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MEMORANDUM

TO: Obesity and tax policy "brain trust" participants
FR: Campaign to End Obesity Staff
RE: February 4th meeting: The Role of Tax Policy in Addressing America's Obesity Epidemic
DT: January 30, 2013

MEETING LOGISTICS:

Date: **Monday, February 4th, 2013**
Time: **11 a.m. – 2:30 p.m.**
Location: **Congressional Meeting Room North (U.S. Capitol Visitors' Center)**

AGENDA/ITEMS FOR CONSIDERATION

The agenda for the meeting will be as follows:

11 am	**Welcome and Introductions**
11:15 am	**Introductions/Background Discussion**
Noon	**Lunch**
12:30 pm	**Discussion of Existing Policy Proposals**
1:30 pm	**New Ideas**

The format of our discussion will be to discuss proposed and other possible tax policies that may be available to respond to the U.S. obesity epidemic. Typically, these fall into three main buckets:

1. Tax policy as an incentive for certain behaviors;
2. Tax policy to disincent unwanted behaviors; and
3. Tax policy to facilitate community access to healthy lifestyles

These discussions will be moderated by Alex Brill, a tax expert and former chief economist to the House Committee on Ways and Means.

BACKGROUND

The use of the federal tax code as a means for implementing public policy has been employed since America's founding days when taxes were viewed as a "means for shaping the national economy, bringing foreign nations to fair commercial terms, regulate morals, and realizing… social reforms."[1] Since 1917, for example, the federal

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[1] Daniel M. Reach, *Fitness Tax Credits: Costs, Benefits, and Viability*, 7 Nw. J. L. & Soc. Pol'y. 352 (2012),

government has allowed taxpayers to deduct charitable donations from their taxable income.[2] Subsequently, the U.S. tax code has been used to incentivize such important societal and economic goals as retirement saving, healthcare, homeownership and higher education, among others. As obesity rates continue to rise, the federal government must not only expand traditional public health responses but also look for new opportunities, such as tax policy measures, as potential approaches to reverse the current epidemic.

The tax code provides an attractive vehicle for social change because it allows government to minimize the bureaucracy and frequent Congressional reviews often inherent in other direct spending programs. Additionally, tax policies are fully separate from the annual federal budgeting process.

A number of tax proposals have been put forward seeking to address obesity already. Some such proposals have all come with the promise of raising revenues for federal coffers (though in practical terms, most general tax revenues cannot be earmarked for other spending). The most popular – albeit controversial – such proposal has been a tax on sugar-sweetened beverages. The Congressional Budget Office (CBO), during debate over the Patient Protection and Affordable Care Act, reported that placing a 3 cent tax on a 12 ounce sugar sweetened beverage would raise $24 billion in new revenues for the U.S. Treasury over four years.

Of course, the sugar-sweetened beverage tax proposal has sparked interest and debate. Proponents point to the success of other so-called "sin taxes" in lowering consumption, while opponents question unintended effects. That said, the sugar-sweetened beverage tax is one of a small handful of existing proposals to tackle obesity. Now is an important time, as Congress considers a broad array of tax policy approaches and options, for stakeholders in the fight against the obesity epidemic to consider whether there are yet other measures that could also be considered and put forth.

EXISTING PROPOSALS

Using the tax code in an effort to facilitate healthy lifestyle choices is by no means a novel approach. For years, Congress has considered legislation that would allow for tax-preferred treatment for certain healthy lifestyle behaviors, though none of these proposals have yet been enacted.

Tax Policies to Incent Healthy Behaviors

Through the use of the U.S. tax code, federal and state governments may be able to encourage many Americans to partake in healthier behaviors – such as eating more nutritious meals and increasing physical activity. Combined, these behaviors have the

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http://scholarlycommons.law.northwestern.edu/njlsp/vol7/iss2/4

[2] The Economist, *Charity and Taxation: Sweetened Charity.* (2012), http://www.economist.com/node/21556570

potential to help combat the obesity epidemic in America. Perhaps the most well-known pieces of legislation that have been advanced in recent years relate to the ability – for employers and individuals – to receive tax benefits for engaging in activities designed to promote physical activity and wellness. Such benefits would effectively lower the cost of these activities to purchasers. Existing proposed legislative policy options include:

- ✓ **The "Personal Healthy Improvement Today (PHIT) Act" (H.R. 2649)**

The Personal Health Improvement Today (PHIT) Act introduced by Rep. Kevin Brady (R-TX) would expand the definition of a medical expense to include physical activity and, therefore, would allow for expenditures for physical activity programs and equipment to be paid using pre-tax health investment accounts. Popular examples of such accounts are flexible spending accounts (FSAs) and health savings accounts (HSAs). These accounts allow individuals to set aside a certain portion of their earnings to pay for certain medical expenses not covered by insurance.

- ✓ **The "Workplace Health Improvement Program (WHIP) Act" (S. 1644)**

The Workplace Health Improvement Program (WHIP) Act whose lead sponsors are Senator John Cornyn (R-TX) and Tom Harkin (D-IA) in the Senate and Rep. Ron Kind (D-WI) in the House of Representatives, would allow tax preferential treatment to employers offering off-site wellness benefits to employees as well as exclude the benefit from the employees' taxable income for that year. The goal of the approach is to provide employers the proper incentive to facilitate healthy lifestyles for their employees.

<u>Tax Policies to Dis-Incent Unwanted Behaviors</u>

Alternatively, as we have discussed briefly above, tax policy has been used to disincent certain behaviors. There are many common examples of this currently in existence – from taxes levied on cigarettes to those on alcohol. Historically, data has shown that smoking controls which include sales or excise taxes on tobacco products have brought down smoking rates in the United States. Building on this idea, 17 states and the District of Columbia have placed specific taxes on foods and/or beverages that are considered of low nutritional value in hopes of achieving similar rates.

These so-called "sin taxes" have at times been criticized for being regressive, ineffective, and or an overreach by government. Proponents of such taxes often argue that the revenues derived from such taxes can be used for other social means or projects. In 1994, Dr. Kelly Brownell of Yale University proposed a so-called "fat tax" that would increase the cost of unhealthy foods. Dr. Brownell's proposal was that revenues raised from these taxes could subsidize the costs of healthier foods. It bears noting that, at the federal level, it is generally not possible to earmark tax revenues for specific programs/projects with the exception of certain "user fees" and "excise taxes." Among proposed policy options to disincent unwanted behaviors include:

- ✓ **Consumption taxes**

“Snack taxes” have been proposed in many states – and even adopted in a few such as Maine and California – as a way to alter unwanted behavior. These proposals have not, as of yet, been shown to curb consumption rates in the same way taxes on tobacco products have, though they offer the added benefit of being revenue generators and can provide key funding to community anti-obesity programs.

In the state of Maryland, the legislature proposed a tax place a tax on specific snack foods. In return, the proceeds would fund anti-obesity programs for kids by providing grants for organizations fighting obesity and keeping kids active and teaching about healthy eating.

Many states have considered or implemented a tax on sugar-sweetened beverages at the point of purchase in an effort to decrease their consumption. However, some research suggests that the current taxes – in places where they exist – are too small to truly effect consumption. In 2010, for example, the state of New York proposed an excise tax of one percent per ounce on sugar-sweetened beverages, which was expected to increase the price of soft drinks by 17 percent on average and raise approximately $450 million in the first year. The proposal was eventually defeated. That said, it serves as a present and potentially enticing option for the federal government and many other state governments looking for ways to curb the obesity epidemic and raise revenues needed particularly since few resources are available in states or at the federal level for new federal programs designed to improve healthy lifestyle choices.

<u>Tax Policies to Enhance Access to Resources</u>

Beyond using the tax code to promote or discourage certain behaviors, tax policy may be used to improve access for target populations to resources they may lack.

By way of background, for example, food distributors and grocers may lack proper incentives to conduct business in certain communities, or to do so profitably. Traditional investments in what may be costly infrastructure improvements needed to bolster active lifestyles have not been viable to many because of a lack of resources. The tax code could, in theory, be used to address both of these concerns.

Existing proposed legislative policy options under this topic include:

- ✓ **Tax incentives for food distributors**

Last Congress, Rep. Steve Cohen (D-TN) introduced H.R. 1542, the Supermarket Tax Credit for Underserved Areas Act. This proposal, which has not been reintroduced yet, would create tax incentives for food distributors to construct supermarkets in areas designated by the U.S. Department of Housing and Urban Development as underserved,

or "food desert," areas. H.R. 1542 would have created a tax credit for food distributors who built new supermarkets in these communities as well as established a credit for the sales of fresh fruits and vegetables from farmers markets and community gardens. Representative Cohen's bill would have also increased the work opportunity tax credit, a current program that provides employers a federal tax credit from a certain target population, to encourage hiring disadvantaged youth, local residents and veterans. Studies show that better access to supermarkets or grocery stores corresponds with healthier eating. For every additional supermarket in a census tract, produce consumption increases 32 percent for African-Americans and 11 percent for whites.[3]

POTENTIAL NEW APPROACHES

Though we have cited some examples of existing tax proposals to help combat the obesity epidemic, the full potential of the tax code as a tool in the fight against obesity is still relatively unknown. Moreover, many tax policymakers are eager for new, innovative thinking in this area. In this part of our discussion, we will focus on new and innovative ways to leverage the tax code to implement change.

Tax Policies to Incent Healthy Behaviors:

A question for stakeholders is whether we can or should identify/support new policy proposals to incentive certain behaviors. Potential tax incentive policy options include:

- ✓ **Personal tax credits for engaging in certain behaviors**

As indicated above, providing individuals the opportunity to receive a tax credit for engaging in certainly healthy lifestyle choices is another example of using the tax code to alter behaviors. Whether the wanted behavior is utilizing alternative modes of transportation, joining a gym, or purchasing foods with greater nutritional value at the grocery store, there is no shortage of the type of behavioral change needed to address the obesity epidemic.

The PHIT and WHIP Acts are examples of policies designed to use the tax code as an incentive for certain behaviors. Other incentives may also be appropriate for supporting or driving behavioral change. The February 4th meeting will include a discussion of what desired behaviors can be incented through tax policy, and what policy steps might incent them.

- ✓ **Tax benefits for the purchase of certain foods**

Americans make choices about their food options on a daily basis. To date, few financial incentives exist for consumers to make healthy choices; by contrast, many studies show that foods which are cheapest and most accessible are often the least healthy choices. To combat this, farmers' markets in some states around the country have begun

[3] Sarah Treuhaft and Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Food and Why it Matters., http://www.thefoodtrust.org/pdf/GroceryGap.pdf.*

providing “bonus dollars” to SNAP recipients when they purchase a certain amount of healthy, local produce. Taking this a step further, the tax code could be used to reduce the cost to individuals of making healthy food purchases, particularly at farmers’ markets.

- ✓ **Tax subsidies for the production of certain foods**

Additionally, the idea of providing tax subsidies to the production of certain foods could be an attractive policy alternative. Currently, federal production tax credits are popular within the energy sector. Whether it is for the development of renewable energy or making investments in energy efficiency, the federal government provides an incentive to these activities via a tax credit to the producing company, which, in theory, is ultimately delivered to the consumer via lower energy costs.

Similarly, the federal government could provide a production tax credit for the farming of certain foods and produce. This might effectively lower the cost to produce these foods and, in theory, lower the prices of these goods in retail locations.

Tax Policies to Facilitate Access to Healthier Lifestyles
Again, focusing on new proposals to help improve access to healthy lifestyles, tax policy proposals could include:

- ✓ **Tax-free bonds for community improvement investments**

Municipal bonds are issued to buyers who are incented to purchase them, and provide funds to municipalities, by federal tax laws that exempt bond returns from capital gains or other applicable taxes. One question to consider would be whether tax-free bonds could be used as a way to raise resources for building or enhancing infrastructure to improve active lifestyles.

- ✓ **Facilitating access to capital for community projects to increase access to healthy lifestyles**

Access to the tools and information needed to lead a healthy lifestyle is one of the major hurdles in combating obesity in America. One of the impediments, as we have discussed earlier, is the lack of access to fresh, affordable produce and safe places to be physically-active. This is especially pronounced in distressed communities.

Can we, then, use the tax code to drive investment in, and the proliferation of, needed resources in targeted communities? Much like by providing tax-free bonds for investments in the community, the government could provide tax benefits to drive micro-lending or other investments in certain communities and for certain projects. One such example might be to provide the ability for investors to pass through any capital losses from investments they make in such projects.

Another idea might be to create an incentive for banks to make loans for certain projects promoting/facilitating healthy lifestyles. When banks make loans to individuals or entities, they charge an interest on the loan. These interest payments are considered taxable income by the federal government. One possibility would be to deduct the percentage of this income that is subject to tax by a certain percentage (i.e. 20 percent). By creating an incentive for banks to make loans for certain purposes – building a gym, opening a healthy food store, etc. – it could lower borrowing costs, thus facilitating access to more healthy lifestyle choices.

OTHER ISSUES

A hurdle that many in public health frequently have to overcome in pushing forward policy changes relates to the cost of a proposal. Given the current environment in Congress, new proposals that have significant revenue implications (especially those that have a significant 'price tag') have a hard time getting through Congress.

Similarly, in pushing forth obesity mitigation strategies, we must be mindful of the intended beneficiary population. Therefore the idea of "means testing" some of these policy proposals may be appropriate. For our discussions, the question will then be, in the policies we discuss, what audience are we attempting to affect and should there be limitations – particularly on the beneficiaries' income level – for eligibility.

Lastly, states and localities also possess the requisite power to leverage tax policy through excise taxes, tax forgiveness, and other means. Because states and localities are able to control property and other taxes, they also have the ability to implement policies to help combat overweight and obesity. While our discussion may not allow a deep dive into state and local policymaking, it bears noting that important tax activity occurs at these levels.

These are a few of the many ways in which stakeholders may wish to consider tax policy options for driving change and reducing obesity. Because this discussion is intended to help identify potential new policy ideas, we urge you as a discussant to bring additional, innovative ideas to the table for discussion. This memo is, by no means, intended to be comprehensive in that regard, but to provide a baseline for discussion. As such, any new ideas for consideration/discussion would be very much welcomed and appreciated. We look forward to seeing you on Monday, February 4th.

APPENDIX

- The “Personal Health Improvement Today (PHIT) Act”
- The “Workplace Health Improvement Program (WHIP) Act”
- The “Supermarket Tax Credit for Underserved Areas Act”

112TH CONGRESS
1ST SESSION

H. R. 2649

To amend the Internal Revenue Code of 1986 to treat certain amounts paid for physical activity, fitness, and exercise as amounts paid for medical care.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2011

Mr. BRADY of Texas (for himself, Mr. KIND, Mr. CLAY, Mr. GERLACH, Mr. BARTON of Texas, Mr. MCINTYRE, Mr. PAUL, Mr. BLUMENAUER, Mr. RUPPERSBERGER, and Mr. SHUSTER) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to treat certain amounts paid for physical activity, fitness, and exercise as amounts paid for medical care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Personal Health In-
5 vestment Today Act of 2011" or the "PHIT Act of 2011".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

1 (1) almost 20 percent of American children be-
2 tween the ages of 2 and 19 are overweight or suffer
3 from obesity;
4 (2) 8 of the 9 most expensive illnesses in the
5 United States are more common among overweight
6 and obese individuals;
7 (3) according to the Centers for Disease Con-
8 trol and Prevention, the increase in the number of
9 overweight and obese Americans between 1987 and
10 2001 resulted in a 27 percent increase in per capita
11 health care costs;
12 (4) the World Health Organization determined
13 that in the United States a $1 investment in phys-
14 ical activity alone (in time and equipment) would re-
15 duce medical expenses by $3.20;
16 (5) research indicates that 2 in 5 Americans
17 would become more physically active if offered a fi-
18 nancial incentive;
19 (6) the United States ranks last in the world in
20 reducing the number of preventable deaths resulting
21 from obesity-related chronic illnesses; and
22 (7) engaging in physical activities at young ages
23 when children are learning lifelong behaviors can
24 have a significant impact on their long-term health.

1 (b) PURPOSE.—The purpose of this Act is to promote
2 health and prevent disease, particularly diseases related
3 to being overweight and obese, by—
4 (1) encouraging healthier lifestyles;
5 (2) providing financial incentives to ease the fi-
6 nancial burden of engaging in healthy behavior; and
7 (3) increasing the ability of individuals and
8 families to participate in physical fitness activities.

9 **SEC. 3. CERTAIN AMOUNTS PAID FOR PHYSICAL ACTIVITY,**
10 **FITNESS, AND EXERCISE TREATED AS**
11 **AMOUNTS PAID FOR MEDICAL CARE.**

12 (a) IN GENERAL.—Paragraph (1) of section 213(d)
13 of the Internal Revenue Code of 1986 is amended by strik-
14 ing ''or'' at the end of subparagraph (C), by striking the
15 period at the end of subparagraph (D) and inserting '',
16 or'', and by adding at the end the following new subpara-
17 graph:
18 ''(E) for qualified sports and fitness ex-
19 penses.''.
20 (b) QUALIFIED SPORTS AND FITNESS EXPENSES.—
21 Subsection (d) of section 213 of such Code is amended
22 by adding at the end the following paragraph:
23 ''(12) QUALIFIED SPORTS AND FITNESS EX-
24 PENSES.—

1 "(A) IN GENERAL.—The term 'qualified
2 sports and fitness expenses' means amounts
3 paid—
4 "(i) for membership at a fitness cen-
5 ter,
6 "(ii) for participation or instruction in
7 a program of physical exercise or physical
8 activity, and
9 "(iii) for equipment for use in a pro-
10 gram (including a self-directed program) of
11 physical exercise or physical activity.
12 "(B) OVERALL DOLLAR LIMITATION.—The
13 aggregate amount treated as qualified sports
14 and fitness expenses with respect to any tax-
15 payer for any taxable year shall not exceed
16 $1,000 ($2,000 in the case of a joint return or
17 a head of household (as defined in section
18 2(b))).
19 "(C) FITNESS FACILITY DEFINED.—For
20 purposes of subparagraph (A)(i), the term 'fit-
21 ness facility' means a facility—
22 "(i) providing instruction in a pro-
23 gram of physical exercise, offering facilities
24 for the preservation, maintenance, encour-
25 agement, or development of physical fit-

1 ness, or serving as the site of such a pro-
2 gram of a State or local government,
3 ‘‘(ii) which is not a private club owned
4 and operated by its members,
5 ‘‘(iii) which does not offer golf, hunt-
6 ing, sailing, or riding facilities,
7 ‘‘(iv) whose health or fitness facility is
8 not incidental to its overall function and
9 purpose, and
10 ‘‘(v) which is fully compliant with the
11 State of jurisdiction and Federal anti-dis-
12 crimination laws.
13 ‘‘(D) LIMITATIONS RELATED TO SPORTS
14 AND FITNESS EQUIPMENT.—Amounts paid for
15 equipment described in subparagraph (A)(iii)
16 shall be treated as a qualified sports and fitness
17 expense only—
18 ‘‘(i) if such equipment is utilized ex-
19 clusively for participation in fitness, exer-
20 cise, sport, or other physical activity pro-
21 grams,
22 ‘‘(ii) if such equipment is not apparel
23 or footwear, and
24 ‘‘(iii) in the case of any item of sports
25 equipment (other than exercise equip-

1 ment), with respect to so much of the
2 amount paid for such item as does not ex-
3 ceed $250.
4 "(E) PROGRAMS WHICH INCLUDE COMPO-
5 NENTS OTHER THAN PHYSICAL EXERCISE AND
6 PHYSICAL ACTIVITY.—Rules similar to the rules
7 of section 213(d)(6) shall apply in the case of
8 any program that includes physical exercise or
9 physical activity and also other components.
10 For purposes of the preceding sentence, travel
11 and accommodations shall be treated as an
12 other component.".
13 (c) EXCEPTION FOR HEALTH SAVINGS ACCOUNTS.—
14 Subparagraph (A) of section 223(d)(2) of such Code is
15 amended by inserting ", determined without regard to
16 paragraph (1)(E) thereof)" after "section 213(d)".
17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 the date of the enactment of this Act.

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112TH CONGRESS
1ST SESSION

S. 1644

To amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2011

Mr. CORNYN (for himself and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ''Workforce Health Im-
5 provement Program Act of 2011''.

6 **SEC. 2. EMPLOYER-PROVIDED OFF-PREMISES HEALTH**
7 **CLUB SERVICES.**

8 (a) TREATMENT AS FRINGE BENEFIT.—Subpara-
9 graph (A) of section 132(j)(4) of the Internal Revenue

1 Code of 1986 (relating to on-premises gyms and other ath-
2 letic facilities) is amended to read as follows:
3 "(A) IN GENERAL.—Gross income shall
4 not include—
5 "(i) the value of any on-premises ath-
6 letic facility provided by an employer to its
7 employees, and
8 "(ii) so much of the fees, dues, or
9 membership expenses paid by an employer
10 to an athletic or fitness facility described
11 in subparagraph (C) on behalf of its em-
12 ployees as does not exceed $900 per em-
13 ployee per year.".
14 (b) ATHLETIC FACILITIES DESCRIBED.—Paragraph
15 (4) of section 132(j) of the Internal Revenue Code of 1986
16 (relating to special rules) is amended by adding at the end
17 the following new subparagraph:
18 "(C) CERTAIN ATHLETIC OR FITNESS FA-
19 CILITIES DESCRIBED.—For purposes of sub-
20 paragraph (A)(ii), an athletic or fitness facility
21 described in this subparagraph is a facility—
22 "(i) which provides instruction in a
23 program of physical exercise, offers facili-
24 ties for the preservation, maintenance, en-
25 couragement, or development of physical

1 fitness, or is the site of such a program of
2 a State or local government,
3 ''(ii) which is not a private club owned
4 and operated by its members,
5 ''(iii) which does not offer golf, hunt-
6 ing, sailing, or riding facilities,
7 ''(iv) whose health or fitness facility is
8 not incidental to its overall function and
9 purpose, and
10 ''(v) which is fully compliant with the
11 State of jurisdiction and Federal anti-dis-
12 crimination laws.''.
13 (c) EXCLUSION APPLIES TO HIGHLY COMPENSATED
14 EMPLOYEES ONLY IF NO DISCRIMINATION.—Section
15 132(j)(1) of the Internal Revenue Code of 1986 is amend-
16 ed—
17 (1) by striking ''Paragraphs (1) and (2) of sub-
18 section (a)'' and inserting ''Subsections (a)(1),
19 (a)(2), and (j)(4)'', and
20 (2) by striking the heading thereof through ''(2)
21 APPLY'' and inserting ''CERTAIN EXCLUSIONS
22 APPLY''.
23 (d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN
24 ATHLETIC FACILITIES.—

1 (1) IN GENERAL.—Paragraph (3) of section
2 274(a) of the Internal Revenue Code of 1986 (relat-
3 ing to denial of deduction for club dues) is amended
4 by adding at the end the following new sentence:
5 ''The preceding sentence shall not apply to so much
6 of the fees, dues, or membership expenses paid to
7 athletic or fitness facilities (within the meaning of
8 section 132(j)(4)(C)) as does not exceed $900 per
9 employee per year.''.

10 (2) CONFORMING AMENDMENT.—The last sen-
11 tence of section 274(e)(4) of such Code is amended
12 by inserting ''the first sentence of'' before ''sub-
13 section (a)(3)''.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 the date of the enactment of this Act.

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112TH CONGRESS
1ST SESSION

H. R. 1542

To amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of supermarkets in certain underserved areas.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2011

Mr. COHEN (for himself, Ms. FUDGE, Ms. RICHARDSON, Mr. JOHNSON of Georgia, Mr. CLARKE of Michigan, Ms. NORTON, Mr. BRADY of Pennsylvania, and Mr. BOSWELL) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of supermarkets in certain underserved areas.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ''Supermarket Tax
5 Credit for Underserved Areas Act''.

1 **SEC. 2. TAX INCENTIVES FOR ESTABLISHMENT OF SUPER-**
2 **MARKETS IN CERTAIN UNDERSERVED AREAS.**

3 (a) IN GENERAL.—Subchapter Y of chapter 1 of the
4 Internal Revenue Code of 1986 is amended by adding at
5 the end the following new part:

6 **"PART IV—TAX INCENTIVES FOR SUPERMARKETS**
7 **IN UNDERSERVED AREAS**

"Sec. 1400V–1. Increased rehabilitation credit.
"Sec. 1400V–2. Increased work opportunity tax credit.
"Sec. 1400V–3. Credit for sales of locally grown fresh fruits and vegetables.
"Sec. 1400V–4. Definitions.

8 **"SEC. 1400V–1. INCREASED REHABILITATION CREDIT.**

9 "(a) IN GENERAL.—In the case of a qualified reha-
10 bilitated building (as defined in section 47) which is an
11 underserved area supermarket, subsection (a) of section
12 47 shall be applied—

13 "(1) by substituting '12 percent' for '10 per-
14 cent' in paragraph (1), and

15 "(2) by substituting '24 percent' for '20 per-
16 cent' in paragraph (2).

17 "(b) UNDERSERVED AREA SUPERMARKET.—For
18 purposes of subsection (a), a qualified rehabilitated build-
19 ing shall be treated as meeting the requirements of sub-
20 paragraphs (A), (B), (C), and (D) of section 1400V–
21 4(a)(2) if it is reasonable to believe that such building will
22 meet such requirements as of the close of the taxable year
23 in which such building is placed in service.

1 "(c) TERMINATION.—Subsection (a) shall only apply
2 to buildings placed in service after December 31, 2011,
3 and before January 1, 2014.

4 **"SEC. 1400V–2. INCREASED WORK OPPORTUNITY TAX CRED-**
5 **IT.**

6 "(a) IN GENERAL.—In the case of an individual em-
7 ployed in the trade or business of operating a new under-
8 served area supermarket, the limitation otherwise in effect
9 under paragraph (3) of section 51(b) with respect to such
10 individual shall be increased by $1,000.

11 "(b) TERMINATION.—Subsection (a) shall only apply
12 to wages paid in taxable years beginning after December
13 31, 2011, and before January 1, 2017.

14 **"SEC. 1400V–3. CREDIT FOR SALES OF LOCALLY GROWN**
15 **FRESH FRUITS AND VEGETABLES.**

16 "(a) IN GENERAL.—For purposes of section 38, the
17 underserved area supermarket fruit and vegetable credit
18 determined under this section for the taxable year is 15
19 percent of the gross receipts from the retail sale of locally
20 grown fresh fruits and vegetables in the trade or business
21 of operating a new underserved area supermarket.

22 "(b) TERMINATION.—Subsection (a) shall only apply
23 to taxable years beginning after December 31, 2012, and
24 before January 1, 2017.

1 **"SEC. 1400V–4. DEFINITIONS.**

2 ''For purposes of this part—

3 ''(1) UNDERSERVED AREA SUPERMARKET.—
4 The term 'underserved area supermarket' means any
5 supermarket located in an underserved area.

6 ''(2) NEW UNDERSERVED AREA SUPER-
7 MARKET.—The term 'new underserved area super-
8 market' means any underserved area supermarket
9 which—

10 ''(A) is placed in service after December
11 31, 2011, and

12 ''(B) was not a supermarket at any time
13 during the 3-year period ending on the date
14 such underserved area supermarket is placed in
15 service.

16 ''(3) SUPERMARKET.—The term 'supermarket'
17 means any building if—

18 ''(A) not less than 12,000 square feet and
19 not more than 80,000 square feet of such build-
20 ing is used for selling items at retail,

21 ''(B) at least 7 percent of the square feet
22 of such building which is used for selling items
23 at retail is used for selling produce, meat, fish,
24 deli, and dairy items,

1 ''(C) gross sales of items sold at retail
2 from such building exceed $2,000,000 annually,
3 and

4 ''(D) at least 7 percent of such gross sales
5 are attributable to sales of produce, meat, fish,
6 deli, and dairy items.

7 ''(4) UNDERSERVED AREA.—The term 'under-
8 served area' means—

9 ''(A) any enterprise community or em-
10 powerment zone with a designation in effect
11 under section 1391, and

12 ''(B) any renewal community with respect
13 to which a designation was in effect under sec-
14 tion 1400E on December 31, 2009.''.

15 (b) CREDIT TO BE PART OF GENERAL BUSINESS
16 CREDIT.—Subsection (b) of section 38 of such Code (re-
17 lating to general business credit) is amended by striking
18 ''plus'' at the end of paragraph (35), by striking the period
19 at the end of paragraph (36) and inserting '', plus'', and
20 by adding at the end the following new paragraph:

21 ''(37) the underserved area supermarket fruit
22 and vegetable credit determined under section
23 1400V–3.''.

1 (c) CLERICAL AMENDMENT.—The table of parts for
2 subchapter Y of chapter 1 of such Code is amended by
3 adding at the end the following new item:

"PART IV. TAX INCENTIVES FOR SUPERMARKETS IN UNDERSERVED AREAS".

○

805 15th St. NW Washington DC 20015
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MEMORANDUM

TO: Obesity and tax policy “brain trust” participants
FR: Staff
RE: March 13th follow-up meeting on tax policy options for addressing obesity
DT: March 11, 2013

We look forward to seeing you this week for a follow-up lunch meeting to our “brain-trust” session last month on what tax policy options are available to the stakeholder community working to reduce the nation’s obesity epidemic. Details of the meeting are as follows:

Date: **Wednesday, March 13, 2013**
Time: **Noon - 2:30 p.m.**
Location: **Offices of Venn Strategies, LLC**
805 15th Street, NW, Suite 650

AGENDA

Noon **Recapping February Discussion**

12:30 pm **Items for Discussion**

- **New Markets Tax Credit**
- **Workplace Health Improvement Program**
- **Manufacturing tax deductions**
- **Accelerated depreciation of certain assets for entities**

2:15 pm **Discussion of major take-aways and Next Steps**

For the discussion this week, we'll be taking a deeper-dive into some of the 'hot' items discussed at our last meeting, and also sharing some concrete new policy alternatives.

Below, please find a short overview of the items we hope to cover at our meeting on the 13th. For additional background on some of the more complex items, we have attached more fulsome information in the appendix section.

New Markets Tax Credit:
At the braintrust meeting, there was great interest in the notion of supporting a modified New Markets Tax Credit (NMTC). The NMTC, by way of background, was originally authorized by the Community Renewal Tax Relief Act of 2000 to stimulate private investment and economic growth in low-income urban neighborhoods and rural communities. The NMTC provides a 39 percent tax credit to taxpayers (businesses) that make qualified equity investments in pre-defined community development entities (CDEs). There is some evidence that NMTC's have helped catalyze the creation of healthier food resources to communities previously considered "food deserts," and thus the question on the table is whether NMTC's could be used – perhaps in a more direct way – to also spur the creation of built environments in low-income communities that facilitate safe physical activity in those neighborhoods.

The timing of this discussion is important because NMTC's are not a permanent part of the tax code and must be extended periodically by Congress. In fact, Congress recently extended the credit as part of the American Taxpayer Relief Act, but it will be up for reauthorization at the end of 2013; when it is due to expire.

Potential modifications to the NMTC statute may be used to promote healthy lifestyles in areas where such options are not currently available. Such modifications to the NMTC statute may also be revenue-neutral (inasmuch as they are not adding funds to the credit; they would simply add preferences or requirements for recipients of the credit). Among the options available to the obesity prevention and reduction community is that the NMTC language may be modified to ensure that, in order to qualify for this credit (or for the credit in excess of a certain amount), entities must include in their development plans specific structures that will promote safe and healthy living, including new structures (tracks, fields, rec centers, etc) to facilitate physical activity and/or new structures to improve access to healthy foods. It may also be possible to simply give preference to applicants for the NMTC who meet such criterion.

Workplace Health Improvement Program Act (WHIP):
The WHIP Act has been introduced in the last Congress and has been promoted by several of the groups that are part of the braintrust discussion. The measure, championed in the Senate by Senator John Cornyn (R-TX) and Senator Tom Harkin (D-IA) and in the House of Representatives by Rep. Ron Kind (D-WI), would change the tax treatment of employer-sponsored offsite wellness benefits (i.e., gym memberships) by excluding any such benefits from employees' taxable income. The goal of this approach is to remove some of the current disincentives (currently the federal government taxes these offsite wellness benefits as if they were income to the employees) that limit employers' efforts to help facilitate healthy lifestyles

for their employees. The question on the table is whether the broader community should promote this measure in its current form or with contemplated modifications (and of course what the downside of making modifications may be to a measure that has already secured Congressional championship).

Manufacturers' Tax Deduction:
Section 199 of the Internal Revenue Code, called the Domestic Production Activities Deduction (DPAD), was first instituted by the American Jobs Creation Act of 2004 and was fully phased-in for tax years beginning in 2010. The DPAD was designed to promote manufacturing activities in the United States and to keep U.S. manufacturers here. Under the DPAD, companies are able to claim a nine percent tax deduction on their income for certain qualified production activities (including but not limited to traditional manufacturing, construction/ architecture/engineering expenses and others, up to an amount that is 50 percent of their total employee wages. Under current law, the deduction may not be used for preparation of food and beverages for retail sale.

This deduction is broadly utilized and, in some industries, meaningfully lowers the cost of doing business. The energy industry in particular has used the deduction to cultivate new fuel sources. Some farming activities are also eligible for this credit, though it is usually not available for smaller farming activities or operations that do not have a significant number of employees. It is possible that the credit could be extended to smaller farms, or in other ways to provide a benefit for U.S. production of produce to boost the availability of affordable, nutritious foods. It is also possible that the credit could be extended to all grocery stores (i.e., not limited to large stores only) for income derived exclusively from the sale of fresh produce. Most likely it will not be possible to require that such produce only be sold in certain areas.

It is important to note, Section 199 has come under political scrutiny, not only because it comes at a great price to the Treasury Department ($76 billion/year in forgone taxes, by one estimate), but also because it has benefited interests like oil and gas companies who benefit from this deduction while being accused of imposing high costs on consumers. It is possible that, in the context of coming tax reform discussions, other modifications to the Section 199 may be advanced. Modifying the deduction would require a change to current law.

Accelerated Depreciation of Certain Business Assets:
The Internal Revenue Service allows for business to write off the loss in value (or "depreciation") of certain assets. There are two types of depreciation: straight-line and accelerated. In general, with straight-line depreciation, a business can deduct from their taxes over a period of time (typically over the pre-determined "life" of the asset) the amount by which their asset declines in value. An example of this would be if a business owner made a $1 million investment in manufacturing equipment that is expected to last 10 years. Under straight-line depreciation, that business would be allowed to deduct $100,000 each year from their taxable income each year for ten years.

In modern tax policy, Congress has provided accelerated depreciation in certain instances, allowing business owners to deduct the loss in value of the asset more rapidly, effectively lowering the cost of the initial investment.

Accelerated depreciation is not targeted geographically – that is, it is not designed to encourage capital investments in particular areas – and it is not likely to be changed in such a way. Even so, accelerated depreciation benefits could be a meaningful incentive to businesses, encouraging them to invest capital that supports for healthy living (specifically for the provision of healthy foods, or facilities that provide a minimum amount of 'healthy' foods, as well as for the building of new facilities for safe physical activity), regardless of where.

These are by no means the only tax policy options available to address obesity, but they are among the ones that have emerged as potentially the most interesting to the stakeholder community seeking innovative tax policy solutions. We look forward to a thoughtful discussion of these and other tax policy items (feel free to raise them in our discussion) at our meeting on Wednesday afternoon, March 13th.

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APPENDICES:

Appendix A: Backgrounder: New Markets Tax Credit

Appendix B: Backgrounder: Section 199 Manufacturing Deduction

Appendix C: Backgrounder: Accelerated Depreciation

Appendix D: Event Summary: 2.4.13 brain trust discussion

Appendix E: Prep memo for 2.4.13 meeting

Appendix A: New Markets Tax Credit

What is the New Markets Tax Credit?

The New Markets Tax Credit (NMTC) was originally authorized by the Community Renewal Tax Relief Act of 2000, to stimulate private investment and economic growth in low-income urban neighborhoods and rural communities that lacked access to capital needed to support new businesses, create jobs, and sustain healthy local economies.

To achieve this, the NMTC provides for a 39 percent tax credit to taxpayers who make qualified equity investments in community development entities (CDEs). The CDEs, in turn, make investments in or provide to qualified businesses in low-income and rural communities defined by the Department of Housing and Urban Development (HUD). Eligible taxpayers who participate in these deals as investors will receive the tax credit in incremental amounts over a period of seven years. Specifically, the tax credit is equal to five percent of their investment in each of the first three years and six percent of their investment per year for each of the remaining four years.

However, it is critical to note these credits are not a permanent part of the tax code and must be extended periodically through an act of Congress, such as the American Taxpayer Relief Act, which recently reauthorized NMTC for another two years, but will expire again at the end of 2013.

Who are Eligible Participants?

Community Development Entities (CDE): only entity that can directly apply for NMTC

- Must be a domestic corporation or partnership at the time of certification application.
- Must demonstrate primary mission of serving or providing investment capital for low-income communities.
- Maintain accountability to residents of communities through the representation on a governing or advisory board.

Business: CDEs transfer allocation of credit to

- Community facilities- charter schools, child care centers, healthcare clinics, and community and performing arts centers.
- High Impact Real Estate Development- redevelopment project, mixed use and transit oriented, neighborhood servicing retailer.
- Job creation and small business

Community:

- Poverty rate greater than 30 percent
- Unemployment rate must be at least 1.5 times the national average
- Median income must be less than 60 percent of area median
- Located in an Empowerment Zone, Enterprise and Renewal Community, HUD Zone and Brownfield

How are New Markets Tax Credits Allocated?
NMTCs are allocated through a competitive application process administered by the Community Development Financial Institutions (CDFI) Fund at the Department of Treasury and the Internal Revenue Service. Under the NMTC program, entities certified as CDEs will apply to the CDFI Fund for an allocation of NMTCs. NMTCs are widely distributed across all 50 states, the District of Columbia and Puerto Rico; however, they are more prevalent (80%) in metropolitan areas versus rural areas (20%).

What is the Application Process for New Markets Tax Credit?

The CDFI Fund's decision making process for awarding NMTCs takes place in two phases. In the first phase, NMTC applicants must submit a standardized application package, which answers a series of questions regarding the CDEs performance, accountability, and record of success in providing assistance to disadvantaged businesses or communities. Additionally, the CDFI Fund elects a group of outside reviewers, who have demonstrated experience in business, real estate, community development, and finance to evaluate applications through a scoring system developed by the CDFI Fund. This scoring system is based on a four categories (business strategy, community impact, management capacity, capitalization strategy) of which a reviewer can allot up to 25 points in each. A CDE may also be eligible to receive up to 10 "priority" points by demonstrating a record of successful investment in disadvantaged communities and/or investing in a business unrelated to the applicant.

If the applicant meets a minimum score, which is relative to other applicants, the CDFI Fund will then determine which CDEs will receive an allocation based on the sum of the aggregate business strategy score, community impact score, and half of the priority points the CDE received in the second phase. Additionally, the CDFI Fund considers the amount of equity investment that can be expected to be raised in two years and the projected impact on the community in three years.

How is New Markets Tax Credit Used?

NMTCs are typically used to finance qualified equity investments. They are often referred to as leverage loans because the tax credit obtained must be invested. NMTC can also be used to enhance investor's internal rate of return, provide borrowers access to debt at reduced interest rates, or repay equity investor with tax credits opposed to actual cash.

Between 2003-2009, NMTCs have financed projects including:

- The first supermarket in a generation that created 153 jobs in a DC neighborhood with a 44 percent poverty rate and a median income 32 percent of the area median;
- A permanent school in Florida that can now accommodate 600 children in a community marked by severe distress;
- A health center in rural Louisiana where the population is 15 percent elderly and no other hospitals are located within a three-hour radius; and

- A series of revitalization projects that attracted employers and new resident to cities and towns with unemployment rates more than 1.5 times the national average in Iowa, Michigan, and Virginia.

The Government Accountability Office (GAO) estimates the cost of NMTC to the federal government in 2010 was $720 million. That said, in the same year, these credits generated $1.1 billion in operational activity—a nearly 50 percent return on investment.

What are the Revenue Issues with New Markets Tax Credit Program?

Given recent concerns regarding the federal deficit, such financing arrangements have become worrisome to some who fear they may be eliminated to solve our current budget deficit.

Who are Champions of the New Markets Tax Credit Program?

Since their enactment in 2000, NMTCs have become a strongly bipartisan issue. Last Congress, Representatives Gerlach (R-PA) and Richard Neal (D-MA) introduced the New Markets Tax Credit Expansion Act of 2011 and were joined by 86 of their colleagues in support of their bill. In addition, on May 12, 2011 Senators Olympia Snowe (R-ME) and Jay Rockefeller (D-WV) introduced an identical bill into the Senate, which would have extended the NMTC program for five years and provide over $25 billion in tax credit authority. Under the legislation $3.5 billion would be provided in NMTC allocation authority for the 2012 through 2013 time period.

Furthermore, on April 26, 2012, the House Select Revenue Subcommittee held a members only hearing regarding tax extenders where several members of the House of Representatives including, Representatives Tiberi, Gerlach, Paulsen, Neal, Costa, and Larson, expressed their support for the credits and their impact on the American economy.

Appendix B: Section 199 Manufacturing Deductions

What is the Section 199 manufacturing deduction?

The Section 199 manufacturing deduction is a tax break for the domestic manufacturing or production of qualified production activities. The deduction was made law by the American Jobs Creation Act of 2004. The deduction was phased in starting with a 3 percent deduction in net income 2005 and was fully phased-in in tax year 2010 at 9 percent of net income of U.S. based qualified activities.

Examples of qualified deduction activities that may be eligible for the deduction include:

- Manufacturing based in the United States;
- Selling, leasing, or licensing items that have been manufactured in the United States;
- Selling, leasing, or licensing motion pictures that have been produced in the United States;
- Construction services in the United States, including building and renovation of residential and commercial properties;
- Electricity, natural gas, or potable water produced in the United States;
- Engineering and architectural services relating to a U.S.-based construction project; and
- Software development in the United States, including the development of video games.

Among those activities that are not eligible for the deduction are:

- The sale of food and beverages prepared and used for sale at a retail location;
- The transmission or distribution of electricity, natural gas, or potable water; or
- The lease, rental, license, sale, exchange, or other disposition of land.

What types of industries utilize this deduction?

Several industries are eligible to benefit from this deduction. Most recently, media attention has focused on the high-utilization of this tax deduction by oil and gas companies; however, it is estimated that roughly one-third of all U.S.-based manufacturing activities are eligible for this deduction.

Appendix C: Accelerated Depreciation of Certain Assets

What is "accelerated depreciation"?

To understand the concept of "accelerated depreciation," it is helpful to first understand the concept of depreciation. Straight-line depreciation (or "ordinary" depreciation) evenly spreads out the costs of a qualified asset over its expected lifetime. Accelerated depreciation, on the other hand, allows for the costs of this asset to be covered over the first few years of its expected life, rather than the lifetime of the asset.

A common example of accelerated depreciation is known as double declining balance depreciation. Under this scenario, the costs of qualified assets would be fully covered over half of the expected lifetime of the asset. For example, if a business were to purchase a $50,000 truck whose lifetime is expected to be 10 years, here is the breakdown of the depreciation of that asset under straight line depreciation and double declining balance depreciation:

	Straight-line depreciation	*Double declining balance depreciation*
Year One:	$5,000	$10,000
Year Two:	$5,000	$10,000
Year Three:	$5,000	$10,000
Year Four:	$5,000	$10,000
Year Five:	$5,000	$10,000
Year Six:	$5,000	$0
Year Seven:	$5,000	$0
Year Eight:	$5,000	$0
Year Nine:	$5,000	$0
Year Ten:	$5,000	$0

Under current tax law, the IRS allows for both deductions, in certain circumstances. In order for a taxpayer (or business) to deduct the depreciation for a property, the property must:

- Be owned by the taxpayer. Capital improvements of the property are also able to be depreciated by the taxpayer; and
- Be used in business or in an income-producing activity; and
- Have a useful life of more than one year.

How is accelerated depreciation different from the Section 179 deduction?

The Section 179 deduction is a type of accelerated depreciation that generally applies to goods who have a very short useful life. In this scenario, taxpayers are able to recover 100 percent of the costs of certain assets in the first tax year after purchase.

An example of an asset that would qualify for this depreciation schedule would be the purchase of a laptop for business use. Because laptops have short useful lives, the IRS allows for 100

percent of the cost of this purchase to be deducted from the taxpayer's taxable income in the tax year after the purchase is made.