

Congress of the United States
Washington, DC 20515

The Honorable Mitch McConnell
317 Russell Senate Office Building
United States Senate United States
Washington, DC 20510

The Honorable Paul Ryan
1233 Longworth House Office Building
House of Representatives
Washington, DC 20515

The Honorable Orrin Hatch
104 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Kevin Brady
1011 Longworth House Office Building
United States House of Representatives
Washington, DC 205150

December 6, 2017

Dear Leader McConnell, Speaker Ryan, Chairman Hatch, and Chairman Brady,

We the undersigned strongly object to the inclusion of the first-in first-out (FIFO) provision in the Senate substitute amendment to the Tax Cuts and Jobs Act (TCJA).

It has long been a feature of our tax system that taxpayers are able to control the timing of their gains and losses by choosing which lots to sell. Taxpayers who have multiple lots of the same security can specifically identify which shares they want sold when calculating capital gains taxes. Under Section 13533 of the Senate version of the TCJA, however, taxpayers (except for regulated investment companies) would lose this flexibility and autonomy over the disposition of their property. Although some mutual fund shareholders would continue to be able to use average cost, otherwise, all investors with a taxable investment account would be required to determine their holding periods and gains/losses on a FIFO basis, and therefore required to sell their oldest blocks of shares first.

We have a number of serious concerns about this new provision. It would:

Increase Taxes on the Investment Income of Ordinary Retail Investors: Mandatory FIFO results in higher capital gains taxes, and the impact will fall heavily on long term investors. This provision will impact nearly every investor with a taxable investment account. Investors with multiple lots will be required to report more taxable gains, because they will be unable to sell their highest cost shares or to pair the sale of low cost shares with unrelated capital losses. Long-term investors are more likely to have older, low-basis stock or to have acquired stock in multiple lots over a long period of time. Depriving taxpayers of this long-standing freedom will raise capital gains rates in a “back door” manner on millions of ordinary retail investors. The TCJA contains no offsetting reduction of the capital gains rate, which means that the Senate version of the TCJA would raise taxes on investment income.

Impact Middle Class Retirees: Retirees with taxable accounts will face higher costs earlier in retirement under FIFO, because the first shares sold to meet retirement needs often will generate the highest tax cost. This could increase the likelihood a retiree will run out of savings and will exacerbate the effects of market downturns in the early years of retirement.

Employee Plan Participants Would Face Higher Tax Liabilities: Millions of employees participate in employee stock purchase plans, incentive stock option plans, and similar equity-based compensation plans. These plans allow employees to buy company stock which has the positive result of aligning employee incentives with those of shareholders. Under the Senate bill, such plans would become less attractive to companies and to employees alike when the company has a rising stock price. In cases where they qualify for capital gains treatment, employees would be required to sell their oldest shares first, resulting in higher capital gains taxes.

Add Complexity: If a goal of FIFO is simplification, it will have the opposite effect. Long term investors will need to search personal records or information held by other brokers that could go back years before the cost basis reporting rules were implemented in 2011. Mandatory FIFO would substantially undermine the simplification benefits to shareholders of these new rules.

Take away the Benefit of New Investment Technologies: Technology has recently made it possible for average investors to use new cost-efficient online wealth management platforms. This allows nearly every advisor to have the most advantageous lot (often the highest cost lot) selected for sale automatically. Investors make this selection once when they open an account. A switch to mandatory FIFO could deter an average investor's use of these platforms and significantly limit their access to more sophisticated wealth management advice. Millions of ordinary retail investors have access to these services today.

Create a "Lock-in" effect: Eliminating a taxpayer's ability to specifically identify which lots to sell may encourage investors to retain securities that otherwise would be sold. This, in turn, would result in inefficient portfolio management and reduce market liquidity. This "lock-in" effect will likely be magnified among wealthy taxpayers holding highly-appreciated assets who understand the benefits to their heirs of receiving a stepped-up basis at death.

Complicate Giving: Under present law, taxpayers are allowed to deduct the fair market value of donated shares, and they are allowed to select which lots of shares to donate. Donors are often advised to give low-basis stock to avoid the largest capital gain, but this won't be possible under the Senate bill. Instead, donors will be required to give their oldest shares. This could cause donors to wait before donating until the shares they wish to donate will be selected by FIFO.

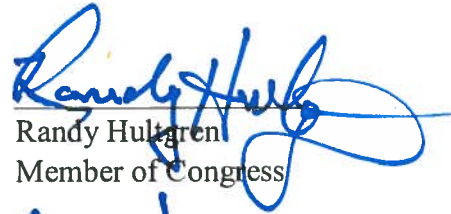
Requiring FIFO would increase taxes substantially on ordinary retail investors. It would be a massive, fundamental change that inhibits investor autonomy. Taking away the choice would

complicate planning, earning compensation, retirement, and giving for millions of American investors and employees and it would not result in meaningful simplification. We urge you to ensure that this provision is not in the final version of the Tax Cuts and Jobs Act.

Sincerely,



Blaine Luetkemeyer
Member of Congress



Randy Hultgren
Member of Congress



Steve Womack
Member of Congress



Steve Stivers
Member of Congress



Trey Hollingsworth
Member of Congress



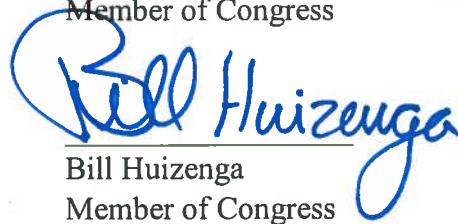
Kevin Yoder
Member of Congress



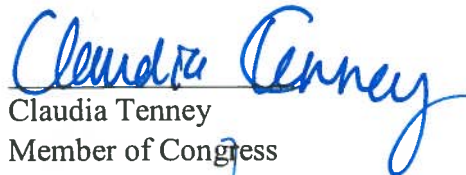
Luke Messer
Member of Congress



Pete Sessions
Member of Congress



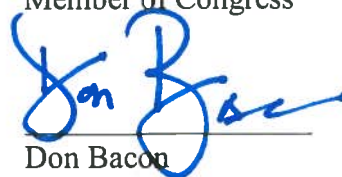
Bill Huizenga
Member of Congress



Claudia Tenney
Member of Congress



Ann Wagner
Member of Congress



Don Bacon
Member of Congress




J. French Hill
Member of Congress




Scott R. Tipton
Member of Congress



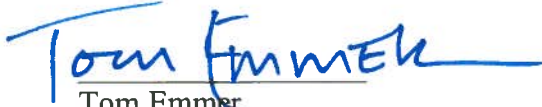
Mike Coffman
Member of Congress



Andy Barr
Member of Congress




Roger Marshall, M.D.
Member of Congress



Tom Emmer
Member of Congress



Mike Gallagher
Member of Congress



David P. Roe, M.D.
Member of Congress



Keith J. Rothfus
Member of Congress




Steve Pearce
Member of Congress




Lee M. Zeldin
Member of Congress



Bruce Poliquin
Member of Congress



Ralph Norman
Member of Congress



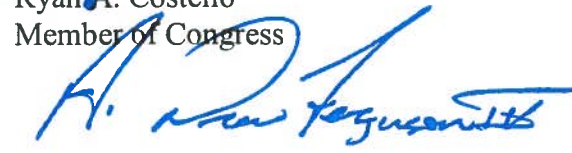
Brad R. Wenstrup
Member of Congress




Ryan A. Costello
Member of Congress




David A. Trott
Member of Congress



A. Drew Ferguson IV DMD
Member of Congress



Ted Budd
Member of Congress



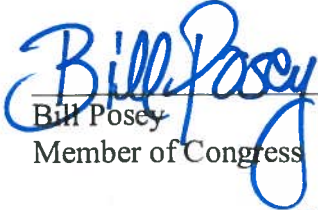
Mia B. Love
Member of Congress



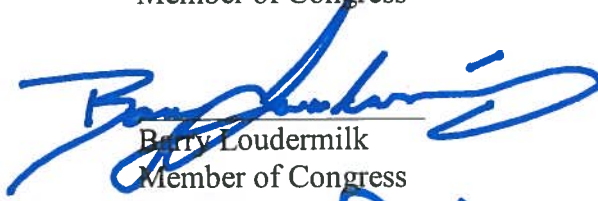
Dennis A. Ross
Member of Congress



Rob Woodall
Member of Congress



Bill Posey
Member of Congress



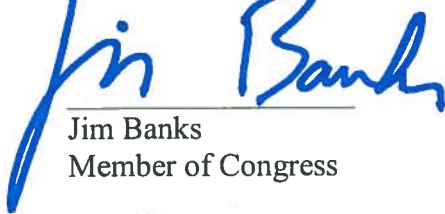
Barry Loudermilk
Member of Congress



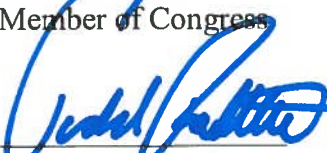
David Kustoff
Member of Congress



Frank D. Lucas
Member of Congress



Jim Banks
Member of Congress



Todd Rokita
Member of Congress



Billy Long
Member of Congress



Sean Duffy
Member of Congress