The Staff of the Joint Committee on Taxation
- From the Outside Looking In

John M. Samuels
General Electric Corporation (retired)

February 2016

Draft prepared for the United States Capitol Historical Society's program on **The History and Role of the Joint Committee: the Joint Committee and Public Perceptions**

Comments welcome.

The Staff of the Joint Committee on Taxation – From the Outside Looking In

I am honored to participate in the celebration of the 90th Anniversary of the Staff of the Joint Committee on Taxation – especially since I am one of the few participants on today's program who has not worked on the Joint Committee Staff.

Indeed, it is precisely because I have never worked on the Joint Committee Staff (the "JCT Staff") that I was asked to provide an outside perspective on the JCT Staff – an institution that appears from the outside, and perhaps the inside as well, to be the most unique and powerful staff function in the entire U.S. Congress.

After a brief description of the JCT Staff and its principal roles and responsibilities, I will make a few observations from an outsider's perspective on why the JCT Staff appears to be so unique and so powerful. Finally, I will conclude by offering a few modest suggestions on steps the JCT Staff might consider taking to enhance its already very high and impressive level of performance and effectiveness.

But first I should make a confession of sorts. While in one sense I am an "outsider" because I have never worked on the JCT Staff, in another sense I am not really an outsider at all – because for the last 40 years I have worked closely with the JCT Staff in a number of different capacities, both inside and outside the government.

My first exposure to the JCT Staff came in my first job in the government as a young tax lawyer in the Office of Tax Policy of the U.S. Treasury Department. My boss was the legendary Larry Woodworth, who before he was picked by President Carter to be the Assistant Secretary of the Treasury for Tax Policy and lead the Administration's efforts on tax reform, had been the Chief of Staff of the Joint Committee on Taxation for the immediately preceding 13 years. And for the 20 years before he became the Chief of Staff, Larry served as an economist on the JCT Staff, putting his uninterrupted tenure on the Staff at 33 years.

Larry's long and successful tenure on the JCT Staff defined his career. The name Larry Woodworth became synonymous with the Joint Committee Staff and vice-versa. It was impossible to think of Larry without thinking of the JCT Staff, and impossible to think of the JCT Staff without thinking of Larry.

And, of course, Larry brought his rich history, deep relationships, and long experience on the JCT Staff with him when he came to the Treasury – undoubtedly one of the reasons President Carter chose Larry to be his point man on tax reform. (For those of you who are not old enough to remember, one of President Carter's principal campaign promises was to reform the tax code – including eliminating the deduction for the "three martini lunch"!)

Being the Chief of Staff had become so imbued in Larry's DNA that even after he became Assistant Secretary it seemed like Larry believed he was also still the Chief of Staff, and that all he had done was move from one end of Pennsylvania Avenue to another, with the only change being that now he was in charge of two staffs instead of just one – the JCT Staff and the tax staff at Treasury!

Indeed, I still vividly remember the joint staff meetings Larry convened on Saturday mornings at the Treasury to develop the Administration's tax reform plan. These meetings were always attended by both the Treasury and Joint Committee tax staffs, and often included presentations by leading outside tax policy experts like Harvard's legendary Stanley Surrey. At Larry's insistence and under his leadership, the Joint Committee and Treasury tax staffs discussed and debated tax policy and formulated tax legislative proposals at these joint Saturday staff meetings as if we were a single integrated team.

It wasn't only on Saturdays that Larry treated the Joint Committee and Treasury staffs as a single and unified staff. He would call Bobby Shapiro, his successor as Chief of Staff, on almost a daily basis to share intelligence and make sure the Joint Committee and Treasury tax staffs were fully coordinated and had the same legislative priorities. And Larry's insistence that the Treasury tax staff work hand-in-glove with our counterparts on the JCT Staff was a practice continued by Don Lubick, Larry's successor as Assistant Secretary for Tax Policy, after Larry's premature and untimely death.

As a result, for the years I worked at the Treasury Department it was almost as if I was also a member of the JCT Staff. I worked closely and met regularly with the lawyers, economists and accountants on the JCT Staff on almost a daily basis. We regularly shared information, jointly developed and implemented legislative strategies and tactics, sat together in legislative drafting sessions (at the knee of the legendary Ward Hussey), collaborated on writing legislative histories, participated together on panels at Congressional hearings, and worked together with members of Congress and the Administration to develop and refine tax legislative proposals.

Simply put, during my four year tenure at the Treasury Department I worked as closely with the JCT Staff as one possibly could without actually being a member of the Staff. And as a result, for those four years in a very real sense I was more of an "insider" than an "outsider" on the JCT Staff.

When I left the Treasury to practice law in Washington, DC, I continued to meet and work regularly with the JCT Staff on a wide variety of issues – sometimes on behalf of clients and at others in a pro bono capacity to help the Staff better understand current tax planning strategies or to give them my perspective on how taxpayers might change their behavior in response to a possible change in law. Sometimes these pro bono meetings were at my own initiative and at others because I was invited in by the JCT Staff to give them my perspective on various matters.

My interaction with the JCT Staff continued unabated during my 26 year tenure as the head of tax at GE. I had countless meetings with the JCT Staff to discuss proposed legislation and other important issues of tax policy – sometimes on behalf of GE, and at others on behalf of trade associations and legislative coalitions. And during my time at GE, I continued to meet with the JCT Staff on a pro bono basis when I was not representing GE or any other private interest. And again, some of these pro bono meetings were at my own initiative, and others because I was invited by the JCT Staff to give them my perspective on what was going on in the "real world," and in particular how businesses might respond to various tax legislative proposals – a perspective from my platform at GE that was of particular interest to the Staff.

So to sum it up, I am an "outsider" because I have never worked on the JCT Staff. But I am an outsider who for more than 40 years has had my nose pushed up hard against the glass, and as a result I have been able to closely observe how this very impressive institution discharges its broad and important responsibilities in a highly competent, professional and entirely nonpartisan way.

THE JCT STAFF'S ROLES AND RESPONSIBILITIES

I will now turn to a brief description of how the JCT Staff is organized followed by a summary of its principal duties and responsibilities – who they are and what they do.

As a formal matter the JCT Staff exists to provide staff support to the Joint Committee on Taxation (JCT), a Congressional committee comprised of ten members of Congress – five of whom are from the Senate Finance Committee and five of whom sit on the House Ways and Means Committee. The JCT was originally established by the Revenue Act of 1926 and its duties have remained essentially unchanged since 1926, and include:

(1) Investigating the operation and effects of internal revenue taxes and how those taxes are administered,

(2) Investigating how those taxes might be simplified,

(3) Making reports to the House Ways and Means and Senate Finance Committees on the findings of their investigations and studies, including making recommendations for legislative changes, and

(4) Reviewing any proposed refund or credit of income or estate and gift taxes (or certain other taxes specified by Section 6405 of the Code) in excess of $2,000,000 ($5,000,000 in the case of corporate refunds).

In addition to the statutorily prescribed duties above – and very importantly – the Congressional Budget Act of 1974 requires the Joint Committee on Taxation to provide the official revenue estimates for all tax legislation considered by Congress. As discussed more fully below, this revenue estimating responsibility is carried out by the JCT Staff and lies at the heart of its influence and power in the tax legislative process.

Who They Are. The JCT Staff is a highly professional staff comprised of experienced tax lawyers, economists, accountants, computer specialists and other support staff, and is led by the Chief of Staff of the Joint Committee on Taxation. The Chief of Staff is selected by the Chairman of the Joint Committee on Taxation, a position that rotates between the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance Committee. The Chief of Staff serves at the will of the Chairman of the Joint Committee on Taxation, but is rarely replaced when the chairmanship of the Joint Committee shifts from the House to the Senate or vice-versa, even if the House and Senate are controlled by different political parties.

The Chief of Staff is an experienced and highly respected tax lawyer or economist and is responsible for hiring and managing the rest of the JCT Staff – who serve at the will of the Chief of Staff and can be replaced at any time. Positions on the Staff are highly competitive and sought after, and are generally filled by experienced, highly educated and exceptionally talented professionals. Most of the lawyers on the JCT Staff have had years of experience practicing tax law with some of the country's top law firms before joining the Staff. Similarly, most of the economists on the JCT Staff have Ph.D.'s or other advanced degrees, and often have had experience before joining the Staff at other government agencies like the Treasury Department's Office of Tax Analysis (OTA), the Internal Revenue Service (IRS), the General Accounting Office (GAO), the Federal Reserve Board, or in the Cabinet departments of the Executive Branch.

There is remarkably little turnover among the professionals on the JCT Staff, and many of the senior members of the Staff have been in their positions for years. The average tenure of the professionals on the JCT Staff is 12 years. This stable and experienced core of highly trained professionals provides important continuity and invaluable institutional memory, and is one of the reasons the JCT Staff is so effective.

Given the broad scope of its responsibilities and heavy workload, the JCT Staff is surprisingly small. For example, today the JCT Staff has only 17 lawyers and accountants, 25 economists (21 of whom are on a dedicated revenue estimating staff), and 3.5 computer and information technology specialists.

What They Do. The JCT Staff devotes the vast majority of its time, effort and resources to its role in the tax legislative process. Perhaps the best way to appreciate the broad scope of the JCT Staff's responsibilities is to understand they are intimately involved in virtually every step of the tax legislative process from beginning to end, including formulating tax legislative proposals, drafting statutory language and legislative histories, estimating the revenue effects of all tax legislation, and actively participating in Congressional hearings, mark-up sessions and floor action on all tax legislation in both the House of Representatives and the Senate.

In addition to their role in the tax legislative process, the JCT Staff prepares many independent studies, reports, and analyses on a wide variety of tax related subjects, and from time-to-time is called upon to conduct an independent review of a tax event that catches the public eye (e.g., the role offshore entities and tax shelters played in the collapse of Enron, or the review of President Nixon's income tax returns).

The JCT Staff also reviews all IRS tax refunds in excess of $2,000,000 ($5,000,000 in the case of corporate refunds). The JCT Staff's review of significant refund claims both provides it with an important window on how the IRS is administering the tax laws and helps the Staff identify areas where taxpayers may be enjoying tax benefits that were not intended by Congress, and therefore might warrant an amendment to the Code.

WHY THE JCT STAFF IS UNIQUE.

From the perspective of an outsider, the JCT Staff is both unique and powerful. It is unique because there is no other Congressional staff that is quite like the Joint Committee Staff – a nonpartisan, multi-disciplinary staff of highly trained and experienced professionals who provide technical and policy support to both the House and the Senate. And the JCT Staff is unusually powerful for a staff function because the central role it plays in the tax legislative process (and especially its revenue estimating responsibilities) allows the Staff to have an enormous influence on the tax laws that are enacted (and that are not enacted) by Congress. First, I will offer three reasons why from an outsider's perspective the JCT Staff is unique, and then three not unrelated reasons why from the outside it appears to be so powerful.

The JCT Staff is Unique Because it is a "Joint" Staff. As its name implies, the JCT Staff is a "joint" staff, meaning that it provides staff support to members of both the

House of Representatives and the Senate. And that, of course, is because the committee it serves, the Joint Committee on Taxation, is itself a "joint" committee comprised of members of the House Ways and Means and Senate Finance Committee.

There are only three other standing joint committees in the Congress today: The Joint Committee on the Library (which oversees the operations of the Library of Congress, and manages the Congressional art collection and the United States Botanic Garden); the Joint Committee on Printing (which oversees the Government Publishing Office and general printing procedures for the federal government); and the Joint Economic Committee (which reviews economic conditions in the United States and makes recommendations for improving the economy).

None of these standing Congressional joint committees have staffs that are comparable to the JCT Staff. The staffs of the Joint Committee on Printing and the Joint Committee on the Library, while professional and competent, have duties and responsibilities that are far narrower in scope than those of the JCT Staff. And unlike the JCT Staff, the staff of the Joint Economic Committee is not directly engaged in the legislative process and is highly partisan. The Joint Economic Committee has separate Republican and Democratic staffs who function autonomously, and who regularly issue partisan reports and press releases attacking the positions and policies of the other party on issues affecting the economy.

The JCT Staff's workload and output is also significantly greater than the staffs of the other three standing joint committees. One indication of the JCT Staff's greater workload is the relative volume of shelf space the records of the Joint Committees of Congress take up in the National Archives. As reported in the Guide to Federal Records published by the National Archives, through 1995 the records of the Joint Committee on the Library consumed 7 feet of shelf space, the records of the Joint Economic Committee 18 feet, the records of the Joint Committee on Printing 144 feet, while the records of the Joint Committee on Taxation consumed 554 feet of shelf space – more than three times the space taken up by the records of the three other standing Joint Committees combined.

The fact that the JCT Staff is a joint staff serving both houses of Congress provides important continuity in the legislative process. For example, when tax legislation moves from the House to the Senate, the JCT Staff is in a position to explain the legislation and its evolution in the House to the members of the Senate Finance Committee and their staffs. As a result, the Senate does not have to start from scratch in understanding what the House passed legislation was intended to accomplish and the political and policy tradeoffs that were involved in producing the final House bill. Thus, the JCT Staff's role as a joint staff serving both houses of Congress materially improves the speed and efficiency of the tax legislative process.

Similarly, as a joint staff, the JCT Staff provides the same technical and policy support and advice to members of both the House and Senate as tax proposals work their way through Congress. As a result, when it comes time to iron out the differences between House and Senate tax bills in conference to produce the final legislation, the JCT Staff is extremely well positioned to help the House and Senate conferees find common ground and compromises between their bills because the Staff knows which provisions are most important to each body.

Simply put, because it is a "joint" staff the JCT Staff is intimately involved with tax legislation from its inception to final passage in both houses of Congress, and as a result the inevitable fumbles and missteps that would occur if tax bills were handed off to an entirely new staff when they moved from the House to the Senate (or vice-versa) are avoided, allowing the tax legislative process to work more smoothly and efficiently.

The JCT Staff is Unique Because it Focuses on a Single and Highly Complex Subject – Taxes. Unlike most Congressional staffs, the JCT Staff's responsibilities and scope of work are limited to one highly technical and complex subject – taxes. But while limited to the single subject of taxes, it is hard to imagine a subject that is more important, because taxes are how we pay for the functions of government – the lifeblood of our democracy. And while limited to only one subject, the substantive work done by the JCT Staff is far from being simple, and the scope of its work is anything but narrow.

The sole subject of the JCT Staff's work – taxes – is not simple for the simple, but unfortunate reason that our tax system is mind-bogglingly complex – reflecting in no small part the complexity of the many diverse businesses and transactions that drive our economy. As a result, to provide the level of technical and policy advice members of Congress need to make informed and sound decisions about changes to our tax laws, the JCT Staff's lawyers, accountants and economists must have broad and deep technical expertise across many different kinds of taxes, including income taxes, payroll taxes, excise taxes and estate and gift taxes. Moreover, much like in the field of medicine today, where general practitioners are rare and specialization is the norm, to provide the kind of cutting edge policy and technical support Congress needs to make sound and informed decisions about changing our tax laws, the JCT Staff has had to develop deep and specialized expertise in many different and highly complex areas of taxation. For example, the JCT Staff has developed specialized expertise in international taxation; in the taxation of partnerships, Subchapter S corporations, REITs, and other pass-through entities; in the tax rules governing non-profit organizations, including charities, private foundations and public and private pension and retirement plans; in the taxation of life and property insurance companies and mutual funds; in tax-exempt bonds and how complex corporate mergers, acquisitions and dispositions are taxed. And these are just some of the areas where the JCT Staff has developed the high degree of tax specialization that is necessary to support Congress in making the best possible decisions about the design of our tax system. So far from being simple, the work done by the JCT Staff requires a high level of specialized expertise across many different areas of taxation to provide Congress with the best possible technical and policy support.

And just as being limited to the single subject of taxes does not mean the JCT Staff's work is simple, working only on taxes does not mean the scope of the Staff's work is narrow. And that is because for many years Congress has used the tax system to influence the size, shape, design and operation of most major government programs by providing special deductions, credits, exclusions and tax rates to incent certain behavior and accomplish important social or economic goals. For example, today the tax system plays an integral part in the design and delivery of healthcare, welfare and child care benefits to the vast majority of Americans; and in how the Nation's major housing, retirement, savings, educational, environmental, charitable and energy programs are designed, funded and implemented. In short, today taxes play a central role in virtually every major Federal government program, and as a result the JCT Staff has a broad window, and significant oversight and influence, on the design and operation of some of the country's most important social and economic programs.

The JCT Staff's sole focus on taxes is also unique because the tax expertise it has developed is not only deep and highly specialized, but is also multi-disciplinary. The JCT Staff is comprised of tax lawyers, accountants, and economists, and computer specialists, each of whom has specialized training, experience and expertise in his or her discipline, but with a special focus on taxes. These professionals work closely together on virtually every project, and as a result learn from one another. The economists learn from the lawyers the important technical aspects of the tax laws and how they apply to transactions in the real world. The lawyers learn from the economists how to think more broadly beyond the particular transaction at hand, and how taxes can affect taxpayer behavior, savings, and investment over time. And the lawyers and economists learn from the accountants how taxes can affect financial statements – the report cards by which managers of public companies are measured, and which therefore often influence their behavior. The multi-disciplinary nature of the tax expertise on the JCT Staff sets it apart from other Congressional staffs and is one of its greatest strengths – by constantly collaborating and working together across their disparate fields of expertise, the whole of the JCT Staff is greater than the sum of its individual parts.

<u>The JCT Staff is Unique Because it is Nonpartisan</u>. Another unique aspect of the JCT Staff is that it is completely nonpartisan – it does not operate as a "majority" staff or a "minority" staff. Instead, the JCT Staff provides equal and objective technical and policy support to members of Congress in both the Republican and Democratic parties. It is not at all uncommon for the JCT Staff to be helping members of Congress who are in the majority party in the House or Senate develop and refine tax legislative proposals while it is simultaneously providing technical and policy support to members in the minority party on different and competing tax legislative proposals – proposals that are often in direct conflict with those being advanced by the majority party.

The JCT Staff provides its technical and policy support to both Democrats and Republicans alike in complete confidence, and is careful not to inform the members of either the majority or minority party about the tax legislative proposals members in the other party are considering or may introduce. This discretion is very important in fostering full, open and transparent communications between the JCT Staff and all members of Congress regardless of their political party as their tax legislative proposals are being developed.

And just as working as a "joint" staff for the House and Senate puts the JCT Staff in a good position to facilitate compromises between the different House and Senate bills in conference to produce a final legislative product, by working closely with parties on both sides of the political aisle the Staff is better able to find and facilitate compromises between Republican and Democratic tax proposals in the House and Senate to produce final House and Senate tax bills, because it has worked closely with the members of both parties in developing their respective proposals.

Perhaps an apt analogy to the JCT Staff's technical and nonpartisan role in the tax legislative process is Chief Justice John Roberts' description of the limited role played by the Judiciary in his opening statement before the Senate Judiciary Committee in his confirmation hearings:

> "Judges are like umpires. Umpires don't make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ball game to see the umpire… I will remember that it's my job to call balls and strikes and not to pitch or bat."

Just like judges, as nonpartisan technical advisors in the tax legislative process, the lawyers, economists and accountants on the JCT Staff are not the players on the tax legislative field whose job is to make our tax laws – that is the sole province of the members of Congress, assisted by their own staffs. Instead, the JCT Staff plays the critical, but limited, role of making sure everyone is playing by the rules – the JCT Staff's job is to call balls and strikes, and not to pitch or bat.

The fact the JCT Staff is entirely nonpartisan and supports both political parties equally and impartially is evidenced by the recent appointment of Tom Barthold as Chief of the Staff. Tom, a talented and experienced Ph.D. economist, was initially appointed Chief of Staff in 2009 by Congressman Charles Rangel, the then Chairman of the House Ways and Means Committee and also Chairman of the Joint Committee on Taxation, and Senator Max Baucus, the Chairman of the Senate Finance Committee and the Vice Chairman of the Joint Committee on Taxation. Both Chairman Rangel and Chairman Baucus are members of the Democratic party.

When the Republican party gained control of both the House of Representatives and the Senate in November of 2014, Congressman Paul Ryan became the Chairman of the House Ways and Means Committee and the Joint Committee on Taxation, and Senator Orrin Hatch became Chairman of the Senate Finance Committee and Vice Chairman of the Joint Committee on Taxation. As the new Chairman of the Joint Committee on Taxation, Paul Ryan – a Republican – had the power to name a new Chief of Staff.

With Republicans in control of both houses of Congress there was widespread speculation that they would replace Tom Barthold – who had been appointed Chief of Staff by Democrats – with a new and partisan Chief of Staff. That did not happen. Instead, Chairman Ryan and Vice Chairman Hatch, both leading Republicans, retained Tom Barthold as the Chief of Staff, and issued a joint statement calling Tom a “strong, nonpartisan leader” during his five years as Chief of Staff, and praising the work done by Tom and the JCT Staff as “quality objective reports and analyses that help shape the major policy debates that are important to hard-working American taxpayers.”

By retaining Tom Barthold as Chief of Staff, Chairmen Ryan and Hatch reaffirmed the long-standing Congressional tradition of having the JCT Staff provide independent and nonpartisan technical and policy advice of the highest possible quality. In other words, by retaining Tom Barthold as Chief of Staff, Chairmen Ryan and Hatch signaled they wanted an experienced, talented and nonpartisan tax professional to lead the JCT Staff – someone who calls balls and strikes the way he sees them without regard to partisan politics.

The JCT Staff is also objective and nonpartisan in another very important sense that has nothing to do with political partisanship. The JCT Staff is nonpartisan in both a substantive tax and tax policy sense. In other words, the JCT Staff does not have or drive its own substantive technical or tax policy agenda for how our tax laws should be designed or changed, but instead follows the lead of the tax writing committees and their staffs in developing tax legislative proposals. While from time-to-time at the request of Congress the JCT Staff develops a menu of options for possible changes in our tax laws, the choice of which, if any, of those options to be considered is entirely up to the members of Congress. So in addition to being politically nonpartisan, the JCT Staff is technically and substantively nonpartisan in the important sense that it does not have or advance its own ideas or substantive agenda for how our tax laws should be changed or improved.

In short, the fact the JCT Staff is independent and nonpartisan – and widely recognized as such – lies at the heart of why it plays such an influential role in the tax legislative process.

WHY THE JCT STAFF IS POWERFUL.

From an outside perspective, the JCT Staff appears to be one of the most – if not the most – powerful staff functions in Congress. But before going any further, it is important to be clear about the sense in which the JCT Staff can be described as being a "powerful" staff function. The JCT Staff is not powerful because it makes any decisions about the tax legislation that will be considered by Congress, how that legislation should be shaped, or whether it should ultimately be adopted. Those decisions are – and should be – the sole province of the members of Congress.

Instead, the JCT Staff derives its power from being a close and trusted technical and policy advisor to the members of Congress who make the decisions about tax legislation, and as a result the Staff's advice can often influence whether Congress decides to consider a particular tax proposal, as well as the size, scope and design of the final legislative product. In other words, by providing important and timely technical and policy advice to members of Congress, the JCT Staff can influence tax legislation much the same way a Supreme Court clerk can influence the opinions written by her Justice, or the way a trusted advisor who has the ear of the President or a Cabinet Secretary can influence important decisions made by his boss.

There are three principal factors that from the outside appear to make the JCT Staff so powerful. First, its deep technical tax expertise makes the JCT Staff indispensable in the tax legislative process. Second, is the fact that the JCT Staff alone is responsible for providing the official revenue estimates for all tax legislation. And third, and perhaps most importantly, the JCT Staff enjoys the utmost trust and confidence of members of Congress in both the House and Senate and on both sides of the political aisle.

The JCT Staff is Powerful Because of its Technical Expertise. The JCT Staff is comprised of talented and experienced tax lawyers, accountants and economists who have spent their entire careers developing and honing a very high level of specialized tax and tax policy expertise. Moreover, the JCT Staff not only has a broad and deep understanding of our tax laws, but also how those laws apply in the real world to affect individuals and businesses in a wide variety of circumstances, both in the United States and around the world. Simply put, there is no more experienced or qualified group of technical tax and tax policy experts anywhere in the world than on the JCT Staff. This deep domain expertise allows the JCT Staff to play an important and powerful role in the tax legislative process wholly independent of the power and influence it has as the sole provider of revenue estimates for all tax legislation.

Ironically, the principal reason the JCT Staff's technical expertise makes it so influential – indeed indispensable – in the tax legislative process is the simple, but unfortunate, fact that our tax system has become so inordinately complex that only experienced tax experts can understand it. So as a result of this mind-boggling complexity, Congress needs and relies heavily upon the expertise of the JCT Staff to ensure that the changes it makes to our tax laws will achieve their intended purpose (and nothing more), not result in greater than expected revenue losses (or gains), mesh with existing tax laws, and be administrable by the IRS.

As early as 1597 Francis Bacon recognized in his Meditationes Sacrae that "Knowledge is Power." He understood that knowledge was necessary to understand the world around us and to change it for the better. Consistent with Sir Francis Bacon's insight, the JCT Staff's deep and extensive technical knowledge and expertise about our tax system allows it to occupy the powerful role of helping Congress understand our complex tax system and to make better and more informed decisions about how to change and improve our tax laws.

The JCT Staff's technical knowledge and expertise is brought to bear and influences the tax legislative process in many different ways and at many different stages in the process. At the earliest stage in the process the JCT Staff may meet with a member of Congress and his staff (and sometimes the member's constituents) to understand exactly what the member would like to accomplish, and then work with the member and his staff to narrow and refine his legislative proposal. The lawyers on the JCT Staff may draft the statutory language for the tax proposal, along with a technical explanation and talking points the member can use to explain his proposal to his colleagues, constituents and the press.

The JCT Staff's technical expertise comes into full play once the tax legislative process gets underway. The JCT Staff prepares detailed and extensive technical pamphlets and materials for the hearings before the tax writing committees, and once a proposal has been formally adopted by the House Ways and Means or Senate Finance Committees, the JCT Staff reviews and refines the statutory language of the approved bill, and takes the laboring oar in drafting its legislative history. These official legislative histories are very important documents because they are relied upon by the IRS and Treasury to divine Congressional intent when they write regulations to fill in gaps and flesh out the statutory language, and by the courts in deciding cases where a statutory provision is at issue.

The JCT Staff's technical expertise is especially important in the drafting sessions led by the House and Senate Legislative Counsels where the actual statutory language of tax legislation is produced. These drafting sessions are rigorous, disciplined and focused on making sure the language of the proposed statute accomplishes the objective of the sponsoring member of Congress – and nothing more. In other words, painstaking care is taken by the lawyers on the JCT Staff in these drafting sessions to ensure the statutory language is narrowly targeted to achieve its intended purpose, and that it does not open up any avenues for tax planning or results that were not intended by the member sponsoring the bill. In a very real sense these drafting sessions are the "sausage making factory", and require the JCT Staff's lawyers to exercise the highest level of legal craftsmanship to protect the revenues and the integrity of the tax legislative process.

Ward Hussey, the legendary Legislative Counsel of the House of Representatives, would begin every one of these drafting sessions with the stern admonition that no policy was ever to be made in the drafting room. Instead, he would firmly and solemnly remind the JCT Staff and Treasury lawyers who were in the drafting room that the sole objective of the session was to ensure the wishes of Congress were faithfully implemented by the statutory language – and that it was not his job or the job of the JCT Staff or Treasury lawyers to make policy. (Of course, as anyone who has ever participated in one of these drafting sessions understands, given the ambiguities and interstices that have to be considered and resolved in drafting statutory language, that was not always the case.)

Yet another area where the JCT Staff's technical and tax policy expertise allows it to play an influential role in the tax legislative process is when it is asked by Congress to develop a list of so-called "revenue raisers" – tax changes that would raise revenue to offset the revenue losses from other tax changes members would like to introduce. Usually in response to a request by the Chairman of one of the tax writing committees, the JCT Staff will compile a list of these potential revenue raisers by relying on its experience and technical expertise to identify areas where the tax laws are not operating as Congress intended, and where a corrective change would raise additional revenue. Similarly, the JCT Staff's experience and expertise allows it to develop revenue raisers by identifying areas where new information reporting requirements or additional enforcement powers would allow the IRS to collect more revenue under existing law.

The JCT Staff's technical knowledge and expertise also comes into play in its negotiations during the tax legislative process with the lawyers, economists and accountants on the tax staff in the Treasury Department's Office of Tax Policy – the only professional tax staff whose technical tax expertise can rival that of the JCT Staff. However, as the control and development of tax policy has migrated over the years from the Treasury Department to the White House – a move that was accelerated by the creation of the National Economic Council (NEC) in the Clinton Administration – the Treasury Department's role in the tax legislative process has become increasingly partisan. As a result, the JCT Staff stands alone as a highly expert staff of completely objective and nonpartisan technical tax advisors – the last anchor down in ensuring the policy and technical soundness of proposed tax legislation without regard to political considerations.

In addition to allowing the JCT Staff to play a powerful role in shaping the tax laws that are ultimately enacted into law by Congress, the Staff's technical knowledge and expertise can be just as important in the tax legislative process by preventing bad or unsound tax proposals from becoming law. For example, the JCT Staff may convince a member of Congress not to introduce a bill – or not to push for its enactment – by explaining to the member why the proposal would be harmful to the economy, unfair to certain taxpayers, not be administrable by the IRS, or lose significant revenue.

The JCT Staff, of course, isn't the sole repository of technical tax expertise in the Congress. Many members of Congress themselves – especially those who serve on the tax writing committees – have a good working knowledge of our tax system. And members who sit on the tax writing committees often have a highly qualified tax lawyer or accountant on their personal staffs. But given the other demands on their time and attention, a member of Congress cannot– and should not – be expected to have the same level of technical tax expertise as the dedicated tax experts on the JCT Staff. And however qualified a member's personal tax staffer may be, he or she is only one person.

The House Ways and Means and Senate Finance Committee staffs have developed an impressive group of experienced tax professionals who play a critical and important role in the tax legislative process. These highly expert Committee staffs work closely with the JCT Staff, and often serve as the principal technical interface between the JCT Staff and the members of Congress who serve on the tax writing committees. These Committee staffs, however, are not as large as the JCT Staff and are partisan majority and minority staffs, and as a result generally work only for members of one political party. Further the staffs of the tax writing committees provide technical and policy support only to members in their respective body of Congress – i.e., in the House or Senate.

Finally, the JCT Staff's tax expertise makes it particularly influential with the vast majority of members of Congress do not sit on the tax writing committees or have dedicated tax staffers. When these members, who are not likely to be familiar with our tax system and its mind-numbing complexity, would like to introduce a tax bill it may seem to them as if they have entered a foreign land where they understand neither the terrain, the running rules, or even the language. So in this strange new world of taxes, most members of Congress find they need a translator, map and a trusted guide to help them achieve their goal – a role the JCT Staff is perfectly suited to fill, and one that provides it with a great deal of influence.

<u>The JCT Staff is Powerful Because of its Revenue Estimating Function</u>. Interestingly, the Joint Committee on Taxation has no grant of legislative authority under the statutes that create it. Instead its legislative mandate is limited to investigating how our tax system is working and being administered, and to writing reports and making recommendations on how the tax system might be improved. If these investigatory and reporting functions were the only powers vested in the Joint Committee on Taxation, it is doubtful the JCT Staff – who support that Committee – would be nearly as powerful in the tax legislative process as it is today.

However, and very importantly, in addition to its investigatory and reporting role, the Congressional Budget Act of 1974 grants the Joint Committee on Taxation the sole responsibility for providing revenue estimates for all tax legislation considered by Congress. And, of course, while the grant of authority to provide revenue estimates is given to the Joint Committee on Taxation, as a practical matter the responsibility for developing revenue estimates devolves to the lawyers, economists, and computer specialists on the JCT Staff. This exclusive authority to provide the official revenue estimates for all tax legislation considered by Congress is central to the JCT Staff's powerful role in the tax legislative process for two separate and distinct reasons.

First, the requirement that all tax legislation have a revenue estimate provided by the Staff means that all proposed tax legislation must be funneled through the JCT Staff, providing the Staff's lawyers, economists and accountants with the opportunity to review, analyze and refine every tax proposal considered by Congress. In other words, in a very real sense, the JCT Staff's revenue estimating function allows it to serve as a kind of central clearing house for all tax legislation, ensuring to the maximum extent possible that all tax bills are clearly drafted, are consistent with the rest of the Code, have a solid tax policy underpinning, and can be administered by the IRS.

For example, because all proposed tax legislation must be funneled through the JCT Staff, the lawyers on the Staff have the opportunity to review and sharpen the statutory language of the proposal to ensure it will achieve the purpose intended by its sponsors without resulting in unintended consequences or unanticipated revenue losses. Similarly, the fact the JCT Staff reviews all tax legislative proposals means the lawyers and economists on Staff have the opportunity to analyze and assess the soundness of the tax policy underlying the proposal, and how the proposal would affect individuals and businesses in the real world if it were enacted into law.

The importance to the integrity of the tax legislative process of having a consistent, rigorous and uniform review and analysis of all proposed tax legislation by an experienced and highly competent staff of independent and nonpartisan tax experts cannot be overstated. And, of course, the ability to review, analyze and refine all tax legislation considered by Congress reinforces the Staff's integral, important and powerful role in the tax legislative process.

Second, the JCT Staff's role as the sole provider of revenue estimates makes it a powerful staff function because the revenue estimates in and of themselves are very important – indeed, they are so important they almost always influence the scope and design of a tax legislative proposal, and can often determine its ultimate legislative fate.

Revenue estimates are critically important to the initial design and ultimate fate of proposed tax legislation because for the last several decades Congress has adopted rules intended to prevent legislative changes that reduce taxes or increase mandatory spending from increasing the projected budget deficit. These so-called "PAYGO" or "pay-as-you-go" rules have been provided by a patchwork quilt of statutory provisions and rules adopted by both the House and Senate, and represent a good faith attempt to implement a policy of budget neutrality by requiring that any new tax cuts or increases in mandatory spending be offset by tax increases or spending reductions to avoid increasing the projected budget deficit.

However, the reality is that these PAYGO rules, which have been intermittently repealed, reinstated and changed, are replete with exceptions and exclusions and have never been consistently and rigorously applied. Nonetheless, they have imposed varying degrees of fiscal discipline, and have created a general political consensus that a proposed tax change that loses revenue should be paired with a tax increase or spending cut to ensure the revenue loss will be offset and not increase the projected budget deficit.

As a result of this Congressionally self-imposed fiscal discipline, tax proposals that would result in significant revenue losses must climb a steep legislative hill to enactment, because their sponsors must come up with tax increases or spending cuts that will offset the revenue losses and also be politically acceptable. And, of course, the greater the revenue loss from a proposed tax change, the greater the offsetting tax increase or spending cut needs to be. Because the JCT Staff is the sole and final arbiter of revenue losses from proposed tax cuts and the offsetting revenue gains from proposed tax increases, the Staff wields enormous influence over the design and scope of proposed tax changes that would lose revenue and any proposed tax increases or "pay-fors" designed to offset the revenue loss.

It is precisely because the JCT Staff understands the importance of its revenue estimates to the tax legislative process that it take its revenue estimating responsibility so seriously, and does the best possible job it can to provide accurate, consistent, and impartial revenue estimates that can be relied upon by members of Congress in making legislative decisions.

The JCT Staff devotes considerable time, effort and resources to produce the most accurate revenue estimates possible. A specialized staff of 21 economists is dedicated full time to the JCT Staff's revenue estimating function. To the extent possible, every revenue estimate is carefully reviewed by an experienced tax lawyer on the JCT Staff, who ensures the estimate reflects the actual words of the statute and takes into account his considered and experienced judgment as to how taxpayers might change their behavior if the proposal were enacted into law. And the economists and computer specialists on the JCT Staff are continually working to improve and refine their revenue estimating methodologies, and update and improve the sophisticated computer models and IRS data they rely upon to produce their revenue estimates.

In short, the JCT Staff does the very best job it can to produce accurate, consistent and impartial revenue estimates. But, of course, its revenue estimates are not perfect. Indeed, revenue estimates are just what the name implies – they are estimates. And they are estimates based on future events that by definition are unknowable and inherently uncertain – estimates that must anticipate how over the 10-year budget window taxpayers in the world's largest and most diverse economy, having the world's most complicated tax system, will change their behavior in response to changes in the tax law.

As former Chief of Staff Ron Pearlman said in testimony before the Senate Finance Committee on March 14, 1989, because anticipating how taxpayers will change their behavior in response to a proposed change in law is a key component of a revenue estimate, revenue estimates are "essentially a judgment call". Or perhaps, the fact that revenue estimates by their very nature are only estimates was more aptly captured in an exchange former Chief of Staff Ken Kies reportedly had with a member of Congress when the member questioned the accuracy of a revenue estimate provided by the JCT Staff. In response to the member's question asking Ken how certain he was that the revenue estimate was accurate, Ken reportedly responded that he was sure of only one thing—that the revenue estimate was almost certainly wrong because the budget rules required a single dollar point estimate for the revenue loss, and not a range of possible losses. (Of course, Ken went on to assure the member that the JCT Staff did the best job it could to provide the most accurate possible revenue estimate, and that in Ken's view the estimate, while assuredly wrong, was in the ballpark and reasonable.)

Simply put, as former Chief of Staff Ron Pearlman testified before the Senate Finance Committee, revenue estimating is somewhere between an art and a science:

> It has been said that revenue estimating is as much an art as it is a science. Certainly all would agree that it is not an exact science. But economic theory and econometric methods are much more sophisticated than most of us realize. Revenue estimating assuredly is much more than an art.
>
> ****
>
> Every estimate is subject to uncertainty. However, in spite of this uncertainty, the Joint Committee has a job to do, namely, to provide the Congress the most informed and reasoned point estimate of the revenue impact of a proposed tax law change as we possibly can.

As a brief digression, I would like to say something about the transparency of the JCT Staff revenue estimating process. The JCT Staff has come under repeated criticism for not being sufficiently transparent about its revenue estimating process and methodology – a criticism that I believe more often than not is unjustified.

Perhaps some of this criticism is because a tight-lipped shroud of secrecy appears to surround revenue estimates, since the JCT Staff will only release revenue estimates to the members of Congress who requested them, and will not even acknowledge that it has provided a revenue estimate for a proposed tax change unless the sponsoring member releases the estimate himself. While this confidentiality is not required by statute, it is important to protecting the member's confidence in the JCT Staff and to maintaining the Staff's role as a nonpartisan staff function.

Another reason why the JCT Staff may be criticized for not being sufficiently transparent about its revenue estimates is that taxpayers often disagree with the Staff's assumptions about how taxpayers will change their behavior in response to a proposed change in tax law, and therefore they believe the revenue loss estimated by the JCT Staff is too large. But of course, estimates of how taxpayers will change their future behavior are just that – estimates or "judgment calls" – an area where there will always be room for a difference of opinion. But in that regard, it is important to note the JCT Staff's door is always open, and as part of the revenue estimating process the Staff is not only willing, but eager, to meet with and listen to affected taxpayers and their representatives about how in their view taxpayers will change their behavior in response to a proposed change in the tax law. And, of course, the JCT Staff's final revenue estimates take into account the views presented to them by taxpayers and their representatives in these meetings, because the Staff always wants to produce the most accurate revenue estimates possible.

Similarly, at times taxpayers and their representatives may complain that the JCT Staff is not sufficiently transparent about its revenue estimates because the Staff does not make a general practice of meeting with taxpayers after a revenue estimate has been finalized and released to discuss and debate the Staff's assumptions in arriving at the final revenue estimate. Taxpayers would obviously like the JCT Staff to engage in these after-the-fact debating sessions, particularly to discuss the Staff's assumptions about anticipated taxpayer behavior in response to the proposed change in law, in the hopes of getting the Staff to change its mind and reduce the amount of the estimated revenue loss. However, because anticipating how taxpayers will change their behavior in response to a change in law is inherently an area of judgment – there is no "right" or "wrong" view – these meetings are not likely to be very productive. Moreover, they would be extremely time consuming for the JCT Staff given the large number of revenue estimates it is asked to provide every year. And perhaps most importantly, as noted above, the JCT Staff is always willing to meet with taxpayers and their representatives to listen to and consider their views before a revenue estimate has been finalized and delivered to the member of Congress who requested it.

Many commentators have also been critical of the JCT Staff's revenue estimates because historically they have not reflected the macroeconomic effect of proposed tax changes – i.e., they are not "dynamic" revenue estimates. Although sometimes conflated with a lack of transparency, this criticism has nothing at all to do with transparency, since the JCT Staff has consistently been very clear that its official revenue estimates are not "dynamic" estimates, but instead hold GNP fixed and do not reflect revenue gains or losses from changes in the size of the overall economy that might result from proposed tax changes.

Criticisms that the JCT Staff's revenue estimating methodologies lack transparency are simply not supported by the evidence. Indeed, the JCT Staff goes to great pains to be as transparent as possible about its revenue estimating process. For example, the JCT Staff has provided countless explanations of its revenue estimating process and methodologies – in Congressional testimony, public speeches, hearing pamphlets, and in articles in professional journals. By my count there are more than 23 publically available explanations of the JCT Staff's revenue estimating process and methodologies posted on its website today, including descriptions of the data and various computer models it relies upon to produce its revenue estimates.

A further indication of the JCT Staff's transparency surrounding its revenue estimates is that whenever an isolated tax change makes it feasible to do so, the Staff has undertaken and made public a retrospective analysis that explains in considerable detail how it arrived at its original revenue estimate, and then looking back with the benefit of 20-20 hindsight, what it got right and what it got wrong in providing that original estimate.

For example, in testimony on the revenue estimating process before a joint hearing of the House and Senate Budget Committees on January 10, 1995, former Chief of Staff Ken Kies provided a retrospective analysis that compared the JCT Staff's original revenue estimate for the 10% excise tax imposed on certain luxury goods by the Omnibus Budget Reconciliation Act of 1990 with the actual tax receipts collected by the IRS under this so-called luxury tax. In detailed and fully transparent testimony, Ken described the methodology and assumptions the JCT Staff relied upon to produce their original revenue estimate, and looking back in hindsight where the Staff got the estimate right, and the areas where – and possibly why – they missed the mark.

More recently, in an article published in Tax Notes on September 22, 2008, former Chief of Staff Ed Kleinbard and Pat Driessen, a senior economist on the JCT Staff, provided a detailed retrospective analysis that compared the JCT Staff's original revenue estimate for the one-time repatriation tax holiday that was enacted as part of the 2004 Jobs Act (Section 965 of the Code) with the actual tax receipts collected by the IRS on the foreign earnings that were repatriated to take advantage of this one-time tax holiday.

The Kleinbard-Driessen article provides a detailed and comprehensive look into the JCT Staff's revenue estimating process in general, and more specifically into how the Staff arrived at its revenue estimate for this highly controversial one-time tax holiday. The authors were remarkably transparent and candid about the JCT Staff's assumptions underlying this estimate, and where the Staff's original revenue estimate was on the money -- and where in hindsight they got it wrong.

These kinds of retrospective analyses comparing the JCT Staff's original revenue estimates for an isolated tax proposal with the actual taxes collected (or lost) as the result of the change in law both help the Staff improve its revenue estimating methodologies and make the revenue estimating process more open and transparent to the public. Unfortunately, the circumstances where these kinds of retrospective analyses can be useful and instructive are limited to the relatively infrequent situations where a change in tax law is not part of a larger legislative package, so that the taxes actually collected (or lost) as a result of the change in law can be identified with some confidence as being attributable to that change, and not be tainted by interactions with other tax changes that were adopted simultaneously.

The important point, however, is that when an isolated tax change lends itself to a retrospective self-evaluation of the revenue estimating process – like the luxury tax or the Section 965 repatriation holiday – the JCT Staff on its own initiative conducts a study to see how accurate its estimates were in hindsight, and then makes its findings available to the Congress and the general public. I am not sure how the JCT Staff can be any more transparent than that.

<u>The JCT Staff is Powerful Because it has the Trust and Confidence of Congress</u>. The JCT Staff's technical tax expertise together with its exclusive responsibility for providing the revenue estimates for all tax legislation are two important factors that explain why the Staff plays such an influential role in the tax legislative process. But neither of these factors would matter very much unless the JCT Staff also had the complete trust and confidence of the members of Congress they serve -- because without that trust and confidence the JCT Staff's technical advice would be ignored, and it is unlikely the Staff would retain the exclusive responsibility for providing revenue estimates for very long.

Consequently, the JCT Staff's power and influence in the tax legislative process is very much dependent on having and maintaining the highest level of trust and confidence from the Congress –a trust and confidence the Staff enjoys today and that has been earned by providing nonpartisan and objective technical and policy advice of the highest possible quality for the last 90 years.

Indeed, on the occasion of the 30th anniversary of the Joint Committee on Taxation, Representative Daniel A. Reed of New York summarized the important role played by the JCT Staff in the *Congressional Record*.

> The Joint Committee staff generally has furnished the entire technical assistance to both the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on every item of tax legislation, large and small, irrespective of which party happened to be in control of the Congress at any particular time. Thus, the staff has been a truly nonpartisan one, providing an extraordinary reservoir of professional talent available to all Members of the Congress regardless of party.

Notwithstanding its long history of providing Congress with nonpartisan technical advice of the highest possible quality, the JCT Staff remains as influential as it is today only because it does not take the trust and confidence placed in it by Congress for granted – but instead performs its duties as if it has to earn this critical trust and confidence every day. And that is because no one understands better than the professionals on the JCT Staff themselves how critically important having the trust and confidence of Congress is in allowing them to do their jobs.

If members of Congress did not trust the JCT Staff's substantive tax advice – either because they thought it was technically deficient or politically partisan – they would not pay much attention to it. Likewise, if they believed the JCT Staff was putting a partisan thumb on the scale in producing its revenue estimates, the Staff's revenue estimates would lose much of their force in the tax legislative process, and might even be dismissed out of hand.

Preserving the long-standing trust and confidence Congress has placed in the JCT Staff over the years is the responsibility of each and every member of the Staff, most of whom interface on a daily basis with members of Congress and their staffs. However, the principal responsibility for maintaining the trust and confidence of Congress that is so critical to the JCT Staff's effectiveness falls to the Chief of Staff – because he or she is the principal face of the Staff, not only to Congress, but also to the media, general public and the broader tax community. Simply put, it is essential that the Chief of Staff be highly competent, widely respected, and above all, completely nonpartisan.

To maintain the confidence and trust of Congress in the JCT Staff's technical expertise, the Chief of Staff not only has to be a highly competent tax expert, but he also has to be articulate and a good teacher. The Chief of Staff has to be able to explain complicated tax provisions and policies to members of Congress clearly and simply -- and very importantly, in a non-condescending manner -- so members of Congress can understand the technical and policy arguments for and against a particular tax legislative proposal, allowing them to explain the proposal to other members, their constituents and the general public, and ultimately to find grounds to negotiate necessary compromises.

To gain and keep the trust and confidence of Congress, it is not enough that the Chief of Staff be technically competent and a good teacher -- he also has to be politically savvy. The Chief of Staff has to fully understand and be sensitive to the political pressures that are regularly exerted on members of Congress, and to help them find and negotiate legislative compromises that will be acceptable to important outside interest groups and at the same time reflect sound tax policy and be good law.

And the Chief of Staff cannot be worried about his popularity when he is attempting to help find a compromise between differing tax legislative proposals. By its very nature a compromise means no party will be fully satisfied with the final outcome, and because at times he will be the principal architect of a compromise, the Chief of Staff has to be ready to shoulder the blame from members of Congress and outside interests who are less than fully satisfied by the final compromise and the ultimate tax legislative product. Indeed, perhaps the best measure of a Chief of Staff's success in helping to find a legislative compromise is that all parties to the negotiation are equally unhappy with him.

In addition to having a thick skin, the Chief of Staff has to be resolute and have a strong backbone, and be willing to deliver bad news to important members of Congress – for example, that the tax proposal they would like to introduce loses far more revenue than had been anticipated. To be sure, the Chief of Staff has to be diplomatic in delivering bad news, but to maintain the respect of the members of Congress and the stature and standing of the JCT Staff, it is important that he stand his ground in the face of what at times may seem to be unfair and undue pressure from members of Congress themselves or outside interest groups.

The Chief of Staff also has to be discreet and keep the confidences placed in him by members of Congress, both to keep members' trust and to ensure the communications between the members of Congress and the JCT Staff are full, open and completely transparent. Unless a member of Congress is fully comfortable in confiding in the JCT Staff exactly what he wants to accomplish – and who he wants to help – by introducing a particular tax proposal, it will be difficult, if not impossible, for the Staff to provide the kind of technical and policy support necessary to fully develop the legislative proposal and accomplish the member's objectives.

Finally, and most importantly, to maintain the trust and confidence of Congress the Chief of Staff must be completely nonpartisan. Being nonpartisan does not mean the Chief of Staff cannot be a member of a political party – he can be a Democrat or Republican and be known as such. Indeed, the Chief of Staff is selected by members of Congress who themselves are Democrats or Republicans. But while he may be affiliated with one political party, the Chief of Staff must not be a partisan. To maintain the trust of members on both sides of the aisle, the Chief of Staff must make sure that members of both the party in the majority and the party in the minority get the same timely, confidential and high quality technical and policy support for the tax legislative proposals they would like to advance.

Simply put, the Chief of Staff has to bend over backwards to make sure that he – and each member of the JCT Staff – leaves his personal political views at the door, and provides the same impartial, objective and high quality technical and policy support to Republicans and Democrats alike. In short, the Chief of Staff has to call balls and strikes the way he sees them -- and by looking solely through the lens of what constitutes good tax policy without regard to any political ramifications. And in leading by example, the

Chief of Staff has to make sure each member of the JCT Staff – from the most junior accountant to the most senior lawyers and economists – does exactly the same thing.

Just as the Chief of Staff can be a Democrat or Republican and have his own personal political point of view, he is entitled to have his own tax policy views. However, just as he cannot let his personal political views influence his behavior or how he does his job, he cannot let his personal views about the best tax policy – or the tax policy views of the individual members of the JCT Staff – result in a tax legislative agenda that is being driven by the JCT Staff itself that is separate and distinct from the tax legislative agenda that Congress wants to advance.

In other words, the JCT Staff has to always remember it is not their job to make law or policy – they are not the real players in the tax legislative process whose job is to pitch or bat, because that role that belongs exclusively to members of Congress. Instead, the JCT Staff are only the umpires, whose exclusive role in the process is to ensure the game is fair and that everyone plays by the same rules.

The importance to maintaining the trust and confidence of Congress, the bedrock foundation upon which the JCT Staff's critical role in the tax legislative process rests, of having the Chief of Staff be fully and completely independent and nonpartisan cannot be overstated.

Finally, in the unlikely event the JCT Staff is ever perceived as either being politically partisan or pushing its own substantive agenda for tax changes, in addition to impairing the Staff's effectiveness and tarnishing its reputation as a technical, impartial and nonpartisan institution, the Chief of Staff would likely be called on the carpet by the Chairmen of the tax-writing committees and instructed to get back in line, and in an extreme case of political or policy partisanship, even be replaced – either immediately or when the majority party changed in one of the houses of Congress.

A FEW SUGGESTIONS FROM THE OUTSIDE.

Finally, I would like to offer a few modest suggestions from an outsider's perspective on steps the JCT Staff might consider taking to enhance its already very impressive and effective performance.

One of the hallmarks of the JCT Staff's success is how well they work seamlessly together as a single team of technical and policy experts across different professional disciplines – law, economics, accounting, and computer technology. This cross-functional teamwork allows the JCT Staff to leverage their collective experience and expertise, and explains in no small part why they are so productive and their work consistently of the highest caliber.

The benefits that flow from this cross-functional teamwork remind me of the wisdom behind an old Japanese proverb, and one of my favorite sayings: "None of Us is as Smart as All of Us." I believe there is a powerful truth underlying this proverb, and my suggestions for how the JCT Staff might improve its effectiveness all build off its wisdom by suggesting a few ideas on how the Staff might leverage the considerable technical and tax policy expertise that lies outside the government at our major universities and research centers and in the private sector.

I recognize that the JCT Staff already seeks and receives a great deal of technical and policy input today from sources outside the government. My suggestions are ways the JCT Staff might take even greater advantage of this outside expertise by establishing processes and operating mechanisms that would allow it to tap into and receive the benefit of the thinking of some of the country's leading technical and tax policy experts on a regular and continuing basis.

Board of Economic Advisors. The JCT Staff might consider establishing a Board of Economic Advisors that would be comprised of leading economists from the country's top universities and research centers, think tanks, and in the private sector. As an analogue, the Congressional Budget Office (CBO) has established a panel of 22 leading outside economists whom CBO regularly calls upon for help and advice in doing their studies and economic forecasts. CBO describes the benefits of having its outside Panel of Economic Advisers as follows:

> CBO has a panel of economic advisers consisting of widely recognized experts with a variety of backgrounds, areas of expertise, and experience. Members of the panel generally serve two-year terms, and are sometimes reappointed. The agency hosts periodic meetings of the advisers and solicits their views between meetings. Through these interactions, CBO benefits from the advisers' understanding of cutting-edge research and their reviews of the agency's economic forecasts. As a result, the quality of CBO's analysis of the economy is greatly enhanced. Although such experts provide considerable assistance, CBO is solely responsible for the accuracy of its work.

In the words of CBO, as a result of having its Panel of Economic Advisers "the quality of CBO's analysis of the economy is greatly enhanced."

In addition to its Panel of Economic Advisers, CBO has established a separate Panel of Health Advisers comprised of 21 widely recognized outside experts in health policy and the health care sector who regularly interact with and advise CBO on the results of cutting edge research and the latest developments in health care delivery and financing. And again in the words of CBO, as a result of having this outside Panel of Health Advisers "the quality of CBO's analysis of health policy is greatly enhanced."

Like CBO, the JCT Staff might benefit from having an outside group of some of the most distinguished economists in the country who could help keep the Staff's economists up to date on cutting edge economic research and developments, and help them think through some of the very knotty economic issues they have to confront on a regular basis.

The economists who might serve on such a Board of Economic Advisors would be selected by the Chief of Staff, and presumably would include some of the most distinguished and widely respected economists in the country. They could serve fixed terms, but could be reappointed by the Chief of Staff. Members of the Board would not be paid a stipend, but could be reimbursed for their travel costs. (If the JCT Staff's budget could not accommodate these costs it is likely a Section 501(c)(3) organization could be found to fund these expenses.)

The Chief of Staff could convene periodic meetings of the Board of Economic Advisors in Washington, DC, (e.g., once or twice a year), and set the agenda for these meetings in advance by identifying specific issues the JCT Staff would like input and advice on from these outside experts. For example, in advance of the formal meetings the Chief of Staff might ask one or more outside economists on the Board to present a paper or organize a panel discussion on a pressing economic issue before the JCT Staff. In between the formal meetings of the Board the economists on the JCT Staff could call upon members of the Board for advice or help on an issue they were working on.

It would be important that members of such a Board of Economic advisors be selected from across the political spectrum – both liberal and conservative and Republican and Democrat. While having a wide mix of different policy and political points of view might make it difficult to reach a consensus, it would ensure the JCT Staff had access to the policy arguments on both sides of an economic issue, as well as reinforcing the Staff's nonpartisan role by insulating it from criticism that its Board of Economic Advisors was either too liberal or conservative, or stacked in the direction of one political party or another. Listening to leading economists with different points of view discuss and debate opposite sides of important policy issues would also help the JCT Staff narrow its focus and isolate the precise areas where and why there were different opinions between leading economists on important policy issues.

While the JCT Staff regularly meets and consults with outside economists today, like CBO, it might benefit from having a more formal and established structure or process for leveraging outside economic expertise. For example, the periodic meetings of a Board of Economic Advisors would allow the JCT Staff to do deeper dives and get multiple perspectives from the best economic minds in the country on some of the most difficult economic issues the Staff has to confront and resolve. And in between the periodic formal meetings of the Board, the JCT Staff's economists would have regular and established channels of communications to discuss the issues they were working on with leading outside economists.

One area where the JCT Staff might benefit from the collective thinking and experience of an outside Board of Economic Advisors would be how to provide the best and most accurate macroeconomic revenue estimates possible. Whatever the pros and cons of dynamic scoring, the fact is the rules of the House now require the JCT Staff to reflect the macroeconomic effects of major tax legislation in its revenue estimates. These macro estimates will be time consuming and their results almost certainly will not be perfect. But at a minimum they should allow Congress to rank order different major tax legislative proposals by comparing the macroeconomic effects of one major tax proposal with another. And for these comparisons to be as meaningful as possible, the JCT Staff will have to apply the same conventions and follow a consistent methodology for all of its macroeconomic estimates, forcing the Staff to address and resolve a host of complex and thorny economic issues – precisely the kinds of issues that a Board of Economic Advisors comprised of some of the best economic minds in the country would be particularly well-suited to help the JCT Staff think through and resolve.

For example, to provide meaningful dynamic revenue estimates the JCT Staff's economists will have to have uniform answers to questions like how responsive savings are to changes in the tax law. Or whether households have perfect foresight. Or if a tax proposal loses revenue, they will need to apply a consistent convention that addresses how the lost revenue will be made up. By spending cuts? If so, what kind of spending cuts… reduced transfer payments, reductions in spending on infrastructure, cuts in the defense budget, or reductions in the services purchased by the government? Or perhaps the JCT Staff should assume a portion of the lost revenue will be made up for by an increase in taxes. If so, what kind of taxes? Or maybe they should assume the revenue loss won't be paid for at all... resulting in an increased deficit and more government debt. And should the JCT Staff make assumptions about how the Federal Reserve might respond to a major tax change? Should it assume the Fed will increase interest rates to keep inflation under control if there is a major tax cut? Or reduce interest rates to support consumer demand in response to a major tax increase?

These are only a few of the knotty economic questions that the JCT Staff has to wrestle with to provide revenue estimates reflecting the macroeconomic effects of a major tax change. Of course, none of these questions have answers – but instead require economic judgments about future events and behaviors. And because the JCT Staff does not have a crystal ball, to ensure it has a consistent framework for providing its macroeconomic revenue estimates it has to make the same assumptions and follow the same conventions in addressing these unanswerable questions. How best to address these difficult economic issues to ensure it has a consistent and uniform framework for providing its dynamic revenue estimates is only one area where a Board of Economic Advisers comprised of top outside economists might prove helpful to the JCT Staff.

In addition to helping the JCT Staff wrestle with the difficult economic issues it confronts on a regular basis, having some of the country's leading and most distinguished economists serve on a Board of Economic Advisors would provide a number of other benefits to the Staff. It would enhance the JCT Staff's reputation for technical excellence and help to recruit top young economists to the Staff, who would be attracted by the opportunity to work with and learn from some of the leading and most distinguished economists in the country. Just as importantly, an outside Board of Economic Advisors would help to ventilate the revenue estimating process with valuable input and advice from leading outside experts. And by working closely with outside economists to develop and refine the conventions and assumptions on which its macro estimates are based, the JCT Staff would help dispel the myth that its revenue estimates are pulled out of a black box or are somehow based on voodoo economics.

I recognize that the JCT Staff has formed advisory panels in the past at the request of Congress. For example, in 2002 at the request of House Way and Means Committee Chairman Bill Thomas, the JCT Staff convened the "Blue Ribbon Advisory Panel" comprised of 23 leading outside economists. While hopefully helpful to the JCT Staff, this Blue Ribbon panel was focused principally on the issue of dynamic scoring and only met three times. By contrast, a Board of Economic Advisors would be formed at the initiative of the JCT Staff itself (and not Congress), and would focus on a broad array of economic issues deemed most pressing by the Chief of Staff and his senior economists. Hopefully this kind of "bottoms-up" instead of "top-down" panel of experts, whose agenda and focus could be set by the Chief of Staff, would prove more helpful to the JCT Staff than panels that were forced upon them by Congress and focused principally on a single issue.

Board of Technical Tax Advisors. The JCT Staff might also consider leveraging outside tax expertise to help achieve its mission by establishing a Board of Technical Tax Advisors that would be comprised of leading tax lawyers, accountants and tax executives from the private sector.

Like a Board of Economic Advisors, the members of a Board of Technical Tax Advisors would be selected by the Chief of Staff and would serve for a specified term. However, this group would not be comprised of economists, but instead some of the country's leading technical tax experts, most of whom would be drawn from top law and accounting firms, and from small and large companies. Like the Board of Economic

Advisors, this group would meet periodically in Washington, DC, and in between meetings would be available to consult with and advise the attorneys and accountants on the JCT Staff on technical tax issues and current tax developments.

There would be two principal benefits from having this group of outside technical experts available to advise and consult with the JCT Staff. First, they would help the JCT Staff keep abreast of current tax planning trends and strategies, including tax planning strategies that are in development or being actively considered, but that have not yet come to fruition. For example, leading international tax lawyers would have been able to inform the JCT Staff about the recent wave of inversions and foreign takeovers of U.S. companies well before these transactions gathered steam. Second, this experienced group of technical and planning experts would be a real asset in the revenue estimating process by serving as a sounding board to help the JCT Staff's lawyers and economists anticipate how taxpayers might adopt new tax strategies or otherwise change their behavior in response to a change in the tax law.

Again, as in the case of a Board of Economic Advisors, it would be best if this group of experts was drawn from across the political spectrum, because sometimes a lawyer or accountant's view as to what is permitted under current law, or how taxpayers might change their behavior in response to a change in law, can be influenced by his political or policy perspective. And, of course, to provide the most accurate revenue estimates possible, it is important the JCT Staff get the widest possible set of perspectives on what is permitted under current law and how taxpayers might change their behavior in response to a change in law. And just as importantly, having the tax experts who would serve on a Board of Technical Tax Advisors be from across the political and policy spectrum would reinforce the nonpartisan and apolitical nature of the JCT Staff.

Unlike the economists on a Board of Economic Advisors, who would largely be academics, tax lawyers and accountants are compensated to represent the interests of their clients, and tax executives are paid to advance the interests of their employers. As a result, a Board of Technical Tax Advisors comprised of outside lawyers, accountants and tax executives would present a potential conflict of interest problem – or at least the appearance of one, causing some to argue such a Board would be the equivalent of letting the fox into the hen house.

While this is not an issue to be dismissed lightly – and one that would have to be managed carefully – for several reasons I do not believe it is insurmountable. Moreover, on balance, the significant benefits that would flow from having a group of the country's leading technical tax experts available to consult with the JCT Staff on a regular basis would far outweigh any risk those outside experts would abuse their position or somehow not be fully open and transparent with the Staff.

First, any potential conflicts of interest that might be presented by an outside Board of Technical Tax Advisors should not pose a real problem because the tax lawyers and other outside experts selected by the Chief of Staff to serve on this Board would presumably be among the most widely known and highly respected tax experts in the country. These leading tax professionals would have sufficient stature and standing in the tax community that it would be unlikely they would even consider taking the reputational risk that would be involved by not being fully transparent with the JCT Staff or giving them their best and most considered objective professional judgments. Indeed, it is precisely because these top lawyers and outside experts have a wide variety of clients and are regularly involved in many different kinds of transactions that their perspectives would be so valuable to the JCT Staff.

Of course, these leading outside tax experts would have to balance the duty they owe to their clients with their responsibility to give the JCT Staff their best and unbiased judgment on an issue. If these outside experts were directly engaged in a specific transaction on behalf of a client they would be expected to disclose that fact to the JCT Staff and recuse themselves from discussing the matter any further. However, leading tax lawyers fully understand and appreciate that in addition to representing their clients' interests, it is part of their professional responsibility to protect the integrity of the tax system and the tax legislative process. For example, the Preamble to the American Bar Association's Model Rules of Professional Conduct specifically provides that lawyers have an affirmative duty to use their expertise to help reform and improve the law:

> "As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. <u>As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen the legal system</u>." [Emphasis Added]

And, of course, the country's top tax lawyers will understand it is very much their professional self-interest to serve on a Board of Technical Tax Advisors, because being recognized as an honest and fully transparent advisor to the JCT Staff will further enhance their reputations and stature in the broader tax community and in the eyes of their more sophisticated clients.

Finally, it is unlikely outside experts on a Board of Technical Tax Advisors would dissemble or be less than fully transparent with the JCT Staff because most tax planning strategies are not proprietary, and therefore sooner or later will come to the Staff's attention. Moreover, the lawyers on the JCT Staff are far from naïve, but instead experienced and sophisticated tax professionals. Simply put, it would be foolish to attempt to pull the wool over their eyes.

In addition to outside lawyers and accountants from leading law and accounting firms, having leading tax directors from large and mid-size companies on a Board of Technical Tax Advisors would be valuable for at least two reasons. First, these inside tax executives fully understand how taxes affect their companies' business decisions and financial statements, and therefore they are uniquely qualified to predict how their companies' behavior might change in response to a change in law. Second, these inside tax experts are regularly pitched a wide variety of cutting edge tax planning strategies by many different law and accounting firms, which puts them in a unique position to help the JCT Staff keep abreast of the latest tax planning strategies.

Further, these inside tax experts are less likely to have a conflict of interest precisely because they represent only one client (their employer), and therefore they are not likely to have been directly involved with as many tax planning strategies as the outside lawyers and accountants, who advise many clients on a wide variety of different tax planning strategies. But, of course, like the outside lawyers and accountants, if their companies had employed a tax planning strategy the JCT Staff was interested in learning about, these inside tax experts would be expected to disclose that fact and recuse themselves from any discussions with the Staff about that strategy.

Inside tax executives would also understand that if they were less than fully transparent with the JCT Staff, it was not only their reputations, but also the reputations of their companies, that was being put on the line. And the best in-house tax experts are sufficiently enlightened to understand that being fully open and transparent with the JCT Staff would be in both their own personal and their company's self-interest in the long run, because any short-term benefit that might be gained by not being fully transparent with the Staff would be far outweighed by the trust and goodwill the tax director and his company would earn by being fully transparent and helping the Staff do its job – and conversely, the long-term damage that would be done by a lack of transparency.

Finally, it would be helpful if some of the tax experts selected by the Chief of Staff to serve on a Board of Technical Tax Advisors had some previous experience working in the government – whether on the JCT Staff, the staffs of the tax-writing committees, the tax staff at the Treasury Department, or elsewhere in the government. The advantage of having tax experts with previous government service serve on a Board of Technical Tax Advisors is that they will have walked in the same shoes as the JCT Staff, and therefore will uniquely understand the kinds of information that would be most useful to the JCT Staff, and the political and institutional constraints the Staff is operating under.

Professor-In-Residence. The JCT Staff might also consider leveraging tax and economic expertise outside the government by establishing the position of "Professor-In-Residence"– a permanent, rotating position for a leading academic to work full time with the JCT Staff for a one to two year period. The academic could either be a leading professor at a law school or a Ph.D. economist specializing in tax or public finance at a graduate school or university.

Ideally the professor would get a special leave of absence or use a sabbatical to serve in this position, but if the law school or university was within commuting distance of Washington, DC, it might be possible for the professor to stay on the faculty and spend two or three days a week in Washington working with the JCT Staff.

In addition to the benefit of having a leading academic help the JCT Staff with its day-to-day work, if the Professor-In-Residence was an economist, she would be likely to have several graduate students working under her tutelage on their Ph.D.'s in economics who might be available to help the JCT Staff's economists on projects they were working on.

Having a leading academic economist serve on the JCT Staff for a limited period of time is not new. Alan Auerbach, an economics professor at Berkeley and one of the country's leading tax policy experts, served as the Deputy Chief of Staff in 1992 before returning to his academic post at Berkeley. Similarly, Rosanne Altshuler, a professor of economics at Rutgers who is very active in the world of tax policy, served as a Special Advisor to the JCT Staff in 2004-2006. Both of these leading tax policy economists made significant contributions to the JCT Staff during their tenure, and when they returned to the academy had a far better understanding of the inner workings of the JCT Staff because they had "lived inside the belly of the beast."

Institutionalizing the position of Professor-In-Residence would have the benefit of allowing the JCT Staff to work with and learn from some of the top legal and economic professors in the country. At the same time, it would provide the academics with the invaluable experience of working in the "sausage factory", and seeing how tax laws are made in the real world – putting them in a much better position to teach the next generation of tax lawyers and economists about the important work that is done by the JCT Staff, and to consult with and advise the Staff after they have returned to their law schools and universities.

Internship Program. Yet another way the JCT Staff might leverage outside technical expertise – and get help in discharging its heavy workload – would be to establish an internship program for graduate students pursuing their doctoral degrees in public finance or economics. These interns might spend one or two years working under the joint tutelage of the economics professor at their college or university who was their thesis advisor and the senior economists on the JCT Staff on projects that would be helpful to the JCT Staff and that were jointly selected by the Staff's economists and the graduate economics students.

These internships would likely be highly sought after because they would provide budding public finance economists with the opportunity to work on important tax policy issues in the real world, and would give them access to data and information that would not otherwise be available to them. And because these internships presumably would be limited in number, they might prove to be highly competitive and attract some of the best graduate economics students in the country.

In addition to helping the JCT Staff with its current workload, an internship program that attracted top graduate economics students would have the added benefit of allowing the Staff to in effect plant its own seed corn by exposing the next generation of top public finance Ph.D. economists to the important work done by the Staff – some of whom might well end up working later in their careers as economists on the Staff.

Enhanced Collaboration with other Congressional Staffs. While most of the technical and tax policy expertise among Congressional staff functions resides in the JCT Staff, other Congressional staffs have economists and tax experts who produce analyses, studies and reports on a variety of tax subjects. For example, CBO has some tax expertise, as does the Congressional Research Service (CRS) and the Government Accounting Office (GAO).

While each of these groups have roles and responsibilities that are very different from the JCT Staff's role in the tax legislative process, to the extent their work requires an analysis of tax issues and tax policy, their work product might be improved if they were to more closely collaborate with the JCT Staff so they could draw on the JCT Staff's extensive technical and policy expertise.

For example, in projecting the future corporate tax receipts for its budget forecasts, CBO has to make certain predictions about changes in taxpayer behavior that are likely to occur in the 10-year budget window – like the number of new businesses that will be formed as pass-through entities, (e.g. Subchapter S corporations, partnerships or other pass-through entities instead of C corporations); and the number of U.S. companies that might change their place of incorporation from the United States to a foreign country, or be acquired by a foreign corporation. To the extent it isn't standard practice today, it might be helpful if the JCT Staff and CBO collaborated and agreed upon a uniform set of future behavioral tax assumptions, so the same assumptions would be built into the CBO's baseline forecast of future tax receipts in the 10-year budget window and the JCT Staff's revenue estimates. This collaboration should prove helpful because the JCT Staff is likely to have knowledge and insights about the scope and magnitude of the tax benefits taxpayers derive from changing their forms of doing business or countries of incorporation that might not be available to CBO.

An example of this kind of interagency cooperation and collaboration on projected tax receipts occurs in the Executive Branch when the tax policy experts at the Council of Economic Advisors (CEA), the Office of Management and Budget (OMB), and the Office of Tax Analysis (OTA) at the Treasury Department (the so-called "Troika") collaborate in reaching agreement on the tax assumptions that go into building the Administration's Budget and forecast of future tax receipts.

Conclusion. So a common theme runs through my suggestions about how the JCT Staff might enhance its already very impressive performance. Namely, that the JCT Staff consider steps that might allow it to take even greater advantage of the best tax and economic expertise it can find – whether that expertise lies inside or outside the government. And that is for the simple but very powerful reason that "None of Us is as Smart as All of Us".

But regardless of whether any of my suggestions are adopted, in this outsider's view the tax legislative process – and our Nation's tax system – is far better and more rational because of the critical role played by the Staff of the Joint Committee on Taxation – a unique, powerful and remarkably effective institution.

[End]