saving about 2.8 percent of GDP. This lack of saving leads to a shortage of investment, which, in turn, leads to insufficient growth, stagnating incomes, and the loss of high-wage jobs.

\textsuperscript{152} See Graham, supra note 150, at A03 (finding large responses by individuals to tax incentives and disincentives); see also Aaron & Pechman, supra note 5, at 1 (explaining that taxes influence the way citizens will use their money).

\textsuperscript{153} For example, the Code provides incentives for taxpayers to make charitable contributions, and taxpayers in the higher income brackets have typically taken advantage of these incentives. See Aaron & Pechman, supra note 5, at 22. In addition, many state lawmakers are attempting to use tax policy to influence taxpayers to make better health decisions, e.g. by implementing a cigarette tax. See Higher Cigarette Tax \textit{Makes More Political Sense}; Lawmakers May Have Settled on the Quick Fix, But This Tax Will Save Lives, PORTLAND PRESS HERALD, June 29, 2005, at A8. "Every taxing decision . . . influences behavior. That's a policy fact that lawmakers shouldn't ignore." Id.


\textsuperscript{155} See I.R.C. § 30B (West 2006) (providing various tax benefits under the Alternative Motor Vehicle Credit); see also Mann, supra note 154, at 664 (affirming that the moving deduction and the home mortgage interest deduction create demand for personal vehicle travel because they encourage reduced living density).

\textsuperscript{156} Mann, supra note 154, at 592-593.

\textsuperscript{157} See \textit{Tax Reform Debate}, supra note 114, at 1 (affirming that "[t]axes change people's behavior and influence the economy by altering incentives to work, consume, save, and invest"); see also Mann, supra note 154, at 590 (commenting that "[t]he evolutionary nature of the tax law and its immense complexity makes it almost inevitable that provisions of the Internal Revenue Code will affect taxpayer choice in unanticipated, and sometimes, contradictory ways").

\textsuperscript{158} Beginning in 2006, the clean fuel deduction that was available for purchasers of hybrid vehicles became a credit. See IRS, \textit{Deduction for Hybrid Vehicles}, http://www.irs.gov/newsroom/article/0,,id=107766,00.html (last visited Nov. 14, 2006). In
to help promote environmental awareness, the Code now provides tax benefits to purchasers of hybrid automobiles.\textsuperscript{159} It appears that taxpayers are eager to take advantage of this tax break, while simultaneously helping the environment, because there has been an increase in the sales of such vehicles as well as an increase in the number of models available to consumers.\textsuperscript{160} Curiously, an interesting trend in the area of hybrid technology has recently started to occur that speaks to the uncertainty of human behavior. Initially, hybrid technology aimed to tap into the environmental concerns of society and provide automobiles that would not damage the environment.\textsuperscript{161} Currently, however, hybrid technology is being used to increase vehicle qualities such as size, speed, and horse power because \textit{those} are the current preferences in society.\textsuperscript{162} Although people are willing to help the environment, they seemingly are not willing to give up their preferences for high speed, high class, and high power cars.\textsuperscript{163} Developments like this are important for Congress to be aware of because they reflect the power that prestige and status have in the consumer industry. The recent trend in hybrid technology is

addition to the benefits offered for clean fuel vehicles, the Code also allows for a solar power credit for those who opt to install solar panels in their homes. \textit{See} Ashlea Ebeling, \textit{Do Solar While the Credit Shines}, \textit{FORBES}, Dec. 12, 2005, at 192.\textsuperscript{159} \textit{See} I.R.C. § 30B (West 2006) (explaining various tax allowances available under the Alternative Motor Vehicle Credit); \textit{see also} \textit{New Tax Credit for 2006}, http://www.hybridcars.com/tax-deductions-credits.html (last visited Nov. 14, 2006) (outlining estimated tax credit amounts that coincide with each qualifying hybrid vehicle on the market).\textsuperscript{160} \textit{See} Tom Incantalupo, \textit{More Tax Incentives for Hybrids in '06}, \textit{NEWSDAY}, Jan. 4, 2006, at A38 (noting that General Motors and Toyota offer hybrid vehicles); \textit{see also} Daniel Ramish, \textit{Government Regulatory Initiatives Encouraging the Development and Sale of Gas/Electric Hybrid Vehicles: Transforming Hybrids from a Curiosity to an Industry Standard}, 30 WM. & MARY ENVTL. L. & POLY REV. 231, 257 (2005) (supporting states’ enactment of laws that allow single-occupancy hybrid vehicles in high occupancy vehicle lanes because such vehicles produce benefits that equate to carpooling).\textsuperscript{161} \textit{See} Mann, \textit{supra} note 154, at 631 (noting that hybrid vehicles produce fewer emissions than vehicles powered solely by conventional engines); \textit{see also} Ramish, \textit{supra} note 160, at 243 (explaining that hybrid technology uses an electric motor to supplement a traditional engine and thereby minimizes fuel consumption).\textsuperscript{162} \textit{See} Matthew L. Wald, \textit{Designed to Save, Hybrids Burn Gas in Drive for Power}, N.Y. TIMES, Jul. 17, 2005, at 16. The 2005 Honda Accord hybrid gets about the same gas mileage as the conventional model, but it accelerates better due to the hybrid technology. \textit{Id.} The green-friendly image that goes along with hybrids is still attracting buyers and these vehicles will still help the environment. \textit{Id.} However, the extent of the benefit to the environment is not quite as prominent anymore because of the need to satisfy the consumer’s desire for performance. \textit{Id.}\textsuperscript{163} \textit{See} Wald, \textit{supra} note 162 (noting that car manufacturers are utilizing hybrid technology to produce vehicles that accelerate faster).
just one example that indicates the emphasis people place on status and the ability to purchase goods.

E. Likelihood of Enactment of Proposed Changes – Somewhere Over the Rainbow

As noted, it is impossible to precisely foretell how people will respond to changes in the tax policy.\footnote{164} The optimal route for Congress to take is to reflect upon the past, thoroughly examine the present, and implement policies that will provide for the best possible future.\footnote{165} To satisfy as many as possible, Congress should focus on the core values that pervade across the strata like the desire to save for investments and to own a home. In light of these core values, the Panel’s proposals will most likely not be enacted in their current forms any time soon. Regarding the home mortgage interest deduction, the Panel’s proposal does not sufficiently provide for those who have relied upon the existence of the deduction.\footnote{166} The Panel’s recommendation fails to provide consistency and reliability. If Congress enacts such a drastic change too abruptly it will have adverse effects in many areas, including but not limited to the real estate market. As for the proposal regarding the AMT, the form of the proposal would be eagerly welcomed except for the requirement of revenue-
Focusing in on the value society places on savings, one can understand why people detest the AMT. Although eliminating the AMT would satisfy the greatest number of people, it is probably not likely that its immediate annihilation will occur in the near future unless the government determines more appeasing ways to make up the devastating loss of revenue.

IV. POSSIBLE RESOLUTIONS

In light of this analysis of human behavior, how could the Panel alter its recommendations to better serve society? Beginning with the home mortgage interest deduction, let us assume that the Home Credit as it is suggested is implemented. Although the Panel recognizes the value of home ownership, it is unfairly discriminating against current homeowners at the middle to upper income tax brackets. The Panel suggests a 5 year period over which the current deductions will be phased out. However, this suggestion is insufficient because it does not coincide with the principle that individuals should be able to

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167 See Report, supra note 6, at 42 (explaining that the concept of revenue-neutrality directed the Panel's suggestions to be "designed to collect roughly the same amount of money that the federal government projects it will collect under the current tax system"); see also Tax Reform Debate, supra note 114, at 69 (defining revenue neutral as "[a] term applied to tax bills or proposals [that] are designed to raise the same amount of revenue as the system that is being replaced.").

168 See Schnepper, supra note 68 (positing that the AMT system will remain in effect until the government can determine alternate methods of revenue); see also R. Jason Griffin, The Individual Alternative Minimum Tax: Is it Touching People that it Shouldn't Be?, 4 Hous. Bus. & Tax. L.J. 259, 284, 288 (2004) (arguing that a repeal of AMT system alone without an alternative could lead to tax revenue losses ranging from $647 billion to $802 billion).

169 The Panel explains that regional limits would be established on a county-by-county basis in order to account for the varying differences in prices of homes. See Report, supra note 6, at 237. On its face, this seems sufficient, until one notes that the maximum limit suggested is $411,704. See id. The Panel even recognizes that a homeowner in Los Angeles, for example, who very likely has a home mortgage loan greater than $411,704, will not be allowed to deduct the interest on the loan exceeding that amount. Id.; see also Charles B. Rangel & Phil Angelides, The Tax Plan that Cheats California, L.A. Times, Nov. 29, 2005, at B13. The $411,704 cap in California is similar to the $568,890 cap in New York that would discriminate against homeowners with a home mortgage loan higher than the cap amount. Id.

170 See Report, supra note 6, at 238 (displaying a table providing the transition rules for the Home Credit); see also Robyn A. Friedman, Tax Panel Targets Mortgage Deductions, Sun-Sentinel, Nov. 7, 2005, at 11 (listing proposed changes by the Panel such as replacing the interest deduction with a tax credit, eliminating the deduction for mortgage interest on second homes, and eliminating interest on home equity loans).
rely upon the tax code for consistency.\textsuperscript{171} Therefore, a better plan might be to include an extensive grandfather clause, allowing those who, at the time of implementation, have home mortgages to continue to take advantage of the current deductions.\textsuperscript{172} Simultaneously, the Home Credit could then be phased in to new home buyers who would be aware of the tax provisions and thus it would be more in line with a system of reliability and fairness.

Continuing with the notion of trying to implement the Panel's Home Credit, the concept of the Home Credit is merit-worthy because its intention is to allow more people to take advantage of tax benefits.\textsuperscript{173} However, the structure of the credit is flawed, especially its suggested determination of the regional limits.\textsuperscript{174} In light of stratification in society by wealth, the government must examine each geographic area not only narrowly but realistically if it is to fairly accomplish this feat.\textsuperscript{175} If regional limits are to be imposed, they need to more accurately reflect the

\textsuperscript{171} See Tax Reform Debate, supra note 114, at 47 (emphasizing the importance of the transparency of the tax system, i.e., the type of tax system taxpayers are able to understand and allows them to better predict their future tax liabilities); see also Kenneth W. Gideon, Assessing the Income Tax: Transparency, Simplicity, Fairness, 25 OHIO N.U.L. REV. 101, 102-03 (1999) (stating that tax transparency is satisfied when tax rules are written, uniformly applied, and sets forth details); see also Paul R. McDaniel, The Pursuit of National Tax Policies in a Globalized Environment: Principal Paper: Trade and Taxation, 26 BROOKLYN J. INT'L L. 1621, 1622 (2001) (enumerating six factors in transparent tax systems such as the tax base, tax rates, who is to pay taxes, when taxes are to be paid, how taxes are applied, and how taxes are to be administered).

\textsuperscript{172} See SHAVIRO, supra note 23, at 144-47 (analyzing possible scenarios involving grandfather clauses during transition periods); J. Mark Ramseyer & Minoru Nakazato, Tax Transitions and the Protection Racket: A Reply to Professors Graetz and Kaplow, 75 VA. L. REV. 1155, 1156-57 (1989) (claiming grandfather clauses can prove to be advantageous).

\textsuperscript{173} See REPORT, supra note 6, at 72 (stating that the Panel's motivation for altering the home mortgage interest deduction was to allow it to be shared more evenly among taxpayers, not just the minority of taxpayers who itemize); see also Mann, supra note 26, at 1365-68 (arguing that a change from the current home mortgage interest deductions would benefit lower income citizens and make homeownership more accessible).

\textsuperscript{174} See Michael Strauss, Tax Reform Panel Declares Open Season on Home Owners, NAT'L ASS'N OF HOME BUILDERS (Nov. 7, 2005), http://www.nahb.org/news_details.aspx?sectionID=875&newsID=1632 (indicating that not only will the suggested regional limits accelerate tax liabilities of current home owners but they will also serve to depress home values); see also Calvin H. Johnson, Was it Lost? Personal Deductions under Tax Reform, 59 SMU L. REV. 689, 703 (2006) (referring to the large variations in the regions of the country).

\textsuperscript{175} The Panel suggests relying on a county-by-county analysis in order to determine the regional limits. See REPORT, supra note 6, at 237. Though this seems plausible, the Panel chose to set the maximum regional limit at an amount that is insufficient to meet the needs of the wealthier taxpayers, because their home mortgage loans will likely exceed the max limit. Id.; see also Johnson, supra note 174, at 703.
true median price of a home. However, with the additional requirement of an annual adjustment, the regional limits will most likely add to the complexity already in existence in the Code which is completely unnecessary and undesired. It appears that, although a meritorious idea in theory, in actuality the Panel’s suggestion of regional limits would only serve to further the intricacies of the tax system.

Following with the idea of a Home Credit, perhaps a broader credit would suffice. For example, the Panel could possibly increase the credit amount above the proffered 15%. This would serve the Panel’s goal of allowing more taxpayers to take advantage of the tax benefits, while also serving to help those taxpayers who have a higher primary home mortgage loan, since their interest payments will be higher. In addition, the Panel should suggest expanding the Home Credit to account for indebtedness not only on a principal residence but on a secondary residence as well. Furthermore, the Panel should not have eliminated the tax benefits that taxpayers received from home equity loans.

In conjunction with the importance of owning a home, taxpayers also value being able to improve their homes, thereby raising property values and contributing to the

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176 For example, in 2003, many cities had median prices of homes that were very close to or exceeded the maximum regional limit. See U.S. CENSUS BUREAU, 2003 MEDIAN VALUE (DOLLARS) FOR ALL OWNER-OCCUPIED HOUSING UNITS, http://www.census.gov/Press-Release/www/2003/2003value_city.pdf. In fact, 25% of all the home loans in California last year exceeded the panel’s caps on mortgages eligible for the tax break. See Strauss, supra note 174. According to the California Association of Realtors, the median housing price of $568,890 for a Californian single-family home in August of 2005 was a 20.1% increase from the previous year, and a 300% increase from 1997. Robert Chambers, Pushed Out: A Call for Inclusionary Housing Programs in Local Condominium Conversion Legislation, 42 CAL. W.L. REV. 355, 357-58 (2006).

177 See Schnepper, supra note 68 (criticizing the Panel’s suggested regional limit plan because it is sure to lead to further complexity in the tax code due to its requirement for county-by-county analysis and annual adjustments); see also Celia Whitaker, Bridging the Book-Tax Accounting Gap, 115 YALE L.J. 680, 700 (2005) (stating that the Tax Code is one of increasing complexity).

178 See Schnepper, supra note 68 (comparing the effects of the 15 percent Home Credit on taxpayers in tax brackets above and below 15 percent); see also Johnson, supra note 174, at 691 (doubting whether the 15 percent tax credit will be effective).

179 See REPORT, supra note 6, at 73 (noting that the Home Credit is available to all taxpayers but only on the primary residence); see also Gabriel O. Aitsebaomo, The Individual Alternative Minimum Tax: An Argument in Favor of Repeal, 74 UMKC L. REV. 335, 345-46 (2005) (stating that deductions were not allowed for secondary homes under AMT).

180 See Forrester, supra note 136, at 383 (arguing that home equity loans provide benefits such as lower interest rates); see also Charles C. Boettcher, Taking Texas Home Equity for a Walk, But Keeping it on a Short Leash!, 30 TEX. TECH. L. REV. 197, 207 (1999) (writing that home equity loans offered an advantage in interest rates over other loans).
As noted, requiring an annual recalculation of regional limits will most likely prove to be too complex; however, allowing for a deduction of 15% of interest paid on mortgages that for many taxpayers will not cover the entire amount of the mortgage seems insufficient. Therefore, if the Panel wishes to pursue the option of the Home Credit, it should either allow for a larger percentage of interest to be credited and/or increase the maximum limits of indebtedness, which include more than just first lien loans.

Another option is to abandon the concept of the Home Credit and utilize a modified version of the current home mortgage interest deduction. The Panel could suggest limiting the maximum amounts of indebtedness against which the interest expense is deducted. By lowering the current maximum amount of indebtedness which is $1.1 million, several benefits could result. First, offering a lower maximum amount might encourage taxpayers to assume less debt if they knew they could not deduct some of the expenses. Second, this reduction would also increase funds for the federal government because taxpayers would not be allowed to deduct as much interest expense. Third, this reduction would appease several critics who argue that the current deduction does not support home ownership but rather fosters the purchase of luxury homes. Finally, this

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181 See Forrester, supra note 136, at 406-08 (analyzing positive benefits that home ownership bestows upon an entire community such as increasing accumulation of homeowners and an increasing number of socially active and responsible citizens because of their increased stake in the community); see also Mann, supra note 26, at 1384-55 (stating that homeownership remains a goal for most Americans and is seen to foster "homeowner activism" as homeowners have a greater stake in the conditions and values of the community than a home renter).

182 See Schnepper, supra note 68 (indicating that it is likely the home mortgage interest deduction could remain in place for primary residences but with a reduced maximum amount of indebtedness, possibly in the range of $300,000 to $500,000 as opposed to $1 million); see also Mathias, supra note 172, at 72-76 (arguing that the deduction for interest on home equity indebtedness allows homeowners to avoid disallowance of personal interest).

183 For example, if taxpayers knew they could not deduct the interest on home equity loans, they might be less inclined to assume increased debt. See Schnepper, supra note 68. Moreover, current deductions motivate people to invest in second homes. See also Mathias, supra note 172, at 72-74.

184 See Schnepper, supra note 68 (reminding readers that the changes suggested for the home mortgage interest deduction are structured in a way to make up for the revenue that would be lost from the elimination of the AMT); see also Mathias, supra note 172, at 75 (estimating that a cap would raise $55 billion).

185 See REPORT, supra note 6, at 73 (affirming that changing the home mortgage interest deduction would help to curtail the current subsidy for luxury and vacation homes); see also Mathias, supra note 172, at 73-74 (reasoning that the deductions have
reduction would also appease homeowners because they could still expect to deduct some interest expense and be able to take advantage of the remainder of the itemized deductions offered in the Code. If such a limit reduction were proposed, it should also be implemented gradually in order to alleviate the imposition on current homeowners.

A final option would be to abstain from altering the current deductions allowed in the Code while determining alternate methods of raising revenue for the federal government. For example, the Panel could look for additional revenue from outside the income tax system. For instance, the government could use taxes to drive human behavior in ways that would lead to a healthier society, by implementing a large, federal excise tax on cigarettes. Consistent with the heightened awareness for the conservation of the environment, the federal government could also impose a commuter tax which would lead to increased revenue and possible environmental benefits. Moreover, it might be time to retreat from the automobile’s favored status, thereby increasing tax revenues and reducing pollution. Furthermore, there are other methods the government might only caused investment in secondary luxury homes and failed to satisfy the goal of encouraging more homeowners).

186 The home mortgage interest deduction provides the impetus for most taxpayers to elect to itemize their deductions as opposed to choosing the standard deduction. See REPORT, supra note 6, at 24.

187 Because the Panel suggested the much-desired elimination of the AMT, it is attempting to supplement this projected loss of revenue by limiting the benefits bestowed upon homeowners under the tax code. See Strauss, supra note 174.

188 See William N. Evans, Jeanne S. Ringel, & Diana Stech, Tobacco Taxes and Public Policy to Discourage Smoking, 13 TAX POLICY AND THE ECONOMY 44-51 (James M. Poterba ed., 1999) (explaining many adverse health reasons why tobacco should be taxed but also warning that the ability to pay concept could be implicated since it appears that an increase in cigarette taxes would predominantly affect lower-income taxpayers); see also Higher Cigarette Tax Makes More Political Sense; Lawmakers May Have Settled on the Quick Fix, But This Tax Will Save Lives, PORTLAND PRESS HERALD, June 29, 2005, at A8 (noting how state lawmakers are using cigarette taxes).

189 Mayor Michael Bloomberg of NY pushed for the revival of the commuter tax in NYC. See Dan Janison & Bryan Virasami, Mayor: Burbs Owe City, In Fight to Revive Commuter Tax, Bloomberg Says Outlying Property Values Tied to the City, NEWSDAY, Nov. 15, 2005, at A03. Mayor Bloomberg claimed that the suburban property values rise and fall on the city's success; therefore, the imposition of a commuter tax, i.e. a tax on those who commute from the suburbs, would be a form of payback to NYC. Id.

190 See Mann, supra note 154, at 613-19 (discussing various transportation alternatives such as public transportation or bicycling that should be encouraged in order to benefit personal health and environmental improvement).
employ to raise revenue, but which are beyond the scope of this paper, i.e. changing budget expenditures.\textsuperscript{191}

Regardless of the option chosen, the Panel should also realize that Americans are not willing to sacrifice their preferences, such as luxury vacation homes or the ability to take out home equity loans to improve their residences.\textsuperscript{192} As a result, the Panel should allow for tax subsidies to be available on these types of debts while attempting to quiet some of the criticisms of the current deduction. The Panel could attempt to implement tax provisions that would boost the industries the home mortgage interest deduction has allegedly harmed.\textsuperscript{193} For example, the Panel could provide tax subsidies in the Code for rental housing, seeing as how those who rent pay monthly expenses and are unable to deduct anything for them.\textsuperscript{194} Accordingly, the Panel could suggest a rental expense deduction, allowing for an annual percentage of rental expense to be deducted.\textsuperscript{195} Moreover, the Panel could implement provisions to offer tax incentives for consumers to invest in middle-America industries like factories that produce equipment.\textsuperscript{196} The Panel must remember that tax

\textsuperscript{191} See Cheryl D. Block, \textit{Pathologies at the Intersection of the Budget and Tax Legislative Processes}, 43 B.C.L. Rev. 863, 865 (2002) (affirming that “the tax and budget legislative processes are increasingly linked”).

\textsuperscript{192} See Boat Owners Association, \textit{supra} note 94, at 6(1) (commenting on how boat owners have come to rely on the deductibility of their boats’ mortgage interest through the secondary residence deduction for boats that serve as residences which the Panel suggests eliminating, and stating that such a change is not likely to occur any time soon); \textit{but see, Poll Shows Majority of U.S. Adults Support Major Tax Reform, Are Willing to Give Up Some Deductions to Make Tax System Simpler} U.S., U.S. NEWSWIRE, Apr. 5, 2006, \textit{available at http://releases.usnewswire.com/GetRelease.asp?id=63577} (revealing that a small majority of taxpayers with incomes over $75,000 per year who were most likely to be able to take advantage of the itemized deductions were willing to sacrifice such deductions in order to remove some complexity in the Code, suggesting that repairing difficulty in tax preparation is the most pressing need in tax reform to citizens).

\textsuperscript{193} See \textit{REPORT}, \textit{supra} note 6, at 71 (displaying disproportionate impact that housing investments may have on business and technology industries, such as lack of investments, lower worker productivity, lower wages, and lower standard of living); \textit{see also} \textit{SHAVIRO, supra} note 23, at 144 (criticizing the home mortgage interest deduction for how it distorts individual investment choices).

\textsuperscript{194} See \textit{GREENE, supra} note 76, at xvii (noting that the suggestion for a deduction or a credit for renters was made back in 1981); \textit{see also} \textit{SHAVIRO, supra} note 23, at 144 (affirming that the home mortgage interest deduction sways people towards investing in home ownership as opposed to rental housing).

\textsuperscript{195} See \textit{GREENE, supra} note 76, at xvii (promoting a tax subsidy for renters because it might encourage better apartment maintenance and enable some households to remain renters).

\textsuperscript{196} See \textit{REPORT, supra} note 6, at 71 (contrasting the close to 0 percent tax rate on owner-occupied housing investments with the 22% tax rate on business sector investments).
policy will inevitably affect the state of the economy and the allocation of resources; therefore, it can appease some critics by implementing changes that will lead to positive results in industries that have heretofore felt slighted.

Regarding the AMT, it seems that there are ways to successfully accomplish the Panel's suggestion of complete elimination. Keeping in mind the desire to encourage savings, eliminating the AMT would be ideal because it would provide for a decrease in tax liability, meaning more money to pocket or to invest.197 The outright elimination of the AMT appears to be conditional upon the occurrence of either of two options: (i) immediately obtaining satisfactory alternative sources of revenue, or (ii) adjusting the regular income tax rates to make up the difference.198 One way to find immediate alternative sources of revenue would be to alter the amounts allowed for the remainder of the itemized deductions. In order to reduce the benefits to those who itemize while retaining the all-important home mortgage interest deduction, the government could lower the amounts allowed under the itemized deductions, thereby increasing revenue.199 This compromise would satisfy the homeowners because they could retain the most important deduction, the government because it would receive an increase in funds, and the non-homeowners because they would not feel as though they were being snubbed continuously.200

197 The Panel did recognize the importance of savings when it stated, "Household saving is crucial to the health of our economy and to the financial health of American families." See REPORT, supra note 6, at 89. The AMT is on a path to cause even more damage to American families as it is projected that, in 2010, "the percentage of married couples with children paying AMT in all income brackets is projected to be 39 percent." See TurboTax, FAQs on the Alternative Minimum Tax, http://turbotax.intuit.com/tax_help/FAQontheAlternativeMinimumTax.html (last visited Nov. 11, 2006).

198 See Karlinsky, supra note 17, at 151 (stating that the AMT could be repealed and its provisions could be incorporated into the regular tax system in order to improve simplicity); see also Novack, supra note 42, at 210 (referring to how the "President's reform panel made clear how hard it would be to fix the AMT without busting the budget").

199 Sections 161-223 of the Internal Revenue Code provide itemized deductions for individuals that are available once the taxpayer chooses to forego the standard deduction. See I.R.C. §§ 161-223 (West 2006). The Panel also suggested the elimination of the deduction for state and local taxes. See REPORT, supra note 6, at 83.

200 See REPORT, supra note 6, at 83 (explaining that the Panel wants the expenditures for state and local taxes to be treated like any other nondeductible personal expense, that way the cost of these services would be borne by those who want them, not by every taxpayer in the country); see also Edward Schnee, Interest Deduction for Individuals: Review and Update, 12 AKRON TAX J. 181, 194 (1996) (emphasizing the value of the deduction for interest expense by stating that "[o]ne of the most important
hand, the Panel could suggest eliminating the AMT while simultaneously increasing the tax rates under the regular tax system.\textsuperscript{201} This decision would not necessarily serve to make taxpayers happy because they would still be paying approximately the same amount of taxes, but at least it would alleviate the frustrations of working through a dual tax system.\textsuperscript{202}

In the event that the loss of revenue from an outright elimination of the AMT is too much to bear, there are alternatives. First, the Panel could suggest the overdue adjustment of the AMT to properly index for inflation.\textsuperscript{203} Next, the AMT could be phased out over a period of five to ten years, depending upon estimates of the time required to establish adequate alternatives. It is important to recognize that the AMT in its current form is no longer serving the goals for which it was designed.\textsuperscript{204} The entire AMT system, although it provides important federal funds, does so in way that only serves to confuse and confound taxpayers and tax preparers.\textsuperscript{205} It is no

exceptions to the disallowance of personal interest is the deductibility of qualified residence interest\textsuperscript{\textsuperscript{}).\textsuperscript{201} For example, the actual percentage rates could be increased within each category of taxpayer, such as individual or married, to make up for the revenue that would be lost with the elimination of the AMT. See I.R.C. § 1 (West 2006). The regular income tax system could be modified to ensure that every taxpayer who has economic income in a tax period pays some minimum amount of tax without the complexity of the AMT system. See Karlinsky, supra note 17, at 150.

\textsuperscript{202} See REPORT, supra note 6, at 85-86 (referring to the AMT as “the most vivid example of the wasteful complexity that has been built into our system to limit the availability of some tax benefits”).

\textsuperscript{203} See Karlinsky, supra note 17, at 152-53 (suggesting that the AMT be modified by indexing it to adjust for inflation and further increase it if necessary to target the wealthy segments of society); but see Sugin, supra note 48, at 1271-75 (warning that although indexing would be a good start there are “fundamental flaws” in the AMT structure that may not be alleviated through indexing alone).

\textsuperscript{204} See REPORT, supra note 6, at 10 (stating that “the individual AMT has failed to achieve its goal of making sure all well-to-do Americans pay taxes”); see also Karlinsky, supra note 17, at 139 (noting that even with a wide range of opinions about tax policy, a consensus was reached that “the current AMT system is not meeting its originally intended policy goals, is overly complex, and is not readily administrable by taxpayers or the government.”).

\textsuperscript{205} The Congressional Budget Office noted that many taxpayers have looked to computer software in order to help alleviate the complications that the AMT causes. See CONGRESSIONAL BUDGET OFFICE, The Alternative Minimum Tax, in REVENUE AND TAX POLICY BRIEF 1, 7 (Apr. 15, 2004), http://www.cbo.gov/showdoc.cfm?index=5386 &sequence=0. Recognizing the burden on taxpayers, the Panel recommends the elimination of the AMT under both of its suggested plans, thereby freeing millions of taxpayers from having to undertake the painful and complex series of calculations and worksheets just to determine whether they are entitled to a tax benefit or whether it is to be taken away by the AMT. See REPORT, supra note 6, at 86.
longer ensuring that everyone pays a minimum amount of tax even if they partake in special preferences; rather it is ensuring that millions of taxpayers pay additional funds to the government because the system has not been properly updated. The Panel could also attempt to revert to the “pre-1986 add-on minimum tax system in which a separate tax is added to the regular tax when the sum of tax preferences exceed some specified amount such as the regular tax liability.” This could be implemented after the phase-out of the adjusted AMT was complete; however, the Panel would face the daunting task of choosing which preferences would be limited. Regardless of how and when the AMT is eliminated, there are few who would deny that it is likely to be and should be erased from the Code sometime in the future.

CONCLUSION

The current federal income tax system is in dire need of reform. Its unnecessary complexity inundates taxpayers with verbose content and forces many individuals to obtain tax preparatory assistance. The President’s Advisory Panel proposed several changes including altering the home mortgage interest deduction and eliminating the AMT. As they stand, the Panel’s recommendations are attempts to satisfy two of the core values of American society which are the importance of owning a home and having the capacity to save. However, the Panel needs to reconsider not only the forms of these recommendations but also the methods of implementation. Studying the successes and failures of past changes as well as gaining an understanding of current predilections will help legislators determine the best ways to proceed with future reforms. Legislators will obtain

206 See REPORT, supra note 6, at 9 (noting that the failure to index the AMT is significant).
207 Karlinsky, supra note 17, at 153.
208 See Karlinsky, supra note 17, at 153-54 (mentioning that the pre-1986 system was not sufficient and so the Panel would have to implement the necessary changes); see also Sugin, supra note 47, at 1273 (noting that “the AMT preferences bear little resemblance to the real preferences that are now in the Code, namely the reduced rates on capital gains and dividends”).
209 See REVENUE AND TAX POLICY BRIEF, supra note 205, at 1 (Apr. 15, 2004) (commenting on the increased complexity that plagues millions of taxpayers); see also Schnepper, supra note 66 (referring to the proposed elimination of the AMT as “This one’s a winner!”).
insight into how to successfully implement tax policy by studying human behavior and appreciating the concerns felt by people from all levels of society. Just like Dorothy in *The Wizard of Oz*, most Americans treasure their homes and are eager to be able to adequately plan and provide for their futures. Perhaps all that is needed in the tax code is a brain, a heart, and some courage.