

November 20, 2008

United States Senate
Washington, DC

Dear Senator:

We are writing to urge you to propose legislation to reverse IRS Notice 2008-83, also known as the “Wells Fargo ruling” after its largest beneficiary to date. This notice, written by Treasury officials, essentially says that banks can ignore an explicit provision in the Internal Revenue Code that prevents abusive tax shelters.

A widely cited analysis from the law firm Jones Day estimates that this change will result in tax cuts for large banks eventually costing a total of \$140 billion.

IRS Notice 2008-83 essentially repeals, for banks only, Section 382 of the tax code, which bars companies from using the losses of companies they acquire to reduce their own tax liability. Section 382 was enacted by Congress in 1986 to stop companies from sheltering their income by purchasing shell companies with losses on their books. Before that time, many mergers took place not because they made economic sense but merely because they offered a tax shelter. Ever since Section 382 was enacted to end these abuses, corporate lobbyists have been promoting its repeal.

Lawmakers and advocates who support measures to stimulate the economy through extending unemployment insurance benefits, nutrition programs or assistance to state governments are now locked in difficult negotiations to craft legislation that can pass Congress. Now we are told that many of the lobbyists promoting the repeal of Section 382 have not been held to the same standard.

The change they sought, which costs more than the measures mentioned above, has been accomplished through a two-page notice that directly contravenes the explicit intent of a statute enacted by Congress.

There is something fundamentally wrong when aid for struggling families must survive a long and difficult legislative process while \$140 billion is spent to subsidize bank mergers through an agency action without Congressional authorization.

We firmly believe that tax revenue is needed to fund public services that are vital to every American family. These public services are threatened when people stop believing that the tax system that pays for them is fair. It is hard to imagine anything that could cause Americans to question the fairness of their tax system more than an agency telling the world’s largest banks that they can ignore an explicit provision of the Internal Revenue Code to reap a \$140 billion benefit.

We understand and appreciate that Congress is extremely attentive to the state of the economy right now. The federal government is taking many unprecedented actions to put the economy back on firm footing. But creating a vast new tax loophole to encourage bank mergers against the explicit intent of Congress should not be one of them.

Sincerely,

Citizens for Tax Justice
Coalition on Human Needs
OMB Watch