GENERAL ELECTRIC'S SPECIAL TAX LOOPHOLE LETS COMPANY DODGE BILLIONS IN TAXES

General Electric is a multinational giant that made $27.5 billion in profits from 2008-2012 but got a total of $3.1 billion in federal tax refunds and paid an effective tax rate of negative 11.1 percent, according to Citizens for Tax Justice.[1] It has dodged these federal income taxes, in part through an obscure tax loophole that allows it to hide profits and ship jobs offshore. That loophole—the "active financing exception"— costs $62.5 billion over 10 years or about $6 billion a year, according to the Congressional Budget Office (CBO).[2]

The loophole is one of 55 temporary tax breaks mostly benefitting corporations that expired at the end of 2013. GE, Wall Street investment banks and insurance companies are lobbying hard to have this lucrative tax loophole reinstated as part of a package of tax breaks known as "tax extenders" that will be considered by Congress in 2014. The 10-year cost of the entire package of tax breaks is $410 billion to $691 billion, or $40 billion to $70 billion a year, according to CBO.[3] About 90 percent of the costs of the total tax breaks benefit corporations.

DODGING TAXES BY OFFSHORING PROFITS

Best known to most Americans as a manufacturer of light bulbs and dishwashers, General Electric has over the past few decades expanded to also be a major financial services company at the center of the Wall Street economy.[4] About half of the company's profits come from its financing arm, GE Capital.[5]

Like a lot of huge corporations, GE dodges taxes by stashing profits offshore. A loophole in federal tax law allows companies to avoid paying U.S. taxes on profits they earn (or claim to earn) outside the United States until the income is brought back home—a tax break called "deferral." As a result, U.S. companies have indefinitely stockpiled some $2 trillion offshore.[6] In 2012, GE had the most offshored profits of any American corporation—$108 billion. GE has stashed its overseas profits in at least 18 tax havens, where it pays little if any taxes.[7]

CONGRESS PLUGGED THE LOOPHOLE BUT CORPORATIONS REOPENED IT

Long ago Congress realized that certain financial income like interest, dividends, rents and royalties could be easily manipulated to make profits earned in America look as if they were generated offshore, thereby avoiding U.S. taxes. To deal with this, a section of the tax code (often referred to as simply "subpart F") makes those profits ineligible for deferral and therefore immediately subject to U.S. corporate income taxes (less any taxes paid to the country where the profits were claimed to be earned). The tax code demands that corporations pay taxes on such "passive" income[8] the year it's received, regardless of where it was claimed to have been made.

This provision, often called the Subpart F "active financing exception," is an exception to subpart F. Congress eliminated the exception in the 1986 tax reform that swept away many loopholes. But in 1997, Congress caved to pressure and passed a "temporary" amendment to the tax code, bringing back the exception. Congress has "temporarily" extended this corporate tax break many times since then, usually for one or two years at a time as part of temporary tax- extenders legislation. The so-called "active financing exception" allows big financial firms like G.E. Capital (a subsidiary of General Electric) to dodge billions of dollars in taxes simply by claiming that U.S.-based financing income is actually being generated offshore.[9]

EXCEPTIONAL RETURNS FOR GE

The "active financing exception" has been a real moneymaker for General Electric. It's one of the primary reasons this highly profitable corporation paid a negative 11.1 percent federal income tax rate between 2008 and 2012.[10] That rate is a tiny fraction of the corporate tax code's statutory 35 percent rate. During those five years GE had profits of $27.5 billion but got refunds totaling $3.1 billion in federal income taxes; in three of those years the company got a tax refund.

The "active financing exception" is so important to GE's bottom line that whenever the tax break nears expiration, the company coordinates an extensive lobbying effort to preserve it. At one point, the head of GE's tax department dropped to one knee to beg the staff of the House Ways and Means Committee to save GE's favorite loophole.[11]

WHO SHOULD PAY?

The "active financing exception" loophole makes billions for GE and the rest of us pay for it: through higher taxes, fewer services or more debt. This is money we could be using to fix roads, build schools, find new medical cures and provide training for the unemployed.

Senate Minority Leader Mitch McConnell has said that the package of "tax extenders," which includes GE's special loophole, should not have to be paid for.[12] Conversely, he insisted that providing emergency unemployment insurance for the long-term jobless should be paid for.[13] This double-standard is common in Congress—tax breaks for big campaign contributors are doled out for free. Meanwhile, services that benefit average Americans have to be paid for by cutting back other vital services, rather than pay for them by making big corporations pay their fair share of taxes.

It's time for Congress to draw the line with this special-interest tax loophole that benefits General Electric, Wall Street investment banks and big insurers. End it now.

ENDNOTES

[1] Citizens for Tax Justice (CTJ), "The Sorry State of Corporate Taxes" (Feb. 25, 2014), p. 53. http://www.ctj.org/corporatetaxdodgers/sorrystateofcorptaxes.pdf

[2] Congressional Budget Office (CBO), "Effects of Extending Tax Provisions Scheduled to Expire Before 2024," (Feb. 4, 2014), as modified by Americans for Tax Fairness. http://bit.ly/1jbDLDM See line 22, Subpart F for Active Financing Income. Original CBO table is at http://www.cbo.gov/publication/45065 (see worksheet 7, line 71).

[3] CBO. The full ten-year cost is calculated from 2014 through 2023. The $691 billion figure includes the cost of bonus depreciation ($281 billion).

[4] Reuters, "Financial Risk Council Says AIG, GE Capital Are 'Too Big To Fail'" (July 9, 2013). http://www.huffingtonpost.com/2013/07/09/financial-risk-council-aig_n_3569517.html

[5] Bloomberg, "GE Tumbles after Profit-Margin Forecast Trails Forecast" (Jan. 17, 2014). http://www.bloomberg.com/news/2014-01-17/ge-profit-matches-forecasts-on-jet-engine-sales.html

[6] Reuters, "U.S. companies' overseas earnings hit record $1.9 trillion: study" (May 8, 2013). http://www.reuters.com/article/2013/05/08/us-usa-taxes-oveseas-idUSBRE9470Z920130508

[7] U.S. Public Interest Research Group, "Offshore Shell Games: The Use of Offshore Tax Havens by the Top 100 Publicly Traded Companies" (July 31, 2013), p. 8. http://uspirg.org/sites/pirg/files/reports/Offshore_Shell_Games_USPIRG.pdf

[8] CTJ, "Don't Renew the Offshore Tax Loopholes" (Aug. 2, 2012). http://ctj.org/ctjreports/2012/08/dont_renew_the_offshore_tax_loopholes.php#.UupMvIVOQ7A

[9] CTJ, "Congress Should Offset the Cost of the 'Tax Extenders,' or Not Enact Them At All" (Dec. 12, 2013), pp. 4-5. http://www.ctj.org/pdf/extenders_december_2013.pdf

[10] CTJ, "The Sorry State of Corporate Taxes."

[11] David Kocieniewski, *The New York Times*, "G.E.'s Strategies Let It Avoid Taxes Altogether" (March 24, 2011). http://www.nytimes.com/2011/03/25/business/economy/25tax.html?pagewanted=all&_r=1&

[12] C-Span TV (Jan. 29, 2014). http://www.c-spanvideo.org/clip/4483259 A transcript of this quote is available at Tax Analysts, "Pay-For Debate Does Not Apply to Renewing Tax Extenders, McConnell Says" (Jan. 29, 2014) subscription required. Sen. McConnell is quoted as saying: "Typically, Republicans have felt that you shouldn't have to pay for current tax policy," McConnell said. "I think occasionally these packages have been paid for, but most Republicans believe that the existing tax policy should not be paid for."

[13] Sen. Mitch McConnell, Press Release: "There's a Bipartisan Path Forward on Unemployment Insurance Extension" (Jan. 8, 2014). http://www.mcconnell.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=c4f00199-4c07-4839-9ae0-cd360d0e4033&ContentType_id=c19bc7a5-2bb9-4a73-b2ab-3c1b5191a72b&Group_id=0fd6ddca-6a05-4b26-8710-a0b7b59a8f1f&MonthDisplay=1&YearDisplay=2014