A Time For Change, A Time For Hope: The AMT's Adverse Effects on Large Families and Congress' Season to Change it

By: Charlotte Erdmann

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I. Introduction

"Change we can believe in."[1] "Change we need."[2] "Yes we can."[3] 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."[4] America needs such a plan as the Alternative Minimum Tax (AMT) is increasingly affecting large families who make less than $250,000 a year.[5]

The Klaassen family has been affected by the AMT for many years. David Klassen is a family man. He is a sole practicing attorney and his wife, Margaret, is his secretary.[6] They are the proud parents of thirteen children, one of whom battled childhood leukemia and won.[7] The frugal family made ends meet by producing their own food and using free tax forms from the post office.[8] The forms were filled out in pencil and then Margaret used a typewriter for the final

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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 Obama, 2008 Presidential campaign slogan, *supra* note 1.

3 *Id.*

4 Barrack Obama, Presidential candidate, Address in Dover, N.H. (Sept.12, 2008), *cited at* http://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*, http://www.reuters.com/article/pressRelease/idUS258402+28-Apr-2009+PRN20090428 (last visited Jan. 4, 2010).

5 *See infra*, notes 32, 59-60, 80, 171 and accompanying text.

6 David Cay Johnston, *Taxing the Sick is Sick*, 122 TAX NOTES 145, 145 (2009) [hereinafter Johnston, *Taxing*].

7 David Klaassen's statement, Ways and Means Committee, *available at* http://waysandmeans.house.gov/hearings.asp?formmode=view&id=2449&keywords=david+klaassen (last visited Jan. 4, 2010). [hereinafter Klaassen statement]. Aaron Klaassen is now free of cancer and works as a fiscal analyst for the Kansas state government. Johnston, *Taxing*, *supra* note 6, at 145.

8 Johnston, *Taxing*, *supra* note 6, at 145.

versions.[9] The Klaassen's were hit with an audit notice and a demand for penalties and interest for their 1994 tax return.[10] They properly claimed their personal exemptions and exemptions for their dependent children for a total of twelve exemptions on their Form 1040.[11] However, they failed to compute and attach the Alternative Minimum Tax (AMT) computations.[12]

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[13] and personal and dependent exemptions.[14] Also, when calculating the AMT, a ten percent floor applies to medical expenses instead of the regular seven and a half percent floor.[15] Sadly, the Klaassen's 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.[16]

In Tax Court, David Klassen 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."[17] Klaassen also argued that the AMT violates the right to religious freedom.[18] The Klaassens' are members of the Reformed Presbyterian church and believe that children "are a blessing from God" and so they do not

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9 Johnston, *Taxing*, *supra* note 6, at 145.
10 *Id.*
11 Klaassen v. Commissioner, T.C. Memo. 1998-241, 1998 WL 352260 (1998).
12 *Id.*
13 I.R.C. § 56(b)(1)(A)(ii) (all references are to the Internal Revenue Code of 1986, as amended, unless otherwise stated).
14 I.R.C. § 56(b)(1)(E).
15 I.R.C. § 56(b)(1)(B).
16 Klaassen v. Commissioner, T.C. Memo. 1998-241, 1998 WL 352260 (1998).
17 *Id.*
18 *Id.*

practice birth control.[19] 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."[20] In other words, courts cannot examine legislative history for intent if the statute is clear and unambiguous. Since the AMT provisions of the Code are unambiguous in not allowing certain deductions when calculating the AMT, there is no equitable relief available from the courts for large families who fall into the trap of the AMT provisions, even if Congress never intended to catch large families in those provisions.[21]

David Klaassen appealed the Tax Court decision and argued "that Congress did not intend to disallow personal exemptions for taxpayers at their income level when no § 57 [preferences] are involved."[22] The Klaassens were not involved in any tax shelter activities and did not hold any tax-preferenced investments.[23] 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."[24] The court system was unable to bring the Klaassens any equitable relief because of the plain meaning rule, which will be examined in this paper as it relates the the AMT.[25] The court tossed the responsibility for AMT reform back to those who created it, Congress, to

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19 Klaassen v. Commissioner, T.C. Memo. 1998-241, 1998 WL 352260 (1998). *See also* David Cay Johnston, *Funny, they Don't Look Like Fat Cats*, N.Y. TIMES, (Jan. 10, 1999), *available at* http://www.nytimes.com/1999/01/10/business/funny-they-don-t-look-like-fat-cats.html?sec=&spon=&pagewanted=all) (last visited Jan. 4, 2010).

20 Klaassen v. Commissioner, T.C. Memo. 1998-241, 1998 WL 352260 (T.C. July 2, 1998).

21 *See infra*, notes 47-49 and accompanying text.

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

23 Klaassen statement, *supra* note 7.

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

25 *See infra,* notes 90-92 and accompanying text.

reexamine and reform the law.[26]

The appeal was decided ten years ago; in the meantime, even more families, like the Klaassens, are being caught by the AMT. In 2004, the Ways and Means Committee asked David Klaassen to fly to Washington, D.C. to testify about how the AMT has affected him and his family.[27] He submitted a written statement and testified that he and his wife claimed twelve to fifteen personal exemptions per year for years 1994 through 2004.[28] 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.[29]

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.[30]

Although the Klaassens' cases are relatively old, the cases and their entire story illustrates the ill affects of the AMT on large families. 1.3 Million taxpayers were subject to the AMT in 2001.[31] It is estimated that the AMT will affect between 29 and 33 million taxpayers by 2010.[32] With the passage of time the adverse impact of the AMT on large families will likely continue to

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26 Klaassen v. Commissioner, 1999 WL 197172, at *2.

27 Johnston, *Taxing*, *supra* note 6, at 145. David Cay Johnston notes that David Klaassen was invited to Washington 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." Johnston, *Taxing*, *supra* note 6, at 145.

28 Klaassen statement, *supra n*ote 7.

29 *Id.*

30 *Id.*

31 Gabriel O. Aitsebaomo, *The Individual Alternative Minimum Tax: An Argument in Favor of Repeal*, 74 UMKC L. REV. 335, 337 (2005) [hereinafter Aitsebaomo, *Argument*], *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).

32 *Id.* at 337, *noted in The Alternative Minimum Tax*, CONGRESS. BUDGET OFFICE REVENUE AND TAX POL'Y BRIEF, Apr. 2004 at 2, *available at* http://www.cbo.gov/doc.cfm?index=5386&type=0 (last visited Jan. 4, 2010).

get worse unless Congress takes action to reform or repeal the AMT.

This article will examine the concept and calculation of the AMT, as well as its history and policy objectives. The AMT is thought to be unfair, outdated, complex and unduly burdensome, thus adversely affecting large families. Those criticisms will be examined in turn. It will then be considered whether taxpayers can receive any equitable relief from the court system at which time the plain meaning rule will be examined and any exceptions to the plain meaning rule will be considered as viable options for relief from the court system. The plain meaning rule of statutory construction limits the sources the courts can consider when hearing statute-based disputes.[33] By understanding the rule better, one can more fully appreciate the important role of the legislative branch since it is likely the only branch that can provide equitable relief to families who are are likely to be subjected to the AMT. Possible solutions to the AMT to mitigate or eliminate its harsh affects on families will then be considered.

II. 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.[34] The AMT is defined by "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"[35] and its provisions are found in I.R.C. §§ 55-59.[36] Like the regular income tax, the AMT is computed by determining gross income. The AMT's tax base is called alternative

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33 *See infra*, notes 117-121 and accompanying text.

34 Daniel S. Goldberg, *To Praise the AMT or To Bury It*, 24 VA. TAX REV. 835, 839. *See also* Jobs and Growth Tax Relief and Reconciliation Act of 2003, Pub. L. 108-27, §§ 105, 106, 177 Stat. 752, 755 (2003).

35 I.R.C. § 55. If one's tentative minimum tax is $5000 and one's regular tax liability was $3000, one's AMT tax liability would be $2000 ($5000 - $3000 = $2000). One would pay $3000 in regular income tax plus the $2000 AMT for total of $5000.

36 I.R.C. §§ 55-59. *See also* Aitsebaomo, *Argument*, *supra* note 31, at 343.

minimum taxable income (AMTI).[37] Many deductions that are allowed under the regular income tax system are excluded when computing one's AMTI.[38] Personal and dependent deductions are not to be considered in the AMTI, and the seven and a half percent floor of allowable medical expenses under the regular income tax system is increased to a ten percent floor under the AMT provision.[39] An exemption amount is deducted which allows many taxpayers to avoid AMT liability,[40] but is phased out for higher income earners.[41] 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.[42] Once the AMTI is determined, the AMT tax rate of twenty-six percent or twenty-eight percent is applied.[43] If the taxpayer's tentative minimum tax is more than his or her regular tax liability, the taxpayer is to pay the difference between between the two, which results in the taxpayer's AMT liability.[44]

II. The History and Policy Objectives of the AMT

A. 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 history, 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 AGI in excess of $200,000 paid no income tax in 1966 "by using substantial deductions and exclusions to completely

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37 Goldberg, *supra* note 34, at 840.
38 I.R.C. § 56(b).
39 *Id.*
40 I.R.C. § 55(d), *discussed in* Goldberg, *supra* note 34, at 840.
41 I.R.C. § 55(d), *discussed in* Goldberg, *supra* note 34, at 840-41.
42 See *infra*, notes 50-61 and accompanying text.
43 I.R.C. § 55(b). For income less than $175,000, the twenty-six percent tax rate is applied and for income of more than $175,000, the twenty-eight percent tax rate is applied. *Id.*
44 *Id.*

eliminate their taxable income."[45] By 1969, Congress enacted the add-on minimum tax,[46] the 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.[47]

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.[48] 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

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[45] 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) [hereinafter Aitsebaomo, *Proposal*]. *See also* S. Rep. No. 91-552, 2039 (1969). "Twenty-one of these had incomes over $1 million." *Id.*

[46] Tax Reform Act of 1969, Pub. L. No. 91-172, § 301, 83 Stat. 580-81 (1969). *See also* Aitsebaomo, *Proposal, supra* note 45, at 112.

[47] 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), *available at* 2001 WL 36044094 [hereinafter Joint Comm. Report 2001], *quoting* Staff of Joint Comm. on Taxation, *General Explanation of the Tax Reform Act of 1969,* JCS-16-70, Dec. 3, 1970, at 105.

[48] Aitsebaomo, *Proposal, supra* note 45, at 119. *See also* Staff of Joint Comm. on Taxation, 97th Cong., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

is already limited to a percentage of adjusted gross income.[49]

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

B. 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 (EGTRRA) which patched the AMT temporarily by increasing the exemption amounts provided under I.R.C. § 55(d) for tax years 2001 to 2004.[50] The exemption amount for individual taxpayers was increased to $35,750 from $33,750 and increased for taxpayers filing married filing jointly to $49,000 from $45,000.[51] The Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003 increased the AMT exemption amounts to $58,000 for taxpayers filing married filing jointly and $40,250 for single taxpayers for taxable years 2003 and 2004 only.[52] Under the Working Families Tax Relief Act of 2004, the JGTRRA exemption amounts were extended to 2005.[53] Another patch was enacted for tax year 2006 increasing the exemption amount for married taxpayers filing a joint return to $62,550 and $42,500 for single taxpayers.[54]

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[49] Aitsebaomo, *Proposal*, *supra* note 45, at 119, *quoting* Staff of Joint Comm. on Taxation, 97th Cong., GENERAL EXPLANATION OF THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

[50] The Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, §701(a)(b), 115 Stat. 148 (2001).

[51] *Id.*

[52] The Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, § 106(a), 117 Stat. 752, 755 (2003).

[53] The Working Families Tax Relief Act of 2004, Pub. L. No. 108-311, § 103, 118 Stat. 1166, 1168 (2004).

[54] The Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No 109-222, § 301, 120 Stat. 345, 353 (2006).

A similar patch was passed in 2007 raising the exemption to $66,250 for joint filers.[55]

In 2008, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 was passed.[56] In that legislation, the exemption amounts were once again increased and other AMT adjustments were also made.[57] For "taxable year beginning in 2008," the exemption amount was raised to $46,200 for single filers and $69,950 for married taxpayers filing jointly.[58] Representative Earl Pomeroy 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.[59]

Representative Pomeroy acknowledged that a patch was needed but understood it to 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.[60]

Sadly, Representative Pomeroy's hope was not realized as another AMT relief patch was passed in 2009 as part of the American Recovery and Reinvestment Act of 2009.[61]

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55 Jeanne Sahadi, *One Year AMT Fix is a Done Deal*, http://money.cnn.com/2007/12/19/pf/taxes/amt_vote_walkup/index.htm (last visited Jan. 4, 2010).

56 The Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. No. 110-343, Div. C. § 102, 122 Stat. 3765, 3863 (2008).

57 *Id.*

58 *Id.*

59 Hon. Earl Pomeroy of North Dakota, 154 Cong. Rec. E2149-04, 2008 WL 4377112 (Sept. 24, 2008).

60 *Id.*

61 *See* Pub. L. No. 111-5 §1012 123 Stat. 115, 319 (effective Dec. 31, 2008).

IV. AMT Criticisms as they Relate to Large Families

The AMT has been criticized as unfair, outdated, complex and unduly burdensome. This paper examines these claims in turn in relation to their affect on large families.

A. Unfair

The AMT is particularly unfair to couples who file a joint tax return. It is estimated that in 2009 five percent of married couples filing jointly will owe the AMT while only one percent of single taxpayers will owe the AMT.[62] Under the current law it is expected that forty percent of married couples filing jointly will owe the AMT in 2010 while only three percent of single taxpayers are expected to owe the tax.[63] Since 2007, the exemption amount for married taxpayers has been $66,250.[64] Singles filing received an exemption of $44,350,[65] resulting in the unmarried couple receiving a larger exemption by $22,450.[66] 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 a married couple, but also the point at which the exemption phase-out begins likewise favors two single taxpayers more than a married couple.[67] Since the phase-out begins at $112,500 for singles and $150,000 for married couples,[68] "[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."[69] She also notes that [t]he exemption amount is completely phased out at $330,000 for married couples and at

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62 Katherine Lim & Jeffrey Rohaly, *The Individual Alternative Minimum Tax: Historical and Projections, Updated October 2009*, (Urban Instutute & Brookings Institute (Urban-Brookings Tax Policy Institute), Washington, D.C.), Oct. 2009, at 7, http://www.urban.org/UploadedPDF/411968_AMT_update.pdf (last visited Jan. 6, 2010).

63 *Id.*

64 I.R.C § 55(d)(1).

65 *Id.*

66 *Id.*

67 Angela V. Langlotz, *Tying the Knot: The Tax Consequences of Marriage,* 54 TAX LAW 329, 348-49 (2001).

68 I.R.C § 55(d)(3).

69 Langlotz, *supra* note 67, at 348-49.

$495,000 for two singles, again giving the unmarried couple a tremendous advantage of earning an additional $165,000 before losing the exemption.[70]

B. Outdated

Various tax reform measures under the Bush administration lead to reduced tax rates under the regular income tax system but failed to correspondingly reduce AMT rates.[71] Before the Jobs and Growth Tax Relief Reconciliation Act of 2003, the top regular tax rate brackets included twenty-eight percent, thirty-one percent, thirty-six percent, and thirty-nine percent.[72] While the top regular tax brackets were so high, the AMT rates were at twenty-six percent and twenty-eight percent and there was a substantial exemption to the AMT resulting in the AMT affecting only a few taxpayers.[73] Professor Goldberg credits the increased numbers 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.[74] A narrow spread between regular income tax rates and AMT tax rates results in more taxpayers being subject to AMT liability.[75] Furthermore, as already 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.[76] Yet, without them, the exemption amounts would revert to pre-EGTRRA amounts, having disastrous affects.[77] Therefore, the AMT is outdated as it

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70 *Id.*

71 Aitsebaomo, *Proposal*, *supra* note 45, at 123.

72 Goldberg, *supra* note 34, at 845-46. *See also* JGTRRA, *supra* note 52, at 755.

73 Goldberg, *supra* note 34, at 845. *See also* Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, §§ 13,201, 13,202, 107 Stat. 312, 458, 461-62 (1993) (legislation that lowered regular income tax brackets while leaving the AMT tax rates unchanged); Leonard E. Burman et. al., *The AMT: Projections and Problems*, 100 TAX NOTES 105, 105 (2003).

74 Goldberg, *supra* note 34, at 845.

75 Goldberg, *supra* note 34, at 845.

76 *See infra* notes 79-170 and accompanying text.

77 Aitsebaomo, *Proposal*, *supra* note 45, at 123.

cannot withstand current day 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.[78] The regular income tax has been adjusted for inflation annually since 1985 through adjusting personal exemptions, standard deductions, rate brackets and the earned income credit, but there have been no corresponding changes to the AMT.[79]

The very structure of the AMT disproportionately affects large families.[80] 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.[81] "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. . . .,"[82] 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[83] 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.[84] Yet, a similar credit is not considered when computing the AMT.[85] Not having a similar adjustment before calculating the AMT has the effect of subjecting families with children

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78 Aitsebaomo, *Proposal*, *supra* note 45, at 138.
79 Joint Comm. Report 2001, *supra* note 47, at *17.
80 Aitsebaomo, *Argument*, *supra* note 31, at 350.
81 *Id.*
82 *Id.*
83 I.R.C. § 24.
84 *Id.*
85 Joint Comm. Report 2001, *supra* note 47, at *11.

to AMT liability.[86] The CTC adjustment together with the disallowance of personal exemptions and deductions in the computation of the AMT leads 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 the reach of the AMT into the income tax provisions. Therefore the AMT effectively reduces the benefit of the CTC that is provided. Such consequences are contrary to the tax policy of taxing individuals, in part, based upon ability to pay. Furthermore, the AMT's tax rates at twenty-six and twenty-eight 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.[87]

C. Complex and Unduly Burdensome

The AMT runs parallel to the regular income tax resulting in a system that is exceedingly complex and administratively burdensome.[88] 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 many more taxpayers than just those who are subject to AMT liability.[89] The AMT also involves performing different computations for the same items of income, credits, and deductions, making the AMT difficult and burdensome to compute.[90] 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 instruction relating to these worksheets

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86 *Id.*

87 Goldberg, *supra* note 34, at 846.

88 *Id.*

89 Joint Comm. Report 2001, *supra* note 47, at *10.

90 *Id.*

> 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.[91]

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."[92]

V. Is There Viable Relief Available from the Judicial System?

A. 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.[93] 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.[94] "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."[95] This is especially the situation in AMT cases where the statute is unambiguous, because it is mechanical and clear in the calculations

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91 Joint Comm. Report 2001, *supra* note 47, at *11.

92 Joint Comm. Report 2001, *supra* note 47, at *11.

93 *See infra* notes 95-96 and accompanying text. *See also* United States v. Am. Trucking Assocs., Inc., 310 U.S. 534, 543 (1940) ("[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.").

94 David Shores, *Textualism and Intentionalism in Tax Litigation*, 61 TAX LAWYER 1, 53 (2007).

95 *Id. See also* Gitlitz v. Commissioner, 531 U.S. 206, 220 (2001) ("Because the Code's plain test permits the taxpayers here to received these benefits, we need not address this policy concern"); Commissioner v. Soliman, 506 U.S. 168, 174 (1993) ("In interpreting the words in a revenue Act, we look to the ordinary, everyday senses of the words.") (internal citations omitted); Textron, Inc. v. Commissioner, 336 F.3d 26, 31 (1st Cir. 2003) ("The Supreme Court has repeatedly emphasized the importance of the plain meaning rule, stating that if the language of a statute or regulation has a plain and ordinary meaning, courts need not look further and should apply the regulation as it is written.").

even if the consequences that it produces are contrary to the purposes of the statute's enactment.[96]

In Katz v. Commissioner, 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.[97] The taxpayer in Katz claimed the status of married filing separately, had an adjusted gross income of $46,834.16, itemized deductions of $54,275.81, and $2,800 in personal exemptions.[98] He had no regular income tax liability.[99] 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.[100] The Court dismissed the case during summary judgment and cited the unanimous opinion of Crooks v. Harrelson[101] 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.[102]

The Katz Court concluded that the taxpayer "must look to congress for relief."[103]

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96 *See* Klaassen v. Commissioner, T.C. Memo. 1998 WL 352260; Wiese v. Commissioner, 2005 WL 1677527 (U.S. Tax Ct.) (upholding the assessment against the taxpayers by the IRS because the calculations were correct based on the unambiguous statute). *See also infra* notes 97 – 114 and accompanying text.

97 Katz v. Commissioner, T.C. Memo 2004-97, 2004 WL 739852.

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id., quoting* Crooks v. Harrelson, 282 U.S. 55, 60 (1930).

102 *Id., quoting* Crooks v. Harrelson, 282 U.S. 55, 60 (1930).

103 Katz v. Commissioner, 2004 WL 739852 at *3.

In Wiese v. Commissioner, the Wieses claimed three personal exemptions, one of which was for the disabled brother of James Weise, as well as a $2,914 deduction for medical expenses (in excess of seven and a half percent of the taxpayers' adjusted gross income), and deductions for state and local income taxes, and real estate taxes in the amounts of $32,099 and $20,445, respectively, in 2002.[104] 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.[105] 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).[106] The Weises faced a financially-disastrous business failure in the 1990's that left their state and local income taxes and real estate taxes accrued but unpaid until they were able to catch up in 2002.[107] For both the Klaassens and the Weises, the AMT was assessed on the basis of the provisions that disallow deductions for State and local income taxes and real estate taxes,[108] allow deductions for medical expenses only in excess of ten percent of the taxpayers' AGI,[109] and the exclusion of all personal exemptions,[110] thereby attacking large families and families having ill or disabled children or other dependants.

The court in Weise said that "[t]he clearest expression of legislative intent is found in the actual language used by Congress in enacting legislation."[111] The Weise Court quoted favorably the United States Supreme Court's decision in United States v. Am. Trucking Associations, Inc.,

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104 Wiese v. Commissioner, 2005 WL 1677527, at *3.
105 *Id.*
106 *Id.*
107 *Id.*
108 I.R.C. § 56(b)(1)(A)(ii).
109 I.R.C. § 56(b)(1)(B).
110 I.R.C. § 56(b)(1)(E).
111 Wiese v. Commissioner, 2005 WL 1677527, at *3.

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."[112] The Tax Court also followed the reasoning of Rath v. Commissioner which held that the plain language of the statute would be controlling unless doing so would produce absurd results.[113] Finally, the Weise 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."[114]

In Weise, while impressed with the "conscientious taxpayers who take their tax responsibilities seriously and follow the rules,"[115] the court ultimately held that the Weises 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."[116] Yet perhaps there is a glimmer of hope for the taxpayer who seeks relief from the court system when absurd results are produced or when there is legislative intent to the contrary.

B. Plain Meaning Rule and Textualism

Since the plain meaning rule of statutory construction is applied to AMT tax cases, it is important to understand the rule and examine if there are any viable exceptions to the rule. Any possibility that would allow courts to consider legislative history and tax policy with regard to the AMT could produce a more equitable result for a burdened taxpayer. Because it is not a viable option, however, based on the available precedent previously discussed, it is nevertheless

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112 *Id., quoting* United States v. Am. Trucking Associations, Inc., 310 U.S. 534, 543 (1940).

113 Wiese v. Commissioner, 2005 WL 1677527, at *3, *quoting* Rath v. Commissioner, 101 T.C. 196, 200 (1993).

114 *Id., quoting* Burlington N. R.R. Co. Okla Tax Comm., 481 U.S. 454, 461 (1987).

115 Wiese v. Commissioner, 2005 WL 1677527, at *4.

116 *Id.*

beneficial to understand why equitable statutory construction is not a viable option to illustrate the importance and urgency needed for Congress to take action (since a permanent solution to the inequities of the AMT rests solely in the hands of Congress). The plain meaning rule as applied to tax cases presents a greater concern because equity is an overarching policy goal of the tax code and the plain meaning of the AMT statutes produce inequitable results.

The plain meaning rule "is a rule of statutory construction . . .'followed by jurists who subscribe to a textualist approach, which asserts the 'primacy of the language and structure of the statute as the basis for discerning Congress' intent in enacting the law.'"[117] There are multiple benefits to the plain meaning rule. The plain meaning of the text is more reliable than legislative history when gleaning the intent of the legislative branch,[118] particularly considering the statute is the final expression of all that was considered during the legislative process. The plain meaning of the statute is "more accessible and comprehensible to officials and citizenry affected by the legislation"[119] and the plain meaning rule is a more effective vehicle in constraining judicial discretion than by having recourse to legislative history.[120]

One criticism against the plain meaning rule is that one must look to the language of the statute unless that language produces absurd results. Yet, often it is difficult to ascertain whether absurd consequences will result when limited to the text of the statute itself.[121]

The plain meaning rule has gone through various forms[122] ranging from a strict formalist approach where the words of the statute were interpreted literally even if such a rule would lead

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117 Eric S. Lasky, *Perplexing Problems With Plain Meaning*, 27 HOFSTRA L. REV. 891, 891, *quoting* Eric W. Lam, *The Limit and Inconsistency of Application of the Plain Meaning Rule to Selected Provisions of the Bankruptcy Reform Act of 1994*, 20 HAMLINE L. REV. 111, 111 (1996).

118 *Id.* at 892. *See* William N, Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990).

119 *Id. See* William N, Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990).

120 *Id. See* William N, Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990).

121 *Id. See* Lam, *The Limit and Inconsistency,* supra note 117.

122 *Id.*

to absurd results[123] to a type of golden rule which will apply the facts to the literal plain meaning of a statute unless such application would lead to absurd results.[124]

Supreme Court Justice Scalia's approach for statutory interpretation has been dubbed the "new textualism."[125] This variation of the golden rule is characterized by "refusing to use statutory purpose to determine the meaning of a statute, but also considers the use of statutes *in pari materia* (upon the same matter or subject) in determining meaning."[126] Despite the multiple variations of the plain meaning rule, when it is invoked, controlling weight is given to the text of the statute itself.[127] In other words, the statute's meaning is gleaned by examining the very wording of the statute.[128]

When interpreting the Tax Code, and in particular the AMT provisions, courts adopt a form of textualism where the statutory language provides the clearest expression of Congress' intent even when the application of the plain meaning rule results in absurd or inequitable results, such as the Klaassen case.[129] However, Courts will often look to other Code provisions, legislative history, statutory structure and tax policy when determining the meaning of specific

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123 *Id. See also* Daniel A. Farber, *The Inevitability of Practical Reason: Statutes, Formalism, and the Rule of Law*, 45 VAND. L. REV. 533, 544 (1992).

124 Lasky, *supra* note 117, at 896. *See also* R. Randall Kelso, *Statutory Interpretation Doctrine on the Modern Supreme Court and Four Doctrinal Approaches to Judicial Decision-making*, 25 PEPP L. REV. 37, 48 (1997).

125 Lasky, *supra* note 117, at 898, *discussing* William N Eskridge, Jr., *Should the Supreme Court Read The Federalist but Not Statutory Legislative History?*, 66 GEO. WASH. L. REV. 1301, 1302 (1998).

126 *Id.* at 897-98. *See also* Maxwell O. Chiundu, *Structure and Structuralism in the Interpretation of Statutes,* 62 U. CIN. L. REV. 1439, 1456 (1994); Kelso, *Statutory Interpretation Doctrine*, *supra* note 124, at 54.

127 *Id.* at 898.

128 Gregory E. Maggs, *Reconciling Textualism and the Chevron Doctrine: In Defense of Justice Scalia*, 28 CONN. L. REV. 393, 396 (1996). *See also* Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54, (1992) ("[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last; judicial inquiry is complete.") *quoted in* Am. Online, Inc., v. United States, 64 Fed.Cl 571, 577 (Court of Federal Claims March 30, 2005); Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of a statute is determined by reference to the statute itself, the specific context in which that language is used, and the broader context of the statute as a whole.") *quoted in* Am.Online, Inc., v. United States, 64 Fed.Cl 571, 577 (Court of Federal Claims March 30, 2005).

129 *See* Klassen v. Commissioner, T.C. Memo.1998-241, affd. without published opinion 182 F.3d 932 (10th Cir. 1999); Wiese v. Commissioner, 2005 WL 1677527, at *4.

words when the statutory language is ambiguous.[130]

Professor Michael Livingston of Yale discusses that it is particularly difficult to apply the plain meaning rule to tax law cases simply due to the very nature of tax law itself.[131] He notes that the tax code is not "a series of unrelated enactments,"[132] but is self-contained, highly contextual, extremely detailed and frequently amended.[133] Due to the unusual nature of tax law, courts should consider legislative history that explains a provision of the Code.[134] Professor Livingston notes:

> The plain meaning rule is not helpful because there is so rarely a plain meaning in tax cases. Plain meanings are rare because of the contextual style of tax decision-making and the need to relay upon nonstatutory sources for the definition of even basic tax terms. Attempting to categorize tax provisions as 'ambiguous' or 'unambiguous' may actually obscure the issues in a case.[135]

He suggests that courts should consider legislative history when the history explains a statute and does not just embellish it.[136] "[I]n interpreting tax statutes, notions such as the plain meaning rule and legislative intent must be considered *in light* of the peculiarities of the tax legislative process."[137] He contends "[t]he tax legislative process does not support a plain meaning approach. Because of the conceptual nature of that process, there is little reason to assume that the statutory language is always right and the committee reports, or other legislative history, are wrong."[138] Livingston therefore suggests that courts should give greater deference to legislative history that primarily explains a statute's meaning and purpose as opposed to legislative history

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130 Shores, *supra* note 94, at 53.

131 Michael A. Livingston, *Congress, the Courts, and the Code: Legislative History and the Interpretation of Tax Statutes*, 69 TEX. L. REV. 819, 826. (1991).

132 Livingston, *supra* note 131, at 827.

133 *Id.*

134 *Id.* at 850.

135 *Id.* at 872.

136 *Id.* at 881.

137 *Id.* at 819 (emphasis added).

138 *Id.* at 872.

that applies a statute to an example.[139]

Professor David Shores makes a distinction between cases that turn on an issue of statutory construction that arise from statutes that are general in nature, like section 162 that allows ordinary and necessary business deductions and those where a statute is highly specific.[140] When answering questions of the more general type, David Shores says that:

> courts will often look to legislative history, statutory structure, or tax policy in an effort to determine exactly what Congress intended when it adopted the provision or term in question [and that such an] intentionalist approach is, of course, in keeping with conventional rules of statutory construction that call for a determination of congressional intent when no clear answer can be obtained by applying the statutory language to the issue at hand.[141]

While both Professor Livingston and Professor Shores' suggestions may be helpful to the tax context in general, their suggestions would do little to assist taxpayers burdened with the AMT provisions. The AMT provisions are specific in nature and rigid in what calculations are required. Looking at a family's circumstance in light of the legislative history will not change how the calculation is applied.

C. Are there any Viable Exceptions to the Plain Meaning Rule?

Regardless of whether courts should consider the legislative history, such as those situations that professor Livingston discusses,[142] there are exceptions carved out of the plain meaning rule that allow courts to consider legislative history and intent. Yet those exceptions have not been applied in the AMT context.[143] For example, courts may consider a statute's legislative intent when the application of a statute's plain meaning would lead to absurd or futile

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139 *Id.* at 819.

140 Shores, *supra* note 94, at 53.

141 *Id.*

142 Livingston, *supra* note 131, at 881.

143 *See* Hillman v. I.R.S, 250 F.3d 228, 232-33 (4th Cir. 2001), *rev'g* 114 T.C. 103 (2000) (Taxpayers are arguing that a plain meaning rule exception should apply to I.R.C. § 469).

results,[144] but this was not done in Klaassen or other AMT cases with similar "absurd" results.

Rath v. Commissioner held that controlling effect will *generally* be given to the plain meaning of a statute unless doing so would produce absurd results.[145] However, it is unclear what an "absurd result" means for the courts when deciding AMT cases. There is no direct precedent where the application of the AMT lead to absurd results such that a court decided to grant equitable relief. In Speltz v. Commissioner, the taxpayers, a family with three children,[146] were liable for over $125,000 in AMT due to the exercise of incentive stock options.[147] However, the stock acquired by the Speltz's upon exercising their incentive stock options "dropped precipitously."[148] 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."[149] 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 Speltz's plight as a perceived hardship when the harm they and their children suffered was both real and extensive.[150] The Tax Court noted how the AMT affected the Speltz's lifestyle:

> Lifestyle changes were necessary, including: Petitioner June M. Speltz had to get a

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144 United States v. Am. Trucking Assocs., Inc., 310 U.S. 534, 543 (1940).

145 Rath v. Commissioner, 101 T.C. 196, 200, 1993 WL 338664 (U.S. Tax Ct.).

146 Speltz v. Commissioner, 124 T.C. 165 (2005).

147 *Id.*

148 *Id.* at 166.

149 *Id.* at 167. The court then lists the following cases where taxpayers have sought relief from the AMT on equitable grounds and have been denied that relief: Alexander v. Commissioner, 72 F.3d 938 (1st Cir. 1995), affg. T.C. Memo. 1995-51; Okin v. Commissioner, 808 F.2d 1338 (9th Cir. 1987), affg. T.C. Memo. 1985-199; Warfield v. Commissioner, 84 T.C. 179 (1985); Huntsberry v. Commissioner, 83 T.C. 742, 747-753 (1984); Prosman v. Commissioner, T.C. Memo. 1999-87; Klassen v. Commissioner, T.C. Memo.1998-241, affd. without published opinion 182 F.3d 932 (10th Cir. 1999).

150 *Id.*

> 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.[151]

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.

Also, there is a frustration of purpose exception that allows the Legislative intent to control "when the plain meaning of the statute produces results demonstrably at odds with the intentions of its drafters."[152] In the AMT context, this exception seems to be the strongest contender in allowing courts to decide cases contrary to the plain meaning of the AMT statutes, because the specific AMT provisions are at odds with its policy objectives. The frustration of purpose argument fails when "[a]pplication of 'broad purposes' of legislation at the expense of specific provisions ignore . . . the complexity of the problems Congress is called upon to address and dynamics of legislative action."[153] "Congress may be unanimous in its intent to stamp out the vague social or economic evil; however, because its members may differ sharply on the means for effectuating that intent, the final language of the legislation may reflect hard-fought compromises."[154]

The consideration of legislative history would greatly help the taxpayer burdened with the AMT when the AMT produces inequitable results. Not only can consideration of legislative

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151 *Id.*

152 Am. Online, Inc. v. United States, 64 Fed. Cl. 571, 577 (Fed. Ct. Appeals March 30, 2005); *see also* United States v. Ron Pair Enters., Inc. 489 U.S. 235, 242 (1989); United States v. Am. Trucking Assocs., 310 U.S. 534, 543 (1940).

153 *Id., quoting* Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp., 474 U.S. 361 at 373-74 (1986).

154 *Id., quoting* Bd. of Governors of the Fed. Reserve Sys. v. Dimension Fin. Corp., 474 U.S. 361 at 373-74 (1986).

history help illuminate drafting errors,[155] but such consideration would also give context to the statute in how it should be applied beyond the mechanics of the calculations.

Yet, if courts provide such equitable relief, they should do so carefully as textualism definitely has its place, particularly when dealing with tax issues. Professor John F. Coverdale argues that courts should not adopt antitextual readings of statutes when deciding tax cases and considers three landmark tax cases where courts have made decisions based on antitextual readings of the applicable code provision.[156] For Coverdale, antitextual means imposing interpretations on the text of the statute that neither the statute itself nor the legislative history supports.[157] While antitextual interpretations are beyond the scope of this paper, Coverdale does discuss textualism in connection with the Code and believes the statutory language is "the best evidence of the legislature's intent."[158] He further states:

> In cases in which a party urges the court to reject the solution required by the text enacted by Congress and to impose on the statute a reading its text will not bear, 'the debate is to be conducted before Congress, and resolution against the presently prescribed system is to be effected by statutory amendment rather than judicial gerrymandering of the existing provisions.'[159]

As exemplified in the cases of Klaassen, Weise, and Katz, discussed above, that is exactly what happened. "[W]hen courts seek to determine congressional intent and legislative purpose, their

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155 Lasky, *supra* note 117, at 892. *See also* Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. CAL. L. REV. 845, 869 (1992).

156 John F. Coverdale, *Text as Limit: A Pleas for a Decent Respect for the Tax Code*, 71 TUL. L. REV. 1501, 1501 (1997).

157 *Id.* at 1504-05.

158 *Id.* at 1518, *quoting* Earl M. Maltz, *Statutory Interpretation and Legislative Power: The Case for a Modified Internationalist Approach* , 63 TUL. L. REV. 1, 22 (1988).

159 *Id.* at 1520, *quoting* Gott v. Walters, 756 F.2d 902, 916 (D.C. Cir.) (Scalia, J.), vacated, 791 F.2d 172 (D.C. Cir. 1985); see also Continental Can Co. v. Chicago Truck Drivers, 916 F.2d 1154, 1160 (7th Cir. 1990) (Easterbrook, J.) ("disappointment with the results may supply a good reason for Congress to change the law; it does not provide a reason for a court to change the law.").

focus should be on 'the purposes Congress sought to achieve by the words it used,'[160] rather than on 'disembodied purposes, reasons cut loose from language.'"[161]

In addition to respecting the relative and separate roles of the legislative and judicial branches with respect to textual interpretation, Congress chose to enact the Code in a rule-like form and such a formal form ought to be respected.[162] Yet such precise rules come at a high cost in that Congress cannot contemplate every circumstance to which such a rule will be applied.[163] "Rules will, therefore, in a number of cases, produce decisions different from those courts would render if they were free simply to do justice by taking into account all relevant circumstances.[164] Furthermore, since Congress choose such formal form in enacting the Code, "[using] legislative history and an imputed 'spirit' . . . dishonors the legislative choice [of a rule] as effectively as expressly refusing to follow the law."[165]

Professor Coverdale also believes that courts should not update the code by interpreting statutes in light of developments that occur after the statute was enacted rather than interpreting the statute itself.[166] Yet, since legislation is enacted frequently, particularly within the Code, and such legislation is affected by other code provisions, courts should take into consideration, at the very minimum, other related code provisions. For instance, as previously discussed, the Jobs and Growth Tax Relief Reconciliation Act of 2003 lowered the top regular tax rate bracket from thirty-nine percent[167] to thirty-five percent without a proportional reduction to the AMT tax

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160 *Id.*, *quoting* Walton v. United Consumers Club, Inc., 786 F.2d 303, 310 (7th Cir. 1986) (Easterbrook, J.).

161 *Id.*, *quoting* Walton v. United Consumers Club, Inc., 786 F.2d 303, 310 (7th Cir. 1986) (Easterbrook, J.).

162 *Id.* at 1521-22.

163 *Id.* at 1523.

164 Coverdale, *supra* note 156, at 1523.

165 *Id.* at 1525, *quoting* Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 HARV. J.L. & PUB. POL'Y 61, 67 (1994).

166 *Id.* at 1525-26.

167 Goldberg, *supra* note 34, at 845-46.

brackets which stand at twenty-six percent and twenty-eight percent.[168] Perhaps the courts should consider such code provisions when applying the AMT. Congress could not have intended certain taxpayers to be trapped by the AMT when Congress did not know that those taxpayers would be ushered into the AMT provisions by subsequent legislation, even if the AMT provisions as written were unambiguous. The clearest expression of legislative intent is not always found within the statute itself, but should be read in light of, at a bare minimum, other code provisions. Failure to do so will often lead to absurd results.

VI. 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. Comissioner, "[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."[169] Also, the court in Katz quoted the Supreme Court case discussing 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 of § 6501. Courts are not authorized to rewrite a statute because they might deem its effects susceptible of improvement.[170]

Congress must then solve this issue. Article 1, section 1 of the Constitution vests all legislative

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168 Goldberg, *supra* note 34, at 845.

169 Kenseth v. Commissioner, 259 F.3d 881, 885 (7th Cir. 2001), affg. 114 T.C. 399 (2000).

170 Bradaracco v. Comissioner, 464 U.S. 386, 398, 104 S.Ct. 756 (1984).

power in Congress making Congress the primary policymaker, not the courts.[171]

While there are numerous benefits to the plain meaning rule, like simplification, one must consider to what extent equity suffers since 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.

VII. Possible Solutions to the AMT that Congress Should Consider

A. Exempt Taxpayers with an Adjusted Gross Income (AGI) 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[172] Because middle 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.[173] 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."[174]

Such a remedy would be a more permanent fix to the problem as opposed to the exemption patches that Congress must pass yearly.[175] 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

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171 Coverdale, *supra* note 156, at 1525; *see also* U.S. Const. Art. I, § I.
172 Aitsebaomo, *Proposal*, *supra* note 45, at 139.
173 *Id.*
174 Obama, Address in Dover, N.H., *supra* note 4.
175 Aitsebaomo, *Proposal*, *supra* note 45, at 139.

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.[176] This type of provision, therefore, would not only relieve the middle class taxpayer by eliminating their AMT liability, but would also 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.[177]

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

Professor Aitsebaomo also suggests another way to provide relief to middle-income taxpayers, by increasing the AMT tax brackets and exemption amounts yearly to account for inflation.[178] 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.

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

Like the Klaassens and Weises, 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.[179] 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

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176 *Id.*
177 *Id.*
178 Aitsebaomo, *Proposal*, *supra* note 45, at 139.
179 *Id.* at 140.

like a lot of money, but when a couple must provide the basic necessities of life, such as food and clothing, for twelve, thirteen, 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 likewise 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.[180]

D. 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 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.

E. Repeal the AMT Altogether

Perhaps Congress should just repeal the AMT altogether because it does not fulfill the policy objective of insuring 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 from the Joint Committee on Taxation as late as in 2001. The Joint Committee noted:

> that the 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

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180 Aitsebaomo, *Proposal*, *supra* note 45, at 140.

> 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.[181]

VIII. Conclusion

Middle and upper-middle income families, particularly large families, are adversely affected by the AMT. While its original intentions were equitable, the forty-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.

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[181] Joint Comm. Report 2001, *supra* note 47, at *12-13.