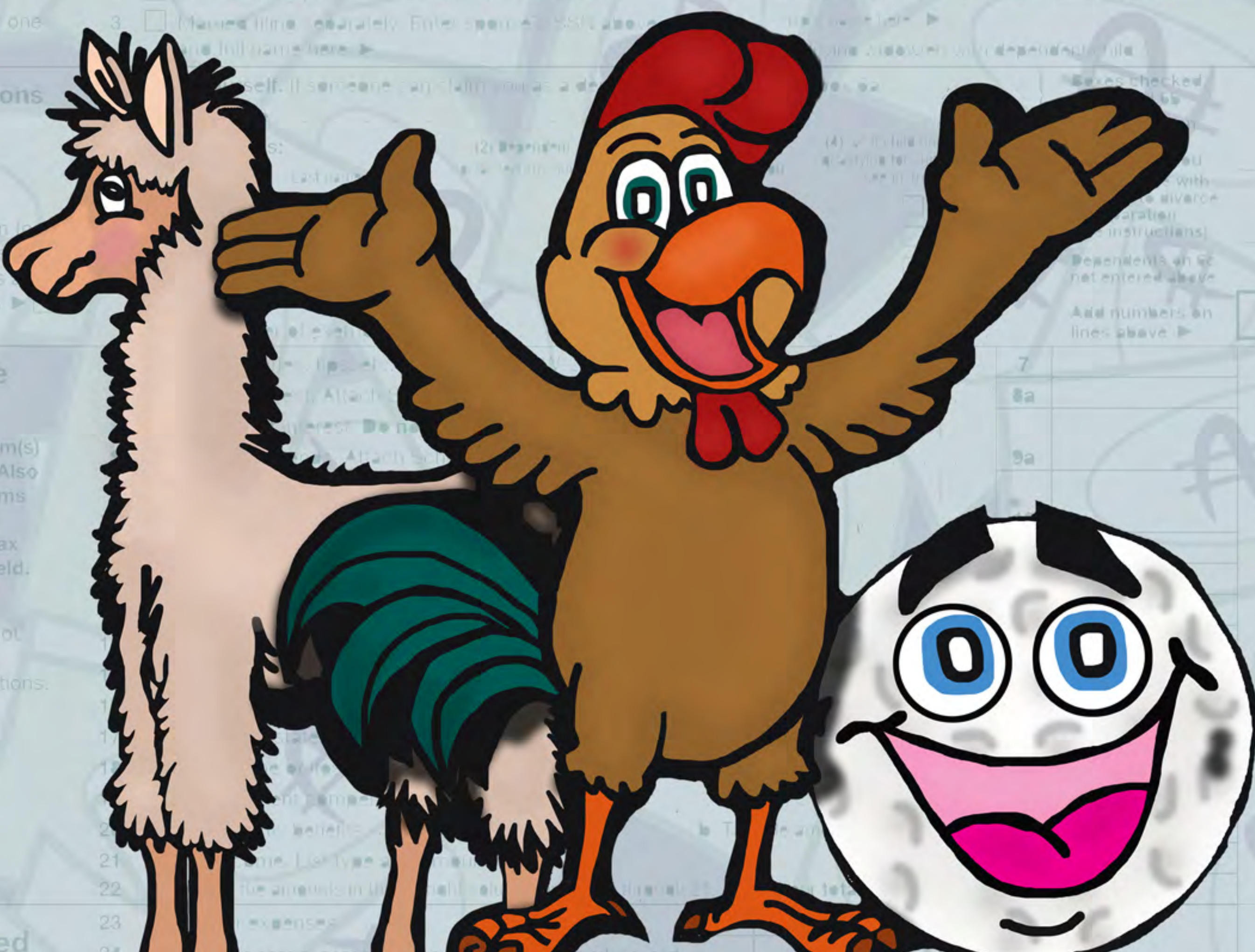
SENATOR JEFF FLAKE presents

[TAX RACKETS]

outlandish loopholes to lower tax liabilities



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[TAX RACKETS outlandish loopholes to lower tax liabilities]

[TAX RACKETS]

outlandish loopholes to lower tax liabilities

"What's my tax bracket?" is the question accountants are most frequently asked by taxpayers.[1]

It is a simple question but finding the answer can be very complicated, time consuming, and frustrating, which is why two-thirds of Americans do not prepare their own returns.[2]

There are seven different tax brackets, with rates of 10, 15, 25, 28, 33, 35, and 39.6 percent. Portions of income are taxed at progressively higher rates with the final percentage of income owed to the IRS referred to as an individual's "effective tax rate."[3]

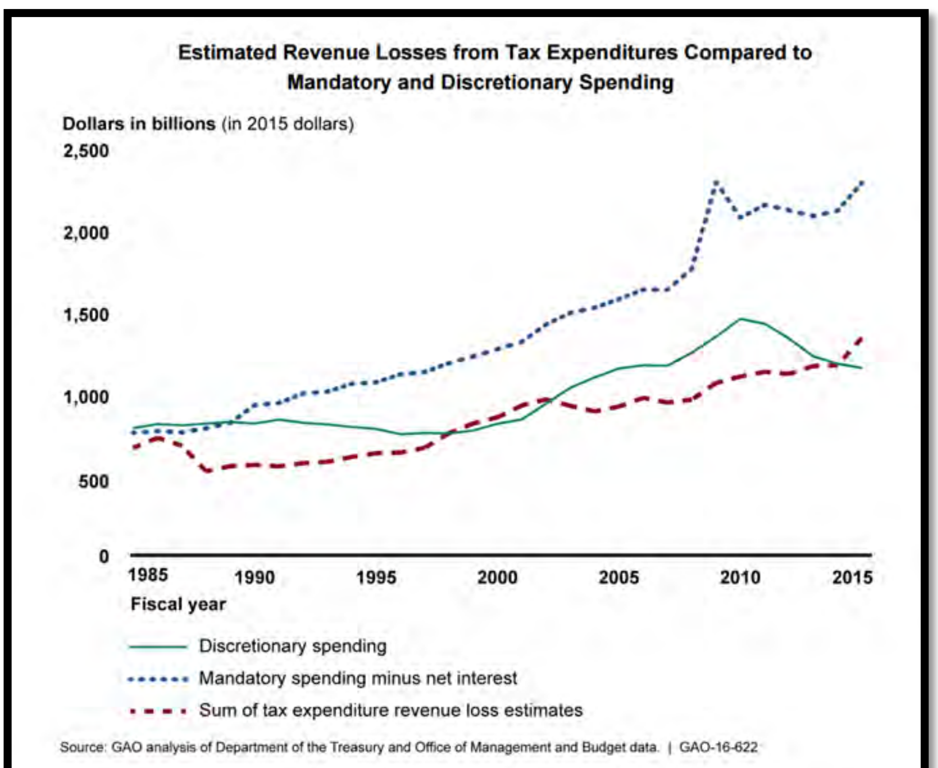
The average taxpayer owed $9,655 in federal income tax last year, which is an effective tax rate of 13.5 percent.[4] This is somewhat misleading since it does not include payroll taxes, which finance Social Security and Medicare. When income and payroll taxes are factored together, the total tax rate exceeds 30 percent of total annual earnings.[5]

Yet 76.6 million Americans, or 44 percent of all tax filers, will pay no income tax this year.[6] This includes about 4,000 earning at least a million dollars.[7] More than 31 million will pay no income *or* payroll taxes.[8]

With a top rate of 40 percent, the U.S. has the highest corporate tax rate in the world.[9] Yet, many corporations have not paid any federal income taxes for years.[10]

This is a result of loopholes, giveaways, write-offs, and other provisions of the code, known as "tax expenditures,"[11] that lower or eliminate tax bills altogether for many individuals and corporations.

Tax expenditures cost $1.23 trillion annually in forgone revenues—an amount that exceeds the total cost of all discretionary spending, which includes defense, education, transportation, foreign aid, parks, and the environment.[12] Tax expenditures "resemble federal spending by providing financial assistance to specific activities, entities, or groups of people" and, "like traditional forms of federal spending, contribute to the federal budget deficit; influence how people work, save, and invest; and affect the distribution of income," notes



The cost of tax expenditures now exceeds discretionary spending, which includes defense, education, transportation, foreign aid, parks, and the environment.[13]

the Congressional Budget Office (CBO).[14]

CBO tallies over 200 tax expenditures[15] while the Department of Treasury counts 169.[16]

Many are clear-cut, like the $1,000 per child tax credit.[17] Some are less so, such as taking a mortgage tax deduction for the interest paid on the price of a luxury yacht declared as a second home.[18] Then there is clever accounting which creates loopholes within the loopholes, such as claiming a home with a small backyard is a farm by purchasing an alpaca.

While some provide tax relief to needy families and struggling small businesses, others are just another form of corporate welfare and wealth redistribution benefiting a very select few. Twisting the tax code to manipulate markets and behaviors presupposes all earnings belong to the government and runs counter to the values of opportunity for all, equal justice and individual liberty that define the American Dream.

"TAX RACKETS: Outlandish Loopholes To Lower Tax Liabilities" highlights some of the consequences and costs of tax expenditures. These include creating fake markets with artificial supply and demand of unnecessary or unwanted goods and services, encouraging more borrowing, spending and taxing by local governments, and shifting the tax burden to middle class workers.

This report examines the tax code from the perspective of a variety of interests and asks the question-- "What is my tax *racket*?"-- to demonstrate how tax expenditures are being exploited to both dodge taxes and subsidize questionable projects and activities. This is not an exhaustive list nor the worst loopholes, but rather anecdotes intended to show how the complexity of the tax code provides shelters for nearly any industry, interest, activity or individual. It also reveals the consequences of these tax incentives, which include misallocation of resources and higher taxes for average Americans.

"One of the most popular ways to avoid the tax man is to load up on tax-free state and local municipal bonds," reports the *Wall Street Journal*, noting this tax haven is "by far the biggest single reason" thousands of tax returns with incomes exceeding $200,000 avoid paying income tax.[19]

The income earned from municipal bonds, or munis for short, is not subject to taxation, thereby providing a tax haven. Munis also provide an indirect tax subsidy for state and local governments by guaranteeing low-interest borrowing rates made possible by the exemption from taxation.

The municipal bond market now exceeds $3.8 trillion and more than $1.6 trillion of that amount is held by households and investors.[20] "The wealthiest one-half percent of U.S. households now own 42 percent of all municipal bonds," says the Investor Advocate at the U.S. Securities and Exchange Commission (SEC), who notes munis have "become a lifestyle of only the rich and famous."[21]

While empowering states and localities to finance many services that benefit the public at large, like schools and infrastructure, munis also enable risky borrowing and the financing of boondoggles that do not serve the public's interest.

The default by Puerto Rico last year[22] and Detroit, Michigan in 2013[23] were largely the result of bond-driven debt. A Virginia city that defaulted last year on the bonds used to pay for a golf course may end up losing its town hall and police station which were put up as collateral.[24]

"Industry groups, including the specialized attorneys who earn fees arranging bond sales," have pushed "to keep eligibility broad," says Susannah Camic Tahk, a University of Wisconsin-Madison law professor who specializes in tax policy.[25] Tahk notes "there is an entire industry of municipal bond attorneys. They become an interest group themselves."[26]

As a result, many other questionable projects, such as Planned Parenthood's national headquarters in New York[27] and a New Jersey mega-mall that is bigger than the Empire State Building and contains an indoor ski slope, are also being financed with tax-exempt municipal bonds.

While the tax code prohibits the use of munis to build private golf courses, some localities continue to use the bonds to finance new public fairways even as hundreds of fairways were closing over the past decade. Now, more taxpayer money must be sunk into the holes to keep the courses open.

Continuing to use golf as an example, taxpayers are likely to be teed off that some golf course owners have been permitted to write-off the value of their fairways as a conservation "donation" by promising to keep the greens green.

In additional to increasing the supply of golf courses, which are experiencing waning demand, the code is also creating fake markets by subsidizing artificial supply and demand of unnecessary and unwanted commodities.

The production of electricity from chicken manure, for example, was egged on by federal biomass tax credits along with state tax incentives and mandates. With cheaper and more abundant sources of energy available, this power source is not needed nor economically viable without public subsidies. The earnings for selling the waste for power is chicken-feed compared to the profits farmers earn by selling the litter as fertilizer. Health concerns have ruffled the feathers of environmental groups and communities who have protested building poultry poop power plants. Yet, this bird brained tax credit is feathering the nest of a few energy companies at the expense of taxpayers.

Alpacas were a rarity in the U.S. just 30 years ago, but a fleecing of the tax code has dramatically increased the population. A market for the furry animals' fleece never took off, but a write-off for the cost of furbearing animals being used to shear tax bills created a demand for the alpacas. Since most of the federal tax benefits are taken in the year of purchase, however, the alpacas are often abandoned when they can no longer be used as tax shelters.

Other tax giveaways purposefully provide beneficial treatment to specific industries.

A special tax carve out for publishers allows immediate recovery of expenses to solicit magazine and newspaper subscribers, including the cost of telemarketing.

The gaming industry wins big with a tax deduction that allows high rollers to deduct the cost of gambling trips, including lodging, meals, and entertainment. Casual gamblers can also write off any losses from the taxes levied on winnings. The gambling loss write-off has created a market for losing scratch off lottery tickets, which are being bought—and even rented— on eBay and Craigslist to provide proof of losses to IRS auditors.[28]

These are just a few examples that demonstrate how legal loopholes and clever accounting provide tax havens and subsidies for the well-off, create artificial markets, encourage more government spending and debt, and shift the tax burden to middle class workers.

The complexity of the code creates other hidden taxes. Individuals and companies spend nearly 9 billion hours complying with IRS requirements, which costs the U.S. economy more than $400 billion a year.[29] As revealed in this report, many federal tax expenditures are coupled with increased state and local government spending, creating a lose-lose scenario for taxpayers who get charged twice to subsidize the same special interests. It also makes it difficult to detect fraud and abuse since there is little transparency regarding the cost or beneficiaries of many tax expenditures.

Clearly, federal taxes are needlessly complicated, blatantly unfair, and way too high for most Americans.

It has been decades since Congress last updated the tax code in a comprehensive manner. The handful of loopholes profiled in TAX RACKETS could cost as much as $50 billion over the next decade. Scrubbing the tax code for other unfair tax expenditures would identify many more loopholes costing hundreds of billions of dollars that could be closed with the savings more evenly distributed. The result would be reduced tax bills for most American families and small businesses, greater prosperity and opportunity for all, and a simpler, flatter and fairer tax code that is far less susceptible to manipulations and rackets.

ALPACA TAX FLEECE

Beneficiaries: Owners of alpacas
Loophole: Immediate expensing of livestock has been exploited to reduce or eliminate income tax bills with the purchase of alpacas
Cost of Tax Expenditures: Undetermined

Alpacas, the South American cousins of camels and llamas, have long been raised for their soft and durable fleece which is used to make yarn, apparel, tapestries, and blankets.[30] The relatively recent fad of farming the furry animals in the United States, however, may have less to do with harvesting fleece than fleecing taxpayers.

The price of purchasing livestock, including furbearing animals, can be deducted as business costs.[31] Expenses for machinery and other equipment are typically depreciated, or taken over a period of years.[32] To help small business owners, Section 179 of the tax code provided immediate expensing, which means the entire purchase price of a purchase up to $500,000 can be written-off in one year.[33] This reduces a tax bill dollar for dollar, potentially to zero,[34] creating a scenario where a tax filer can "avoid paying the federal income tax by claiming the section 179 allowance."[35]


A tax write-off that can divert capital towards speculative markets has contributed to the dramatic increase in the alpaca population in the U.S.

All small businesses can qualify for the same deduction, but alpaca breeders have been able to benefit more than many others due to the amount of their investments.[36] At one point, breeding stock alpacas cost as much as $4,000 or more. Sheep, by comparison, cost a few hundred dollars.[37] Because alpacas are low maintenance and require little space, the animals are also ideal for claiming a home with a small backyard as a farm.[38]

If a taxpayer in the 25 percent tax bracket paid $7,000 to purchase two alpacas, for example, Section 179 expensing would result in an immediate tax savings of $1,750. Under the regular depreciation rules, this amount would be spread over a period of years.[39]

Alpaca associations promoting the write-off acknowledge it is "partly responsible for the steady growth" in the domestic alpaca population.[40] Thirty years ago, alpacas were a rarity in the U.S. outside of zoos.[41] Today there are at least 154,000 in the country, with Ohio and Washington state being home to the largest alpaca populations.[42] There are more than 390 alpaca farms and 7,000 registered alpacas in Ohio.[43]

Because a large market for alpaca wool never developed, the alpaca industry now "tends to stress the tax advantages of raising alpacas as an agricultural endeavor, shifting the emphasis away from the profit to be made on the sale of the animals themselves."[44]

Kevin Gellatly, "an iconic figure" within the Australia shearing community who also works in the U.S., says, "we do get a lot of rich clients getting into them to dodge tax. For example, if they're selling a company and are going to get hit with a huge tax bill, they'll go and buy 10 alpacas which helps circumvent that bill."[45] Gellatly notes "unlike Australia's fledgling alpaca industry," the tax deduction has made alpacas "big business over in the U.S."[46]

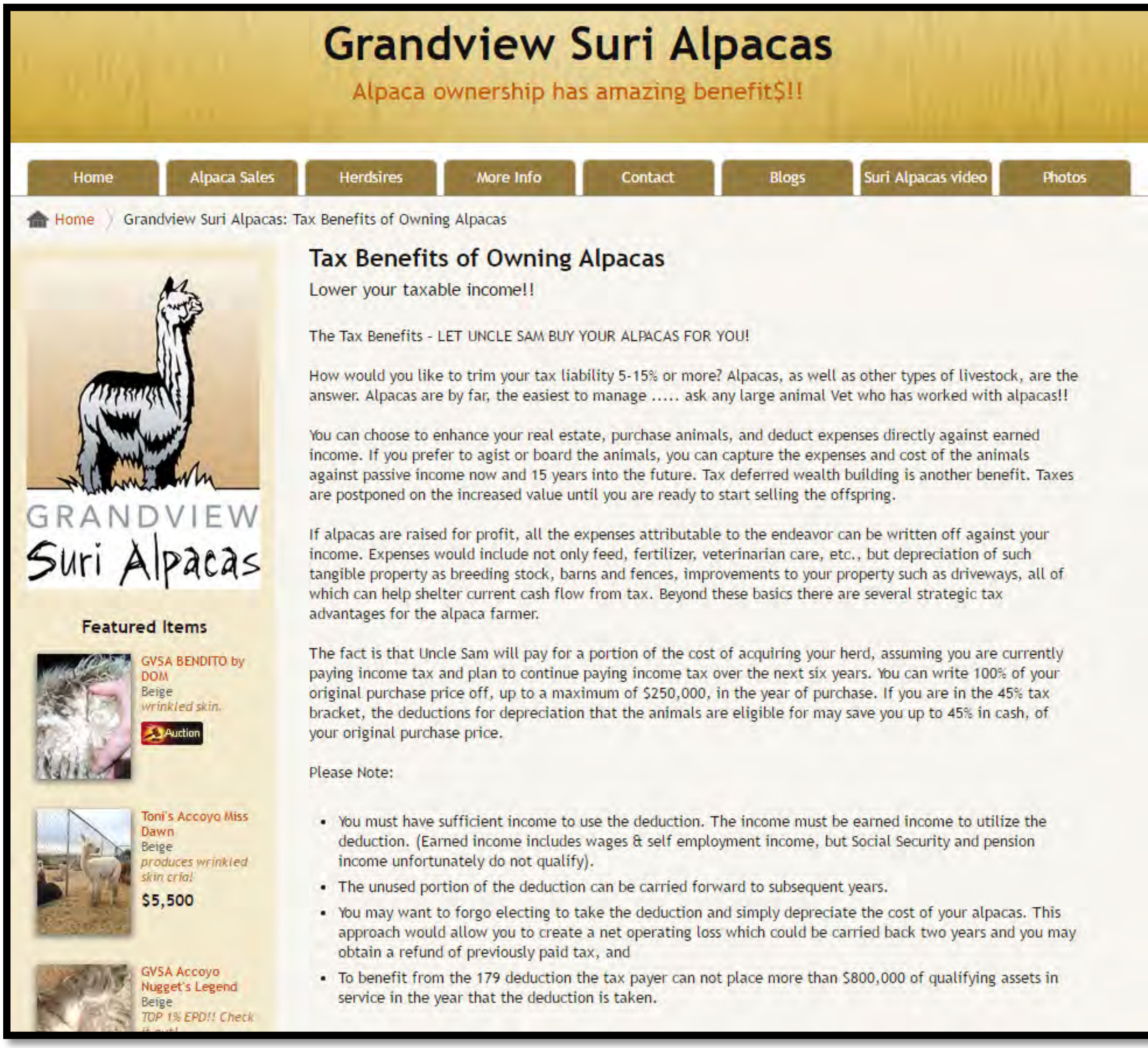
"That's why the federal tax laws are written the way they are—to encourage people to invest in business assets," says a Vermont man who owns an alpaca farm with his wife.[47] The couple decided to increase the size of their alpaca herd, in part, due to the tax incentives. By paying $10,000 for an alpaca, their tax bill can be cut by $4,000.[48]

An alpaca farmer in New Jersey explains some "buy the animals just for the tax deduction" but are "boarding their animals with the breeder who sold it to them."[49]

In addition to writing off the cost of purchasing alpacas, an agricultural tax specialist explains how some can also avoid paying taxes on the sale of the animals. "It is very important to take advantage of selling your alpacas as a business asset on IRS Form 4797 (if eligible) rather than on the Schedule F, and take advantage of the 15% maximum long term gain rate on farm assets held more than 1 year. IF you are in the 15% bracket – THEN – sale of long term farm assets are taxed at 0% - YES ZERO PERCENT! – This truly is how you can have a nice farming profit and not pay any federal tax!!!"[50]

When the Alpaca Breeders Association asked its members to rate on a scale of 1 to 10 what motivated them to get into alpacas, more than half gave the tax benefits a 10.[51] The tax benefits are promoted by breeders associations to encourage the purchase of alpacas.

The Pennsylvania Alpaca Owners And Breeders Association (PAOBA) explains how even not-for-profit ranchers can reduce their tax bills with alpacas. "The main difference between a hands-on or active rancher and a passive owner involves the passive owner's ability to deduct losses against other income. The passive investor may only be able to deduct losses from investment against gain from the sale of animals and fleece. The active rancher can take the losses against other income."[52] If alpacas are being raised with the intent to make a profit, other expenses can also be written off from gross income.[53] "Expenses would include feed, fertilizer, veterinarian care, etc., but also the depreciation of such tangible property as breeding stock, barns, and fences. These expenses can also help shelter current cash flow from tax," explains PAOBA.[54]



"LET *UNCLE SAM BUY YOUR ALPACAS FOR YOU!," exclaims an alpaca association website detailing how to "lower your taxable income" and other "tax benefits of owning alpacas."*[55]

"LET UNCLE SAM BUY YOUR ALPACAS FOR YOU!," exclaims the website of Grandview Suri Alpacas, located in Colorado.[56] "The fact is that Uncle Sam will pay for a portion of the cost of acquiring your herd," the website states, explaining "if alpacas are raised for profit, all the expenses attributable to the endeavor can be written off against your income. Expenses would include not only feed, fertilizer, veterinarian care, etc., but depreciation of such tangible property as breeding stock, barns and fences, improvements to your property such as driveways, all of which can help shelter current cash flow from tax. Beyond these basics there are several strategic tax advantages for the alpaca farmer."[57]

"I write off food, water, fences, the guy who cuts the lawn," says a New York man who tends to a herd of alpacas in the backyard of his home. He even wrote off a new extension to his home because he uses it to hold alpaca seminars.[58]

Kim • a year ago

First off let me say that I love my herd of alpacas. They cost me about $300,000.00 initial investment. What this article is not covering is the TAX IMPLICATIONS of owning alpacas! Ok, so maybe the fleece does not cover the cost to feed, house and care for them, but the tax deduction certainly makes them an attractive item to have on my property! After depreciation of the $300,000 I spent, I have a huge carry over loss, allowing my income to be below zero.... and therefor no tax liability. Also, the animals keep my land in the agricultural property tax program, saving me $10,000 per year on property taxes! And the biggest plus for me, was that with my income being at zero of below zero (after depreciation on the 1040), my cost to send my children to college became nearly zero! Put those numbers into the FAFSA equation and see what you r "Estimated family contribution" is for college tuition! My kids received $680,000.00 in GRANT money toward their bachelor degrees and all of them went to top schools. Without investing the "college fund" into alpacas, I would never have been able to send them to these schools. SO, let it be known, that the deductions alone are well worth the investment!! Plus we get to raise such beautiful and loving livestock! I do not expect to get back all the money I invested in cash... but I already got double back from not having to pay tuition and property taxes! So, the bubble may have burst, but the deductions are still quite real!

An alpaca owner explains how to shear tax bills and fleece taxpayers.

Turning a backyard into an alpaca farm can also cut property tax bills.[59] "I had to look for something that would help defray the property taxes, and somebody told me that alpacas could do that. So I thought, 'Well, heck, that sounds more fun than avocado trees,'" says Cindy Harris, who runs Alpacas at Windy Hill in California.[60] "Any start-up business needs a break," claims Harris, noting "alpacas have only been in this country about 25 years."[61] Alpacas at Windy Hill now offers a class entitled "Alpaca Tax Advantages."[62]

A lawyer in Ohio and her husband had considered buying horses, but "after a friend introduced her to alpacas — and the tax advantages the alpaca breeding business offers — they quickly changed gears."[63] She admits, "I first was looking into alpacas as a tax shelter, then I fell in love with them."[64]

A demand for alpaca wool never developed in the U.S., and the price of alpacas has dropped.[65] "Some small remnants of the bubble still exist. Prize winning alpacas can still sell for a couple of thousand bucks."[66]

Even if shearing the animals to sell fleece does not pay off, the purchase price can still be used to shear tax bills. One alpaca owner explains in an online post how to double a $300,000 investment on a herd without even making money from the fleece. "Maybe the fleece does not cover the cost to feed, house and care for them, but the tax deduction certainly makes them an attractive item to have on my property! After depreciation of the $300,000 I spent, I have a huge carry over loss, allowing my income to be below zero.... and therefor no tax liability. Also, the animals keep my land in the agricultural property tax program, saving me $10,000 per year on property taxes! And the biggest plus for me, was that with my income being at zero of below zero (after depreciation on the 1040), my cost to send my children to college became nearly zero! Put those numbers into the FAFSA equation and see what your 'Estimated family contribution' is for college tuition! My kids received $680,000.00 in GRANT money toward their bachelor degrees and all of them went to top schools. Without investing the 'college fund' into alpacas, I would never have been able to send them to these schools. SO, let it be known, that the deductions alone are well worth the investment!! Plus we get to raise such beautiful and loving livestock! I do not expect to get back all the money I invested in cash... but I already got double back from not having to pay tuition and property taxes! So, the bubble may have burst, but the deductions are still quite real!"[67]

When alpacas no longer produce tax benefits, the animals are often abandoned.

Linda Hayes, who runs a llama and alpaca rescue in Colorado, says breeding associations pitched alpacas in television commercials to older folks as a way to "pad a retiree's income."[68] She is inundated by people who followed the herd but now want out of the alpaca business. "I've had a few that were crying," she says. "I mean, it's sad. One lady just didn't have the money, she was being evicted."[69]

The problem is not the alpacas, it is the tax code, which needs to be sheared of perverse incentives to avoid taxes by investing in commodities for which there is little need or real demand.

"An expensing allowance may interfere with the efficient allocation of capital among investment opportunities by diverting capital away from more productive uses," according to a review by the nonpartisan Congressional Research Service (CRS).[70] That is exactly what appears to have occurred with the alpaca tax fleece. Certainly, many got into the business out of their love for alpacas and succeeded. For many others, the up-front tax benefits drive speculative endeavors, such as alpaca farming.

While the alpaca bubble may have burst, this provision may continue to encourage other speculative behavior. Section 179 was designed to be a short term stimulus measure, but it has been repeatedly extended and recently made permanent. "Since 2003, Congress has passed eight bills that either temporarily enhanced the Section 179 expensing allowance and its phase-out threshold or included a temporary or permanent extension of an already enhanced allowance. And since 2002, nine bills have been enacted that extend or enhance the bonus depreciation allowance."[71] When Congress permanently extended Section 179 in December 2015, the maximum allowance that could be claimed was set at $500,000 but indexed for inflation beginning in 2016.[72]

In total, the section 179 expensing allowance is projected to reduce federal revenue in FY 2016 by $2.3 billion.[73] The information necessary to estimate the cost associated with tax write-offs specifically for alpacas, including the number of annual purchases and the other income for each buyer, is not reported or tracked. It is, therefore, impossible to calculate the total cost of the alpaca tax fleece.

Not everyone who is in the alpaca business is happy about the loophole. A woman in Texas who started an alpaca ranch with her husband says they "get phone calls every December from rich people, looking for the agriculture exemptions." But she says, "We're not gonna turn them over to people who just want them for tax deductions. These animals have names and parents. We raised them."[74]

A New York man who tends to a herd of alpacas in his backyard wrote off a new extension to his home because he uses it to hold alpaca seminars.[75][76]

Telemarketing Tax Break

Beneficiaries: Publishers of newspapers, magazines, or other periodicals
Loophole: Tax deduction for establishing, maintaining, or increasing circulation, including hiring telemarketers
Cost of Tax Expenditures: $300 million over five years

As if telemarketers interrupting dinner or waking you from your sleep isn't irritating enough, the tax code is providing a special telemarketing tax break for publishing companies to cover the costs of hiring more operators to call you.

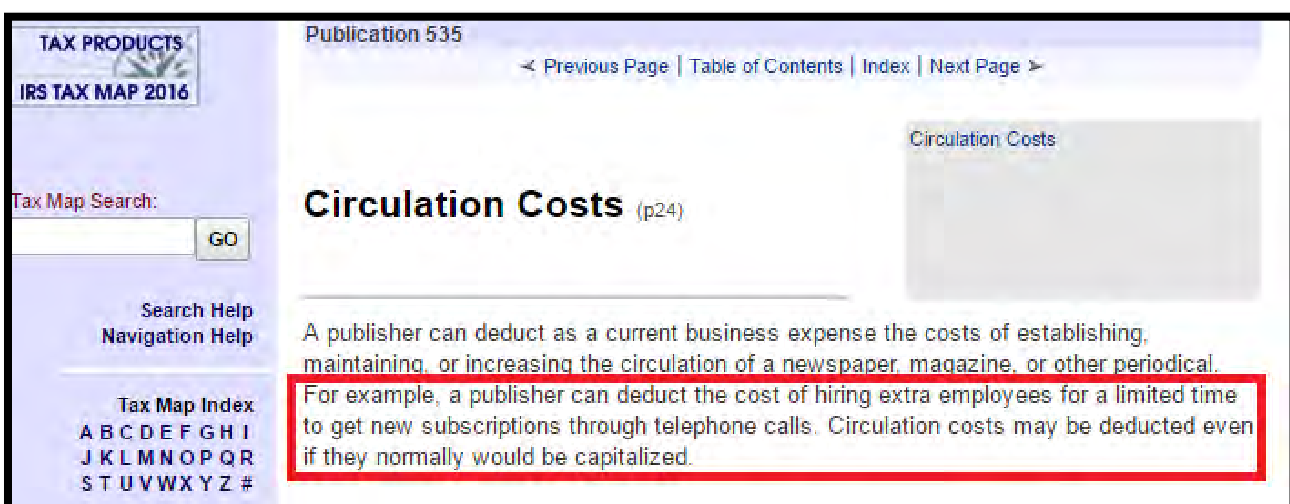
Lest there be any doubt about American's dislike for telemarketing, the national Do Not Call Registry contains 226 million active phone numbers[77] in our nation with a population of 325 million people. Last year alone, more than 5.3 million consumers filed complaints about telemarketers with the Federal Trade Commission.[78]

The telemarketer tax break is part of a larger exemption provided specifically for publishers that could include other forms of consumer targeting.

The tax code provides a deduction that allows businesses to recover capital costs over a period of years.[79] Most types of tangible property, including buildings, machinery, vehicles, furniture, and equipment, and certain intangible property, such as computer software, are depreciable.

"It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property," according to the IRS.[80] "You generally can't deduct in one year the entire cost" of an investment, the IRS notes.[81] Instead, "you deduct a part of the cost every year until you fully recover its cost."[82]

Publishers, however, receive preferential treatment with a special deduction that allows immediate expensing and quicker recovery of circulation-related costs.


TAX PRODUCTS
IRS TAX MAP 2016

Publication 535

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Circulation Costs

Circulation Costs (p24)

A publisher can deduct as a current business expense the costs of establishing, maintaining, or increasing the circulation of a newspaper, magazine, or other periodical. For example, a publisher can deduct the cost of hiring extra employees for a limited time to get new subscriptions through telephone calls. Circulation costs may be deducted even if they normally would be capitalized.

Publishers receive a "telemarketing tax break" for the cost of staffing call centers to solicit new magazine subscribers.[83]

Magazine publishers receive a special tax break for hiring telemarketers, staffing call centers and other costs to maintain or increase subscribers.

"A publisher can deduct as a current business expense the costs of establishing, maintaining, or increasing the circulation of a newspaper, magazine, or other periodical," according to the IRS.[84] "For example, a publisher can deduct the cost of hiring extra employees for a limited time to get new subscriptions through telephone calls."[85]

This exemption will cost $300 million over five years.[86]

This is not the only tax break benefitting print publications. "All told, federal and state tax laws forgive more than $900 million annually in taxes related to newspapers and magazines," most of which comes from state tax breaks, according to an analysis by the University of Southern California.[87]

While circulation of news magazines has been declining overall, subscription sales have remained stable.[88] In fact, some newspapers have experienced dramatic surges in subscriptions over the last six months resulting from the public's interest in the new President.[89]

"Even in the digital age of publishing," many publishers continue to rely on telemarketing to build subscriptions," reports *Folio*, a magazine for publishing professionals.[90] "They admit that using this type of promotion can be expensive compared to others such as e-mail, but they say it can also yield better results."[91]

With this tax expenditure, publishers are passing those costs, no matter how expensive, onto taxpayers.

LUCKY LOOPHOLES

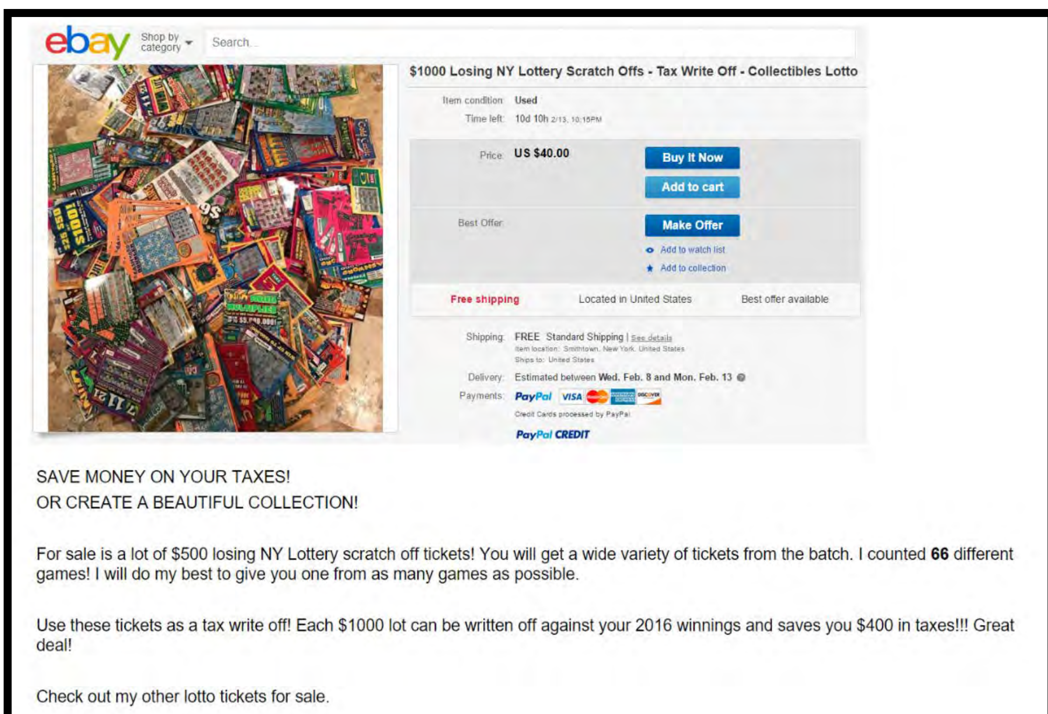
Beneficiaries: Casual and professional gamblers
Loophole: Tax deduction for gambling losses and, for some, costs of gambling trips
Cost of Tax Expenditures: More than $2.8 billion annually

The tax code is turning losers into winners. A black market for losing scratch off lottery tickets has developed as a result of a tax code provision that allows gamblers to deduct their losses.

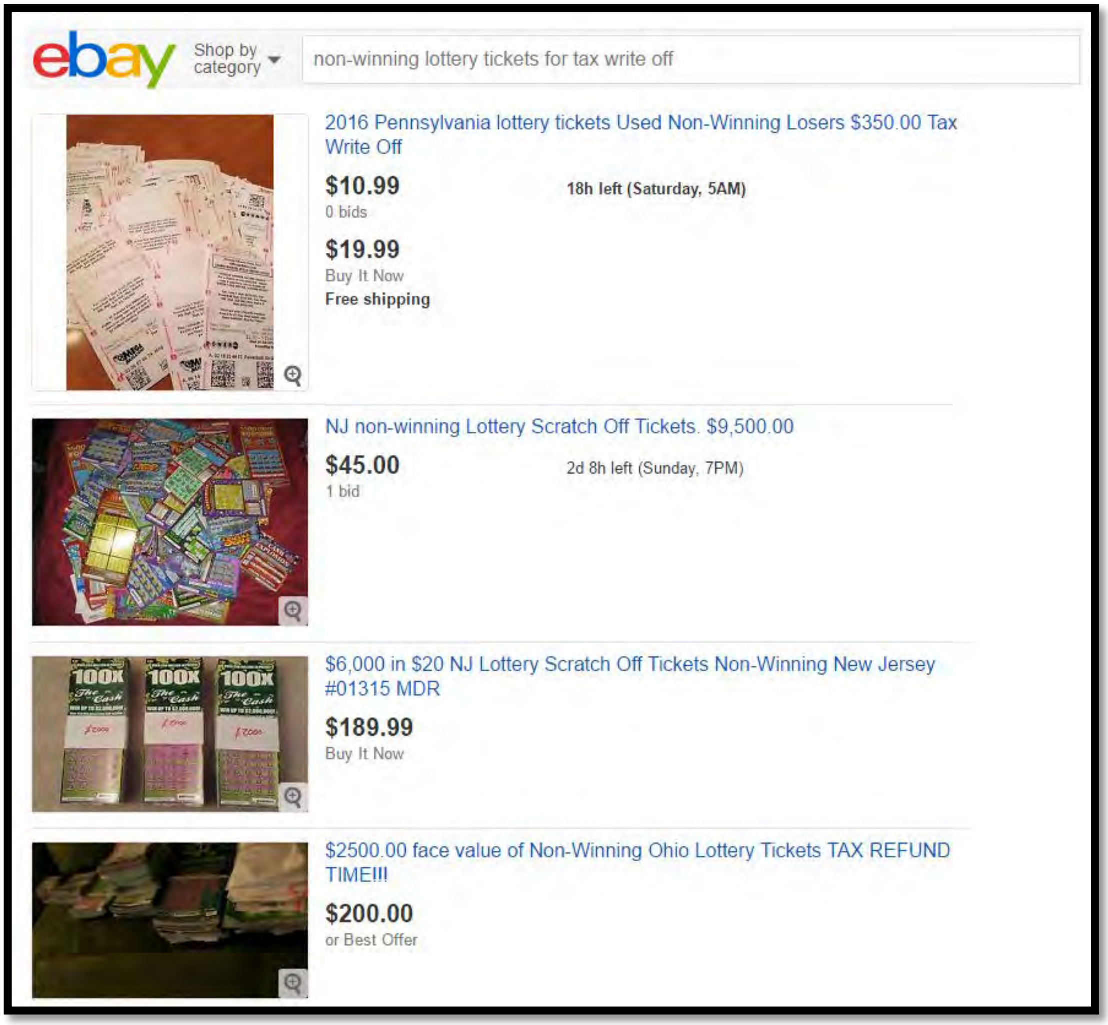
Those "who aren't in the trade or business of gambling" may deduct losses "up to the amount of winnings,"[92] which are taxed as income.[93] This means the amount of losses claimed by a "casual gambler" reduce taxes owed only on income earned from gambling.[94] Every dollar claimed in losses equates to a dollar in winnings not subjected to taxes. If $1,000 is reported in winnings, for example, losses can only be deducted up to that amount.

"Professional gamblers," on the other hand, may deduct losses that are greater than their winnings as well as the cost of gambling trips as business expenses "incurred as part of their job."[95]

A 2011 ruling by the U.S. Tax Court sweetened the pot by allowing professional gamblers to deduct travel expenses to reach a casino or racetrack, fees for race handicapping information, and "other expenses associated with the activity of gambling."[96] Meals, entertainment, admission, subscriptions, and "other fees" may all be included as "nonwagering business expenses," according to the *Journal of Accountancy*.[97]



Non-winning lottery tickets are being sold on eBay to claim deductions for gambling losses to evade federal taxes.[98]



Another eBay auction for a batch of losing lottery tickets to use as tax write-offs.[99]

The decision "is important because it allows professional gamblers to utilize negative operating losses arising from their gambling business," explains Roger McEowen, a law professor at Iowa State University's Center for Agricultural Law and Taxation.[100]

Approximately 874,000 tax filers claimed $18.8 billion in deductions for gambling losses in tax year (filing year 2015).[101]

The loss in tax revenue resulting from the gambling loss write-off could be more than $2.8 billion annually.[102]

Only taxpayers who itemize deductions may write-off gambling losses.[103] About one-third of Americans itemize their deductions, and "they are mostly the well off. In 2010, only 29.3 percent of those making between $30,000 and $50,000 itemized, but 96.8 percent of those making $250,000-plus did."[104]

The market for losing scratch off lottery tickets has developed because the IRS specifically lists lottery tickets as records that could be requested to demonstrate proof of loss.[105] To take advantage of this loophole, losing tickets are being bought—and even rented— to provide proof of losses if a tax filer who has claimed the deduction is audited by the IRS.[106]

Sellers on eBay and Craigslist highlight the tax write-off value of the losing tickets. For example, a bundle of losing lottery tickets with a face value of $2,500 with the header "TAX REFUND TIME!!!" was being sold on eBay for $200 or best offer.[107] The seller states "Tax Time. Use these to offset your taxable lottery winnings. Please consult an accountant to ensure you do so properly. I cannot offer any advise [sic] on how to do so. These tickets are all losing tickets and have been already redeemed for any 'My Lotto Rewards' points. There [sic] are scratch off tickets in denominations from $1.00 to $30.00. There [sic] are online tickets (like Keno or Powerball) in a wide range of denominations. Again, Please be sure to understand that these tickets are all NON WINNERS and they have been entered into the Ohio Lottery "My Lotto Rewards" program and cannot be re-entered for points or second chance promotions."[108]

This black market in non-winning lottery tickets demonstrates how a loophole in the tax code can be exploited to turn even a losing streak into a safe bet for those willing to press their luck. For most taxpayers, however, the cards are stacked against them with this busted tax break for high rollers.

High rollers can write-off the cost of gambling trips, including entertainment and losses from bad bets.

CHICKEN POOP TAX CREDIT

Beneficiaries: Energy companies that produce power from chicken manure and litter
Loophole: Tax credits paid for the production of poultry poop power
Cost of Tax Expenditures: Not more than $200 million annually

The tax code is feathering the nests of energy companies to egg on the production of power from an unlikely source: chicken poop.

Congress amended Section 45 of the code in 1999 to make energy produced from poultry manure and other organic waste (generally referred to as open-loop biomass) eligible for federal tax credits.[109] While the IRS does not track the specific amount paid for poultry poop power, all open-loop biomass sources receive $200 million in tax subsidies a year and that cost is expected to increase.[110]

The idea for the tax credit was hatched by a flock of politicians representing the Delmarva Peninsula, an area comprised of Delaware, the eastern shore of Maryland, and the peninsula of Virginia, which produces more than 500 tons of chicken droppings every year.[111] The manure has long been used as fertilizer, but the run-off is causing pollution in the Chesapeake Bay, prompting a search for alternative uses.

Protecting waterway is important, but this initiative is not everything it was cracked up to be. In fact, some environmental activists and poultry producers are wondering why this chicken crossed the road since it doesn't actually benefit the interests of either group.

Because the power is generated by burning the chicken waste, many environmentalists see the process as simply turning water pollution into air pollution.[112] "It's not clean energy. Anytime you're burning waste, to call that part of our renewable clean energy portfolio is a huge mistake," says Scott Edwards of Food & Water Watch.[113]

A study of a proposed poultry poop plant in Virginia found the process "would have increased emissions of fine particulate matter, nitrogen oxides, sulfur oxides and arsenic."[114] A plant in Minnesota was fined $65,000 for "air quality violations" by the state's Pollution Control Agency "shortly after its opening."[115]

The congressman who led the effort to create the tax credit acknowledges there was not a peep of interest in the tax credit from the chicken industry.[116] While poultry producers are not opposed to the concept, the earnings from selling chicken litter to energy companies or producing energy on-site is chicken feed compared to the profits from selling the waste as fertilizer.

The technology to turn chicken manure into energy "has long existed" but "it has never seemed profitable."[117] The high cost of the technology required to produce poultry poop power is "not affordable for the average farmer," explains Bill Satterfield, executive director of the Delmarva Poultry Industry.[118] The chicken growers "can make more money selling the manure" as fertilizer, says Satterfield.[119]

The tax code is egging on the production of power from chicken poop by feathering the nests of energy companies.

Jim Pease, a professor of agricultural economics, says there is not enough litter available to make a plant viable in Virginia, for example, because the $4 to $5 a ton offered to chicken growers "wasn't enough to persuade them to give up their litter."[120]

Like many other biofuels, the economic feasibility of poultry power is largely dependent upon government-imposed renewable fuel mandates and subsidies including tax credits.[121] The Chief Executive Officer of Fibrowatt, which opened the first poultry power plant in the U.S. in Minnesota in 2007,[122] admits "the Section 45 tax credit is needed because, like other biomass plants, poultry litter fired plants cannot compete in price with traditional fossil fuel plants."[123]

Political supporters of chicken poop power didn't put all of their eggs in one basket with the tax credit to ensure its success.

Federal and state governments are providing public subsidies to make a supply of biofuels while some states are also mandating its usage to create demand. It's a classic case of "which came first—the chicken or the egg?"

On the supply side, federal and state programs provide public assistance to support the production of chicken poop power.[124]

The U.S. Department of Agriculture (USDA)[125] and the Department of Energy (DOE)[126] offer federal financial support for such projects.

The DOE Small Business Innovation Research program, for example, provided $750,000 to the Community Power Corporation in Colorado to develop technology capable of generating electricity from poultry waste that could be used on-site.[127]

A number of USDA agencies provide a variety of financial aid options. The USDA Rural Energy for America Program (REAP) provides grants "for the construction and operation of anaerobic digesters" used to turn manure into energy.[128] The USDA Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP) offers cost-sharing that reimburses the construction costs of anaerobic digesters upon completion.[129] Low-interest loan guarantees provided by the USDA Farm Service Agency and the Small Business Administration (SBA)[130] reduce the costs of installing an anaerobic digester and guarantee full repayment of the loan to potential lenders, "even if the digester operator defaults on the loan."[131]

Maryland began a program to fund poop-to-power projects in 2011.[132] "Despite millions in state subsidies, however, nothing viable has come of it so far."[133] The state recently canceled a contract with Maryland Bio Energy, a subsidiary of California-based Green Planet Power Solutions, after the company failed to build a plant to convert chicken waste into power.[134] A grant from the U.S. DOE was funding nearly one-third of the cost for the $75 million project.[135]

In September 2016, the Maryland Department of Agriculture awarded a $1.4 million Animal Waste Technology grant to Clean Bay Renewables of Maryland "to construct and operate a manure-to-energy plant in Somerset County."[136] The plant could eventually process 80 tons of poultry litter a day and produce two megawatts of electricity per hour.[137]

AgEnergyUSA, Perdue Farms Inc., and EDF Renewable Energy are partnering on a chicken poop power project in Maryland and are seeking $30 million in support from the state.[138]

The state is providing $1 million for a collaborative effort between a farm called Double Trouble and the Irish company BHSL[139] to produce poultry power.[140]

Another company, Planet Found Energy Development, received a $676,000 state grant to open a poultry power plant in Maryland.[141]

Prestage AgEnergy, a division of Prestage Farms, made the location of its poultry power plant in North Carolina "contingent on local incentives."[142] Over the concerns of some citizens, the Sampson County, North Carolina Board of Commissioners approved local tax breaks for the plant, which is expected to be operational in 2017.[143]

To force demand, some states have enacted laws requiring use of electricity produced from animal waste or including the use of poultry poop power in state biomass energy mandates.[144]

Chicken farmers did not seek and environmentalists opposed the tax credit for poultry poop power, which begs the questions "why did this chicken cross the road?"

The nonpartisan Congressional Research Service notes "federal policy that mandates the use of a minimum volume of biofuel creates a source of demand that is not based on price, but rather on government fiat. As long as the consumption of biofuels is less than the mandated volume, its use is obligatory."[145]

"Special requirements," also referred to as "set-asides," in a ten-year-old North Carolina law, for example, "specify that a small part of the 12.5 percent renewable-energy goal set for state utilities must come from such animal waste."[146]

Ironically, while some government programs are encouraging its use, "a complicated patchwork of local, state and federal energy policy rules has discouraged" the production of power from poultry poop, admits Chris Voell, a program manager with the Environmental Protection Agency (EPA).[147]

The added irony is that plans to build the power plants have ruffled the feathers of the very taxpayers being forced to subsidize the energy they would produce. The squawking by citizens caused Fibrowatt to scratch plans to build plants in Virginia,[148] North Carolina,[149] and Georgia.[150]

To taxpayers everywhere, subsidizing energy companies for producing poultry poop power is a bird brained idea that smells like a rotten egg.

Treasure Island Tax Haven

Beneficiaries: New residents of Puerto Rico
Loophole: No federal income tax on capital gains, dividends or interests earned within the commonwealth
Cost of Tax Expenditures: Tens of millions of dollars annually

Beneficiary: Commonwealth of Puerto Rico government
Loophole: U.S. companies act as middlemen collecting federal foreign tax credits paid to the commonwealth as a special excise tax
Cost of Tax Expenditures: Nearly $2 billion annually

A new offshore tax haven in the Caribbean allows those who relocate to the island to avoid paying U.S. federal taxes on dividends, interest and capital gains—while retaining all the benefits of being an American citizen. Even the local taxes levied on U.S. businesses there can be dodged by essentially making the federal government pay the bill.

This port for the rich is Puerto Rico, which has become a tax-free treasure island for corporations and the well-to-do on the mainland.

Because of its unique status as a U.S. commonwealth, residents have long benefited from receiving federal assistance without having to pay federal personal income tax. Puerto Rico residents cumulatively paid less than $20 million in U.S. federal income taxes in 2010, according to an analysis by the Government Accountability Office (GAO).[151] If Puerto Rico had been a state that year, the "estimated individual income tax revenue from Puerto Rico taxpayers would have ranged from $2.2 billion to $2.3 billion (after accounting for estimated payments in excess of tax liability from refundable tax credits, such as the earned income tax credit)," according to GAO calculations.[152]

But recently, Puerto Rico has begun to "exploit" the U.S. tax code to turn itself into what *Forbes* describes as "a refuge for tax-oppressed millionaires and billionaires."[153]

Since 2012, American citizens who move to Puerto Rico do not have to pay federal or local income tax on dividends, interest, or capital gains earned after taking up official residence on the island.[154] "Even someone working for a mainland company who is a resident of the island would be exempt from paying U.S. federal taxes on his salary," explains *Bloomberg*.[155]

In addition, "new resident investors may be able to reduce the tax rate applied on interest and dividend income coming from sources outside of Puerto Rico (including the source country taxation) to 0 percent or 10 percent, respectively, by investing through certain Puerto Rico investment vehicles."[156]

"Yes, this is legal," *Forbes* assures.[157] "While the U.S. asserts a sweeping right to tax citizens' income wherever they live and wherever it's earned, Section 933 of the tax code exempts residents of Puerto Rico from paying U.S. income tax on their Puerto Rico-sourced income. Instead, the Commonwealth of Puerto Rico has the exclusive right to tax local income as it sees fit."[158]

These tax exemptions “are valid through December 31, 2035.”[159]

“This is a much sweeter deal than you can get these days by renouncing U.S. citizenship,” asserts *Forbes*.[160]

Year-round golf weather and tax exemptions make Puerto Rico the ideal place for golfers trying to avoid taxes.

Golf Digest’s “Tax Advice for Any Golfer” suggests golfers make Puerto Rico their official residence to take advantage of “year-round golf weather” and the tax loopholes— the real hole-in-one to avoid tax traps.[161]

To take advantage of the benefits, you have to be a bona fide resident of the island. This requires having a “physical presence” in Puerto Rico for at least 183 days during the taxable year.[162]

Clever tax attorneys have already found loopholes to this rule.[163] “If you arrive at 11:59 at night that is counted as a day in Puerto Rico,” points out San Juan tax attorney Edgar Rios-Mendez.[164]

“About 200 traders, private equity moguls, and entrepreneurs have already moved or committed to moving, according to Puerto Rico’s Department of Economic Development and Commerce,” *Bloomberg* reports.[165]

“Sadly, moving to Puerto Rico won’t buy you a total dispensation from the Internal Revenue Service,” *Forbes* cautions. “Uncle Sam still wants his cut on dividends you receive from U.S. public companies, profits from mainland private businesses, pensions and deferred compensation earned in the states, and Social Security benefits.”[166]

Regardless, the shelter still allows some to avoid paying millions of dollars in tax bills.

An entrepreneur from California with a private equity venture estimates the move to Puerto Rico is saving him "as much as $10 million in tax" a year.[167]

The founder and Chief Executive Officer of a private equity firm relocated his business and his family from Connecticut to Puerto Rico in 2013 for the tax benefits. Initially he had "some sense of guilt" about "uprooting his 10-year-old daughter."[168] But now he says cruises to "pristine beaches with funky beach bars" where they meet up with others from his daughter's private school" are making his weekends "utterly epic."[169]

Puerto Rico is also manipulating its status to collect almost $2 billion every year in federal tax credits intended to protect U.S. companies from being double taxed by foreign nations.[170]

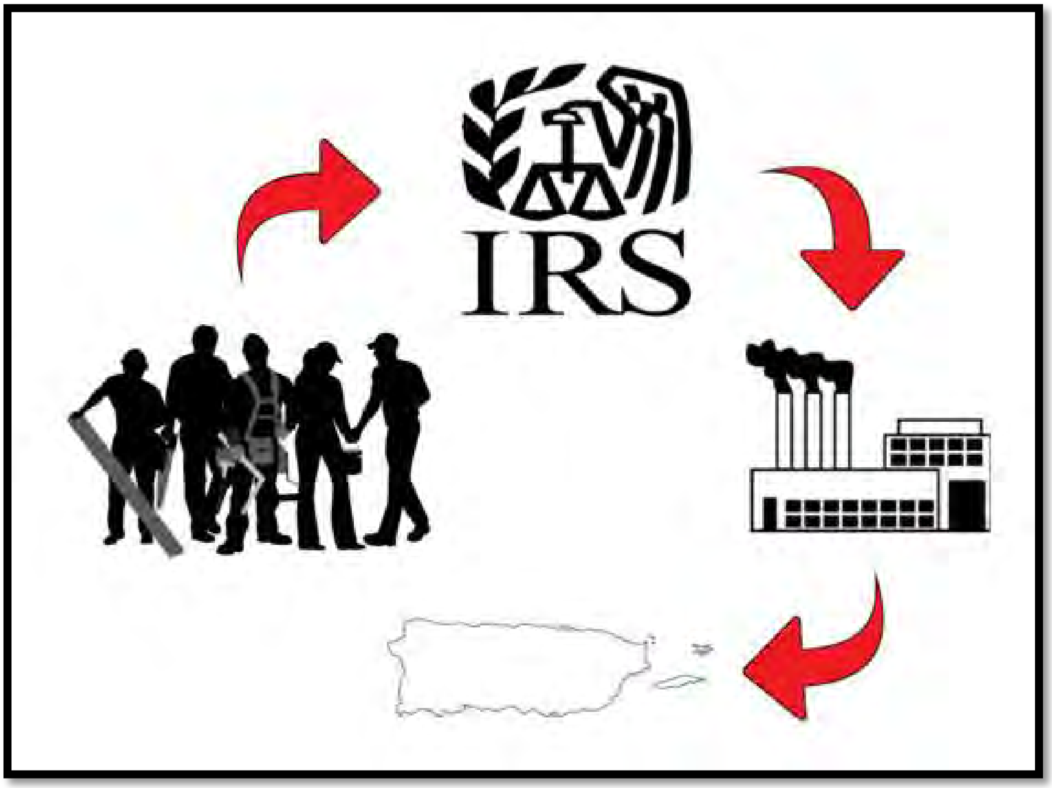
The Washington law firm Steptoe & Johnson helped Puerto Rico devise the shell game using "a special corporate levy aimed at getting money out of the U.S. Treasury" in 2010, reports *POLITICO*.[171]

"You can claim a credit only for foreign taxes that are imposed on you by a foreign country or U.S. possession. For example, a tax that is deducted from your wages is considered to be imposed on you," the IRS states on its website.[172] "For foreign tax credit purposes, all qualified taxes paid to U.S. possessions are considered foreign taxes. For this purpose, U.S. possessions include Puerto Rico and American Samoa."[173]

To take advantage of this provision, the island intentionally imposed "a special excise tax on American companies there— mostly pharmaceutical and medical device companies— in a bid to plug a hole in the Puerto Rican government's budget. But the government had agreements with many of those companies that it wouldn't raise their taxes. So it designed the tax to be eligible for the foreign tax credit in the U.S. That way, it would basically be a wash for the companies, while Puerto Rico could still reap the money it would raise."[174]

Tax loopholes have turned Puerto Rico into a treasure island tax haven sinking in a rising sea of red ink.

As a result, U.S. companies act as "middlemen."[175] The taxes paid to the commonwealth are reimbursed with foreign tax credits claimed from the federal government.[176] This "was never approved by Congress" and "some analysts question whether the arrangement is constitutional."[177]



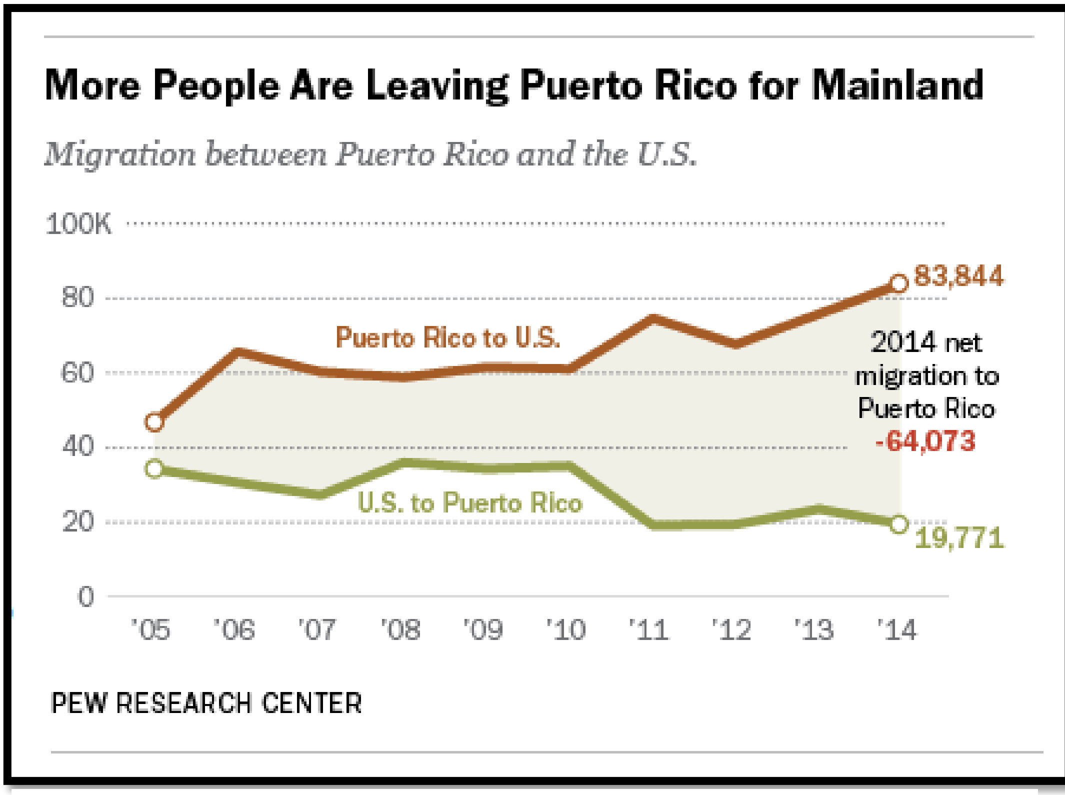
Puerto Rico uses U.S. companies as middlemen to collect foreign tax credits. The federal government reimburses the businesses for taxes levied by the commonwealth, which is treated as a foreign country. Despite being U.S. citizens, Puerto Rican residents pay no federal income tax.

The tax scheme has subsidized "more than 20 percent of Puerto Rico's budget."[178] In addition, the island receives billions of dollars from other federal programs.

But even billions of dollars of federal tax benefits and subsidies cannot offset the negative impact of local government policies. In fact, the island's economy has "corroded" as a result of Puerto Rico's dependence on tax loopholes and its dysfunctional local government—both of which favor outside corporations rather than local upstarts, according to a recent investigative report by *Reuters*.[179]

"Dozens of interviews with business owners, advocates, officials and economists, reveal a government that holds up routine permits and payments to government contractors for months or years. One education consultant said he lost a $12 million government contract due to payment delays; another entrepreneur scrapped plans for an assisted living facility because of a five-year wait for permits; food truck operators are required mountains of government forms to work a single festival," according to *Reuters*.[180]

As a result, "Puerto Rican entrepreneurs are fleeing to the mainland. Between 2007 and 2012, the number of Puerto Rican-owned businesses in the 50 states shot up by 65 percent."[181]



Puerto Rico's tax shelter has attracted some wealthy new residents from the mainland, but a lack of opportunities is causing a greater exodus from the island.

While cheaper tax bills are luring some to Puerto Rico, many more are leaving the island due to a lack of opportunities.[182] Puerto Rico has been experiencing a mass exodus—with more people moving from the island to the mainland and the number moving from the mainland to the island declining.[183] "As of 2013, there were more Puerto Ricans living in the U.S. mainland (5.1 million) than on the island itself (3.5 million)."[184]

In yet another twist, the excessive borrowing that has bankrupted the commonwealth's government was enabled in part by another tax loophole. Puerto Rico borrowed money by issuing municipal bonds— which are exempt from federal, state and local taxes[185] — to avoid making cuts in spending to offset declining government revenue.[186] "With plenty of takers, Puerto Rico doubled its total debt in 10 years," reports the *Wall Street Journal*.[187] "The triple-tax exemption on Puerto Rican bonds created built-in demand" and "lured" investors, which in turn "fueled" the ballooning debt.[188]

The commonwealth now owes more than $70 billion, which is twice the size of its total annual budget.[189] Unable to make payments, Puerto Rico began defaulting last summer.[190]

Puerto Rico serves as an unfortunate case study that demonstrates when the tax code is used to pick winners, everyone loses. Billions of dollars of tax loopholes are not enough to rescue the island's economy which is being strangled by red tape and sinking in a sea of red ink.

GOLFING LOOP "HOLE IN ONE"

Beneficiaries: Local governments and holders of municipal bonds sold to finance golf courses
Loophole: Tax-exemption for interest earned on the municipal bonds sold to finance golf courses and lower interest rates for local governments selling the bonds
Cost of Tax Expenditures: Undetermined

Beneficiaries: Golf course owners
Loophole: Conservation-easement tax deductions provide write-offs for the preservation of golf courses
Cost of Tax Expenditures: Undetermined

Golfing has taken a hit over the past decade. With fewer Americans playing the sport,[191] more than 800 golf courses have closed nationwide.[192]

During this same time, however, the tax code has supported the construction of new golf courses and the preservation of existing ones.

The results are par for the course when it comes to government boondoggles and bailouts. Some of the golf courses financed with federal tax benefits have become sand traps, requiring annual taxpayer subsidies to stay afloat. A Virginia city that defaulted on its payments for bonds issued to pay for a golf course is even at risk of losing its town hall and police station which were put up as collateral.[193]

At least two different loopholes are turning golf links into tax havens: An exemption on interest earned from municipal bonds sold to finance the construction of courses and a deduction for conserving golf courses.

State and local governments and other government-created entities issue municipal bonds, or "munis" for short, to finance infrastructure projects,[194] such as highways, sewers, bridges, schools, and hospitals.[195]

The sale of municipal bonds is, in effect, borrowing money in exchange for regular interest payments and the return of the original investment, or "principal," from the bond insurer to the purchaser.[196] Unlike other types of bonds, interest on municipal bonds has largely been exempt from the federal income tax[197] since it was imposed in 1913.[198]

State and local governments receive "direct and indirect tax benefits" from municipal bond financing primarily through lower borrowing costs, according to the IRS.[199] "Because interest paid to bondholders on these obligations is not includable in their gross income for federal income tax purposes, bondholders are willing to accept a lower interest rate than they would accept if the interest was taxable," the federal tax agency explains.[200] "Hence, the issuers can borrow funds at rates lower than those prevailing on the market, providing them with a subsidy from the federal government," contends the Brookings Institute.[201]

A Virginia city that defaulted on the municipal bonds issued to build a golf course is threatened with foreclosure on its police headquarters and city hall which were put up as collateral.

The Tax Reform Act of 1986 explicitly prohibited the financing of private golf courses with tax-exempt private activity bonds, but a Mulligan in the tax code offers a second swing at using governmental bonds for golf courses.[202] This is because federal guidelines permit "governmental entities to use third parties to operate facilities financed with tax-exempt governmental bonds under management agreements so that the third-party use of the bond-financed property is not treated as a private trade or business."[203]

"The state and local governments that issued the bonds to finance hotels and golf courses generally justified the projects on the grounds that they would generate economic development, including new jobs and businesses. However, in some cases, it is not clear whether the facilities generate public benefits that would be underprovided by the private market or whether the facilities generally make services available to those who would not otherwise be able to use them," a review by the Government Accountability Office (GAO) found.[204]

GAO questions "how much public benefit is produced at the local level and what, if any, benefits federal taxpayers receive for subsidizing these and other kinds of facilities that are essentially private in nature."[205]

There is little public information about how many or which golf courses are being financed with tax-exempt bonds and the cost to taxpayers. While GAO "could not find a comprehensive, reliable source with information on the number of municipal golf courses financed with tax-exempt bonds,"[206] it did find that six out of nine municipal golf courses that opened in a single year were financed with tax exempt bonds.[207]

The SilverRock Resort's Arnold Palmer Classic Course in La Quinta, California was financed with tax-exempt government bonds as part of a development project that will cost more than $100 million.[208]

At least three public golf courses financed with tax-exempt bonds in California are sand traps for never ending government subsidies.

The 18-hole course, owned by the city and managed by Landmark Golf Management, boasts "7,578 yards sprawling over 200 acres with massive native bunkers and stunning water features" and is "set against the backdrop and natural beauty of the Santa Rosa Mountains."[209] Depending on the time of day, green fee rates range from $60 to $187 for non-residents.[210]

Other golf courses financed with tax-exempt municipal bonds include the Callippe Preserve Golf Course in California, Laurel Hill Golf Club in Virginia, Osgood Golf Course in North Dakota, Atchafalaya at Idlewild Golf Course in Louisiana, and Lamberts Point Golf Course in Virginia.[211]

Two golf courses in San José, California, financed with tax-exempt bonds have become sand traps for taxpayer subsidies.[212] The city owns three golf courses and is spending $2.6 million to cover operating losses and debt service at the two —Los Lagos and Rancho del Pueblo—that were constructed with federal tax loopholes.[213]

Facing competition from at least 23 other golf courses within 25 miles of downtown San José, use of the city's golf courses has plummeted as the cost to operate them has increased.[214]

Just 65 people play a round of golf at Rancho del Pueblo on an average day, a 42 percent drop from a decade ago.[215] At Los Lagos, 136 people play on an average day, a 28 percent decline since opening in 2002.[216]

While they are expected to be financially self-sustaining, the golf courses cost the city $2.2 million in Fiscal Year 2014- 15.[217] As a result, the city is paying $38 to subsidize each round of golf at Los Lagos and $33 per round played at Rancho del Pueblo.[218]

The city claims, "as a direct benefit, publicly-owned golf courses make the game of golf accessible to the broad public. In contrast to private golf facilities and country clubs, publicly-owned golf courses generally charge lower green fees to golfers and do not require membership, enabling customers of a variety of ages and income levels to play."[219] Yet 90 percent of the players at the Los Lagos Golf Course are male and 79 percent are age 50 or older.[220] The demographics of golfers at Rancho del Pueblo are also overwhelmingly men, 50 and older.[221]

Subsidies to maintain the golf courses will continue to cost "about $2 million every year through 2031," calculates the Office of City Auditor.[222] It "seems unrealistic" that even by "aggressively" pursuing customers that the courses could attract enough golfers to break even.[223] A customer satisfaction survey at the Los Lagos Golf Course found that even among those using the course, there was a low likelihood that they would play the course more often.[224]

The San José golf courses are not the only publicly-owned courses financed with tax-exempt bonds that are choking.

"All public golf is suffering right now," according to Tim Heck, the golf and visitor services manager in nearby San Mateo.[225] "We're probably busier than most municipal golf courses in the area, financially we're probably in better shape than most of them," says Heck while noting, "I think there will always be some level of subsidy."[226]

The Poplar Creek Golf Course owned by the city of San Mateo is over $7 million in debt and requires an annual subsidy of $1 million from the city's general fund to pay for maintenance and outstanding bonds.[227] While generating $2.5 million in revenue, the course costs $2.9 million to operate and another $675,000 for bond payments.[228] The city is "forbidden from contracting with a for-profit company until it pays off its tax-exempt bonds."[229]

A golf course intended to spur economic growth in Buena Vista, Virginia is instead threatening to bankrupt the city and even take away its city hall and police station.

As the centerpiece of the city's economic development plan, the Vista Links Golf Course was expected to raise enough revenue to pay for itself and stimulate commercial development nearby.[230] Since opening in 2004, however, the golf course has not been up to par.

"People are not playing golf," says City Attorney Brian Kearney, noting the number of rounds played at the course has declined by 30 percent.[231]

With the course losing thousands of dollars every year,[232] the city's general fund has been subsidizing the operating losses, which have now cost more than $3.2 million.[233]

When the city was working on its 2015 budget, "it became clear that continuing to fund the golf course would severely impact essential services," according to the then-mayor.[234] The city was faced with cutting education and public safety or dramatically increasing taxes to meet its financial obligations.[235]

"For the fiscal budget 2015, the City council did appropriate funds for the debt service" and "decided not to make any subsequent payments on the golf course bonds."[236] As a result, the city defaulted on its loans and has not made payments on the course for more than two years.[237] ACA Financial Guaranty Corporation, which insured the bonds, has been stuck making payments of $660,000 a year to bondholders.[238]

ACA is seeking legal remedies to force the city to pay its debt, which could include seizure of city hall.[239] Buena Vista's municipal building, police station, and the Vista Links golf course itself were all put up as collateral by the city to ACA for insuring payments through liens on the $9.2 million in bonds.[240]

A lawsuit filed by the company in February "takes new steps towards" foreclosing on the three properties.[241] ACA does not want the properties, which are only worth a fraction of the city's debt,[242] but is hoping to force the city to "pay back the money it borrowed," says Steve Higgs, an attorney who is representing the company.[243] The lawsuit states that Buena Vista is financially able to pay its debts, but "perhaps recognizing, in retrospect, that the entire project was a bad idea — the city now refuses to make the appropriations and payments that it originally agreed to make."[244]

Kearney said that "even if the police station or city hall were to close there would still be plenty of vacant buildings in town to house city services."[245]

While bond holders are making tax-free income over these risky investments, taxpayers are being left in the rough.

Section 170(h) of the Internal Revenue Code allows landowners to claim a charitable deduction in exchange for agreeing not to develop their property. The land is still owned by the donor and can be used for farming, recreation, and other purposes and public access is not required. Even the construction of homes is still permitted, but "intrusive" development—such as hotels or shopping centers—is not.[246]

Congress made conservation easements tax deductible in 1976.[247] A temporary increase in the value of the write-off was enacted in 2006 was then made permanent in 2015.[248] The deduction is based upon the market value of the property for which the easements are being made. This amount is determined by appraisers also selected by the donor.[249]

Some tax filers can deduct amounts up to 50 percent of their income while other individuals and corporations can deduct up to 100 percent of income with conservation contributions exceeding the income giving limits being permitted to be carried forward for 15 years.[250]

More than 1,100 taxpayers claimed the deduction in 2012. The average deduction was $872,000, which totaled nearly $1 billion in all, according to the *Wall Street Journal*.[251]

To receive the tax break, a land deed is amended to include a "conservation easement"[252] that is binding on "current and future owners of the easement and the underlying property."[253] The easement is then "donated" to a government agency or a nonprofit land trust.[254] The property owner hand-picks the organization to which the easement will be donated and works out the terms for future uses of the property. The trusts rather than the federal government are then expected to enforce the arrangements. Employees and board members of trusts have even donated easements to their own nonprofits while "hundreds—perhaps thousands—of easements have been violated or altered at the request of landowners."[255]

While intended to encourage conservation, some "wealthy landowners, including golf clubs,"[256] use easements to turn "recreational amenities, such as golf courses," into tax shelters.[257]

"The idea that 18 carefully manicured holes can lead to an environmental tax break has long bothered some government lawyers," reports the *Wall Street Journal*. The IRS's first major attempt to challenge a golf course conservation claim, however, "ended in an embarrassing bogey in tax court. The IRS had to concede that the course qualified for the break."[258] The Tax Court concluded the Kiva Dunes Golf Course in Alabama could claim a conservation easement tax credit with a fair market value of $28.7 million.[259]

Kiva Dunes Golf Course in Alabama was approved for a conservation easement write-off valued at $28.7 million.[260] [261]

The IRS is now challenging a $10.4 million conservation easement tax deduction claim by the Champions Retreat golf club in Georgia.[262]

While the IRS has won cases against other golf courses, the litigation comes at a cost to taxpayers.

As with any government goody, an industry to preserve and promote the tax break has developed.

In Washington, golf course owners have hired a DC advocacy firm to lobby Congress to retain the tax break for golf courses.[263] The golf industry is now lobbying to make playing golf a tax-deductible activity. The proposed write-off would apply to the cost of golf lessons, balls and clubs, camps and clinics, green and driving range fees, and tournament fees.[264]

A consulting business has also popped up to take advantage of the tax giveaway. Former golf pro Mike Kahn started his own firm that advised "celebrities and sports stars how they can save millions in taxes" with golf course conservation easements.[265] Kahn even found a loophole to the loophole: "Through strategic planning, owners can conceivably extend the length of their write-off period by writing off groups of six holes and practice facilities in different years," noted Kahn.[266] His firm charges $50,000 or a percentage of the gross IRS tax deduction—whichever is larger—to help a client arrange a conservation easement.[267] Kahn says one investor paid $2.4 million for a golf course, which resulted in $4.8 million "in pure tax savings."[268]

Golf course owners are not the only ones trying to take advantage of these tax breaks. The Joint Committee on Taxation and the IRS "identified overvalued donations of conservation easements as a particularly problematic issue" in 2005. While Congress responded by passing legislation to address the issue, the Government Accountability Office (GAO) reported in 2012 that "the problem persists."[269]

There are also other tax benefits provided for conservation easements at the state level. At least 16 states and Puerto Rico offer tax credits for the donation of conservation easements.[270]

Even advocates of granting the conservation-easement tax break to golf course owners concede it is vulnerable to abuse. Nancy A. McLaughlin, a law professor and a proponent of conservation easements, argues that "protecting portions of golf courses that provide habitat or publicly-accessible open spaces should be eligible for the deduction. But the way the deduction is currently structured, it's too open for abuse."[271] She suggests that "Congress needs to build in additional requirements for easements on golf courses to qualify" and "enact reforms to address abuses. In particular, reforms are needed that will help ensure that conservation easements are not overvalued, that the lands subject to the easements actually have important conservation values, and that those values will be 'protected in perpetuity.' This would not be difficult to do."[272]

With Congress' handicap on tax reform, however, even a swing that should be a birdie ends up a bogey.

American Dream Tax Shelter

Beneficiaries: A Canadian developer being financed to build a mega-mall with the sale of municipal bonds, the local governments selling the bonds to borrow at lower interest rates, and the holders of the bonds that are exempt from federal taxes
Loophole: Tax-exemption for interest paid on the municipal bonds sold to finance the American Dream Meadowlands mega-mall
Cost of Tax Expenditures: Undetermined

Switzerland may be the world's best known destination to take a holiday for skiing and from taxes, but it soon may find competition in the most unlikely of locations—a suburban megamall in New Jersey.

Completion of American Dream Meadowlands, a 2.9 million square-foot shopping and entertainment center, is dependent upon $1.15 billion in tax-exempt municipal bonds and hundreds of millions of dollars in other state and local tax incentives.[273] The complex will be more than a half-mile long and "bigger than the Empire State Building."[274]

"Buyers of the bonds won't pay federal tax on the income, making U.S. taxpayers silent partners in the project," Bloomberg reports.[275]

One of the supermall's most unusual attractions is "The Big SNOW America Indoor Ski Slope," which will "bring year-round ski-town life to North Jersey" in a big way.[276] Standing 800 feet or 16 stories tall and spanning 180,000 square-feet, this would be the first indoor ski slope in the Western Hemisphere.[277] In addition to offering year-round skiing, Big SNOW America will also feature ski chalets and an "après ski lounge."[278] Skiing lessons will also be offered.[279]

The shopping and entertainment complex will bring year-round ski-town life to North Jersey with an indoor ski slope that stands 16 stories tall.

American Dreamland also has plans to house "the world's steepest roller coaster and tallest twin-body water slides."[280] The fun doesn't end there either. Other entertainment options include an 18-hole mini golf course, an aquarium with sharks and seahorses, a Legoland, a National Hockey League sized ice rink, an indoor waterpark,[281] and a 300-foot-tall Ferris wheel with views of Manhattan.[282]

American Dream Meadowlands will also contain over 450 restaurants and retailers catering to "savvy, fashion forward" shoppers by offering "the most exclusive luxury brands from around the globe."[283]

Beyond shopping and amusement, American Dream will feature "Champagne and caviar bars," a concierge service, and a helipad.[284] There will be gardens, "cobblestones meant to evoke Paris," and a fountain that will "part every two hours, allowing two members of Cirque du Soleil to emerge and perform acrobatics."[285]

The $5 billion price tag to complete American Dream Meadowlands "makes it the most expensive retail project on earth," claims Don Ghermezian, the CEO of the Triple Five Group which is the third and latest developer to take on the project.[286]

American Dream Meadowlands, a mega-mall that will be bigger than the Empire State Building when completed, is the world's most expensive retail project and will be financed with tax-exempt municipal bonds.

Ground was broken in 2004 at "a million-dollar party, with martinis in one tent and artificial snow in another"[287] and problems have plagued the lavish project ever since. It was abandoned by the first two developers due to financial problems.[288] For much of the past decade, the unfinished structure has "sat vacant and ridiculed, having already cost developers $2 billion."[289] The governor of New Jersey even derided it as "the ugliest damn building in New Jersey and maybe America."[290]

To jump start the project, the Canadian development company Triple Five Worldwide is being provided layers of federal, state, and local tax giveaways.[291] [292] Additionally, "a $185 million government-funded rail line that opened in 2009 will carry customers to and from the planned mall, which is located on state-owned property."[293] The company, however, is not putting "any of its own cash into the project."[294]

The New Jersey Sports and Exposition Authority (NJSEA) has now voted twice to use tax-exempt municipal bonds to support the project.[295] Most recently, the sale of $1.15 billion in bonds was approved in September 2016.[296]

The complex financing scheme goes outside the borders of New Jersey. Instead of being sold to the public, the Wisconsin Public Finance Authority (PFA) will purchase the bonds, while "simultaneously" selling "its own bonds to the public" to cover the costs.[297] The bonds PFA issues are also tax-exempt.[298]

This arrangement was made because "the Wisconsin agency charges lower issuance fees," according to Tony Armlin, Triple Five's vice president of development and construction.[299]

Wisconsin is one of only seven states, including Arizona, "that allow so-called conduit authorities to issue debt for projects beyond their borders" and PFA is "one of the most prolific issuers."[300] In addition to the mega-mall in New Jersey, PFA has provided tax-exempt financing for Planned Parenthood's national headquarters in New York.[301]

NJSEA will then "hand the proceeds" from the bond sale to Triple Five to complete work on American Dream.[302]

Lisa Washburn, a managing director at Municipal Market Analytics, says it "doesn't look good" for New Jersey to be "bending over backwards to provide tax-exempt financing along with a whole host of other sweeteners in order to get a non-essential project, benefiting a for-profit company."[303]

Critics say the complex "will compete with neighboring malls and regional attractions like Six Flags, and doesn't serve a new or untapped market."[304] There are currently three indoor malls in the state 10 miles north of the Meadowlands site, and Manhattan is ten miles to the east.[305] "You can't go to a water park on Fifth Avenue," counters Jeff Sheckter, Triple Five's executive vice president.[306]

"We're spending a billion dollars on a water park and amusement park," points out Ghermezian.[307] "It's there to push traffic to the stores."[308] Reaching the ski lift, for example, requires walking through a "faux Alpine village that consists mostly of boutiques."[309]

There is another unique twist that could impact sales. The giant retail center will be located in Bergen County, New Jersey, the last county in America that bans shopping on Sunday.[310] Regardless, Triple Five is forecasting $1.5 billion in annual sales.[311]

Another competitor is open 24 hours a day, 7 days a week: The internet. A third of shopping malls in the U.S. are forecast to close in the near future as more customers shop online.[312] Ghermezian believes the "extravagant attractions" of American Dream Meadowlands make it "internet-proof."[313]

"It's going to be the No. 1 tourist destination, bar none, in the world," promises Nader Ghermezian, chairman of Triple Five[314] (and Don Ghermezian's uncle).[315]

However, Triple Five is already preparing to build an even bigger mega-mall in Florida that will "exceed 5 million square feet."[316]

"Shockingly, at the same time that Triple Five is asking for a $1 billion subsidy from New Jersey taxpayers, it is constructing a multi-billion dollar sister project in Florida - American Dream Miami - without requesting public financing for construction costs," complains New Jersey state senator Michael Doherty. He argues "if Triple Five can afford to undertake the American Dream Miami venture before the Meadowlands project is completed, does it really need $1 billion of additional funding provided by" taxpayers?[317]

"It's essentially crony capitalism," says Doherty. "Our credit rating is in the crapper and we're going to triple down by giving more than $1 billion to a private mall developer."[318]

Supporters claim the cost will be worth the long-term economic benefits. The New Jersey Economic Development Authority estimates American Dream will create 11,000 new jobs.[319] The average pay, however, will be just $19,500 a year, "not enough to rent a one-bedroom apartment in surrounding Bergen County."[320]

Those jobs depend upon American Dream Meadowlands finally being completed. The shopping and entertainment center was expected to open in 2014. Several other opening dates have come and gone. Fall 2018 is the current expected opening.[321] As of March 2017, however, the bonds to finance the project had not been issued[322] and construction was stalled.[323] At that time, the Mayor of East Rutherford, James Cassella, said "I've been told that they are looking forward to getting stared again in the next month to six weeks. Whether that will happen or not we don't know."[324]

For taxpayers, this American Dream is becoming a nightmare.

[TAX RACKETS]
outlandish loopholes to lower tax liabilities

Executive Summary

Federal taxes are complicated, unfair and too high for most Americans. Meanwhile millions of others pay no taxes at all. Closing loopholes would create a fairer, less complicated tax code and the savings could reduce tax bills for most American families and small businesses.

The report examines the tax code from the perspective of a variety of interests and asks the question—"What is my tax *racket*?"— to demonstrate how tax expenditures are being exploited to both dodge taxes and subsidize questionable projects and activities.

This is not an exhaustive list nor the worst loopholes, but rather anecdotes intended to show how the complexity of the tax code provides shelters for nearly any industry, interest, activity or individual.

The report highlights some of the consequences of tax loopholes, which include:

- creating fake markets with artificial supply and demand of unnecessary or unwanted goods and services;
- encouraging more borrowing, spending and taxing by local governments;
- misallocating both public and private resources; and
- shifting the tax burden to middle class workers.

There are as many as 200 tax expenditures within the code that cost $1.23 trillion annually in forgone revenues. The handful of loopholes profiled in TAX RACKETS will cost as much as $50 billion over the next decade.

Wasteful tax expenditures intended to benefit specific industries profiled in this report include:

- the write off for publishers to increase circulation;
- write offs for gambling losses; and
- tax credits for chicken poop power.

Tax expenditures being manipulated to avoid taxes or receive tax subsidies profiled in this report include:

- foreign tax credits paid to U.S. businesses in Puerto Rico and then collected by the commonwealth's government as part of a shell game;
- Deductions for the cost of alpacas to receive the immediate depreciation available to small businesses for capital investments;
- Conservation-easement tax deductions for golf course owners for maintaining their fairways; and
- Tax-exempt municipal bonds used by localities to finance golf courses and a megamall.

Fake markets for which the tax code is creating artificial supply and demand profiled in this report include alpacas, poultry poop power, losing lottery tickets, and golf courses.

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Kim • a year ago
First off let me say that I love my herd of alpacas. They cost me about $300,000.00 initial investment. What this article is not covering is the TAX IMPLICATIONS of owning alpacas! Ok, so maybe the fleece does not cover the cost to feed, house and care for them, but the tax deduction certainly makes them an attractive item to have on my property! After depreciation of the $300,000 I spent, I have a huge carry over loss, allowing my income to be below zero.... and therefor no tax liability. Also, the animals keep my land in the agricultural property tax program, saving me $10,000 per year on property taxes! And the biggest plus for me, was that with my income being at zero of below zero (after depreciation on the 1040), my cost to send my children to college became nearly zero! Put those numbers into the FAFSA equation and see what you r "Estimated family contribution" is for college tuition! My kids received $680,000.00 in GRANT money toward their bachelor degrees and all of them went to top schools. Without investing the "college fund" into alpacas, I would never have been able to send them to these schools. SO, let it be known, that the deductions alone are well worth the investment!! Plus we get to raise such beautiful and loving livestock! I do not expect to get back all the money I invested in cash... but I already got double back from not having to pay tuition and property taxes! So, the bubble may have burst, but the deductions are still quite real!

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Tax Expenditure Estimates By Budget Function, Fiscal Years 2016 - 2020 [Billions of Dollars]

Function	Corporations					Individuals					Total
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020	2016-20
Exemptions from imputed interest rules	[4]	[4]	[4]	[4]	[4]	0.6	0.7	0.7	0.7	0.8	3.5
Expensing of magazine circulation expenditures	0.2	[4]	[4]	[4]	[4]	0.1	[4]	[4]	[4]	[4]	0.3
Special rules for magazine, paperback book, and record returns	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	[4]	0.2

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[93] Gambling winnings are fully taxable and must be reported as income on federal tax returns. This includes "but isn't limited to winnings from lotteries, raffles, horse races, and casinos. It includes cash winnings and the fair market value of prizes, such as cars and trips."

"Topic 419 - Gambling Income and Losses," IRS website, as updated December 30, 2016; https://www.irs.gov/taxtopics/tc419.html .

The IRS considers gambling winnings to be "proceeds from a wager," but notes "not all activities in which one can win a prize involve wagering." Three elements must be present for the IRS to consider a transaction to be a wager: (1) prize, (2) chance, and (3) consideration.

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Table 2.1. Returns with Itemized Deductions: Sources of Income, Adjustments, Itemized Deductions by Type, Exemptions, and Tax Items, by Size of Adjusted Gross Income, Tax Year 2014 (Filing Year 2015)
(All figures are estimates based on samples—money amounts are in thousands of dollars)

Size of adjusted gross income	Unlimited miscellaneous deductions: Gambling loss deduction — Number of returns	Amount
	(118)	(119)
All returns, total	**873,936**	**18,826,289**
Under $5,000	* 3,656	* 9,770
$5,000 under $10,000	* 4,572	* 14,684
$10,000 under $15,000	23,764	204,663
$15,000 under $20,000	9,691	60,354
$20,000 under $25,000	21,221	198,005
$25,000 under $30,000	19,904	85,719
$30,000 under $35,000	25,839	172,050
$35,000 under $40,000	37,146	315,397
$40,000 under $45,000	22,224	121,197
$45,000 under $50,000	24,759	221,432
$50,000 under $55,000	22,673	186,758
$55,000 under $60,000	32,397	243,119
$60,000 under $75,000	92,691	836,772
$75,000 under $100,000	128,944	994,697
$100,000 under $200,000	272,199	3,700,523
$200,000 under $500,000	103,201	3,743,832
$500,000 under $1,000,000	18,350	2,472,875
$1,000,000 under $1,500,000	4,880	1,118,714
$1,500,000 under $2,000,000	2,090	720,906
$2,000,000 under $5,000,000	2,731	1,621,787
$5,000,000 under $10,000,000	643	794,930
$10,000,000 or more	360	988,104
Taxable returns, total	**775,927**	**16,919,734**
Nontaxable returns, total	**98,008**	**1,906,556**

[102] According to the most recent data (2014), 873,936 taxfilers claimed $18,826,289,000 in deductions for gambling losses (see columns 118 and 119 in the table). The top marginal tax rates these tax filers faced is not provided, so it is difficult to get an exact number of revenue cost. If a top income tax rate of 15 percent for these gamblers is assumed, then the revenue loss would be around $18,826,289,000*(.15)= $2.8 billion. If a top rate of 25 percent is assumed, then the revenue loss would be around $4.7 billion. In 2014, the 15 percent bracket ranged from $18,151 to $73,800 for married couples filing jointly.
Analysis provided by the Congressional Research Service to the Office of Senator Jeff Flake, February 3, 2017.

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Table 1.--Tax Expenditure Estimates By Budget Function, Fiscal Years 2016 - 2020 [1]

[Billions of Dollars]

Function	Corporations					Individuals					Total
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020	2016-20
Open-loop biomass..	0.1	0.2	0.2	0.3	0.3	[4]	[4]	[4]	[4]	[4]	1.2

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Feb 27 Mon	Feb 28 Tue	Mar 1 Wed	Mar 2 Thu	Mar 3 Fri	Mar 4 Sat	Mar 5 Sun	Next

Tee Time	Players	Non-Resident Rates	Walk the Rock
7:08AM	1 player	$187.00 Select	N/A Rate not available for date selected
8:00AM	1 player	$187.00 Select	N/A Rate not available for date selected
8:38AM	1 to 3 players	$187.00 Select	N/A Rate not available for date selected
11:45AM	1 or 2 players	$187.00 Select	N/A Rate not available for date selected
12:00PM	1 or 2 players	$187.00 Select	N/A Rate not available for date selected
12:45PM	1 player	$187.00 Select	N/A Rate not available for date selected
1:45PM	1 or 2 players	$100.00 Select	N/A Rate not available for date selected
1:53PM	1 to 4 players	$100.00 Select	N/A Rate not available for date selected
2:00PM	1 to 4 players	$100.00 Select	N/A Rate not available for date selected

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1. Arkansas [A "wetland and riparian zone conservation tax credit."]
2. California
3. Colorado
4. Connecticut
5. Delaware
6. Georgia
7. Iowa
8. Maryland
9. Massachusetts
10. Mississippi
11. New Mexico
12. New York
13. North Carolina
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15. Virginia
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