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A Seldom Considered Aspect of Tax Fairness and Simplifications: The Need for a Coherent Policy Perspective on the Many and Varied Dollar Limitations Contained in the Internal Revenue Code

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Dollar limitations abound in the Internal Revenue Code (Code). They fundamentally define the familiar rate brackets of § 1 and control a wide variety of tax obligations and advantages that contribute greatly to the complexity of the Code all the way into its highest-numbered sections. Many dollar limitations refer to a particular level of income, usually adjusted gross income, and determine the extent to which particular tax features operate, as in the case of credits, loss recognitions, special tax statutes, or many kinds of deductions.

As individual provisions containing dollar limitations find their way into the Code, the precise points at which they separate taxpayers who will experience a corresponding benefit or detriment result, in part, from computations relating to direct revenue effects. Consequently, one explanation for the astounding range and variety of dollar limitations in the

1. This article discusses several significant dollar limitations but makes no attempt to catalog all provisions of the Code that predicate a revenue consequence on a specified amount of compensation, adjusted gross income, volume of capital, or other economic indicator expressed as a dollar amount.

2. Near the end of the Code, § 7872 (addressing the federal tax consequences of loans with below-market interest rates) uses a $10,000 limitation to define de minimis gift loans excepted from regulation, a $100,000 limitation to determine if a gift loan will be subject to implicit interest accrual in relation to the borrower’s net investment income, and a $1,000 limitation on net investment income considered in mitigation of an implicit interest accrual. I.R.C. § 7872(o)(2), (d)(1)(A), (d)(1)(D), (d)(1)(E)(ii)). These dollar limitations use round numbers but do not necessarily reflect any statistical norms or overarching policy considerations as discussed infra in this article regarding the use of dollar limitations in general. Id.

3. Adjusted gross income, defined in § 62 in relation to a set list of deductions that directly reduce gross income, is first used as a dollar limitation in § 21(a)(2), which reduces the rate of credit available for household and dependent care services necessary for gainful employment for taxpayers having an adjusted gross income exceeding $15,000. I.R.C. §§ 62, 21(a)(2).

4. See generally I.R.C. §§ 21-25A (predicating various nonrefundable personal credits on differing levels of adjusted gross income).

5. For example, § 469(i) allows full use of passive activity losses pertaining to rental real estate activities (up to $25,000 per taxable year—yet another fixed dollar limitation) only for taxpayers whose adjusted gross income does not exceed $100,000. See I.R.C. § 469(i)(3)(A).

6. See, e.g., I.R.C. § 408A(c)(3) (preventing taxpayers having too high an adjusted gross income from making contributions to a Roth Individual Retirement Account).

7. Several kinds of deductions fit under an overall limitation on itemized deductions contained in § 68. This limitation operates in relation to the size of a taxpayer’s adjusted gross income. See I.R.C. § 68(a)(1), (b)(1).

8. The direct effects of various allowances on revenue production have prompted tax policy studies under a “tax expenditures” concept that equates tax allowances with direct governmental expenditures. Congress formally began to evaluate and quantify tax expenditures resulting from the structure of the Code in 1974. See Philip D. Oliver & Fred W. Peel, Jr., Tax Policy 505-07 (1996). Adjusting a dollar limitation associated with a particular allowance will, of course, alter the tax expenditure impact of that allowance. For example, doubling the dollar limitation respecting the passive activity real estate rental exception of § 469(i) see supra note 5, would significantly increase the revenue loss associated with that exception.
Code rests on the observation that our collection of federal tax statutes did not evolve within a short time under a uniform political climate and stable set of fiscal circumstances.9

The haphazard evolution of the Code into a massive conglomeration of disparate provisions containing designated dollar limitations suggests the need for a policy overhaul directed both toward simplification and other systemic goals to coordinate the incidental implications, social and economic, of predating important tax benefits and detriments upon fixed dollar attainments.10 This article will elaborate upon some of the policy implications of many existing dollar limitations in the Code and discuss how a more cohesive perspective on the collective effect of dollar limitations could help strengthen our federal taxation system.

I. DOLLAR LIMITATIONS IN THE INTERNAL REVENUE CODE TELL US WHETHER WE ARE POOR, RICH, OR IN BETWEEN

A. Determining Who is Poor for Tax Purposes

Governmental definitions of poverty serve a variety of purposes outside taxation statutes.11 The Code contains a handful of dollar limitations that

9. The Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (2001), represents the latest major reworking of the Code reflecting a political climate and fiscal circumstances favoring substantial tax cuts. Many Code provisions affected by this legislation contain dollar limitations that help shape the overall scope of the act’s revenue effects. For the most part, the legislative history of this act does not reveal exactly how its dollar limitations were determined but sometimes does illustrate the political tension underlying the selection of particular dollar limitations. Thus, the Senate amendment affecting § 68, which reduces the total amount of otherwise allowable itemized deductions, see supra note 7, simply attempted to raise the starting point of the overall limitation on itemized deductions to a projected $245,500 by 2009. The Conference Agreement for the provision, however, determined that the provision should be repealed in phases and consequently leave the Code altogether by 2010. See H.R. CONF. REP. NO. 107-84, 130 (2001). By eliminating the entire limitation provision by 2010, the Conference Committee clearly implemented a larger and more permanent tax cut than that contemplated by the Senate Committee, which merely desired to raise the dollar limitation that invokes the deduction-shrinking rule of § 68.

10. Economically, achieving higher levels of income constitutes an attainment, but for tax purposes higher incomes frequently result in relative detriments as a result of statutory structures that, for example, increase rates of taxation, see § 1, or negate the effect of otherwise permitted deductions, credits, or similar tax mitigating features. See supra note 9 (regarding the itemized deductions limitation of § 68).

effectively define poverty in relation to revenue raising, and under the earned income credit,\textsuperscript{12} in relation to the political question of income redistribution.\textsuperscript{13}

With respect to revenue collections, personal and dependency exemptions,\textsuperscript{14} in conjunction with the standard deduction,\textsuperscript{15} sensitize the public to the minimum amount of income that results in zero taxable income, which precludes a citizen from having to pay a federal income tax in the first instance, regardless of potential qualification for any outlay-specific deduction or tax credit.\textsuperscript{16} Indeed, the combination of personal and dependency exemptions and the standard deduction sets the limit under which individuals do not even have to file a tax return for any given computational period.\textsuperscript{17} As a practical matter, these allowances tell a married couple, sans children, for example, that if their gross income in 2003 is no more than $15,600, they are too poor to have to state their financial circumstances for tax informational purposes and certainly too poor to have to pay any federal income tax.\textsuperscript{18}

This de facto definition of poverty applies as well to the federal tax collection process under which wages, salary, or other income is exempt from levy by the Service for outstanding tax obligations to the extent of the sum of a taxpayer's personal exemptions and standard deduction.\textsuperscript{19} Persons having wages, salary, or other income less than such sum are thus also too poor to have their current income levied upon for the payment of taxes attributable to more prosperous, prior computational periods.\textsuperscript{20}

Poverty determinations based on personal exemptions and the standard deduction appear to manifest in the federal income tax rules rather uniformly, but the definition of poverty for employment tax purposes follows different

\begin{itemize}
  \item \textsuperscript{12} I.R.C. § 32.
  \item \textsuperscript{13} The earned income credit of § 32 benefits individuals having earned incomes in the four-figure and low five-figure ranges as set forth in § 32(b)(2). I.R.C. § 32(b)(2).
  \item \textsuperscript{14} I.R.C. § 151.
  \item \textsuperscript{15} I.R.C. § 63(c).
  \item \textsuperscript{16} "Outlay-specific" deductions involve an actual expense of the taxpayer that merits tax relief. Examples include ordinary and necessary business expenses that generate deductions under § 162, as well as various personal expenditures, like medical expenses, which permit deductions under §§ 211-223. I.R.C. §§ 162, 211-223.
  \item \textsuperscript{17} See I.R.C. § 6012(a)(1)(A).
  \item \textsuperscript{18} The $15,600 figure results from two personal exemptions at $3,050 each plus a standard deduction of $9,500. See 17 STAND. FED. TAX REP. (CCH) ¶ 107E (applying IRS Form 1040-ES/V (OCR) for 2002, Estimated Tax Worksheet, line 4).
  \item \textsuperscript{19} I.R.C. § 6334(d)(2).
  \item \textsuperscript{20} The exemption for wages, salary, or other income appears in a list containing twelve other kinds of property exempt from levy as set forth in § 6334(a). Some of the other properties listed also appear with separate dollar limitations that suggest subsistence level holdings. See I.R.C. § 6334(a)(2), (3), (13).}
\end{itemize}
numbers altogether under the earned income credit. The Code contains this credit to assist the "working poor," particularly those having dependent children, who must cope with the burden of Social Security taxes imposed under the Federal Insurance Contributions Act. Because Social Security contributions provide the taxpayer with direct benefits, similar to the pension, health, and disability benefits often provided by private employers, the "refundable" earned income credit serves as a redistribution mechanism whereby taxes paid by more affluent Americans are paid over to credit recipients.

This redistribution function of the earned income credit allows it to indirectly define poverty under the Code. The credit seems to say that if by the credit's standards one's income from services is low enough, federal assistance will result to promote both Social Security rights predicated upon employee contributions and the worker's ability to meet basic living expenses, especially in relation to the cost of raising children. The credit income limitations do not coordinate with the level of income-determined poverty sufficient to avoid taxable income computations as a result of personal exemptions and the standard deduction.

Setting the dollar limitations for the personal exemption and standard deduction scheme at variance with the earned income credit dollar limitations creates an awkward set of uncoordinated messages to persons of limited

21. I.R.C. § 32(b)(2) (setting the phaseout for earned income credit allowance).
22. I.R.C. §§ 3101-3128. Note that the credit percentage for eligible earned income recipients is 7.65% (for those with no qualifying children), the same percentage imposed under the Federal Insurance Contributions Act for combined pension and hospital insurance. Compare I.R.C. § 32(b)(1) with § 3101(a), (b); see also S. REP. No. 94-36, at 33 (1975), reprinted in 1975 U.S.C.C.A.N. 54, 83-84 (specifically identifying the earned income credit as compensating low income wage earners for the Social Security taxes they pay).
23. I.R.C. §§ 21-32 (distinguishing "nonrefundable personal credits" from "other credits," and placing § 32 relating to earned income in "refundable credits").
24. See I.R.C. § 3507 (obligating employers paying wages to an employee having an "earned income eligibility certificate" to effect advanced payment of the earned income credit).
25. Under § 32(b)(1), the highest earned income credit percentages go to persons having two or more qualifying children. I.R.C. § 32(b)(1). By contrast, the personal exemption scheme of § 151 expands the link between child raising expenses and tax benefits by permitting one additional exemption for each dependent child. I.R.C. § 151(c). Further tax-based relief reflecting child raising expenses comes from the child tax credit of § 24, which serves as yet another variable in the tax structure of family poverty relief. I.R.C. § 24.
26. Compare I.R.C. § 32(b)(2) (setting phaseout amount for earned income credit for a married couple with no children at $5,280) with supra note 18 and accompanying text (calculating from personal exemptions and standard deduction that $15,600 is the most a married couple without children can make before having to file a tax return and pay federal income taxes, not considering § 151(c), which could increase this amount by allowing additional dependency exemptions for a couple who do have children).
means. Thus, it is possible for the Code to tell certain persons that they are not too poor to avoid reporting taxable income and possibly paying some federal income tax while at the same time telling them they are poor enough to receive dollars from the Treasury to assist them with basic living expenses, including any federal taxes they might owe.27

The Code displays a similar lack of coordination in sending indirect messages about poverty standards for tax purposes via a dollar limitation for the dependent care expense credit.28 Within an overall dollar limitation applicable to all taxpayers,29 the credit equals an amount of "employment-related expenses" that varies from 20% to 35%.30 The maximum percentage of expenses for which the credit applies begins to diminish for taxpayers whose adjusted gross income exceeds $15,000 per year.31 Indirectly, this phaseout starting point for the maximum percentage of credit-worthy expenses tells working parents when they are poor enough to merit the fullest tax relief under the credit.32 At $45,000 of adjusted gross income, a taxpayer merits a dependent care expense credit no greater than the 20% of employment-related expenses applicable to all taxpayers having higher adjusted gross income.33

27. For example, a single person earning $9,000 in 2002 would have reported $1,300 of taxable income after taking a personal exemption of $3,000 and a standard deduction of $4,700. See INTERNAL REVENUE SERV., FORM 1040, Ins. 36-41 (2002). This would have resulted in a federal income tax liability of $131. Id. at In. 41, tbl. 2002. In addition, the taxpayer would have paid $688.50 (7.65%) in Social Security taxes under the Federal Insurance Contributions Act. See supra note 22 and accompanying text. The earned income credit for such taxpayer would have been $150. Id. at In. 64, 2002 EARNED INCOME CREDIT tbl. (2002). Effectively, the federal taxation system would have imposed an income tax on such person and totally offset the liability with the earned income credit. In addition, a part of the Social Security taxes withheld would effectively be refunded due to the excess of the Earned Income Credit over the income tax liability. This reduction of the Social Security taxes is a result of the Earned Income Credit being a refundable credit. A refundable tax credit creates a payment that can be received by the taxpayer even if there is no tax liability. Note that the 2002 Earned Income Credit (EIC) table designates some earned income credit for taxpayers having earned income up to $34,178 for single taxpayers having at least two children, $33,178 for single taxpayers having at least two children, $30,201 for married taxpayers having one child, $29,201 for single taxpayers having one child, $12,060 for married taxpayers having no children, and $11,060 for single taxpayers having no children. This array of poverty-suggestive dollar limitations further points to lack of coordinated income standards in the Code.

28. See I.R.C. § 21 (detailing amount and availability of credit for household and dependent care expenses necessary for taxpayer to maintain gainful employment).

29. See I.R.C. § 21(c) (limiting the amount of employment-related expenses for which the credit can be taken depending on the number of qualifying dependents in the taxpayer’s household).


31. Id.

32. Compare phaseout amounts for the earned income credit set forth in § 32(b)(2). Although employing the same technical device to scale down the maximum tax benefit in relation to some standard of putative poverty, the two phaseout dollar limitations of §§ 21 and 32 do not coordinate.

33. Compare the earned income credit maximum dollar limitations; see supra note 27.
In addition, the Code contains some provisions that incorporate poverty standards in contexts not involving the adverse financial condition of affected taxpayers. Under § 42, a low-income housing credit mitigates the federal income tax liability of developers who provide habitation for persons whose income does not exceed a certain percentage of the median income of the populace of a specified geographic area.\textsuperscript{34} Thus, one person's poverty can translate into another (affluent) person's tax benefit. The Code seems to tell some individuals that they are poor enough to allow tax benefits to those who provide basic shelter for them.\textsuperscript{35} In other words, these individuals are poor enough to receive an indirect form of housing assistance, since developers can substitute tax credits for the full economic benefits normally associated with higher rent levels than poor lessees can pay.

Interestingly, the de facto definition of poverty resulting from the low-income housing credit specifically takes into account differences in living costs according to location.\textsuperscript{36} This raises an important policy issue respecting those Code provisions that do not vary their implicit poverty determinations geographically. Administrative complexities aside,\textsuperscript{37} common sense suggests that it takes a lot more money to avoid poverty in Palo Alto, California than it does in rural Virginia.

An additional, relatively esoteric dollar limitation incorporating a tax concept of poverty appears in § 267.\textsuperscript{38} This provision attempts to match deductible expenses paid to a related taxpayer to the recipient's year of inclusion of the item as income.\textsuperscript{39} In defining related persons, the provision lets some “pass-thru entities”\textsuperscript{40} that own low-income housing fit under an exception to the deduction deferring rule.\textsuperscript{41} The exception defines “low-income housing” with reference to a subset of acts that create federal housing

\textsuperscript{34} See I.R.C. § 42(g)(1) (defining “qualified low-income housing project”).
\textsuperscript{35} Section 42(g)(1)(B) seems to imply that a minimum standard of poverty is met by individuals having income no more than 60% of an area's median gross income.
\textsuperscript{36} Indeed, § 42(d)(5)(C) substantially increases the credit when the taxpayer constructs low-income housing in a high cost area. I.R.C. § 42(d)(5)(C).
\textsuperscript{37} The problem of determining geographical cost-of-living distinctions is resolved in § 42(d)(5)(C)(ii) with reference to the concept of a “qualified census tract” designated by the Secretary of Housing and Urban Development. Presumably, a similar convention could apply to other Code provisions that currently base direct tax relief on fixed standards of implicit poverty applied uniformly to all taxpayers wherever residing. I.R.C. § 42(d)(5)(C)(ii).
\textsuperscript{38} I.R.C. § 267.
\textsuperscript{39} I.R.C. § 267(a)(2).
\textsuperscript{40} See I.R.C. § 267(e)(2) (defining “pass-thru entity”).
\textsuperscript{41} See I.R.C. § 267(e)(5) (excepting qualified expenses of partnerships owning low income housing from the general rules of § 267).
assistance, such as Section 8 of the United States Housing Act of 1937 ("Section 8").42 These federal acts do not specifically define poverty for tax purposes, since they operate as entitlement programs that expend revenue rather than govern the raising of revenue.43

Accordingly, federal housing laws set standards for poverty determinations that indirectly affect the tax postures of entities and their owners who would otherwise face deduction adjustments resulting from related-party transactions.44 Although making use of poverty definitions outside the Code makes sense in the relatively esoteric context of a low-income housing exception to the § 267 related-party rules, Congress might also wish to apply this definitional borrowing technique to broader applications under the Code.45 By doing so, lawmakers would enact revenue statutes that directly coordinate with other federal poverty guidelines so as to avoid complicating the lives of persons who qualify for federal assistance.46 Furthermore, coordination of tax definitions of poverty with nontax standards would present a unified social and political view of the portion of the populace that Americans collectively agree needs public assistance.47 Accordingly, federal poverty assistance could manifest in a unified and organized manner by blending tax policy with legislative notions about economic relief dispensed in the form of housing welfare payments, general subsidies, food programs, old-age support, and medical care.48

42. See I.R.C. § 267(e)(5)(D) (incorporating by reference § 1250(a)(1)(B)(i)-(iv)).
43. Thus, § 1250(a)(1)(B)(ii) specifically mentions that eligible families or individuals receive "subsidies" under Section 8 of the United States Housing Act of 1937. See I.R.C. § 1250(a)(1)(B)(ii).
44. For example, a partnership owning low-income housing can deduct interest paid to a qualified 5% partner in a taxable period other than a taxable period that coordinates with the interest income inclusion event of the partner. See I.R.C. § 267(a)(2), (e)(5)(A), (B).
45. The broader provisions aforementioned pertain to personal exemptions, standard deductions, the earned income credit, and the credit for expenses for household and dependent care services necessary for gainful employment, each of which contains an implicit poverty definition. See I.R.C. §§ 151, 63(c), 32, 21. Of course, poverty definitions pertaining to low-income housing need not be the exclusive source of tax-oriented poverty standards. Tax definitions could incorporate the federal poverty standards referred to above. See supra note 11.
46. Persons meeting federal standards for public assistance could simultaenously meet tax guidelines that would exempt them from filing or otherwise result in tax system benefits.
47. Americans exhibit varied notions about poverty, but Congress becomes the political focus for collectivizing these diverse notions into a national consensus. This political focus would sharpen debate about how best to address the issue of poverty. Legislative efforts toward poverty alleviation currently compartmentalize into tax and nontax categories employing uncoordinated standards. E.g., compare I.R.C. § 32 (providing the earned income credit standards), with 7 U.S.C. § 2014 (2003) (detailing food stamp program eligibility requirements).
48. Perhaps more universally applied poverty standards would lead to a better sense of the total public "cost" of poverty, both in terms of "tax subsidies" and direct assistance, to help further identify the
B. Determining Who is Wealthy for Tax Purposes

Because the wealthy do not qualify for the same kinds of federal assistance available to the poor, coordination of the tax definitions of wealth with nontax standards would have less compelling policy implications. Nonetheless, the Code contains enough implicit references to wealth to warrant an examination of whether a uniform definition might advance worthwhile policy goals.

The most fundamental Code indicia of wealth are the estate and gift tax unified credits, which shelter asset accumulations of up to $1 million currently and $3.5 million by 2009 in the case of estate transfers. Of course, the Code defines wealth in terms of income as well as by reference to asset accumulations. For example, the business expense deduction provision of § 162 contains a special feature that can deny an employer’s deduction for compensation paid in excess of $1 million per year. This indirect expression of extravagant remuneration is confined to top executives of publicly held corporations that report officer compensation to shareholders under securities disclosure laws. Further, the limitation on deductibility contains broad exceptions applicable when an officer’s compensation is performance-based.

In effect, the Code sets a standard for compensatory wealth earned from a publicly held corporation and thus indirectly raises a political question regarding when earned wealth is sufficient to merit an inquiry as to whether the recipient has fairly earned the financial benefit conferred. The incentive for an employer to exercise such scrutiny is preservation of a quite valuable deduction. In order to establish this form of earned wealth accountability, Congress needed to determine an appropriate level of compensatory wealth,
and a nice, round $1 million per year became the benchmark for lavish enough pay to warrant such detailed regulation. 55

The Code offers additional examples of lavish expenditures that invoke a relative tax detriment. Among the more esoteric examples, the provision that governs the income taxation of annuities, endowment contracts, and life insurance arrangements indirectly defines a too lavish funeral as one exceeding $25,000 in cost. 56

Less esoterically, § 121 points to a standard for lavish housing by limiting the exclusion from income for gain upon the sale of a primary residence to $500,000, a figure frequently exceeded for sales of homes at values clearly associated with the "luxury market" in residential real estate. 57 In a similar way, the luxury market in homes corresponds at the high end with mortgages so large that the homeowner loses deductibility for a portion of interest paid on debts exceeding $1 million. 58 Notably, the Code imposes no "luxury" limitation on the tax benefit derived from deductions for residential real estate taxes. 59

Provisions creating special tax benefits aside, the overarching Code provision that ostensibly identifies wealthy taxpayers remains that which imposes direct tax detriments through a progressive structure of income tax rates. 60 Regardless of filing status, the highest income tax rate is reserved for those taxpayers whose taxable income exceeds approximately $300,000. 61 The progressive rate structure for federal income taxation thus indirectly quantifies income wealth, while the unified credit and transfer tax rate structure quantify asset wealth under the estate and gift tax scheme. 62 Yet the two standards lack any meaningful coordination. Indeed, taxpayers having sufficient taxable income to reach the highest income tax rate will not

55. Note that the $1 million per year compensation standard of § 162(m)(1) bears no relationship to the taxable income standards of § 1, which determine who will pay federal income taxes at the highest marginal rates.

56. See I.R.C. § 72(e)(10)(B) (exempting certain burial contracts from special rules that treat contract loans as taxable distributions).

57. Perhaps no other dollar limitation begs as much for geographic differentiation, given the huge variations in housing markets exhibited, say, as between Manhattan and Fargo, North Dakota. See supra notes 36, 37 and accompanying text.

58. See I.R.C. § 163(h)(1), (2)(D), (3)(A)-(B) (limiting the deductibility of mortgage interest respecting the qualified residence of a taxpayer).

59. See I.R.C. § 164 (allowing deductions for certain state and local taxes paid by taxpayers).

60. See I.R.C. § 1 (setting forth tax rate tables depending on filing status determinations).

61. The exact amount increases from year to year as a result of § 1(f), which provides adjustments in the tax tables so that economic inflation will not result in tax increases.

62. See supra note 50 and accompanying text.
necessarily accumulate sufficient wealth by the time they die to expose their estates to transfer taxation. From a wealth-determining viewpoint, some correlation between the highest income tax rate bracket and the estate tax unified credit/exemption equivalent would present to taxpayers a more rational view of which citizens are wealthy enough to incur full tax burdens. Without such a correlation, many persons might be viewed as having sufficient wealth for one revenue-raising purpose while not being sufficiently wealthy for another. Since both the imposition of income taxation at the highest rate and payment of transfer taxes are relatively rare, these implicit tax wealth standards inconsistently create a kind of "wealth stigmatization" that fails to coordinate with the implications of tax disallowances pertaining to such items as lavish compensations, funerals, or home purchases.

C. Determining Who is Middle Class, Affluent, or Otherwise Lucky/Unlucky in the Dispensation of Tax Allowances

Beyond standards that most Americans would clearly associate with either poverty or wealth exists a broad zone of dollar limitations that schizophrenically categorize taxpayers in a large variety of ways. Foremost in the categorization of taxpayers between poverty and wealth is § 1, which sets out four levels of taxable income that determine marginal income tax rate shifts. Once again, dollar limitations creating shifts in income tax rates do not correspond very well with other tax status indicia.

63. Putting aside the estate tax charitable deduction of § 2055 and the marital deduction of § 2056, exposure to the estate tax occurs when a decedent's taxable estate exceeds the exemption equivalent of the unified credit of § 2010 plus deductible estate administrative expenses and losses under §§ 2053 and 2054. Thus, the most fundamental estate tax sheltering mechanism in the Code is the unified credit of § 2010 (ranging over the next few years from exemption equivalents of $1 million to $3.5 million). If the unified credit were linked statistically to income tax characteristics, the credit's accumulations sheltering effect could be set as some multiple of a universal dollar limitation as discussed in Part III of the text.

64. To be cynical, one might expect that any unification of income and asset wealth standards would in any event result in numbers sufficiently high to permit the average Congressperson to avoid the highest taxation burdens.

65. Who is wealthy for tax purposes? Without a unified standard for the various Code dollar limitations that indirectly point to wealth, federal taxation offers no clarifying focus for ongoing political debates outside of tax policy, such as national discussions that pertain to the social implications of wealth disparities, philanthropy regulation, and the connection between wealth and political influence.


67. Section 1 further complicates the categorization of American taxpayers by making "filing status" distinctions. See I.R.C. § 2 (containing filing status definitions).
These other indicia of tax status include the lone rate shift from 26% to 28% at $175,000 of the “taxable excess” of alternative minimum taxable income over an exemption amount contained in the provision that creates the alternative minimum tax. 68. Many other dollar limitations that indirectly define tax statuses refer to adjusted gross income under the regular income tax scheme. 69.

Among the various limitations expressed as an amount of adjusted gross income, itemized deductions collectively start to diminish at $100,000, 70 Social Security benefit taxation commences at $32,000, 71 an exclusion for interest on U.S. savings bonds dedicated to higher education expenses begins to disappear at $60,000, 72 the exclusion for employer-paid adoption assistance starts phasing out at $150,000, 73 personal exemptions begin phasing out at $150,000, 74 deductions for contributions to individual retirement accounts diminish at $60,000, 75 the deductibility of interest paid on education loans starts phasing out at $100,000, 76 the deductibility of interest paid for qualified tuition and related expenses disappears above $130,000, 77 contributions to “Roth” individual retirement accounts diminish beyond $150,000, 78 a useful exception to the passive activity loss limitation rules starts to diminish at $100,000, 79 and the advantages of a “Coverdell” education savings account starts to phase out at $190,000. 80

A few other intermediary dollar limitations that do not refer to adjusted gross income include a $200,000 compensation ceiling for computing

68. See I.R.C. § 55(a) and (b) (imposing the alternative minimum tax and setting its rates).
69. Section 62 defines adjusted gross income as gross income minus seventeen possible deductions specifically listed. I.R.C. § 62(a). Section 63(a) defines taxable income (which defines the rate shifts in § 1) as gross income minus all the deductions allowable under Chapter One of the Code (other than the standard deduction created by § 63). I.R.C. § 63(c).
70. See I.R.C. § 68(a), (b)(1) (placing an overall limitation on itemized deductions). Unless otherwise stated, dollar limitations referenced in terms of adjusted gross income will refer to Code designated amounts unadjusted for filing status or inflation.
71. See I.R.C. § 86 (including in gross income certain amounts of Social Security benefits).
72. See I.R.C. § 135 (excluding from gross income amounts for redemption of qualified United States savings bonds).
73. See I.R.C. § 137 (excluding certain employer payments for adoption assistance).
74. See I.R.C. § 151(d)(3) (creating the exemption phaseout).
75. See I.R.C. § 219(g)(3)(B) (setting forth phaseout amounts that increase up to the year 2007).
76. See I.R.C. § 221(b) (limiting the maximum deduction for interest on education loans).
77. See I.R.C. § 222(b) (setting dollar limitations on the qualified tuition and related expenses deduction).
78. See I.R.C. § 408A(c)(3) (setting limits for Roth IRAs based on modified adjusted gross income).
79. See I.R.C. § 469(j)(3) (creating a phaseout of the $25,000 offset for rental real estate activities conducted by “natural” persons as set forth in § 469(j)(1)).
80. See I.R.C. § 530(c) (reducing permitted contributions to these tax-favored savings accounts).
contributions or benefits under a qualified retirement arrangement,\(^81\) the
$80,000 compensation figure used in the definition of a “highly compensated
employee” for the purpose of determining economic discrimination under
employee benefit programs,\(^82\) and both a $130,000 and $150,000
compensation threshold for defining “key employee” to determine whether a
retirement plan is “top-heavy” and thus subject to additional qualification
criteria necessary to secure favorable tax features for plan participants and
sponsoring employers.\(^83\)

The basic implication derived from any one of these dollar limitations is
that a taxpayer having compensation above a stated figure is too affluent, for
a given taxable year, to share in the particular tax benefit or status in question.
Those who attempt to plan their tax postures from year to year in order to
come within particular dollar limitations will seek ways to move income and
deductions from one taxable year to another.\(^84\) The incentives to engage in
timing manipulations and other tactics are as numerous as the collective dollar
limitations themselves. If all or more of the dollar limitations were
consolidated into one uniform figure, set in some manner as an objective
determination of income affluence,\(^85\) attempts to defer or accelerate income
and deductions could diminish.\(^86\) As well, those who did or did not qualify for
certain tax benefits based upon income limitations would have a better
political understanding of their statuses.\(^87\) As the system now stands, as a
taxpayer’s income fluctuates up or down over a wide range, potential tax

\(^{81}\) See I.R.C. § 401(a)(17) (creating an overall compensation limit for employees who participate
in tax-favored retirement plans).

\(^{82}\) See I.R.C. § 414(q) (defining “highly compensated employee” for the purpose of determining
whether a qualified retirement plan engages in unpermitted economic discrimination under § 401(a)(4)).

\(^{83}\) See I.R.C. § 416(i) (defining “key employee” by using ownership and officer status criteria as
well as compensation levels).

\(^{84}\) Taxpayers spend a great deal of effort in attempting to overcome these dollar limitations. Thus,
the personal finance magazine article referenced in note 66, supra, which laments how many taxpayers earn
too much to qualify for various tax breaks, also contains a cover description that further states, “[i]nside,
solutions [to the dollar limitations problem] that work.” Of course, the “solutions” offered have their own
definitional limitations imposed by the Code.

\(^{85}\) See infra Part III.C.

\(^{86}\) This statement assumes that Congress would set such a uniform dollar limitation sufficiently
high to reduce the number of potentially affected taxpayers to an audit-manageable size. In other words,
uniformity would best be achieved by raising the lower dollar limitation numbers to a level consistent with
the higher dollar limitations now affecting affluent taxpayers. Doing so would both eliminate a great deal of
taxpayer disaffection as illustrated by the popular article referenced, see supra note 66, and permit more
efficient allocations of Service audit resources against taxpayers of means whose audits are likely to
produce greater revenue collections.

\(^{87}\) The impression of fairness in the dispensation of tax benefits is particularly important in a
system that heavily relies on self-enforcement via annual reporting.
benefits and detriments appear and disappear with confusing frequency and without any semblance of objective policy considerations.

II. OTHER DOLLAR LIMITATIONS IN THE CODE FURTHER CATEGORIZE TAXPAYERS IN A HAPHAZARD MANNER

A. The Role of Dollar Limitations in Defining How Americans Save for Retirement

If a taxpayer who is not self-employed works for an employer (usually a small employer) that chooses not to sponsor a qualified retirement plan, the taxpayer’s opportunities to save for retirement in a tax-favored manner are limited to funding individual retirement accounts that can receive no more than $3,500 per year in contributions. Although Congress has scheduled this dollar limitation to rise to $6,000 by 2008, the economic potential for retirement savings under qualified retirement arrangements sponsored by employers will remain far greater. In 2003, an employee participating in an employer-sponsored retirement plan can benefit from an annual contribution of as much as $40,000 if the plan is a defined contribution arrangement, and considerably more if the plan is a defined benefit arrangement.

This glaring distinction in dollar limitations that serve a similar purpose is not based on any perceived taxpayer differences reflecting income levels or

88. The tax benefits associated with qualified retirement savings include immediate deductibility of employer contributions, long-term deferral of income recognition for plan participants, and exemption from taxation for the qualified trust holding and investing retirement plan contributions. I.R.C. §§ 404, 402(a), 501(a).
89. See I.R.C. § 408(a)(1) (incorporating by reference § 219(b)(1)(A), which refers to the “deductible amount” set out in § 219(b)(5) ($3,000 through the year 2004), plus an extra $500 “catch-up” contribution for individuals age fifty or older).
90. I.R.C. § 408(a)(1) (without the “catch-up” contribution, the basic limitation will be only $5,000 in the year 2008).
91. See I.R.C. § 415(c) (setting annual additions to employer-sponsored defined contribution retirement plans at the lesser of $40,000 or 100% of a participant’s compensation).
92. See I.R.C. § 415(c).
93. See I.R.C. § 415(b) (setting a payout limitation for defined benefit plans sponsored by employers at the lesser of $160,000 per year or 100% of average compensation for the participant’s high three years). Particularly for participants near retirement age when a defined benefit plan starts, this payout limitation, a lifetime annuity of as much as $160,000 per year, can invoke annual contributions actuarially set at levels considerably in excess of $40,000 per year.
94. The ostensible purpose is promotion of retirement income security, but even if the reason for lower contribution limits for individual retirement accounts relates to revenue costs, revenue neutrality could still result by appropriately lowering the contribution limits for employer-sponsored plans while increasing the limits for individual retirement accounts.
relative degrees of affluence, but rather rests solely upon whether an employed taxpayer attempts to self-fund retirement benefits or leaves the task to a (perhaps unwilling) employer.95 Indeed, this bias against employee self-funding extends into the realm of employer-sponsored retirement plans: Congress has set the dollar limitations applicable to elective deferrals under an employer’s § 401(k) plan or similar arrangement at levels substantially lower than the maximum contribution limits mentioned above, although still higher than the contribution limits for individual retirement accounts.96

But the schizophrenia respecting retirement plan contribution limitations extends even further. If an employer adopts a kind of elective deferral arrangement known as a SIMPLE plan,97 the annual limit on the participant’s elective deferrals is only $8,000 in 2003.98 Yet if the same employer instead adopts a § 401(k) plan, the annual elective deferral limit is $12,000.99 Since the policy behind the creation of SIMPLE plans involves removing a great deal of complexity associated with § 401(k) plans, thus encouraging small employers to adopt such plans, the legislature sends a clear message by substantially lowering the elective deferral limits for the less complex arrangement: The price employers and employees must pay to operate a plan that avoids mind-numbing complexity is substantially lowered access to coveted tax benefits.100 Inconsistent dollar limitations dramatically communicate this message, just as the much lower limit on individual retirement account contributions sends the message that the best retirement savings possibilities come from power granted to employers but not given to individual employees.101

95. If an individual is self-employed (sole proprietor), he or she can assume the status of an employer and thus sponsor a fully funded qualified retirement plan under § 401(a) by virtue of § 401(c)(1)(A). Unfortunately, employed individuals having no control over their employers cannot sponsor a § 401(a) plan for themselves. See I.R.C. § 401(a)(1).
96. See I.R.C. § 402(g)(1) (setting limitations for elective deferrals) and compare I.R.C. § 415(c) (setting a defined contribution limitation of $40,000 per year in general).
97. See generally I.R.C. § 408(p) (creating SIMPLE Retirement Accounts).
98. See I.R.C. § 408(p)(3)(E) (setting applicable dollar amounts for contributions by employees to SIMPLE Retirement Accounts).
100. To gauge the difference in complexity between SIMPLE Retirement Accounts and § 401(k) plans, compare the volume of Code verbiage contained in § 408(p) with the much greater volume of language contained in both § 401(k) and § 401(a). (Section 401(k)(1) incorporates by reference all the complicated provisions of § 401(a).) See I.R.C. § 401(a), (k).
101. Generally, employees can exercise power to implement an employer-sponsored retirement plan only through the collective bargaining process upon creation of a labor union at an employer’s facilities. Even under these circumstances, the collective will, not individual preferences, determines the kind of plan implemented and level of contributions. See I.R.C. § 414(f) (defining "multi-employer plan").
Other inconsistencies infect the portion of the Code devoted to retirement savings arrangements. In order to prevent qualified retirement plans from inordinately favoring top personnel, the Code contains two sets of rules that regulate economic discrimination against rank and file participants. One set of rules divides the participating workforce into two major groups: highly and nonhighly compensated employees.\textsuperscript{102} The other set of rules creates additional qualification criteria for plans deemed “top heavy.”\textsuperscript{103} Unfortunately, the definition of a “highly compensated employee” does not coordinate with the definition of a “key employee” as used in the latter set of rules.\textsuperscript{104} Both definitions refer to compensation levels and ownership status, but the applicable dollar limitations are different enough to guarantee that for many employers these categorizations overlap.\textsuperscript{105} This creates unnecessary complexity and risks of disqualification for many retirement plans.

The Code regulates various types of qualified retirement arrangements, and often different sets of rules apply to different kinds of plans for no clear reason. For example, a special dollar limitation in § 402(h) states that any contribution allocated to a participant’s account in excess of 25% of the participant’s compensation will cause immediate income recognition to the participant if the allocation is made under a type of plan known as a simplified employee pension.\textsuperscript{106} No other kind of qualified retirement plan invokes a similar sanction.\textsuperscript{107}

From time to time, Congress will indicate concern regarding inconsistent dollar limitations and make token adjustments. Thus, the 25% limitation applicable to simplified employee pensions stood at 15% of a participant’s compensation until recently changed, presumably to better coordinate the limitation with the 25% deduction limitation applicable to such plans.\textsuperscript{108}

\textsuperscript{102} See I.R.C. § 401(a)(4) (prohibiting discrimination in favor of highly compensated employees with respect to plan contributions or benefits), and I.R.C. § 414(q) (defining “highly compensated employee”).

\textsuperscript{103} See generally I.R.C. § 401(a)(10)(B) (incorporating by reference § 416 and creating special rules for top-heavy retirement plans).

\textsuperscript{104} Compare I.R.C. § 416(i)(1), with I.R.C. § 414(q).

\textsuperscript{105} For example, a non-owner officer earning only $125,000 per year would not be a “key employee,” but would have “highly compensated employee” status. See I.R.C. § 410(i)(1)(A)(i), 414(q)(1)(B)(i).

\textsuperscript{106} See I.R.C. § 402(h)(2)(A) (placing limitations on employer contributions to simplified employee pensions).

\textsuperscript{107} Simplified employee pensions, created under § 408(k) should not be confused with simple retirement accounts which follow a distinctly different set of rules under § 408(p). I.R.C. § 408(k), (p).

\textsuperscript{108} The change from 15% to 25% in § 402(h) resulted from the Job Creation and Worker Assistance Act of 2002, Pub. L. No. 107-147, 116 Stat. 21. The deduction limit for simplified employee pensions is
Similarly, Congress recently altered the deduction limitation for stock bonus and profit sharing plans from 15% of the collective compensation of plan participants to 25%. This change permitted small (usually professional) employers to avoid having to implement both a profit sharing plan and a money purchase pension plan in order to maximize overall deductible plan contributions. Now, a plan sponsor can avoid the complexities of two distinct kinds of qualified plans by implementing only a profit sharing plan that permits a large deductible contribution in profitable years and flexibility to reduce the contribution to as low as zero in lean years.

Even with these adjustments, the Code still fails to coordinate the ultimate qualification limitation for defined contribution plans with the employer deduction limits of § 404. Consequently, employers will not fund a profit sharing plan beyond 25% of the participants’ total compensation, even though an employer could fund each participant’s account individually up to a maximum of the lesser of $40,000 or 100% of compensation in any year. Because of this inconsistency, the owner of a small business having two employees could make, for example, a 40% of compensation contribution for each of three participants (including the owner) without disqualifying a profit sharing plan, yet could deduct only 25% of the three participants’ payroll and incur a penalty tax for making a nondeductible contribution.

If instead of a profit sharing plan, the same employer adopted a defined benefit pension plan, the deduction for plan contributions would coordinate much better with the plan’s qualification limitation. Indeed, the overall contribution might be substantially greater than that allowed by the $40,000 allocation limitation applicable to defined contribution plans. Since defined benefit pension plans are much more complex than defined contribution plans,

contained in § 404(h)(1)(C).


111. Contributions flexibility for profit sharing plans exists because the Code’s minimum funding standards do not apply to such plans. See I.R.C. § 412(b)(1).

112. See supra note 109 and accompanying text.

113. See supra note 91.

114. See I.R.C. § 4972(a) (imposing a 10% penalty tax on nondeductible contributions to qualified retirement plans).

115. In effect, the deduction limit for defined benefit plans expressed in § 404(a)(1) lets the employer deduct contributions actuarially consistent with the plan’s promised benefits, and § 415(b) tells the employer exactly how great a promise is permitted.

116. See supra notes 91, 93.
the message conveyed by this limitation disparity seems to say that maximizing tax-favored retirement savings should not be allowed unless the sponsor endures great administrative cost and complexity.\(^{117}\)

B. How Dollar Limitations Define Small Businesses

Like individuals, businesses face a wide array of tax benefits and detriments diversely expressed in the Code through numerous dollar limitations. Corporations have their own income taxation rate table, separate and distinct from the rate tables of § 1 applicable to flesh-and-blood individuals.\(^{118}\) The highest rate in the corporate table is 35%, only one percentage point greater than the second-highest rate in the table.\(^{119}\) Curiously, the 34% rate bracket applies to corporate taxable income over a range of $9,925 million, while the two rate brackets (15% and 25% percent) leading up to the 34% rate span a mere $75,000 of taxable income.\(^{120}\) Corporations having in excess of $10 million of taxable income, thus fitting into the table’s 35% rate bracket, presumably satisfy an implicit definition of “big-business,” especially given the tendency of closely-held corporations to restrict taxable income by making large deductible compensation payments to their owner-executives.\(^{121}\)

An interesting feature of the corporation income tax rate structure, however, sets the implied transition to affluent corporation status (arguably “big business”) at a mere $335,000 of taxable income, which is the point at which a corporation loses the relative advantage of the lower two tax brackets and must compute all taxable income up to $10 million under a flat 34% rate.\(^{122}\)

Just as for individuals, the taxpayer-defining implications of the income taxation rate table for corporations result indirectly from shifts in rates, not from explicit policy-based differences among similarly situated groups of

\(^{117}\) See supra notes 97-100 and accompanying text.

\(^{118}\) See generally I.R.C. § 11 (setting forth income tax rates for corporations).

\(^{119}\) I.R.C. § 11(b)(1).

\(^{120}\) Id.

\(^{121}\) See I.R.C. § 162(a)(1) (providing deductions for reasonable compensation expenses paid in carrying on a business).

\(^{122}\) See I.R.C. § 11(b)(1)(D) (flush language) (providing a surtax on corporate taxable income above $100,000).
taxpayers. Subsection D. Other Code provisions clearly attempt to define small businesses for a variety of tax purposes.

For example, § 1202, which offers taxpayers selling stock a 50% exclusion for gain from “small business stock,” defines “qualified small business” as a domestic corporation that, among other requirements, has “aggregate gross assets” that do not exceed $50 million. By contrast, § 1244, which converts up to $100,000 of capital loss on the disposition of stock into ordinary loss, defines a “small business corporation” as one for which the aggregate amount of money and other property received as a contribution to capital and as paid-in surplus does not exceed $1 million. Yet another Code provision, § 1361, which allows corporations to avoid direct income taxation via an election that passes through the entity’s tax features to its shareholders, defines an eligible “small business corporation” primarily as an entity having no more than 75 shareholders. This “Subchapter S” election definition makes no reference to the entity’s asset values or degree of capitalization.

Other Code provisions obliquely define small businesses using a range of dollar limitations. Section 55, which establishes the unpopular alternative minimum tax, provides a small corporation exemption for entities having average annual gross receipts not exceeding $7.5 million. Section 263A, which requires capitalization of a variety of business expenses that taxpayers might otherwise attempt to deduct immediately, does not apply to personal property acquired by a taxpayer for resale if the average annual gross receipts of the taxpayer do not exceed $10 million.

Section 447 excuses corporations operating a farming business from the more complicated accrual method of tax accounting if the entity either is not

123. The rate tables operate in relation to levels of taxable income, but depending on the deductions taken by a taxpayer to reduce gross income to taxable income, a small business could produce a taxable income exceeding that of a publicly held corporate giant. Consequently, rate tables are poor devices for determining whether a business is large or small, yet rate tables indiscriminately create relative tax detriments as though all taxpayers having the same taxable income are equally suited to pay the tax imposed.
125. See I.R.C. § 1244(a) (ordinary loss is a preferred status due to the restrictions against capital losses imposed by § 1211).
128. Section 1361(b)(1) does refer to other defining criteria, including the status of shareholders and the necessity of corporation’s having issued only one class of stock.
an "S corporation"\textsuperscript{131} or does not have gross receipts exceeding $1 million.\textsuperscript{132} Similarly, under § 448, any corporation or partnership having average annual gross receipts of not more than $5 million can use the relatively simple cash method of tax accounting.\textsuperscript{133}

Yet another view of small business operations comes from § 535, which allows corporations to avoid the complex and costly accumulated earnings tax if their accumulated earnings do not exceed $250,000.\textsuperscript{134} Another penalty provision, § 541, establishes the personal holding company tax.\textsuperscript{135} Excepted from this imposition are entities that, like electing small business corporations defined under § 1361(b) of the "Subchapter S" scheme, meet a standard that pertains to the number of shareholders rather than an operational dollar limitation.\textsuperscript{136}

Referring once again to a dollar limitation involving farming operations, § 1274, which burdens sales transactions involving issuance of a debt instrument by potentially determining an imputed principal amount, does not apply to sales of $1 million or less of farms by individuals or small businesses.\textsuperscript{137} Thus, sale price becomes one more way to identify a small operation for purposes of avoiding the administrative burdens of complying with a technical taxation feature that affects the owners of larger operations.

Like individual flesh-and-blood taxpayers, corporations and other entities that operate businesses compute their tax liabilities under a great variety of Code dollar limitations that inconsistently create categories for the dispensation of tax benefits and detriments. Small businesses, variously defined, are the "darlings" of the federal taxation scheme, just like human taxpayers whose economic identifiers distinguish them from more affluent persons. Such distinctions are pervasive but not organized under cohesive policy guidelines designed to impart greater public meaning and simplify compliance and planning exercises under the Code.\textsuperscript{138}

\textsuperscript{131} See supra notes 127-28 and accompanying text.
\textsuperscript{132} I.R.C. § 447(c), (d)(1). (Section 447(d)(2) increases the $1 million limit to a generous $25 million in the case of a "family corporation.")
\textsuperscript{133} I.R.C. § 448(b)(3), (c)(1).
\textsuperscript{134} I.R.C. § 535(c)(2)(A).
\textsuperscript{135} See generally I.R.C. §§ 541-547 (imposing a tax at the highest rate of § 1(c) against "undistributed personal holding company income").
\textsuperscript{136} See I.R.C. § 542(a)(2) (setting forth a stock ownership requirement as part of the definition of a personal holding company).
\textsuperscript{137} I.R.C. § 1274(c)(3)(A).
\textsuperscript{138} See infra Part III.B-C.
III. A More Rational and Cohesive Approach to Setting Dollar Limitations in the Internal Revenue Code

A. Adjusting Revenue Effects Without Compromising Dollar Limitations

Most dollar limitations contained in the Code have a clear effect on revenue production. If particular limitations are moved up or down by a certain number of dollars, revenue collections will increase or decrease correspondingly. Accordingly, one might suppose that revenue projections influence political compromises that accompany many legislative changes involving dollar limitations.

Yet revenue effects alone cannot explain why many dollar limitations are set at a precise amount. Even when the legislative history behind a Code provision is murky, some policy consideration beyond mere revenue effects frequently appears to guide Congress in the exact setting of a dollar limitation. As suggested earlier, some dollar limitations can telegraph a kind of social message that certain taxpayers, because of their statuses expressed via relevant financial data, should or should not invoke various tax benefits or detriments. If these effects were substantially dependent upon revenue collections, far fewer dollar limitations would appear as round numbers that tend to repeat throughout the Code.

To the extent revenue costs do influence the setting of dollar limitations, no compelling technical reasons suggest that they should. With reasonable consistency, technical mechanisms are available to address revenue effects without interfering with the putative social messages that dollar limitations

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139. Some revenue effects associated with certain dollar limitations might be very difficult to determine. For example, the dollar limitations mentioned in the text accompanying (supra) notes 132-33 have vague influences on revenue collections, since questions of choice involving tax accounting methods relate more to issues of timing rather than to whether income will eventually be recognized or deductions taken.

140. For example, altering the taxable income amounts that determine tax rate brackets in § 1, or changing the personal exemption amount of § 151(d), would predictably affect revenue collections.

141. Congress has long viewed special tax allowances as a form of governmental financial assistance that substitutes for direct government expenditures. See Philip D. Oliver & Fred W. Peel, Jr., Tax Policy 505-07 (1996).


143. See supra Parts I, II.

144. Note in particular the popularity of dollar limitations set at the $100,000, $150,000, or $1 million levels in many of the Code provisions mentioned in the preceding segments of this article.
readily convey. For example, revenue effects can just as well vary under a tax rate table by adjusting the rate percentages as by tinkering with the dollar levels of taxable income that create bracket shifts.145 Similarly, revenue effects can vary by adjusting the definition of the tax base, making it broader perhaps, while leaving the telling economic shifts that cause some taxpayers to incur higher rates of taxation to independent determinations.146

Dollar limitations less comprehensively applicable than those contained in rate schedules can also coordinate with technical mechanisms that would preserve revenue if precise limitations were set by policy standards rather than from revenue considerations. For example, if Congress were to determine that the exclusion for interest on government savings bonds used to pay higher education expenses should apply without phase-out to modified adjusted gross income up to $100,000, instead of the $60,000 set in the Code,147 the revenue not collected as a result of such change might be saved by limiting the exclusion to a percentage of the total interest paid,148 altering the definition of "qualified United States savings bond",149 altering the definition of "qualified higher education expenses",150 tightening the phase-out range for the exclusion when modified adjusted gross income exceeds the dollar limitation;151 altering the inflation adjustment feature of the dollar limitation;152 tying the exclusion to a percentage of qualified expenses;153 or adding additional "special rules" that otherwise alter the revenue effects of the exclusion.154

In like fashion, law writers could set most Code dollar limitations according to reasoned policy standards without compromise stemming from revenue effects.155 Indeed, a massive overhaul of dollar limitations to

145. See generally I.R.C. § 1 (containing a series of rate tables expressing both variable rates of income taxation and progressively stated levels of taxable income that effectively create “tax brackets”).
146. The tax base fundamentally begins with the definition of gross income and continues definitionally through a series of exclusions set forth. I.R.C. § 61; §§ 101-140.
147. I.R.C. § 135(b)(2).
148. Compare I.R.C. § 243(a) (limiting a corporation’s dividends received deduction to either 70% (or 80% in the case of 20% owned corporations) except for dividends received from qualifying sources).
149. See I.R.C. § 135(c)(1).
150. See I.R.C. § 135(c)(2).
153. For example, the exclusion could apply to only 50% of qualified higher education expenses in excess of the median for such expenses at American institutions of higher learning.
154. See generally I.R.C. § 135(d). (For example, setting forth special rules that reduce qualified higher education expenses for persons receiving scholarships or other assistance.)
155. See supra note 144 and accompanying text. Selecting commonly used rough numbers alone does not indicate that the dollar limitations so derived were based on cohesive policy considerations intended to convey unified messages about poverty, affluence, wealth, ability to pay, and similar matters.
coordinate their collective policy implications could accompany relatively insubstantial rate table alterations in order to preserve revenue neutrality. In other words, Congress might more easily address revenue level issues in gross rather than piecemeal as each provision enters the Code. Thus, from time to time, Congress could alter tax rates slightly to account for both a broadening of aggregate allowances set pursuant to particularized policy goals affecting individual Code provisions and an overarching policy that rationally and consistently sets dollars limitations throughout the Code.

Accordingly, § 1, which contains the basic income tax rate tables for individuals, could contain a subsection, paragraph, or clause (similar to an inflation adjustment provision) to adjust tax rates whenever collective allowances based on dollar limitations exceed a growth benchmark during a preceding period. As desired, the rate adjustments could be uniform, progressive across all rate brackets, or expressly applicable only to the higher rate brackets. The growth benchmark used might relate to increases in the use of listed allowances as measured by numbers of taxpayers beyond mere demographic changes over the reference period. Or, the growth benchmark could incorporate changes in direct revenue effects actually experienced during the reference period, which could be defined to allow sufficient opportunities to collect and analyze relevant data from previously filed tax returns.

In any event, tax law writers need not justify the current mishmash of dollar limitations in the Code by suggesting that revenue needs necessitate continuously inconsistent categorizations of taxpayers. Congress could

156. If coordination of dollar limitations suggesting relative affluence were to result in raising many dollar limitations to, say, $250,000 in order to express statistical harmony with other governmental norms or data collection categories, revenue neutrality might nonetheless be preserved by, for example, modestly increasing tax rates for the higher brackets contained in § 1.

157. See infra Part III.C (regarding objective ways to categorize taxpayers using dollar limitations).

158. Thus, if Congress were to expand the number of “tax breaks” based on uniform dollar limitation standards, they could control overall revenue effects automatically through rate adjustments that could at least partially offset the growth of such tax allowances.

159. Indeed, the rate increases might concentrate on those rate brackets in which taxpayers collectively avoid the greatest amount of taxes due to allowances based on uniform dollar limitation standards. Accordingly, all persons in those rate brackets would tend to “pay” for the allowances enjoyed by those taxpayers circumstantially eligible for such allowances. The mechanics of automatic rate adjustments would surely raise some interesting political questions.

160. For example, if the number of taxpayers in question grew by 3% due to population increases alone, and the number of deduction takers taking advantage of certain allowances grew by 7% in the same period, an automatic rate adjustment could be justified to offset the disproportionately lost revenue.

161. Automatic rate adjustments need not occur annually. Biennial or even three-year periods might allow collection of better data upon which automatic rate adjustments could occur.
address revenue needs with ad hoc rate adjustments from one tax act to another by using an automatic adjustment mechanism like that suggested above, or by simply focusing more carefully on the definitional elements of each particular provision that creates an allowance. Consequently, the dollar limitations used to structure tax allowances need not vary as wildly as the Code now permits.\textsuperscript{162}

B. Uniform Dollar Limitations Would Promote Simplicity and Fairness

A self-reporting taxation system will operate effectively only if it generates broad public support resulting from a collective sense that the system operates fairly and rationally. When numerous tax benefit provisions categorize taxpayers according to economic criteria expressed in the form of dollar limitations, the paying public will expect their law makers to set limitations consistently, reasonably, and objectively.\textsuperscript{163} If the dollar limitations in a taxation system present a hodgepodge of standards, the resulting mixed signals will detract from the system's semblance of economic justice, thus weakening the system in the eyes of its supporters.\textsuperscript{164} This weakening extends as well to many state taxation systems that use federal adjusted gross income as a starting point for local income taxation.\textsuperscript{165}

The current conglomeration of dollar limitations contains inconsistencies beyond mere amount differences. Dollar limitations frequently refer to adjusted gross income but sometimes use other determinations, such as “modified” adjusted gross income,\textsuperscript{166} compensation in general,\textsuperscript{167} and a variety of numbers applicable to business activity.\textsuperscript{168} Some dollar limitations take

\begin{enumerate}
\item[162.] See supra notes 72, 76-77, 80 and accompanying text (illustrating a dollar limitation range of $60,000 to $190,000 of adjusted gross income for just a handful of provisions, all of which relate to tax allowances pertaining to education expenses alone).
\item[163.] A taxpayer might reasonably ask, for example, “Why shouldn't I be able to have a Roth IRA if I don't earn enough money to be subject to the alternative minimum tax and I qualify for a "Coverdell" education savings account?” The answer is that each tax feature uses arbitrarily set and inconsistent dollar limitations. See supra notes 68, 78, 80 and accompanying text.
\item[164.] Over many years, the popular press has generated a huge volume of stories, usually around April 15th each year, expressing citizen disaffection with tax law complexity, examining tax cheating, and illustrating taxpayer animosity with the Service. Throughout the Code, inconsistently stated dollar limitations no doubt contribute to this “customer dissatisfaction.”
\item[165.] See, e.g., OHIO REV. CODE ANN. §§ 5747.01(A), 5747.02(A) (West 2002).
\item[166.] See, e.g., I.R.C. § 222(b)(2)(C) (listing several other Code provisions for their specific impact on adjusted gross income as used to limit the deduction for qualified tuition and related expenses).
\item[167.] See I.R.C. § 401(a)(17) (setting a $200,000 limitation on compensation taken into account for each employee covered in a qualified retirement plan).
\item[168.] See supra Part II.B.
into account annual inflationary changes; others do not.\textsuperscript{169} Those that do account for inflation employ inconsistent methods for making the annual adjustment.\textsuperscript{170} Even the methods employed to round off annual inflation adjustments illustrate further inconsistencies.\textsuperscript{171}

These variations, as well as frequent tinkering with applicable dollar amounts, create both complexity and the appearance that our system of taxation lacks a rational policy basis respecting dollar limitations. Taxpayers and their advisers must continuously check and recheck adjustment authorities,\textsuperscript{172} definitional predicates,\textsuperscript{173} and structural changes in limitation provisions that result from a continuous stream of new tax legislation.\textsuperscript{174} Tax compliance becomes expensive and overly complicated, and tax planning becomes increasingly subject to unpredictability as the mechanical underpinnings of numerous dollar limitations continue to evolve.\textsuperscript{175}

At the same time, the dollar limitations misasnia increasingly affects social and political discourse. Socially, particular dollar limitations serve as labels that place individuals into discernable groups according to erratic dispensations of tax benefits and detriments. At a gathering of neighbors, friends, and acquaintances, one might overhear a person talking enthusiastically about the virtues of opening a “Roth” individual retirement account.\textsuperscript{176} This presents the perfect opportunity for another person to lament that the benefits of such an arrangement cannot favor the speaker because of a $150,000 income limitation.\textsuperscript{177} Immediately, the conversation relegates the first person to a lower income status than that of the second. The cutoff point

\textsuperscript{169} For example, the dollar limitations under the alternative minimum tax, contained in § 55(b)(1) and (d), are not adjusted for inflation.

\textsuperscript{170} Compare inflation adjustments respecting the adoption expenses credit, § 23(h) with cost-of-living adjustments respecting limitations on benefits and contributions under qualified retirement plans. I.R.C. § 415(d).

\textsuperscript{171} Id.

\textsuperscript{172} The Service publishes annually long lists of specific dollar limitation changes. See, e.g., Rev. Proc. 2002-70, 2002-2 C.B. 845.

\textsuperscript{173} Note the difficulty regulators have had expounding upon the definition of “compensation” as set forth in § 414(s) for qualified retirement plan purposes. See also Treas. Reg. § 1.414(a) (1993) (the overwrought definitional effort contained therein).

\textsuperscript{174} One of the best ways to appreciate how frequently Congress alters popular tax allowance provisions is to peruse text from the Code as published with all prior amendments since the date of enactment of each Code provision. See generally STAND. FED. TAX REP. (CCH).

\textsuperscript{175} When a Code provision evolves too extensively, problems of retroactivity can arise, leading to complex “grandfathering” clauses. See, e.g., I.R.C. § 415(d)(3) (reflecting date sensitivity in the determination of cost-of-living adjustments for qualified retirement plan limitations).

\textsuperscript{176} See I.R.C. § 408A.

\textsuperscript{177} I.R.C. § 408A(c)(3)(C).
between the two will thus appear quite significant even though their incomes might vary only slightly, or indeed, the gross income of the first person might actually exceed that of the second.178 Nonetheless, the relative detriment of not qualifying for a common tax benefit will indirectly label the one conversationalist as being economically superior.

For decades, people have obliquely distinguished themselves socially via references to their income tax brackets.179 Today, many more opportunities exist for social differentiation as a result of the varied and numerous dollar limitations of the Code. If death and taxes are both immutable, conversations about the common certainties we face will frequently drift to the latter topic, since taxation is slightly more cheerful (if only because one’s tax status can be worn as a badge of economic honor) and more pervasive in everyday life due to annual filing requirements.

Consequently, a great deal of personal information can be solicited (or volunteered) in the course of casual conversations about taxes. Consider the information potentially transmitted as a result of the following statements or questions: “My daughter got a hefty earned income credit this spring.” (She doesn’t earn much, is probably poor, and likely has children.180) “Did you take advantage of the child tax credit for your two children?” (Inquirer possibly knows the person addressed has adjusted gross income under a specified amount if the response is affirmative.181) “Now that my son is on his own, he can offset his income tax liability with the new education credits.” (“We have adjusted gross income over $80,000 these days.”182) “My accountant says we will have to pay some capital gains tax on the sale of our home.” (“I am telling you our profit on the sale exceeded $500,000.”183) “I ‘maxed out’ my 401(k) contribution this year.” (“I could afford to save $12,000—too bad if you (a fellow plan participant) couldn’t.”184)

178. Using adjusted gross income in a dollar limitation, when most persons associate “income” with gross income sans deductions, creates the possibility, for example, that one person having a gross income of $200,000 and $60,000 of § 62(a) deductions would qualify to fund a Roth IRA while another person having $180,000 of gross income but only $15,000 of § 62(a) deductions would not so qualify.

179. At any time during the development of the Code’s rate structure, paying income taxes at the highest marginal rate has been a clear indicator of financial success and a means to signal such success without divulging the precise amount of one’s income.

180. See I.R.C. § 32 (containing the earned income credit rules).

181. See I.R.C. § 24(b) (creating a child tax credit limitation based on adjusted gross income).

182. See I.R.C. § 25A(d) (regarding hope and lifetime learning credits limitation based on modified adjusted gross income).

183. See I.R.C. § 121(b)(2)(A) (limiting the exclusion of gain from the sale of a principal residence).

184. See I.R.C. § 402(g)(1)(B) (setting forth applicable dollar amounts for elective deferrals).
As taxpayers enter the period between January 1st and April 15th each year, many other similar opportunities exist for indirect exchanges of economic information as a result of the varied dollar limitations contained in the Code. These limitations thus assume an important place in a social fabric that enables people to compare themselves with their fellow citizens. Individuals use taxation features as part of a continuous process of seeking and analyzing similarities and differences that help identify social status or predicament. Taxation features assume social significance on par with other common differentiating characteristics such as age, race, gender, occupation or profession, place of habitation or employment, marital and parental status, education, avocations, and similar determinants. For this reason, taxation features, including most particularly the Code's many dollar limitations, should not appear haphazardly set without comprehensive policy inputs that take into account their importance beyond mere revenue effects.

The dollar limitations of the Code have significant political implications as well. Federal politicians continuously debate the merits or detriments of tax or other legislative proposals designed to assist targeted groups of constituents. Frequently, such proposals involve the creation of new dollar limitations that define a particular group of affected persons or entities. If a proposal purports to help, for example, small businesses, some politicians will favor a restrictive definition while affirming their resistance to "welfare for the wealthy." Other politicians will argue for an expansive definition to

185. Of course, other Code features also permit indirect exchanges of economic information. For example, if one knows what another paid for an asset sold years later, the innocent answer to a question about how much capital gains tax the seller paid might tell the inquirer whether and how much profit the seller realized (based on an understanding of the basis, gain recognition, and capital gain rate provisions). I.R.C. §§ 1012, -1001, and -1(h). Notwithstanding, the Code's dollar limitations remain the most pervasive yardsticks for indirectly discerning economic information pertaining to tax consequences.

186. Sometimes a person's tax status can overcome the negative implications (to the extent perceived) of the nontax determinants listed. For example, a person having little formal education might delight in illustrating how his or her tax characteristics signal parity (or superiority) compared to persons much better educated.

187. See infra Part IIIC (regarding possible means to standardize dollar limitations).

188. Outside of federal taxation, enactments like the Americans with Disabilities Act, the Occupational Health and Safety Act, and various discrimination statutes frequently provide assistance to employees, a major group also targeted for considerable tax relief under a host of Code-provisions affecting health care, pensions, and fringe benefits, among many other provisions basing tax benefits upon the existence of an employment relationship. I.R.C. §§ 105, -106, 401-418E, -132.

189. Wealthy persons do own small businesses, but very large (publicly owned) businesses are often owned by diverse persons of limited means or the trustees of pension and other funds that benefit a wide variety of persons not deemed wealthy under most definitions. Wealth and business size do not correlate indisputably.
afford relief to as large a number of business owners as possible so as to mitigate "punishment of the wealthy.”\textsuperscript{190}

Each political view will simultaneously find support by referring to established dollar limitations that predecendally suggest either a restrictive or expansive definition of small businesses.\textsuperscript{191} Because political agreement on a definition of small businesses has varied so widely in the past, future dollar limitations will likely continue to emerge indiscriminately under a continuing exercise in political subjectivity. These inconsistent determinations of important dollar limitations thus assume a life of their own divorced from any set of objective principles that would promote fairness, simplicity, reliability, and freedom from subjective political inputs.

\textit{C. Objective Means for Categorizing Taxpayers Via Dollar Limitations in the Internal Revenue Code}

Instead of directing the political process piecemeal toward the case-by-case setting of individual dollar limitations in the Code, Congress would best steer political efforts toward consensus building that leads to discernible objective standards for categorizing taxpayers according to numerical characteristics. Standards for tax features based on the concept of poverty\textsuperscript{192} would likely result in political consensus, since various demographic demarcations used for many nontax policy analyses point the way to readily available poverty standards that could lend consistency to taxation determinations.\textsuperscript{193} That such extraneous standards might fluctuate should present no problem in a taxation system already assiduously sensitive to annual changes in consumer prices and even monthly changes in a handful of federal interest rates.\textsuperscript{194}

Finding acceptable objective standards to delineate the wealthy from the merely affluent presents a far greater challenge. Most dollar limitations in the Code that distinguish degrees of affluence are based on the concept of

\textsuperscript{190} \textit{Id.}

\textsuperscript{191} \textit{See supra} Part II.B (discussing some of the many dollar limitations that purport to define small businesses for various Code purposes).

\textsuperscript{192} \textit{See supra} Part I.A (discussing various dollar limitations that indirectly help define poverty for tax determinations).

\textsuperscript{193} \textit{See supra} note 11.

\textsuperscript{194} \textit{See I.R.C.} § 1274(d)(1)(B) (requiring the Secretary of the Treasury to determine three interest rates during each calendar month for the purpose of defining imputed interest in the case of certain debt instruments issued for property).
adjusted gross income.\textsuperscript{195} If a convenient conversation factor were found that links adjusted gross income to taxable income, dollar limitations could indirectly relate to the rate bracket cutoff points set forth in the income tax rate tables contained in § 1.\textsuperscript{196} This would permit tax lawmakers to coordinate classes of dollar limitations, separating tax benefits and detriments throughout the Code, with the ultimate categorization of tax detriments (or relative benefits) inherent in the rate structure of the progressive taxation scheme.\textsuperscript{197}

For example, if the shift between the first three and next higher rate brackets occurs at $120,000 of taxable income, and a conversion factor of 125\% would apply,\textsuperscript{198} an adjusted gross income of $150,000 might serve as a "universal" dollar limitation that effectively represents the midpoint of the progressive rate structure. If tax lawmakers wished a degree of flexibility in setting dollar limitations in particular provisions at variance with a universal standard, they could reach down or up a rate bracket (or two perhaps) to find a rate table derived number appropriate for the particular provision under consideration.\textsuperscript{199}

Variations up or down from the universal dollar limitation would, of course, alter the revenue effects of particular provisions relative to those resulting from use of the universal standard, but because many other mechanisms are available to address revenue effects,\textsuperscript{200} specific policy reasons should alone motivate the use of a dollar limitation at variance with a universal standard objectively selected. In effect, using a dollar limitation

\textsuperscript{195} See supra note 69 and accompanying text.

\textsuperscript{196} This would help mitigate the problem of basing the most fundamental income tax imposition on one standard (taxable income) while basing many tax benefits, and thus relative tax detriments for taxpayers outside applicable dollar limitations, on yet another standard (adjusted gross income). Actually, as §§ 62 and 63 illustrate, the two standards relate to different sets of deductions that enter the respective computations of taxable income and adjusted gross income. Although individual differences between taxable income and adjusted gross income vary greatly, no doubt statistical correlations can link the two within large groups of taxpayers.

\textsuperscript{197} Currently, § 1 sets out rate tables that use five progressive rates. Linking dollar limitations to the amounts of taxable income that separate these rates would thus offer tax law writers five possibilities to express poverty and degrees of affluence while setting uniform dollar limitations that now vary disjointedly and independently.

\textsuperscript{198} See I.R.C. § 1274(d) (factor variations in the use of the "applicable federal rate" standard, created under § 1274(d) to determine issue price in the case of certain debt instruments issued for property). Section 1274(e) refers to a 110\% variation on the universal rate where sale-leasebacks are involved. For other purposes in the Code, 120, 130, 150 and 175\% variations apply. See, e.g., Rev. Rul. 2003-7, 2003-27 I.R.B. 1.

\textsuperscript{199} For example, lawmakers could set limitations contained in § 32 (the earned income credit) to correspond with the taxable income equivalent that defines the top end of the lowest income tax bracket.

\textsuperscript{200} See supra notes 147-54 and accompanying text.
higher or lower than the universal standard would signal to taxpayers the built-in intentions of their lawmakers. Choosing a higher standard would indicate a deliberate attempt to benefit more affluent taxpayers as well as less affluent persons while giving a special status to the particular allowance in question. This status would automatically point to the unusual significance of the economic subject of that allowance. Conversely, choosing a lower standard would indicate a congressional intention to focus tax relief only upon less affluent Americans while, in many cases, making a de facto declaration that the economic subject of the provision in question merits relatively less significance.\textsuperscript{201}

If a universal dollar limitation were set (by way of illustration only) at $150,000 of adjusted gross income, deliberately using dollar limitations of, say, either half as much or twice as much would make implied statements about the relative merits of tax relief relating to a wide range of subjects including higher education,\textsuperscript{202} rental housing,\textsuperscript{203} retirement savings,\textsuperscript{204} childcare,\textsuperscript{205} government-sponsored investments,\textsuperscript{206} and several other items on the agenda of national concerns that have or might become integrated into the federal taxation system.\textsuperscript{207}

By sticking to a universal standard in most instances, lawmakers would affirm the prima facie equal importance of the majority of subjects or activities addressed in Code provisions that utilize dollar limitations.\textsuperscript{208} Upon occasionally using a dollar limitation at variance with a universal standard, lawgivers would deliberately telegraph their intention to invite special attention to particular subjects or activities that might merit continuing policy debate. The political debate surrounding the setting of a particular dollar limitation would focus upon whether potential tax relief should target a broader or narrower class of taxpayers than suggested by the normative standard or upon whether the subjects and activities of individual Code

\textsuperscript{201} Presumably, provisions like the earned income credit of § 32, which specifically target poorer taxpayers, would contain dollar limitations low enough to dispel the notion that lower limitations necessarily correspond with a less significant subject matter.

\textsuperscript{202} See supra notes 72, 76-77, 80 and accompanying text.

\textsuperscript{203} See supra note 34 and accompanying text.

\textsuperscript{204} See supra Part II.A.

\textsuperscript{205} See supra notes 28-33 and accompanying text.

\textsuperscript{206} See supra note 72 and accompanying text.

\textsuperscript{207} See, e.g., note 73 and accompanying text (referring to an adoption assistance provision of the Code).

\textsuperscript{208} Equalization in the sense of revenue effects would unlikely occur, although overall control of revenue effects could be achieved by using a rate adjustment mechanism. See supra notes 157-61 and accompanying text.
provisions deserve wider or more restrictive encouragement.\textsuperscript{209} A system of normative dollar limitations would encourage political debaters to reveal their intentions, since advocacy of a dollar limitation at variance with the universal standard would create a stronger implicit obligation to explain the variation than now exists under the inconsistently variable dollar limitations that infect federal taxation policy.

Creation of a universal dollar limitation would impose a form of political discipline on tax lawmakers as they continuously enact new Code provisions while tinkering with existing ones. Use of a universal dollar limitation, objectively derived,\textsuperscript{210} would yield an economic reference point valuable both as a technical determiner in the Code and as a frame of reference for taxation policy debates. Even those Code provisions that employ dollar limitations not expressing an adjusted gross income standard, such as the provisions that deal with rates and other features of the gift, estate, and generation skipping taxes, could link up with a common adjusted gross income standard via a simple multiplier mechanism that would use a universal dollar limitation as a unit of measure.\textsuperscript{211} In short, a universal dollar limitation could give a rational cohesiveness to the entire Code.\textsuperscript{212}

All dollar limitation structures in the Code would derive from a standard taken directly from rate bracket determinations applicable to individual taxpayers under § 1, which embodies the very first and arguably most important taxpayer categorizations of our voluminous and complex statutory system of federal taxation.\textsuperscript{213} All that would remain for a cohesive approach to dollar limitations in the Code would be to find a politically palatable objective means to determine how income tax rate brackets should be set.

\textsuperscript{209} For example, Congress might set dollar limitations pertaining to education lower than those set for retirement savings if data were to indicate that affluent Americans do a better job in seeing that their children get a higher education than they do in providing for their own retirements. Under such circumstances, the latter activity might better benefit from tax encouragement than the former, notwithstanding the substantial importance of both subjects.

\textsuperscript{210} Hopefully, the objectively derived universal dollar limitation would not coincidentally coordinate too closely with the tax postures of average Congrespersons.

\textsuperscript{211} For example, the estate tax unified credit of § 2010 might be set at ten times the universal dollar limitation.

\textsuperscript{212} Presumably, Congress could also use properly determined multipliers to set even the larger dollar limitations associated with various taxation features connected with business activities, like those discussed in Part II.B.

\textsuperscript{213} The continuing wide political support for progressive tax rates under § 1 assures the availability of multiple rate bracket differentiations that could serve as potential sources for a universal dollar limitation. But even a flat tax system could provide a rate differentiation benchmark, since few flat tax proponents would fail to set a standard to separate those who would pay at least some tax from those whose tax base would be too low to pay any income tax.
Although the setting of rates tends to depend on revenue needs, other criteria besides revenue generation could determine how many rate brackets should exist and at what levels of taxable income these rate brackets should begin and end. An effective zero rate bracket could automatically result from objective poverty standards expressed through appropriate universal allowances like personal exemptions and the standard deduction.\textsuperscript{214}

Beyond the first “poverty level” bracket, the number of brackets needed to span the gap to the top of the § 1 rate scheme should not be so large that policy-based distinctions in taxable income cannot easily fit rational categorizations. Using categorizations based on threshold concepts like “middle class,” “nascent affluence,” “substantial affluence,” and “wealth” would imply the need for no more than four rate brackets beyond the poverty threshold. Using just one “affluence” category would reduce the number of brackets to only three beyond the poverty level. Using more than four higher rate brackets would probably create difficulty in finding reasonable, widely acceptable criteria for economic distinctions that would justify substantial shifts in rates.\textsuperscript{215}

Upon determining a rational conceptual framework for setting the number of rate brackets, tax lawmakers could next seek an objective means to set the distinguishing levels of taxable income that would complete rate bracket definitions. Among objective criteria that might serve this task are arithmetical symmetry,\textsuperscript{216} income distribution percentiles,\textsuperscript{217} wealth distribution percentiles subject to a taxable income conversion factor,\textsuperscript{218} or income statistics that identify financial mobility transition points.\textsuperscript{219} Indeed, other criteria might come into use allowing taxpayers to perceive that shifts in tax rate burdens result from objective characteristics of American taxpayers or characteristics of the general economy in which they seek financial security. In any event, the public should not view rate shifts as resulting from

\textsuperscript{214} See \textit{supra} notes 11, 14-18 and accompanying text.
\textsuperscript{215} Note the meaningless categorizations of taxpayers exhibited in older rate tables from § 1. For example, examine the pre-1986 rate table incorporated into the instructions to IRS Form 4972, which uses fifteen rate brackets. See \textit{Internal Revenue Serv.}, FORM 4972 (2003).
\textsuperscript{216} For example, higher rate bracket delineations could be set as a uniform series of multiples based on the “poverty threshold” that defines the lowest bracket.
\textsuperscript{217} Lawmakers could use Service statistics that place taxpayers into various categories according to their income characteristics.
\textsuperscript{218} This criterion would stress wealth as an equally important indicator as income in determining ability to pay.
\textsuperscript{219} Service statistics could relate collective shifts in income to age differences, attained occupations or professions, marital or parental status, and like characteristics identified among taxpayers.
congressional whim, arbitrariness, or undocumented political consensus based on subjective factors.220

IV. CONCLUSION

A cohesive approach to the setting of dollar limitations in the Code, involving the creation of a universal dollar limitation based on objectively determined income tax rate brackets, would have salutary effects. Inconsistencies between federal tax and non-tax standards would diminish.221 The Code would clearly define which taxpayers are wealthy or affluent enough to bear additional revenue impositions or not share in targeted taxation benefits made available to others.222 Confusion would lessen respecting the relative status of taxpayers enjoying intermediate levels of affluence, and the relative significance of various tax advantages of the Code would be apparent to taxpayers through the use of standardized dollar limitations. A universal dollar limitation would serve to sharpen the focus of particular political debates.223 The Code would display a more cohesive policy orientation toward such all encompassing and important economic activities as retirement savings and small business development.224

Moreover, cohesively set dollar limitations would assure that the burden of revenue adjustments necessary to contain the effects of various tax allowances falls on politically visible features of the Code like the income taxation rate structure.225 In addition to promoting clearer political focus on tax issues, uniform dollar limitations would permit taxpayers and their advisers to engage in better and more comprehensive tax planning. Because a “universal” dollar limitation would attract widespread recognition by affecting multiple tax consequences simultaneously, taxpayers and paid consultants would better appreciate the significance of tax-determining economic activities that cause income fluctuations in relation to a standardized dollar limitation.226 Dollar limitation standardization would concentrate and

220. Thus, rate bracket delineations should result from something more objectively based than a mere political contest between “high tax” and “low tax” mentalities. Such a contest might be useful for determining tax rates but is not an optimal way to determine economic differentials that telegraph broad messages relating to the categorization of taxpayers into discrete groups.
221. See supra Part I.A (discussing tax and nontax standards that relate to poverty determinations).
222. See supra Part LB-C.
223. See supra notes 208-12 and accompanying text.
224. See supra Part II.A-B.
225. Among other politically visible features is the definition of gross income. I.R.C. § 61.
226. Predicating many tax effects upon a common dollar limitation would produce more
simplify tax-planning efforts, whereas the current system involves scores of different dollar limitations that affect a person's overall tax posture in a disjointed manner.227

Uniformity in the use of dollar limitations in the Code would help create a conscious national consensus to identify the proper economic circumstances sufficient to mitigate or intensify tax burdens under the federal revenue system. Rationally set dollar limitations linked to objectively determined rate bracket divisions would strengthen the perception of overall fairness so necessary to the integrity of tax collections based on voluntary reporting.228

consciousness of income and expense variations than now exists under a system that focuses personal attention piecemeal on individual tax effects that can involve dollar limitations set over a wide range of possibilities.

227. See discussion supra Parts I, II.
228. See supra note 163 and accompanying text.