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Citizens for Tax Justice

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The Senate's Foreclosure Prevention Act Unfairly Rewards Big Business Over Middle-Class Americans

The Foreclosure Prevention Act introduced in the Senate last week includes several measures that lawmakers argue will address the home mortgage foreclosure crisis and the problems plaguing the home construction industry. Unfortunately, the bill includes tax provisions that are likely to help large corporate homebuilders and yet do little for ordinary Americans who are either struggling to keep their homes or who are hurt by the downturn in the home construction industry. These tax provisions include:

Net Operating Loss Carryback

Cost: $6 billion ($25.5 billion over 2 years, $6 billion over 10 years)

As a general rule, a company operating at a loss in a given year will not have to pay taxes for that year, because its deductions will wipe out its taxable income. Under current law, if a company has excess deductions beyond its taxable income for the year, it can apply those excess deductions not only against earnings in later years, but also against income taxed in the previous two years. That allows it to get previously paid taxes refunded. The Senate bill would expand this benefit by allowing companies to apply losses in 2008 or 2009 to taxes paid in the previous *four* years.

This benefit would be available for all companies, but proponents in the Senate have argued that this will particularly ease the pain felt by home-construction companies. Proponents say the loss carryback provision will make it less likely that construction companies will need to lay off workers, and that it will somehow reduce the pressure on them to quickly sell their excess inventory at a loss.

But there is no reason to think that this tax break will have these positive effects. Companies will always have an incentive to lay off workers if no one is seeking to buy whatever the company produces. Handing the companies a tax break with no strings attached does nothing to change that. Contrary to the claims of backers of the tax break, labor groups have persuasively argued that this provision could actually *encourage* construction companies to dump their excess housing inventory on the market more quickly since the tax break would cushion the losses that result from selling at lower prices.

In terms of its effects on the housing industry, the main effect of this corporate giveaway will be to reward large corporate home-builders who helped perpetrate the sub-prime lending debacle. Other major beneficiaries will be large corporations who use the "bonus depreciation" tax break enacted earlier this year to reduce their taxable incomes below zero, and who will enjoy outright negative tax rates if this NOL carryback provision is enacted.

Non-Itemizer Tax Deduction for State and Local Property Taxes

Cost: $1.5 Billion

Currently, homeowners are allowed to take an itemized deduction for state and local property taxes. But less than a third of taxpayers bother to itemize their deductions, because most find it more beneficial to use the standard deduction. The Senate bill would offer non-itemizers a deduction for property taxes on top of the standard deduction this year. The new deduction would be limited to $500 for single taxpayers and $1,000 for married couples.

Proponents of this provision apparently fail to understand the purposes of the standard deduction, which are (a) to make the tax code fairer and (b) to make tax filing simpler for most people by giving them a simple deduction that is *bigger* than what they'd get from itemizing.

Right now, the only homeowners who do not itemize their property taxes are those for whom the standard deduction ($10,900 for couples) is bigger than their total expenses for state and local taxes, interest, donations, etc. In effect, non-itemizing homeowners already get to write off *more* than their total property taxes.

Adding an additional property tax deduction on top of the generous one already implicitly allowed to non-itemizers would make tax filing more complicated and tax enforcement more difficult.

The new deduction would provide little help to those who take advantage of it. Families who have no taxable income already would not be helped at all. For couples with two children, that means those making less than $25,000. For couples with two children making more than $25,000 but less than $41,000, the maximum tax saving would be only $100. For those with incomes between $41,000 and $90,000 the maximum tax saving would be only $150. And above that level, the vast majority of homeowners already itemize deductions, and would thus get no benefit.

To illustrate how little thought went into the design of this foolish tax break, the new non-itemizer property tax deduction would be denied to taxpayers if their state or locality raised its property tax rate this year or next. The apparent goal of this strange rule is to punish taxpayers whose state or local governments have mitigated revenue losses caused by declining home values and the economic downturn. The Senate apparently hopes to encourage local government to deal with falling revenues by cutting back on public services such as education instead.[1]

Foreclosed Home Purchase Tax Credit

Cost: $1.6 billion

The bill also includes a $7,000 non-refundable tax credit that can be claimed over two years by people who purchase foreclosed homes during the next 12 months. It seems unlikely that this

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[1] In addition, this misdirected rule may be difficult or impossible to enforce, given the thousands of local jurisdictions with authority to levy property taxes and obvious ways to get around the rule (such as by raising assessment ratios rather than tax rates).

provision would make foreclosed homes more affordable for buyers who earn enough to take advantage of this subsidy (more than $57,000 for couples with two children). Instead, it will probably lead to higher prices for the foreclosed homes. Indeed, supporters of this provision admit as much. "The $7,000 tax credit for those who buy foreclosed properties should stimulate demand for them and prevent their prices from falling further, said Sen. Johnny Isakson (R-Ga.)," according to the *Washington Post* (Apr. 5, 2008, p. D1).