A Time for Change, A Time for Hope:

The Alternative Minimum Tax's Adverse Effects on Large Families and Congress' Season to Change It

By Charlotte Erdmann

The following feature is an abridged version of the winning essay of the 2010 Writing Competition awarded by the FBA's Section on Taxation.

Introduction

"Change we can believe in." "Change we need." "Yes we can."[1] In 2008, on the campaign trail, Barrack Obama made the following campaign promise: "I can make a firm pledge. Under my plan, no family making less than $250,000 a year will see any form of tax increase. Not your income tax, not your payroll tax, not your capital gains taxes, not any of your taxes."[2] America needs such a plan as the Alternative Minimum Tax (AMT) is increasingly affecting large families who make less than $250,000 a year.

The Klaassen family has been affected by the AMT for many years. David Klaassen is a family man. He is a sole practicing attorney, and his wife, Margaret, is his secretary. They are the proud parents of 13 children, one of whom battled childhood leukemia and won. The frugal family made ends meet by producing their own food and using free tax forms from the post office. The forms were filled out in pencil and then Margaret used a typewriter for the final versions. The Klaassen's were hit with an audit notice and a demand for penalties and interest for their 1994 tax return. They properly claimed their personal exemptions and exemptions for their dependent children for a total of 12 exemptions on their Form 1040. However, they failed to compute and attach the Alternative Minimum Tax (AMT) computations.[3]

When computing the AMT, some deductions that can be otherwise used in calculating the regular income tax may not be used when calculating the AMT, including itemized deductions for state and local taxes and personal and dependent exemptions. Also, when calculating the AMT, a 10 percent floor applies to medical expenses instead of the regular 7.5 percent floor. Sadly, the Klaassens were responsible for the AMT not because of any tax preference items but, rather, because of these adjustments to their AMT determination, in addition to the fact that they had a large family and lost the value of personal or dependent exemptions when calculating their AMT liability.

In Tax Court, David Klaassen argued not that the AMT was calculated incorrectly but that the AMT "adversely affects large families and results in an application of the alternative minimum tax that is contrary to congressional intent."[4] Unfortunately, the court held that the Klaassens remained liable for the AMT because, even though Congress may not have meant to catch large families such as the Klaassens, "[t]he clearest expression of legislative intent is found in the actual language used by Congress in enacting legislation."[5] In other words, courts cannot examine legislative history for intent if the statute is unambiguous. Since the AMT provisions of the code are clear in not allowing certain deductions when calculating the AMT, there is no equitable relief available from the court system for large families who fall into the trap of the AMT provisions, even if Congress never intended to catch large families in those provisions.

David Klaassen appealed the Tax Court's decision and argued that "Congress did not intend to disallow personal exemptions for taxpayers at their income level when no § 57 [preferences] are involved." The Klaassens were not involved in any tax shelter activities and did not hold any tax-preferenced investments. The Tenth Circuit Court of Appeals nevertheless held that "the statute's plain language unequivocally reaches the Klaassens, and our inquiry is therefore complete. While the law may result in some unintended consequences, in the absence of any ambiguity, it must be applied as written. It is therefore from Congress that the Klaassens should seek relief."[6] The court

system was unable to bring the Klaassens any equitable relief because of the plain meaning rule. The court tossed the responsibility for AMT reform back to those who created it, Congress, to re-examine and reform the law.

The Klaassens' appeal was decided 10 years ago; in the meantime, even more families like the Klaassens are being caught by the AMT. In 2004, the Ways and Means Committee of the U.S. House of Representatives asked David Klaassen to fly to Washington, D.C., to testify about how the AMT has affected him and his family.[7] He submitted a written statement and testified that he and his wife claimed 12–15 personal exemptions per year for years 1994 through 2004. He testified:

> the subtle mathematics of the AMT in effect has reduced the total exemption amount to which we are entitled each year. In this manner, the AMT has become a penalty on large families solely because of their size. I doubt that this was an intended purpose of the AMT. However, it is in this very manner that the AMT has cost my family in excess of $25,000.00 over the past ten years.

At the end of his statement David Klaassen pleaded with the Ways and Means Committee to help him and his family, and likely all large families, in obtaining from Congress an equitable solution to the effects of the AMT.[8]

Although the Klaassens' cases are relatively old, the cases and their entire story illustrates the ill affects of the AMT on large families. In 2001, 1.3 million taxpayers were subject to the AMT. It is estimated that the AMT will affect between 29 and 33 million taxpayers by 2010.[9] With the passage of time the adverse impact of the AMT on large families will likely continue to get worse unless Congress takes action to reform or repeal the AMT.

The AMT and How It is Calculated

The AMT is a tax system that operates parallel to the regular income tax system but has a broader taxable base than regular income tax. The AMT is defined as "a tax equal to the excess (if any) of the tentative minimum tax for the taxable year over the regular tax for the taxable year,"[10] and its provisions are found in I.R.C. §§ 55–59. Like the regular income tax, the AMT is computed by determining gross income. The AMT's tax base is called alternative minimum taxable income (AMTI). Many deductions that are allowed under the regular income tax system are excluded when computing one's AMTI. Personal and dependent deductions are not to be considered in the AMTI, and the 7.5 percent floor of allowable medical expenses under the regular income tax system is increased to a 10 percent floor under the AMT provision. An exemption amount is deducted, which allows many taxpayers to avoid AMT liability, but it is phased out for higher income earners. The exemption amounts have been adjusted yearly in the form of AMT patches, which have been enacted to help taxpayers, especially the middle class, avoid AMT liability. Once the AMTI is determined, the AMT tax rate of 26 percent or 28 percent is applied. If the taxpayer's tentative minimum tax is more than his or her regular tax liability, the taxpayer is to pay the difference between the two, which results in the taxpayer's AMT liability.

The History and Policy Objectives of the AMT

Origin and Policy of the AMT

Ironically, the AMT and its predecessor were originally designed to promote fairness and vertical equity. However, with the passing of time, inadequate patches to the AMT, and amendments to other tax code provisions, the AMT is far from the goal it seeks to accomplish. In 1966, Joseph Barr testified before Congress that 154 people with an adjusted gross income in excess of $200,000 paid no income tax in 1966 "by using substantial deductions and exclusions to completely eliminate their taxable income."[11] By 1969, Congress enacted the add-on minimum tax,[12] Tax Rethe AMT's predecessor, for the following purpose:

> The prior treatment imposed no limit on the amount of income which an individual … could exclude from tax as a result of various tax preferences. As a result, there were large variations in the tax burdens placed on individuals … with similar economic incomes. … Individuals [who] received the bulk of their income from such sources as capital gains or were in a position to benefit from … tax preference activities tended to pay relatively low rates of tax. In fact, many individuals with high incomes who could benefit from these provisions paid lower effective rates of tax than many individuals with modest incomes. In extreme cases, individuals enjoyed large economic incomes without paying any tax at all.[13]

The AMT itself was enacted in 1978 with the "purpose to ensure that no individual with substantial economic income can avoid paying any federal income tax."[14] Congress stated that—

> Congress amended the present minimum tax provisions applying to individuals with one overriding objective: no taxpayer with substantial economic income should be able to avoid all tax liability by using exclusions, deductions and credits. Although these provisions provide incentives for worthy goals, they become counterproductive when individuals are allowed to use them to avoid virtually all tax liability. The ability of high-income individuals to pay little or no tax undermines respect for the entire tax system and, thus, for the incentive provisions themselves. Therefore, Congress provided an alternative minimum tax which was intended to insure that, when an individual's ability to pay taxes is measured by a broad-based concept of income, a measure which can be reduced by only a few tax incentives provisions, tax liability is at least a minimum percentage of that broad measure. The only deductions allowed, other than costs of producing income, are for important personal or unavoidable expenditures (housing

interest, medical expenses and casualty losses) or for charitable contributions, the deduction of which is already limited to a percentage of adjusted gross income.[15]

As demonstrated by the Klaassen case, the AMT has not only gone astray from its purpose but is also achieving the very unfairness it sought to avoid.

Recent Patches to the AMT

Throughout the years, Congress has enacted various patches to the AMT in an attempt to reduce the burden of the AMT on taxpayers, including middle-class taxpayers and those with large families, but has failed to permanently fix or repeal the AMT altogether.

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act, which patched the AMT temporarily by increasing the exemption amounts provided under IRC § 55(d) for tax years 2001 to 2004. The exemption amount for individual taxpayers was increased to $35,750 from $33,750 and increased for married taxpayers filing jointly to $49,000 from $45,000. The Jobs and Growth Tax Relief Reconciliation Act of 2003 increased the AMT exemption amounts to $58,000 for married taxpayers filing jointly and $40,250 for single taxpayers for tax years 2003 and 2004 only. Under the Working Families Tax Relief Act of 2004, those exemption amounts were extended to 2005. Another patch was enacted for tax year 2006 increasing the exemption amount to $62,550 for married taxpayers filing jointly and $42,500 for single taxpayers. A similar patch was passed in 2007 raising the exemption to $66,250 for joint filers.

In 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 was passed. In that legislation, the exemption amounts were once again increased and other AMT adjustments were also made. For the taxable year beginning in 2008, the exemption amount was raised to $46,200 for single filers and $69,950 for married taxpayers filing jointly. Rep. Earl Pomeroy (D-N.D.) commented:

> I rise today to support this relief from the Alternative Minimum Tax, AMT. If Congress does not pass this legislation, over 25 million middle-class tax payers [sic] would find themselves subject to this tax.
>
> It is important that we provide relief to millions of American families who want a better life for their families. The current structure of the AMT leaves middle-class households vulnerable to a significant unexpected tax bill while many very wealthy households pay no AMT. In these economic times, enacting AMT relief can put more money in their pockets rather than subject them to taxes that were not intended to apply to middle-class families.[16]

Rep. Pomeroy acknowledged that a patch was needed but understood it to be only temporary and looked forward to a time when comprehensive AMT reform could be completed: "I will cast my vote for the Alternative Minimum Tax Relief Act today so that this tax does not fall on families struggling to meet increasing prices with wages that have not kept pace with inflation. … I do so with the hope that Congress will work next year with a new administration to advance commonsense tax reform that includes paid for AMT relief." Sadly, Representative Pomeroy's hope was not realized, and another AMT relief patch was passed in 2009 as part of the American Recovery and Reinvestment Act of 2009.

AMT Criticisms as They Relate to Large Families

The AMT has been criticized as unfair, outdated, complex, and unduly burdensome. This article examines each of these claims as they relate to their effect on large families.

Unfair

The AMT is particularly unfair to married couples who file a joint tax return. It is estimated that in 2009 5 percent of married couples filing jointly will owe the AMT, whereas only 1 percent of single taxpayers will owe the AMT. Under the current law it is expected that 40 percent of married couples filing jointly will owe the AMT in 2010, whereas only 3 percent of single taxpayers are expected to owe the tax.[17] Since 2007, the exemption amount for married taxpayers has been $66,250. Single taxpayers received an exemption of $44,350, resulting in an unmarried couple receiving an exemption that was 22,450 more. In discussing the marriage penalty in 2001, Professor Angela V. Langlotz pointed out that not only do the AMT exemption amounts benefit two single taxpayers more than they benefit a married couple, but also that the point at which the exemption phase-out begins also favors two single taxpayers more than a married couple.[18] Since the phase-out begins at $112,500 for singles and $150,000 for married couples, "[a]n unmarried couple may earn an alternative minimum taxable income of $225,000 before phase-out begins, giving them a $75,000 income advantage over a married couple." She also notes that "[t]he exemption amount is completely phased out at $330,000 for married couples and at $495,000 for two singles, again giving the [unmarried couple] a tremendous advantage of earning an additional $165,000 before losing the exemption."

Outdated

Various tax reform measures under the Bush administration led to reduced tax rates under the regular income tax system but failed to correspondingly reduce AMT rates.[19] Before the Jobs and Growth Tax Relief Reconciliation Act of 2003, the top regular tax rate brackets were 28 percent, 31 percent, 36 percent, and 39 percent. While the top regular tax brackets were so high, the AMT rates were 26 percent and 28 percent, and there was a substantial exemption to the AMT, resulting in the AMT affecting only a few taxpayers. Professor Goldberg credits the increased number of taxpayers subject to the AMT to the reduction of the top regular income brackets from those listed above without a proportional reduction to the AMT tax brackets.[20] A narrow spread between regular income tax rates and

AMT tax rates results in more taxpayers being subject to AMT liability. Furthermore, as discussed above, the various patches that the legislature enacted are only temporary, and the exemption amounts they provide are not substantial enough to protect middle-income taxpayers and large families. Yet, without these patches, the exemption amounts would revert to those that were in effect before the passage of the Economic Growth and Tax Relief Reconciliation Act in 2001, leading to disastrous effects. Therefore, the AMT is outdated, because it cannot withstand current demands.

Also, employers often provide employees with cost-of-living pay increases to combat the effects of inflation on their income and purchasing power, which has the effect of pushing a taxpayer into a higher regular tax bracket. The regular income tax has been adjusted for inflation annually since 1985 by adjusting personal exemptions, standard deductions, rate brackets, and the earned income credit, but there have been no corresponding changes to the AMT.

The very structure of the AMT disproportionately affects large families. Standard deductions and personal and dependency deductions that are allowed under the regular income tax system are disallowed under the AMT system under I.R.C. § 56(b)(1)(E) when determining one's AMTI. "By disallowing the … exemptions, the AMT effectively treats these ordinary deductions as though they were the prohibited tax preference items the AMT was designed to restrain, …"[21] thereby compounding the systematic failures of the AMT by allowing the AMT to reach in and adversely affect the standard income tax provisions.

The Child Tax Credit allows families to take a credit against their income tax liability, thereby assisting with a family's cost of living, which is generally higher than a childless family's cost of living, and considers a family's ability to pay when computing regular income tax liability. Yet a similar credit is not considered when computing the AMT. Not having a similar adjustment before calculating the AMT has the effect of subjecting families with children to AMT liability. The Child Tax Credit adjustment, together with the disallowance of personal exemptions and deductions in the computation of the AMT, makes large families particularly susceptible to the AMT when they are even more unable to pay it, because the higher cost of maintaining a larger family is further compounded by the reach of the AMT into the income tax provisions. Therefore, the AMT effectively reduces the benefit of the Child Tax Credit that is provided. Such consequences are contrary to the tax policy of taxing individuals, based, in part, on their ability to pay. Furthermore, the AMT's tax rates of 26 percent and 28 percent also tend to replace a progressive tax rate system that is found within the regular income tax system with a nearly flat rate system, affecting the vertical equity of the AMT.

Complex and Unduly Burdensome

The AMT runs parallel to the regular income tax, resulting in a system that is exceedingly complex and administratively burdensome. Although many taxpayers may not have AMT liability, most taxpayers must compute the AMT to see whether they have any AMT liability, causing the AMT to affect more taxpayers than those who are subject to AMT liability. The AMT also involves performing different computations for the same items of income, credits, and deductions, making the AMT difficult and burdensome to compute. As the 2001 report of the Joint Committee on Taxation stated,

> for individuals: there is a 13-line worksheet to determine if the taxpayer must file a 50-line form (Form 6251) to be used for computing the alternative minimum tax with the taxpayer's annual income return. There is a 48-line form (Form 8801) to determine the taxpayer's credit for prior payments of the alternative minimum tax. There are ten pages of IRS instructions relating to these worksheets and forms. Complying with the alternative minimum tax requires taxpayers to devote considerable time to try and understand and use the maze of tax rules relating to the tax.

The Joint Committee further noted that "[a]lthough there are no studies specifically measuring the compliance costs arising from the alternative minimum tax, the IRS estimates that taxpayers spend over 29 million hours annually on Form 6251."

Is There Viable Relief Available From the Judicial System?

Holdings in AMT Cases

Where is the taxpayer burdened with the high costs of the AMT to turn to for equitable relief? The taxpayer may take his or her case to court to challenge any tax imposed against the taxpayer. However, the court system often does not have relief to offer. The courts must uphold the law which is contained within the AMT provisions of the code. When seeking Congress' intent, courts often refuse to look beyond the plain meaning of the statute to the legislative history in cases where the statute is highly specific and unambiguous. "A Court might then adopt a textual or plain meaning approach to statutory interpretation, closing its eyes to legislative history, statutory structure, or tax policy, suggesting a congressional intent at odds with the result dictated by the language of the statute."[22] This is especially the situation in AMT cases where the statute is unambiguous, because it is mechanical and clear in the calculations even if the consequences that it produces are contrary to the purposes of the statute's enactment.

In *Katz v. Commissioner*,[23] the Tax Court held that the taxpayer was liable for the alternative minimum tax even if the taxpayer was a low- or moderate-income earner. The taxpayer in *Katz* claimed the status of married filing separately, had an adjusted gross income (AGI) of $46,834.16, itemized deductions of $54,275.81, and $2,800 in personal exemptions. He had no regular income tax liability. After computing his AMT liability, his total tax liability for the year 2000 was based solely on the AMT and was assessed at $4,214. The court dismissed the case during summary judgment and cited the unanimous opinion of *Crooks v. Harrelson* as follows:

> Courts have sometimes exercised a high degree of ingenuity in the effort to find justification for wrenching from the words of a statute a meaning which literally they did not bear in order to escape consequences thought to be absurd or to entail great hardship. But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call for great caution and circumspection in order to avoid usurpation of the latter. … It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. Laws enacted with good intention, when put to the test, frequently, and to the surprise of the lawmaker himself, turn out to be mischievous, absurd, or otherwise objectionable. But in such case the remedy lies with the law making authority, and not with the courts.[24]

The *Katz* court concluded that the taxpayer "must look to Congress for relief."

In *Wiese v. Commissioner*,[25] the Wieses claimed three personal exemptions, one of which was for the disabled brother of James Wiese, as well as a $2,914 deduction for medical expenses (in excess of 7.5 percent of the taxpayers' adjusted gross income) and deductions for state and local income taxes and for real estate taxes in the amounts of $32,099 and $20,445, respectively, in 2002. The Wieses, who filed jointly, reported $9,631 of taxable income and a tax liability of $963. They failed to complete and attach their Form 6251 for reporting the AMT for individuals, and they did not report any AMT liability on their Form 1040. The Wieses asked the court for equitable relief in the form of a waiver of the $5,328 additional AMT tax liability ($6,291 for the tentative minimum tax, $963 from regular income tax liability). The Wieses faced a financially disastrous business failure in the 1990s that caused their state and local income taxes and real estate taxes to accrue but remain unpaid until they were able to catch up in 2002. For both the Klaassens and the Wieses, the AMT was assessed on the basis of the provisions that disallow deductions for state and local income taxes and real estate taxes, allow deductions for medical expenses only in excess of 10 percent of the taxpayers' AGI, and exclude all personal exemptions, thereby attacking large families and families having ill or disabled children or other dependents.

The court in *Wiese* said that "[t]he clearest expression of legislative intent is found in the actual language used by Congress in enacting legislation." The Wiese court quoted favorably the U.S. Supreme Court's decision in *United States v. Am. Trucking Associations Inc.*,[26] stating "[t]here is … no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." The Tax Court also followed the reasoning of *Rath v. Commissioner*,[27] which held that the plain language of the statute would be controlling unless doing so would produce absurd results. Finally, the Wiese Court also quoted a 1989 Supreme Court case holding that, "[i]n the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must be regarded as conclusive."[28]

In *Wiese*, while impressed with the "conscientious taxpayers who take their tax responsibilities seriously and follow the rules," the court ultimately held that the *Wieses* were liable for the AMT that was assessed even though the court said it was "cognizant of the inequity that [the taxpayers] perceive in the application of the AMT under the circumstances of their case."

In *Speltz v. Commissioner*,[29] the taxpayers, a family with three children, were liable for more than $125,000 in AMT because they had exercised incentive stock options. However, the stock acquired by the Speltzes upon exercising their incentive stock options "dropped precipitously." The court in *Speltz* was sympathetic to the taxpayers, but stated: "The unfortunate consequences of the AMT in various circumstances have been litigated since shortly after the adoption of the AMT. In many different contexts, literal application of the AMT has led to a perceived hardship, but challenges based on equity have been uniformly rejected." Based on the *Speltz* case and those cited by the Tax Court in *Speltz*, an inequitable result is not an absurd result. However, it is absurd that the court talks about the Speltzes' plight as a perceived hardship when the

harm they and their children suffered was both real and extensive. The Tax Court noted how the AMT affected the Speltzes' lifestyle:

> Lifestyle changes were necessary, including: Petitioner June M. Speltz had to get a job instead of staying home with the children; the oldest daughter had to switch schools; petitioners were unable to contribute to their retirement and to their children's education fund; and they had to reduce their charitable donations. Finally, they could not afford to have a fourth child, which they had wanted.

Unfortunately, with the *Speltz* case as a precedent, any relief based upon a possible "absurd result" exception to the plain meaning rule in the application of the AMT is tenuous at best.

A Solution to the AMT Must Reside with Congress

Although these are possible arguments for relief, the precedent stands strong, so courts are almost certain to stand by the plain meaning rule and not consider the legislative history or intent in order to provide equitable relief. As noted in *Kenseth v. Commissioner*, "[i]t is not a feasible judicial undertaking to achieve global equity in taxation. ... [a]nd [even] if it were a feasible judicial undertaking, it still would not be a proper one, equity in taxation being a political rather than a jural concept."[30] The court in *Katz* also quoted the Supreme Court's decision in *Bradaracco v. Commissioner*, which discusses tax statutes:

> The cases before us concern the construction of existing statutes. The relevant question is not whether, as an abstract matter, the rule advocated by petitioners accords with good policy. The question we must consider is whether the policy petitioners favor is that which Congress effectuated by its enactment. … Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement.[31]

Congress must then solve this issue. Article I, section 1, of the Constitution vests all legislative power in Congress, making Congress the primary policy-maker, not the courts.

While there are numerous benefits to the plain meaning rule, like simplification, one must consider to what extent equity suffers because it was the very purpose such legislation was enacted in the first place. Although one must weigh the administrative costs against the laudable goal of equity, at some point equity must win over simplification. As demonstrated, the responsibility of equitable relief to taxpayers with large families is in the hands of Congress.

Possible Solutions to the AMT that Congress Should Consider

Exempt Taxpayers with an Adjusted Gross Income of $250,000 or Less from the AMT

Professor Gabriel Aitsebaomo suggests that one way to remedy the ill effects of the AMT is to exempt taxpayers with an AGI of $250,000 or less from AMT liability altogether.[32] Because middle-income and upper-middle-income taxpayers are increasingly subjected to AMT liability, such a solution would allow the AMT to fulfill its policy objective of ensuring that only wealthy individuals would be subject to the AMT. Such a change to the AMT provisions would also allow the current administration to work toward President Obama's campaign promise: "Under my plan, no family making less than $250,000 a year will see any form of tax increase."

Such a remedy would be a more permanent fix to the problem as opposed to the exemption patches that Congress must pass yearly. It would also alleviate the taxpayer's administrative burden of "calculating their AMT liability before getting the benefit of the increased exemption amounts whereas, under the proposed permanent exemption of individuals with AGIs of up to $250,000, no taxpayer with [an] AGI of $250,000 or less would be required to even prepare an AMT return of any kind." This type of provision, therefore, not only would relieve middle-class taxpayers by eliminating their AMT liability but also would relieve them from having to calculate AMT liability and restore integrity to the voluntary self-assessment tax system by simplifying the AMT to a level that ordinary taxpayers could understand.

Index the AMT for Inflation and Provide a Permanent and Substantial Exemption

Professor Aitsebaomo also suggests that another way to provide relief to middle-income taxpayers is by increasing the AMT tax brackets and exemption amounts yearly to account for inflation.[33] Such a provision would not only reduce the gap between the income tax brackets and the AMT brackets, allowing fewer middle-class and large families to be subject to the AMT, but would also realign the AMT with its policy objectives. Since the regular income tax brackets and exemptions are indexed for inflation, a corresponding adjustment in the AMT system would promote fairness and vertical equity.

Allow Standard or Itemized Deductions and Personal Exemption Deductions for AMT Purposes

Like the Klaassens and Wieses, the disallowance of standard deductions and dependency deductions when calculating the AMT is one of the main reasons that large families are trapped into having AMT liability. Furthermore, when one considers the cost of living for a large family, the AMT, in disallowing standard, personal, and dependency deductions, does not reflect a family's ability to pay the AMT. $150,000 for a married couple without children may seem like a lot of money, but when a couple must provide the basic necessities of life, such as food and clothing, for

12, 13, or even three children, their ability to pay the AMT is greatly decreased. Ability to pay, and ultimately, equity, is one of the very reasons why the standard, personal, and dependency deductions are allowed when computing regular income tax. Should not such deductions also apply in the calculation of Alternative Minimum Taxable Income? Allowance of personal and dependency deductions would help fulfill the purpose of the AMT in ensuring that only the wealthy are subject to the AMT.

Add AMT-like Protection Measure to the Regular Income Tax System

By incorporating AMT-like provisions in the calculation of regular income tax, Congress can reinvent a mechanism that would only subject the wealthy to a minimum tax while protecting middle-class and upper-middle-class families. As a result, those families would be free from AMT liability, because all the benefits of personal and dependency deductions would be available to them. Furthermore, Congress can build in safeguards for middle-income families by including adjustments for inflation and more permanent exceptions, such as those listed above.

Repeal the AMT Altogether

Perhaps Congress should just repeal the AMT altogether because it does not fulfill the policy objective of ensuring that individuals and families with *substantial* income pay their fair share of the tax burden. Such an action would be in accordance with a recommendation made by the Joint Committee on Taxation as late as in 2001. The Joint Committee noted the following:

> [T]he individual alternative minimum tax no longer serves the purposes for which it was intended. The … structure of the individual alternative minimum tax expands the scope of the provisions to taxpayers who were not intended to be alternative minimum taxpayers. The number of individual taxpayers required to comply with the complexity of the individual alternative minimum tax calculations will continue to grow due to the lack of indexing of the minimum tax exemption amounts and the effect of individual alternative minimum tax on taxpayers claiming nonrefundable personal credits. The alternative minimum tax can be a trap for the unwary, especially for large families, and creates disparate treatment of taxpayers depending on where they live.[34]

Conclusion

Middle-income and upper-middle-income families, particularly large families, are adversely affected by the AMT. While its original intentions were equitable, the 40-year-old provisions and their accompanying band-aid patches result in a system that is burdensome, complex, outdated and unfair. When families seek equitable relief from the AMT through the court system, it is always denied. Based on AMT precedent and the plain meaning rule, courts cannot provide equitable relief to taxpayers who are burdened. Taxpayers only recourse is Congress, who has talked about reform for years, but has been slow to provide comprehensive reform. Instead, Congress has tried to provide the AMT with yearly crutches to make sure the AMT system does not collapse while at the same time reaping the revenues it provides. Congress must act comprehensively in addressing meaningful AMT change that is equitable for all families, large and small, and must do so seasonably. Now is the time for change. **TFL**

Charlotte Erdmann is the winner of the 2010 Writing Competition sponsored by the Federal Bar Association's Section on Taxation. She graduated from Barry University's School of Law in Orlando, Fla., with her J.D. in May 2010. She will be attending the University of Florida in the fall to pursue an LL.M. in Taxation. She is a member of the FBA's Orlando Chapter.

Endnotes

[1]Barrack Obama, presidential candidate, 2008 presidential campaign slogan, available at presidentsusa.net/campaignslogans.html (last visited Dec. 31, 2009). *See also* David Cay Johnston, *Taxing the Sick Is Sick*, 122 Tax Notes 145, 145 (2009).

[2]Barrack Obama, presidential candidate, Address in Dover, N.H. (Sept. 12, 2008), available at www.reuters.com/article/pressRelease/idUS258402+28-Apr-2009+PRN20090428 (last visited Jan. 4, 2010). Unfortunately, President Obama broke that promise when he passed a federal excise tax on tobacco just 16 days into his presidency. John Kartch, *Obama's Broken Promise: No Tax Hikes on Those Making Less Than $250,000*, available at www.reuters.com/article/pressRelease/idUS258402+28-Apr-2009+PRN20090428 (last visited Jan. 4, 2010).

[3]Johnston, *supra* note 1, at 145.

[4]*Klaassen v. Commissioner*, T.C. Memo, 1998-241, 1998 WL 352260 (T.C. July 2, 1998).

[5]*Id.*

[6]*Klaassen v. Commissioner*, 1999 WL 197172, at *2 (10th Cir. Apr. 7 1999).

[7]Johnston, *supra* note 1 at 145. David Cay Johnston notes that David Klaassen was invited to Washington, D.C., to testify, provided he pay his own way. He states that "asking him to pay his own way shows how much our lawmakers favor those with the resources to work Capitol Hill. This makes it hard for lawmakers to hear the voices of those without such means."

[8]David Klaassen, Testimony before the House Ways and Means Committee, available at waysandmeans.house.gov/hearings.asp?formmode=view&id=2449&keywords=david+klaassen (last visited Jan. 4, 2010).

[9]Gabriel O. Aitsebaomo, *The Individual Alternative Minimum Tax: An Argument in Favor of Repeal*, 74 UMKC L. Rev. 335, 337 (2005); *see also* Staff of Joint Comm. On Taxation, 107th Cong., Study of the Overall State of the Federal Tax Systems and Recommendations for Simplification, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986, at 17 (Comm. Print 2001).

[10]I.R.C. § 55.

[11]Gabriel O. Aitsebaomo, *The Individual Alternative Minimum Tax and the Intersection of the Bush Tax Cuts: A Proposal for Permanent Reform*, 23 Akron Tax J. 109, 112 (2008).

[12]Tax Reform Act of 1969, Pub. L. No. 91-172. § 301, 83 Stat. 580-81 (1969).

[13]Staff on Joint Comm. on Taxation, 107th Cong., *supra* note 9, quoting Staff on Joint Comm. on Taxation, General Explanation of the Tax Reform Act of 1969, JCS-16-70, Dec. 3, 1970, at 105.

[14]Aitsebaomo, *supra* note 11, at 119; *see also* Staff of Joint Comm. on Taxation, 97th Cong., general explanation of the revenue provisions of the Tax and Fiscal Responsibility Act of 1982.

[15]Aitsebaomo, *supra* note 11, at 119, quoting Staff on Joint Comm. on Taxation, 97th Cong., general explanation of the revenue provisions of the Tax and Fiscal Responsibility Act of 1982.

[16]Hon. Earl Pomeroy of North Dakota, 154 Cong. Rec. E2149-04, 2008 WL 437712 (Sept. 24, 2008).

[17]Katherine Lim and Jeffrey Rohaly, *The Individual Alternative Minimum Tax: Historical and Projections, Updated October 2009*, Urban Institute and Brookings Instititution (Urban-Brookings Tax Policy Institute, Washington, D.C.), Oct. 2009, at 7, available at www.urban.org/Uploaded-PDF/411968_AMT_update.pdf (last visited Jan. 6, 2010).

[18]Angela V. Langlotz, *Tying the Knot: The Tax Consequences of Marriage,* 54 Tax Law 329, 348–49 (2001).

[19]Aitsebaomo, *supra* note 11.

[20]Daniel S. Goldberg, *To Praise the AMT or To Bury It*, 24 Va. Tax Rev. 835, 845 (2005).

[21]Aitsebaomo, *supra* note 9, at 350.

[22]David Shores, *Textualism and Intentionalism in Tax Litigation*, 61 Tax Lawyer 1, 53 (2007).

[23]*Katz v. Commissioner*, T.C. Memo 2004-97, 2004 WL 739852.

[24]*Crooks v. Harrelson*, 282 U.S. 55, 60 (1930).

[25]T.C. Summ. Op. 2005-91, 2005 WL 1677527 (U.S. Tax Ct.).

[26]310 U.S. 534, 543 (1940).

[27]101 T.C. 196, 200 (1993).

[28]*Burlington N. R.R. Co. v. Okla. Tax Comm.*, 481 U.S. 454, 461 (1987).

[29]124 T.C. 165, 167 (2005).

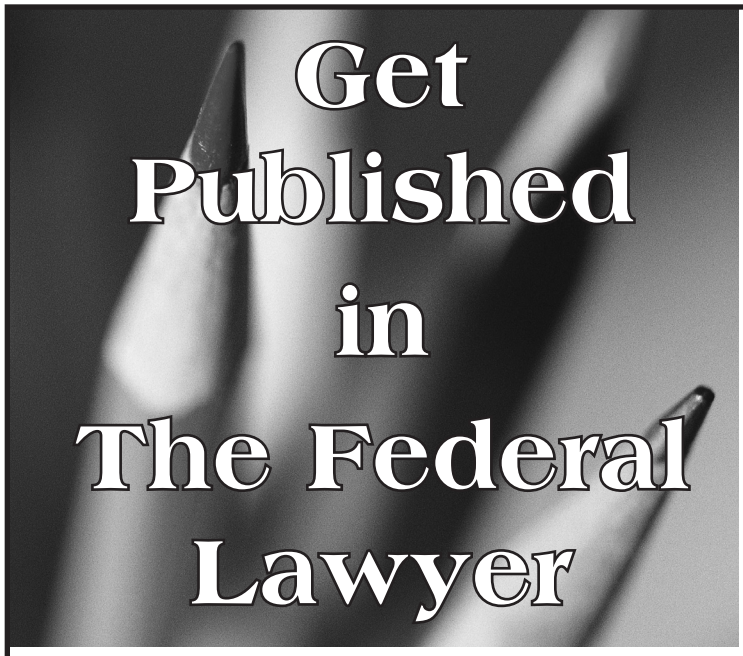
[30]*Kenseth v. Commissioner*, 259 F.3d 881, 885 (7th Cir. 2001), affy 114 T.C. 399 (2000).

[31]*Bradaracco v. Commissioner*, 464 U.S. 386, 398 (1984).

[32]Aitsebaomo*, supra* note 11, at 139.

[33]*Id.*

[34]Joint Comm. Report 2001, *supra* note 9, at *12-13.



Writer's guidelines available online
www.fedbar.org/guidelines.html

Contact Managing Editor Stacy King at tfl@fedbar.org or (571) 481-9100 with topic suggestions or questions.

The Federal Lawyer relies solely on the contributions of members of the Federal Bar Association and the federal legal community as a whole. The editorial board is always looking for new material and encourages suggestions for topics on which articles should be published. Because *The Federal Lawyer* has no writers on staff and editors serve in voluntary capacities only, the editorial board seeks recommendations for potential authors, as well.

You have a number of choices regarding what type of piece you would like to submit: a full-length feature article, a column in a variety of subject areas, a commentary piece on an emerging legal trend, or a focus on addressing a specific area of concern within the association or the legal field in general. The specifications for each of these are outlined in the guidelines. *The Federal Lawyer* strives for diverse coverage of the federal legal profession and your contribution in any of these areas is encouraged to maintain this diversity.