THE TAX EXPENDITURE CONCEPT AND THE BUDGET REFORM ACT OF 1974

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STANLEY S. SURREY AND PAUL R. MCDANIEL

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FY1976のUS予算書は1975年1月に発行された。これは"Tax Expenditures”[[1]](#footnote-1)と冠された特殊な分析が載った最初のものだった。この予算書は1974年国会立法された予算法（the Congressional Budget Act of 1974）[[2]](#footnote-2)に基づいている。この予算法は"tax expenditures"関連の用語定義と条文を多数含んでいる。またこの予算法はどの国[[3]](#footnote-3)の認識よりも具体的に、tax subsidiesが国家歳出の一部を為すという新たな考えを表現しているし、伝統的予算書によって規定される従来の国家歳出との整合性を重要視したものとなっている。

1. THE TAX EXPENDITURE CONCEPT IN GENERAL

the tax expenditureという概念は本質的に、income taxに適用されるものである。またincome taxは、次に示す二つの異なる要素から構成される。一番目の要素は、income taxを適用する際に通常必要となる規定一式である。例えば、net incomeをどう定義するのか、その会計周期、income taxが課されるentityをどう特定するのか、税率はどう決めるか、この税を免れる水準はどの程度にするのか、といった規定一式である。勿論これらの規定は、この税によってどれほどの歳入を得たいのかに左右される。二番目の要素は、income tax全てに見られる或る特別なpreference（選好性）である。この特別なpreferenceはしばしばtax incentivesまたはtax subsidiesと呼ばれる。即ち、income taxの標準的構造からの逸脱、つまり特定の産業や活動や人間集団に有利なように意図的に設けられる逸脱である。この逸脱は様々な形態をとる。例えば、incomeからの恒久的除外、納税責任の猶予、税額控除（credits against tax）、特別税率、などである。どのような形態をとろうとも、この"normative" income tax structureからの逸脱は、本質的に次のような考えに基づいたものである。即ち、直接的な助成金や貸出金や他の形態の政府援助によるよりも、こういった逸脱を含むincome tax systemによる方が、特定の好ましいグループや活動（the favored activities or groups）を有利に進めようとする国家歳出として適しているという考え方に基づいている。

別の言い方をすれば、政府が認可助成金を与えることによって或る活動やグループを援助しようとすれば、必ず、幾つかの援助方法の選択肢の中から選ぶことになる。例えば、政府が直接に許認可や助成金を与える、政府貸出金（それも恐らく特別に低利の貸出金）を与える、政府が保証人となって民間融資金を与える、などなどである。これと対照的に、政府はincome tax systemをうまく使えば、好ましい活動やグループへの課税額を減じることができる。あるいは政府が、所得からの特別除外や控除などをうまく設けておけば、好ましい活動やグループが望めば税の減額が可能であるとしておくことができる。具体例としては、投資税控除、特別償却による所得控除、特殊な消費に伴う償却、特定活動への低税率、などである。これらの減税は、実効的には、政府が準備した金銭的援助といえる。

この様なincome taxの選好性を見てみると、以下のような色々な疑問が湧いてくる。即ち、そもそも何故income tax systemには援助という側面ができてしまうのか？　あるいは、もしも歳入形成のためのincome tax systemを我々は適切に構築できているとするならば、何故このincome tax systemに更に役割を求めるのか？　また既に我々は、事業や個人の活動を援助するための政府直接支出（direct expenditures）の予算を組むプロセスを持っているのに、何故そういった援助を更に準備しなければならないのか？　これら質問には多岐にわたらねば答えられない。注目する項目によって答えは、古代の税の歴史に、あるいは最近の事件の中に見いだすことができる。あるいは、当初採用したテクニカルな税規定が想定していた援助では不足すると答えることもできるし、いや、援助をしようとじっくりと努力しないからだと答えることもできる。税の専門家の経験不足やmistakesのせいだと答えることもできるし、圧力団体が強力にロビー活動をしないせいだと答えることもできる。意志が強く影響力の大きい国会議員の特異体質的な要求にばかり応じただめだとも言えるし、いや、国会内多数派の意見や感情に流されてしまったためだとも言える。また最近、特に1971年ならば、共和党政権下の財務省が、前の民主党政権下の財務省が直接的援助プログラムを重視したのに対比して、tax incentivesを多用しようとしたためだとも言える。しかしながら、income taxが持つ選好性（preference）の起源が何であるにせよ、この様な逸脱を含むincome tax systemが今日も依然として存在しているのは、この存在により恩恵を受ける者達がdefenseしているためである。

the normative income taxの上に接ぎ木されたこの様な"spending" provisions（歳出引き当て）は、米国では"tax expenditures"と名付けられた。この様なtax expenditure processを含むthe Budget Reform Act of 1974が国会において承認され、このtax expenditure processと、それがもたらす税政策と予算政策への含意とに関する研究が始まったのである。

1. DEVELOPMENT OF THE TAX EXPENDITURE CONCEPT

今回、the Budget Reform Actの中にthe tax expenditure processを国会が承認した背景には、二つの事柄の展開がある。まず1968年に、財務省が初の"tax expenditure budget"[[4]](#footnote-4)を発行した。それ以前、1960年代の財務省は、tax incentivesを使って、容認できる社会政策目標を進めることに反対であり、むしろ、必要な援助は直接的プログラムで行うべきだとの意見を表明していた。また当時の財務省によるtax incentivesに関する研究で、政府内のどこも、既発のtax incentivesの全容も、それが全額で幾らになるのかも把握していないことが明らかになった。そこで、財務省が分析を引き受けることになった。tax expendituresリストと、科目ごとの歳入ロス見積額 --- 即ちtax expenditures金額 --- とを作成することになった。このリストは、直接歳出予算と科目を同じにして、直接プログラムとtax expenditureプログラムとの比較[[5]](#footnote-5)が出来るようにした。その後は毎年同様のリストが、1971年の立法指針[[6]](#footnote-6)に従って、国会の租税関係スタッフにより発行されることになった。この様に財務省は意見を変えたが、究極的にはこのtax expenditure分析を使うことには消極的だった。しかしながら、税制改革研究はこの概念に焦点を当て始めた。[[7]](#footnote-7)　こうした流れが一本目のより糸となって、このtax expenditure conceptが構成されていった。従ってそのルーツは、income tax構造分析に、そして、income taxを利用したtax incentivesと直接的支援との比較に、見つけられるのである。

二本目のより糸は、the Congressional Budget Act of 1974[[8]](#footnote-8)に関連する考察の中で生まれた。その頃まで頻繁に国会は深刻な意見の相違を、何人もの大統領と、政府歳出の適正水準[[9]](#footnote-9)に関して経験していた。特に意見の相違は1972年1973年に集中していた。[[10]](#footnote-10) この様な論争が発展していくなか国会が、政府歳出全般に関し見解を形成するメカニズムを持っていないことが明らかになっていった。全般でなく個別に、様々な政府省庁ごとに特定の目的を意識することなく、別々の縦割り予算を国会は審議通過させていた。更に悪いことに、縦割り予算の中のある個別歳出の水準はその個別歳入の状態によって直接に調整されていなかった。なぜならば、別々の委員会がこれらの予算科目を扱い、それらの関係を調整するメカニズムが働いていなかったからである。

これらの経験を踏まえて1974年国会が、個別予算審議の全体に指針を与えるよう設計された手続きを生み出し、個別歳入決定と個別予算審議とを直接に関係づけた。この手続きを設計する過程で立法者達は、政府による直接歳出管理とtax expendituresとの間に或る関係性を認識した。[[11]](#footnote-11) 例えば、もしも教育や住宅の分野で直接プログラムの全体像が確立されると、もっと政府支援を寄越せとこれら分野で要求してきたadvocator達は、直接支援要求の場から閉め出される。そこで彼らは矛先を税委員会に変え、教育や住宅向けに特別所得控除を願い、直接支援と同額の支援を獲得するように動くだろう。そしてもしこの税委員会がこの様なtax expendituresを認めたならば、直接支援の管理権限は明らかに骨抜きにされてしまう。実際、国会内の歳出審議には元々二種類あった。一つはappropriations（歳出予算）を利用する。即ち、立法委員会主導で権限付けされた伝統的なappropriations（歳出予算）、ないし、歳出予算委員会主導で必然的に生ずる歳出予算を利用するもの。もう一つは、税委員会主導で、reductions in tax liabilities（納税義務の減免）ないしthe tax system（逸脱を含むincome tax system）を利用するもの。この二種類が元々あった。この二重性を認識した上で国会は、the Budget Reform Act of 1974の中に幾つもの条文を盛り込んで、従来型と新型のtax expendituresを区別でき、更に、この様なtax expenditureルートと直接歳出ルートとをcoordinateできるようにしたのである。

1. DEFINITION OF TAX EXPENDITURE

　the Budget Reform Actがこの様にtax expendituresの従来型新型を区別でき、予算作成プロセスにおいてそれらの関係を保つためには、用語"tax expenditure"の定義が必要である。このActには以下のように定義されている：

税収ロス。即ち連邦税法条文がgross incomeから何らかの特別除外、免除、控除を設定したとき、あるいは、連邦税法条文が何らかの税控除、何らかの選好的税率、何らかの納税責任の延期を設定したとき、帰結的に生ずる税収ロス…[[12]](#footnote-12)

ここで「特別」"special"とは、このActの立法過程を読み解くと、"deviation from the normal tax structure for individuals and corporations"[[13]](#footnote-13)、即ち、individualsとcorporationsの通常のincome tax構造からの偏倚（deviation）に関連していることが分かる。またこの立法過程からは、用語"tax expenditures"を使う場合、国会が想定しているのは、財務省と国会租税スタッフが以前記述したリストに含まれる予算科目で分類したもの[[14]](#footnote-14)であることが分かる。それほどまでに、元々の財務省の基礎リストは、注意深く考えられた基準から導かれたものなのである。参考までに言うと、このActでtax expendituresを特定する箇所の書き出しは、"widely accepted definitions of income"[[15]](#footnote-15)、income（所得）の広く受け入れられた定義の説明である。即ち、一般的な経済学での「所得」の定義、つまり、時間軸上のある二点間の、消費を加味した上での、net economic wealthの増加を念頭に置く書き出しとなっている。ただし怠りなく財務省は、"generally accepted structure of an income tax"[[16]](#footnote-16)にも言及して、tax expendituresを特定する基準を厳しくしている。つまり、資産価値の未実現の増価と、持ち家等資産の帰属所得とを、tax expendituresの対象からは除外している。これらは経済学的定義では所得に含まれるが、米国を始め多くの地域で税務における所得からは除外されることが共通に行われているので、この基準厳密化が必要なのである。またもう一つの基準として財務省は、corporate財務報告で所得を決定する際に広く用いられている"standards of business accounting"[[17]](#footnote-17)を書き記している。経費（expenses）に関しては、economistが用いるapproachに従っている。即ちpersonalな消費に備えて、あるいは稼得や所得生成における被害に備えて引き当てる準備金を、控除対象にすることもtax expendituresと見なしている。[[18]](#footnote-18)

　Essentially, the concept of a normal (or normative) income tax structure was one of applying a rate schedule against the taxable unit's net income base—ascertained by including all items of gross income and deducting all expenditures associated with the production of that income, with capital expenditures allocated over time in accordance with generally accepted accounting practices—less personal exemptions. Departures from that norm—"special" provisions—were tax expenditures.[[19]](#footnote-19) The analysis extended to both the corporation income tax and the individual income tax, with the present separation of the two taxes accepted as a permissible facet of the normative structure in the United States.[[20]](#footnote-20) The analysis also accepts the present approach of basing the definition of income and related computations on nominal amounts, that is constant dollars—and thus disregards the effect of inflation. This present approach does involve a choice as to the basic character of the income tax in this regard. A country could choose to base its income tax on real values and real dollars and hence adjust its definition of income and computations for inflation. Such a decision, however, should be a clean one. Thus, an approach that would adjust the cost of an asset for inflation in computing gain or depreciation but fail to make an adjustment for the decline in the real cost of funds borrowed to buy that asset would be effecting only a partial or preferential change to reflect inflation and would thus involve a tax expenditure.[[21]](#footnote-21)

 The enumeration of tax expenditures—the tax expenditure budget—like any budget enumeration is not concerned with the wisdom of the items included. Rather, the goal is simply the identification and quantification of the tax expenditure items, and the illustration of their relationship to the items and classifications of the direct budget.[[22]](#footnote-22) As a whole, given the concept of a tax expenditure, there is not much dispute over the composition of the current list being used by the Congress.[[23]](#footnote-23) Usually an examination of the defense made for a particular provision discloses whether its supporters are treating it as a tax incentive and are arguing in those terms, or instead are really urging that the provision is needed to overcome a structural distortion in the proper tax structure that would otherwise exist.[[24]](#footnote-24) The list used in the President's 1976 and 1977 Budgets does omit a few items which had appeared on previous lists and which appear on the present congressional list, but that omission is largely due to an overemphasis on certain policy positions of the current Treasury Department that impeded coherent analysis. [[25]](#footnote-25)

 There are, of course, those who disagree with the tax expenditure concept itself, essentially on the rhetorical ground that the concept implicitly and erroneously asserts all income belongs of right to the government and that what the government decides not to collect, by exemption or otherwise, constitutes a subsidy. They add that while a subsidy used to mean a government expenditure for a certain purpose, it now also is said to mean a generous decision by government not to take your money. [[26]](#footnote-26)

 One would think it obvious, however, that a decision to employ net income as a tax base—thus including all items of gross income and subtracting the costs of producing that income—does not in any way assert that all income belongs to the government. Once the tax base is properly determined, it is then the function of the rate structure to effect an appropriate allocation of each person's income for public needs. The tax expenditure concept does not dictate the adoption of a 100% flat rate of tax on net income—the rate implicitly necessary to support the argument advanced by the above critics of the concept. In practical life, of course, the rates adopted are determined by a complex set of factors including revenue needs, effects on labor and investment, political considerations, and so on.

 Fortunately, practical legislators were not as bemused by form and rhetoric and did recognize that a tax preference can constitute a subsidy that produces monetary assistance to the same degree as the traditional direct subsidy. Others have difficulty in visualizing any such concept as a normative income tax structure and instead see the income tax as only the composite or jumble of statutory provisions resulting from numerous ad hoc legislative decisions.[[27]](#footnote-27) Such an anarchistic view of the tax structure has the consequence of making tax policy formulation a task to be performed without criteria, guidelines, or standards, and any policy official who has tried to approach the tax conscientiously would reject that view. Moreover, the worldwide dialogue that continuously takes place among those who shape legislative tax developments—officials, theoreticians, tax professionals, and taxpayers—does assume a generally understandable set of concepts and norms representing the income tax. The speakers in that dialogue do have understandings of a normative tax structure in their minds, and while there may be some differences in those understandings, the degree of commonness about the understandings clearly overshadows those differences. It is that basic commonness of concepts that gives the dialogue rationality and vitality.[[28]](#footnote-28)

1. THE ESTIMATES OF TAX EXPENDITURES

 The estimates for the amounts spent through tax expenditures are stated in terms of the revenue losses attributable to the various items. The procedure for making these estimates is carefully explained in the Special Analysis F of the 1976 Budget.[[29]](#footnote-29) Each item is estimated separately by assuming that the item were deleted and all else, including the rate schedule, remained the same. In the case of deferrals of tax liability, the estimate is based on the *current* revenue loss. Since most deferrals are likely to be lengthy or even indefinite and in a growing economy to increase over time, and since even a limited deferral involves a significant revenue loss (and corresponding benefit to the taxpayer) especially at an appropriate discount rate, this method of estimation is a reasonable approach for such deferrals. More significantly, the estimates for the various items assume that taxpayer behavior and general economic conditions would remain unchanged even though the particular item—be it incentive or subsidy—were eliminated.[[30]](#footnote-30)

 Mention should be made of some comments directed to this estimating approach. Thus, it is said, that if a number of items were eliminated, revenue rates generally might well be changed. This of course may be true, but to measure the present revenue loss it is necessary to use the present rate schedule.[[31]](#footnote-31) These comments focus more sharply, however, on the second assumption—that taxpayer behavior or economic conditions would remain unaltered—and it is said that this assumption is clearly erroneous and the estimates are therefore inaccurate because they fail to take into account taxpayer reaction to changes in tax expenditures. The comments point out that the consequently altered taxpayer behavior might lead to revenue losses in other areas (so that no net gain might occur if the tax expenditure were dropped) or result in such other taxpayer action as to require an increase in direct government expenditures.[[32]](#footnote-32)

 The criticism, however, essentially overlooks the fact that all Treasury estimates follow the approach taken in formulating the estimates in the tax expenditure budget.[[33]](#footnote-33) This is because, as the critics themselves acknowledge, it is very difficult to predict taxpayer reaction to changes in revenue provisions. Consequently, the Treasury and the Congress have thought it safer in most situations involving the estimation of revenue loss or gain from a tax change to use a "first order" estimate that is in effect a "snapshot" of the present world with this one change made. Indeed, data regarding the direct budget essentially proceed on this "first order" basis—it will be said that $X can be saved if a direct program is dropped, with the calculation based on the present program cost and no conjecture made as to any ripple effect in behavior if the direct program is . dropped. While it is surely worthwhile to attempt to learn more about such "ripple effects" of taxpayer behavior incident to tax law changes, the consideration of those effects is a proper subject in connection with the analysis, in cost-benefit terms or otherwise, of the wisdom or effectiveness of a particular tax expenditure. As far as the tax expenditure estimates are concerned, however, it should be recognized that such estimates follow the presently accepted course used by the Treasury and Congress with regard to both revenue estimates in general, and direct expenditure programs.

1. LIST OF TAX EXPENDITURES

 The present list of tax expenditures used by the Executive Branch and the Budget and Tax Committees of the Congress is set forth in a Report of the Congressional Budget Office in 1976.[[34]](#footnote-34) It includes tax expenditures resulting from the Tax Reduction Act of 1975 and several other additions.[[35]](#footnote-35) Two aspects stand out at once on an examination of this list. The first is the variety of categories and items involved.[[36]](#footnote-36) The list is arranged by direct budget classifications and shows that the tax expenditures approach covers nearly every budget category in the United States. A second aspect of the list is that the overall total is quite large—almost $106 billion for fiscal 1977. The direct budget outlays for that fiscal year may total $419 billion. Thus, it is clear that tax expenditures are a sizeable amount in relation to direct programs. In some budget functions, more government funds are provided through the tax system than are spent directly, as in Commerce and Transportation (notably Housing). In some other areas, tax expenditures constitute the largest program under a particular function, as in Agriculture. Indeed, in the case of Government subsidy payments, the tax expenditures or tax subsidies far exceed the total of all direct subsidies. The $106 billion in expenditures effected through the income tax system in fiscal 1977 may also be compared to the estimated yield of the income tax—$234.5 billion in that period.[[37]](#footnote-37)

1. USES OF THE TAX EXPENDITURE CONCEPT
2. *Budgetary Aspect*

 The recognition that government assistance is being provided through the tax system and that the consequent tax expenditures are a very large and important segment of government spending has many implications. One way of putting the matter is to inquire into the uses of a tax expenditure concept. In considering this matter we may start with the *budgetary aspect.* Certainly a government should know how much it is spending and for what purposes. A tax expenditure budget provides this essential and elementary knowledge with respect to the spending channeled through the tax system. It is interesting to observe that a country that gathers as much detailed government statistics as the United States did not have this knowledge until 1968, and that perhaps only one other country presents these data officially. In all likelihood, the data are not available in other countries.[[38]](#footnote-38)

 Once the knowledge exists, appropriate analysis becomes possible. The presence of an item in the tax expenditure table does not tell us whether the assistance given is desirable as a national goal or not.[[39]](#footnote-39) Here, as with any direct expenditure, we must weigh the particular assistance against competing claimants, and reach a judgment based upon our view of the national priorities involved. Even if the goal is appropriate, the presence of an item in the tax expenditure table does not tell us whether the particular assistance is being provided in a rational, equitable, and efficient way. Here also, just as with direct expenditure items, we need to analyze the particular situation, understand who is receiving what, and then weigh .the costs and benefits in the light of the priority of the goal, and the effectiveness of the means chosen to achieve that goal.

 To do so we can ask the usual question relevant to any budgetary matter: Does the tax expenditure item represent a priority goal of the government, as respects those assisted and the amount involved? A useful, initial way to test a tax expenditure in this regard is to ask if government would directly spend such funds for the purpose at hand. If not, then why should the money be spent through the tax system?[[40]](#footnote-40)

This last question takes us to the next level of consideration. Assuming that government assistance in the particular area is a priority goal, then should the assistance be in the form of a direct program or through the tax system? It is the experience in the United States that until recently little thought was given to this aspect of the inquiry and thus there were no criteria developed to govern the choice since no analysis had been made of the factors involved in the choice.[[41]](#footnote-41) Gradually, however, various factors that are involved in a choice of the tax system are being recognized.[[42]](#footnote-42) Thus, it is now realized that a tax expenditure in the form of an exemption, exclusion, or deduction provides the greatest assistance to the wealthiest taxpayers and to the large corporations, in view of the progressive individual tax rates and' the higher rate for large as opposed to small corporations. Tax expenditure assistance is usually "upside-down" assistance. Moreover, the choice of the tax system automatically excludes from the assistance non-taxpayers, such as individuals below taxable levels, loss proprietorships and loss corporations, exempt organizations, and governmental units. This exclusion exists even where the aspect of upside-down assistance is alleviated by using a credit against tax instead of an exemption or deduction.[[43]](#footnote-43)

It is clear that no direct program would be structured in such an upside-down or exclusionary fashion. Thus, in the United States the tax deduction for home mortgage interest means that the government pays $700 of each $1,000 of mortgage interest for a wealthy homeowner in the 70% bracket—and does so for his residence and his summer vacation home and his winter vacation home—but pays only $140 for the homeowner in the 14% bracket, and zero for the least well-off of homeowners because they are not -taxable. This is equally so for the property taxes on the home. Even though the encouragement of home ownership is presumably a priority goal in the United States, it does not take much intuition to understand that no direct assistance program for home ownership with this upside-down distribution of benefits would ever be voted, and the few direct programs we do have (though our tax program is the largest housing program) such as mortgage interest assistance,[[44]](#footnote-44) are not upside-down.[[45]](#footnote-45) Similarly, deferrals of tax liability gained through the expensing of items that are properly capital expenditures also operate in an "upside-down" fashion, resulting in interest-free, nonsecured loans of the deferred tax liability, with the size of the loan increasing as the benefitted individual's or corporation's income increases.[[46]](#footnote-46) The interesting, perhaps sad, fact is that until recently, legislators never really understood the implicit upside-down aspect involved in granting assistance through the tax system by these special deductions or exclusions.

The Congress has recently released tables showing the distribution of tax expenditures assistance for individuals by income classes.[[47]](#footnote-47) Partly because of the upside-down aspect and partly because many of the activities assisted represent expenditures or activities of the well-to-do, *e.g.,* capital gain transactions and exemption of state and local bond interest, the tables show that the overwhelming amount of tax expenditure assistance goes to upper-income groups. Thus, for 1974, of the $58 billion in tax expenditures for individuals, over 23 percent went to individuals with incomes over $50,000, who constituted only 1.2 percent of all taxpayers.[[48]](#footnote-48) On the other hand, the 46.9 percent of taxpayers with adjusted gross incomes of less than $10,000 received only 16.6 percent of these tax expenditures.[[49]](#footnote-49) Seen as an average, the 160,000 taxpayers with adjusted gross incomes over $100,000 received an average of $45,662 each in tax benefits, while the approximately 9.9 million taxpayers with adjusted gross incomes of between $15,000 and $20,000 received $901 each.[[50]](#footnote-50) (Obviously, the precise assistance for each taxpayer in the group would involve a wide range, and the figures illustrate only the general upside-down character of the assistance.) There is thus one set of generalizations that can be made about the choice of the tax system to provide government assistance—the assistance is likely to be provided in an upside-down manner and to be skewed to favor those already well-off.

This discussion of the relationship of the techniques used to the objectives sought to be achieved also points to the various ways in which the beneficiaries of the tax expenditures may be described or classified. At the first level, there is the overall or broad initial target category of beneficiaries, *e.g.,* the aged, homeowners, consumers, certain categories of employees, certain categories of investors, and so on. The next level involves an analysis of the income groups within this overall target category which actually benefit initially from the tax expenditure and the extent of the benefit, *i.e.,* the tax reduction. As a result of the "upside-down" effect of the technique usually adopted, the actual distribution of the tax benefits will in the main usually accrue disproportionately to only a small portion of the intended beneficiaries and this small group will be the persons who are already better off and who have the least need for assistance.

A third level of description of beneficiaries would seek to discover the ultimate economic beneficiaries of the tax expenditure as its consequences ripple throughout the economy. Tax expenditures for home ownership will aid the construction industry; tax expenditures for investors in residential real estate will aid the construction industry and perhaps tenants; tax expenditures for the interest on state and local bonds will aid state and local governments; tax expenditures for students will aid schools; and so on. The opposite is also true, in that the removal of the tax expenditure will have its own set of economic effects. The construction industry may suffer; tenants may have their rents raised; state and local governments may resort to higher taxes on some groups; schools may lose students; and so on. Obviously this analysis of ultimate economic beneficiaries is related to the earlier discussion of the estimates beyond "first order" estimates,[[51]](#footnote-51) and involves the difficult, almost endless task of tracing the effects of the tax expenditure through the economy. Essentially, this task becomes an analysis of the desirability of the tax expenditure itself—what does the expenditure really accomplish and is the accomplishment worth the cost in revenue and tax equity? [[52]](#footnote-52)

There is another set of generalizations that can be made about the efficiency of using the tax expenditure assistance process rather than direct programs. Generally, and certainly until recent years, these tax expenditures were rarely examined. They lay hidden in the tax structure, often worded and looking like any normal structural provision since the technical tax jargon appeared the same. Furthermore, they did not have to be voted on each year. Whatever may be the weaknesses in our direct budget programs, they usually do have to endure more scrutiny. Thus, the Joint Economic Committee in commenting in 1974 on increases in government spending said: "The largest absolute increase has occurred in tax subsidies. Tax expenditures are not included in any budget and therefore they are not reviewed on a systematic and regular basis.[[53]](#footnote-53) With the advent of the tax expenditure budget, this absence of scrutiny may be redressed. But the items are still in the tax laws and as such are usually permanent unless changed. On the other hand — and equally irrationally — the amounts involved in many tax expenditure programs are changed, automatically and without discussion, each time Congress changes rates, exemption levels, or the standard deduction. Moreover, the "tax reform" struggles to change or remove tax expenditure items take place within the tax committees. These committees are often uninformed on the real issues involved and on the other programs that relate to the tax assistance. A look at the titles in the tax expenditure list will reveal at once that many other congressional committees have as their principal areas of expertise the items in that list—housing, education, agriculture, commerce, labor, and so on. The presence of an item in the tax expenditure budget is generally a sign of lack of study and coordination within the executive departments and the Office of Budget and Management.

There are basic issues of efficiency and rationality in government spending. Cost-benefit and other forms of analysis are now customarily applied to direct government spending programs. They can and should be applied equally to tax expenditure programs. If experience in the United States is any guide, many tax expenditure programs would be found lacking any priority status. Moreover, those that do represent appropriate goals would be found lacking in fairness and efficiency.[[54]](#footnote-54) Economy and efficiency in government spending would thus be served by a careful re-examination of items in the tax expenditure list.[[55]](#footnote-55)

1. *Tax Reform Aspect*

以下略。

1. BUDGET OF THE UNITED STATES GOVERNMENT, 1976, Special Analysis F at 101 (1975). The 1977 Budget has a similar analysis, Special Analysis F at 116 (1976), containing an extended description of the tax expenditure concept and the various tax expenditure items. See also the 1977 Budget, at 58, for an introductory discussion of tax expenditures in Part 5, The Federal Program By Function, and also page 15. [↑](#footnote-ref-1)
2. Act of July 12, 1974, Pub. L. No. 93-344, 88 Stat. 297 [hereinafter cited as Budget Act]. [↑](#footnote-ref-2)
3. 他には西独だけが明らかに、tax subsidiesをa systematic basis に定量化することの優位性と効用を認識している。1966年以来西独は、その税収予測の中に"tax aids"と呼ばれるinformation concerning expenditures を発行している。この西独の経験は、Ault, Steuervergunstigungen in der Bundesrepublik Deutchland and den USA, 5 STEUER UND WIRTSCHAFT 335 (1974) [hereinafter cited as Ault]においてディスかションされた。他の国におけるtax incentives についてのディスかションも、General Report, Tax Incentives as an Instrument for Achievement of Government Goals, Vol LXIa, CAHIERS DE DROIT FISCAL INTERNATIONAL, International Fiscal Association (Jerusalem Congress, 1976)に載っている。 [↑](#footnote-ref-3)
4. ANNUAL REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES FOR FISCAL YEAR 1968, 326-40 [hereinafter cited as 1968 ANNUAL REPORT]. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. CONFERENCE REPORT ON THE REVENUE ACT OF 1971, **H.R.** REP. No. 708, 92d Cong., 1st Sess. 49 (1971). For comparative purposes, the tax expenditure budgets for *fiscal* years 1968-1976 have been compiled in 1 S. SURREY, W. WARREN, P. MCDANIEL & **H.** AULT, FEDERAL INCOME TAXATION 242-45(972), and 1975 Supplement 101-05 (1975). [↑](#footnote-ref-6)
7. The tax expenditure concept and its uses were most fully developed in S. SURREY, PATHWAYS TO TAX REFORM (1973) [hereinafter cited as SURREY]. For a brief general statement see Surrey, *The Sheltered Life,* N.Y. Times, April 13, 1975, Magazine at 50. [↑](#footnote-ref-7)
8. Act of July 12, 1974, Pub. **L.** No. 93-344, 88 Stat. 297. [↑](#footnote-ref-8)
9. For example, the Congress in the Revenue and Expenditure Control Act of 1968, Act of June 28, 1968, Pub. L. No. 90-364, 82 Stat. 251, imposed an overall spending ceiling because of its concern that federal expenditures, fueled by the Viet Nam War, were not being kept under adequate control by President *Johnson. Id.* 202, 203. *Ste, e.g., Hearings on President's 1967 Tax Proposals Before the House Ways and Means Comm.,* 90th Cong., 1st Sess. 1-217 (1967). [↑](#footnote-ref-9)
10. The disagreements had by this time also expanded to include congressional dissatisfaction with the refusal of President Nixon to expend funds appropriated by Congress. For an historian's view of the "Impoundment" dispute, see A. SCHESLINGER, JR., THE IMPERIAL PRESIDENCY 397 (1973). [↑](#footnote-ref-10)
11. *See Panel Discussions (Discussion on the Budgetary Process) Committee rganization in the House, Howe Select Comm. on Committees, 93d* Cong., 1st Sess. 125 (1973) (statement of Stanley S. Surrey). [↑](#footnote-ref-11)
12. Budget Act, supra note 2, 3(a)(3). [↑](#footnote-ref-12)
13. The quoted language is from the Senate version of the Act. S. 1541, 93d Cong., 2d Sess. § 3 (1974). Although this language was not included in the definition ultimately contained in the Act, the Conference Committee Report explained: "The Senate definition of 'tax expenditures' has been simplified although no change in meaning is intended." H.R. REP. No. 1101, 93d Cong., 2d Sess. 50 (1974). [↑](#footnote-ref-13)
14. *E.g.,* 120 CONG. REC S. 4107-14 (daily ed. March 21, 1974) (statement of Senator ,Davits); 120. CONG. REC. S. 4317 (daily ed. March 22, 1974) (statement of Senator Muskie). See note 6 *supra* for prior lists. [↑](#footnote-ref-14)
15. 1968 ANNUAL REPORT, supra note 4, at 327. [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. *Id.* at 327-28. [↑](#footnote-ref-18)
19. *See it at* 327, 329-30; SURREY, supra note 7, at 4, 15 *el seq.* However, minor departures from the norm were disregarded to avoid too cumbersome a list. The economic definition is that developed in H. SIMONS. PERSONAL INCOME TAXATION 50 (1938).

The description of tax expenditures in the 1976 Special Analysis F, supra note speaks in terms of whatever tax rates or exemption levels may exist from time to time as the "normal" rates or levels. *Id.* at 102. This view is not necessarily required. All that need be said is that a normal or normative income tax would of course contain rate schedules and exemption levels. Since these matters are politically determined and must essentially vary from country to country and from time to time, any particular set of rates or levels cannot be said, and need not be said, to be "normal." Such aspects, like the unit of taxation and the separation of the corporation and individual income taxes, in this sense, lie outside tax expenditure analysis. *See also* STAFF OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION, ESTIMATES OF FEDERAL TAX EXPENDITURES, PREPARED FOR THE COMMITTEE ON WAYS AND MEANS AND THE COMMITTEE ON FINANCE 4 (Comm. Print March 15, 1976) [hereinafter cited as ESTIMATES OF FEDERAL TAX EXPENDITURES], stating that items such as the rate schedules and personal exemptions are not a part of tax expenditure analysis. [↑](#footnote-ref-19)
20. For a discussion of the competing considerations involved in employing a dual versus an integrated individual-corporate income tax structure see National Tax Association—Tax Institute of America Symposium, *The Taxation of Income from Corporate Shareholding,* 28 NAT'L TAXI 257 (1975). [↑](#footnote-ref-20)
21. For discussions of indexing the definition of both individual and business income for inflation, and the related aspect of restating financial statements, see the forthcoming Brookings Institution volume on this subject. The tax expenditure list does not include the last-in, first-out inventory method since that method has been a long-recognized acceptable method of inventory accounting and since its use for tax purposes is conditioned on its being used for book purposes. INT. REV. CODE OF 1954 § 472(c). [↑](#footnote-ref-21)
22. There appears in some quarters to be misconception regarding the significance to be attached to the presence of an item in the tax expenditure list. Some assume that this listing is an automatic statement that the tax expenditure is bad per se and a "loophole" in the popular usage. The listing, however, is not pejorative, but only descriptive of the included items as "spending" and not "taxing" provisions. The spending programs embodied in the listing may be helpful or harmful, necessary or unnecessary. The answers to these queries, however, lie not in the listing but in a careful analysis of the programs represented in the items listed. This is of course equally the situation for each item listed in the direct budget.

Another misconception regarding tax expenditures is the view that those who utilize the tax expenditure concept are implying, through the very listing of these various items, that the items should simply be eliminated from the tax system and that all else should remain the same. Clearly this is a misconception and quite foreign to a sensible approach to the tax expenditure concept. As stated in the text, the listing does not inform us as to whether the spending involved in an item is useful. In many cases it is not. In other cases, if spending through the income tax system were dropped it would be necessary or appropriate either to add the increased revenues to existing direct programs or to substitute a direct spending program (though not necessarily in the same amount or with the same design). Moreover, while a critical examination of the tax expenditure list could well result in the elimination of some items and a reduction of the amount involved in others, it does not follow that the remaining tax structure would remain unaltered. On the contrary, any significant increases in revenue resulting from changes in tax expenditures could be applied to alterations in the tax rate or exemption structure. Moreover, since a large number of the tax expenditure items provide incentives to savings and investment, many might urge that a general lowering of tax rates, with a goal of encouraging savings and investment through that course, should complement the elimination of tax expenditure incentives. Of course others might prefer using the funds so freed to increase or add direct budget programs. The point is, contrary to the misconceptions, that answers to these questions do not flow automatically from the step of utilizing the tax expenditure concept and list of tax expenditures. [↑](#footnote-ref-22)
23. Critics of the tax expenditure approach often appear to proceed from the premise that the list is some sort of indiscriminate or haphazard listing of tax provisions, or else state that the term "special" in the Budget Act .definition can have no helpful meaning in itself. *See, e.g.,* MORGAN GUARANTY TRUST COMPANY, WHAT You GET To KEEP MAY BE A "TAX EXPENDITURE," (December 1975) (Morgan Guaranty Survey), where the author styles the tax expenditure concept as a "semantic ploy," states, in effect, that the listing is "capricious and arbitrary," and then advances the observation that "the very concept of a tax expenditure remains fuzzy—and debatable." *Id.* at 9, 10. (Is it possible the writer of the piece desires to "fuzz" up the topic?) Such unsupported statements neglect the careful analysis that was used in the original approach and in the subsequent examinations of the list since 1968. Considering the various governmental units and persons who have worked in the area since 1968, the differences over the composition of the lists are indeed few. There can always be borderline questions but the clear items presenting no conceptual issue far outweigh the borderline questions that may arise and require further analysis.

 Professor Carl Shoup, in Surrey, *Pathways to Tax Reform, A Review Article,* 30 J. FIN. 1329 (1975) (hereinafter cited as Shoup], though he cautiously concludes that a valid tax expenditure list can be drawn, seems to struggle with the problems he believes are raised in Professor Bittker's approach to tax expenditures through the path of a comprehensive income tax. *See, e.g.,* Bittker, *Accounting for Federal "Tax Subsidies" in the National Budget,* 22 NATL TAX J. 244 (1969) (hereinafter cited as Bittkerl. However, like Professor Bittker's discussion, though considerably less so, Shoup's discussion doei not separate the areas with which tax expenditure analysis is involved from the areas which lie outside that analysis, such as general rate schedules, personal exemption levels, determination of the taxable unit, and the relationship of the corporation tax to the individual tax. Once that separation is perceived, then a view that sees the tax landscape as one vast panorama without any distinctions is not relevant.

As another aspect of classification, Professor William Andrews, while accepting the validity of the tax expenditure concept, has demurred to inclusion in the list of the deductions for charitable contributions and medical expenses. *See* INT. REV. CODE OF 1954 $§ 170, 213. Andrews, *Personal Deductions* in an *Ideal Income* Tax, 86 HARV. L. REV. 309 (1972). To reach this conclusion, Professor Andrews in effect converts the normative structure of the tax system from one based on the production of income to one based on the expenditure or consumption of economic resources, excluding savings. He then argues that in a consumption-type tax, deductions for charitable contributions and medical expenses should not be regarded as tax expenditures. Professor Andrews' conclusions may be open to question even if the United States were to adopt a consumption tax. However, in an income tax system, the threshold question must be whether expenditures for charitable contributions and medical expenses are costs of producing income. Professor Andrews does not address himself to this issue. See SURREY, SWIM note 7, at 19-23 for further analysis of this aspect and for discussion of the "ability to pay" justification for the medical expense deduction. Indeed, critics of the definitions and criteria used to determine the tax expenditure list usually refer to items of medical expenses, INT. REV. CODE OF 1954, § 213, and casualty losses, INT. REV. CODE or 1954, I65(c)(3), as examples, and stop there, giving the impression that there are other numerous illustrations, but really focusing exclusively on these two situations involving loss of wealth and physical well-being. [↑](#footnote-ref-23)
24. For example, the charitable contributions deduction was most recently analyzed by Congress in connection with the Tax Reform Act of 1969, Act of Dec. 30, 1969, Pub. L. No. 91-172, 83 Stat. 487. One searches in vain in the hearings by the tax committees for any argument or analysis by supporters of the deduction that charitable contributions represent costs of producing income and hence are proper offsets to gross income to arrive at taxable net income. [↑](#footnote-ref-24)
25. The 1976 Budget list (in January 1975), supra note I, omitted the exclusion of capital gains at death, deferral of income of controlled foreign corporations, and asset depreciation range—items which were included in previous Treasury and congressional lists. The 1975 congressional lists included these items and also the "maximum tax on earned income." *See, e.g.,* STAFF OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION. ESTIMATES OF FEDERAL TAX EXPENDITURES. PREPARED FOR THE COMMITTEE ON WAYS AND MEANS AND THE COMMITTEE ON FINANCE, (Comm. Print, July 8, 1975); H.R Km No. 145, 94th Cong., 1st Sess. 53-55 (1975) (House Budget Committee). The 1975 Budget list (in January 1976), *supra* note I, omitted these items, but they were included in the 1976 congressional list, which also added "cooperatives: deductibility of non-cash patronage dividends and certain other items." *See ESTIMATES* of FEDERAL TAX EXPENDITURES, supra note 19. *See also* CONGRESSIONAL BUDGET OFFICE. FIVE YEAR BUDGET PROJECTIONS, Fiscal. YEARS 1977-81, 49 *et. seq.* and Table 19 (January 26, 1976); CONGRESSIONAL BUDGET OFFICE, BUDGET OPTIONS FOR FISCAL. YEAR 1977: A REPORT To THE SENATE AND HOUSE COMMITTEES ON THE BUDGET 381 (March 15, 1976) (the Table at 384 is Appendix A of this article) [hereinafter cited as BUDGET OPTIONS FOR FISCAL YEAR 1977], The 1977 Budget Special Analysis on Tax Expenditures, *supra note I,* while excluding the above items, does contain descriptive material on them including estimates of the amounts involved and some indication the items could well have been included in the Budget list.

For descriptive summary material on each tax expenditure, see SENATE BUDGET COMM., TAX EXPENDITURES, 99th Cong., 2d Sess. 1 (March 17, 1976). [↑](#footnote-ref-25)
26. *See, e.g.,* Kristol, *Taxes, Poverty and Equality,* 37 TIIE PUBLIC INTEREST 3, 14 (1974), *quoted in* WHAT YOU GET TO KEEP MAY BE A "TAX EXPENDITURE," *supra* note 23, at 9; Coheen, ***Is*** *Private Philanthropy "Government Money"?,* 60 UNIVERSITY: A PRINCETON QUARTERLY 14, 16 (Spring 1974); exchange of letters of Kristol and Surrey in *Letters,* N.Y. Times, June 1, 1975, Magazine, at 61-63; Will, *The Non-Spending of Non-Taxes,* Wash. Post, April 22, 1976, at A-17, and letter of Senator Kennedy in response thereto, Wash. Post, May 2, 1976. [↑](#footnote-ref-26)
27. This view has on occasion seemed to have been espoused by Professor Boris Bittker, although his writings in some instances appear to accept the utility of the tax expenditure concept. *Compare* Bittker, *Accounting for Federal "Tax Subsidies" in the National Budget,* 22 NATI. TAX J. 244 (1969), *with,.* Rinker, *The Tax Expenditure Budget—A Reply to Professors Surrey & Hellmuteh, 22* NAT'L TAX J. 538, 542 (1969). [↑](#footnote-ref-27)
28. Thus, the proceedings of the International Fiscal Association, the membership of which is composed of government officials, lawyers, economists, academics, accountants, executives and investment advisors from many countries, reflect the generalized acceptance of normative income tax rules. See the annual CAHIERS published by the Association. Also in the absence of such widespread agreement, the task of formulating tax treaties between countries would be rendered virtually impossible. Tax treaties entered into by the United States by and large reflect this understanding, and deviations from the norm that are accepted by either or both of the treaty partners are generally clearly identifiable as such. [↑](#footnote-ref-28)
29. See note 1 *supra.* [↑](#footnote-ref-29)
30. As the discussion in the 1976 Special Analysis F, *supra* note I, indicates, the estimates show the difference between budget receipts under the current tax law and budget receipts which would have been raised had a different tax law always been in effect. If the change in the tax expenditure involved a transitional approach to its elimination, then, as the Analysis states at 105-06, the estimate in the tax expenditure list would show more revenue than would be obtained in the transition years. The discussion in Special Analysis F states that tax expenditure items cannot simply be added together for functional areas or for a grand total. The principal reason assigned for this view is a technical one derived from the estimating process: if two tax expenditure exclusions from income were to be dropped, the combined effect would be greater than the addition of the two separate effects since that combined effect could push the taxpayer into a higher bracket than would a single change. Furthermore, with respect to itemized deductions which are included as tax expenditures, the Analysis states that the elimination of multiple tax expenditures could push taxpayers into the standard deduction, thus limiting the resulting revenue gain. (This assumes, probably incorrectly, that the standard deduction, which is a proxy for average itemized deductions, would remain unchanged despite major changes in itemized deductions; the low income allowance might be changed.) However, these effects of multiple changes would not appear to be a sufficient reason for not totaling the tax expenditures either by functional category or overall. Indeed, under the above reasons, the totals would probably underestimate the amounts actually involved. Another reason given fir not aggregating the estimates is that if several tax expenditures were changed the assumption of no change in economic behavior or other aspects of the tax system would have little validity. This aspect is discussed in the text of the article at notes 31-33 *infra.* It should be noted that while these tax expenditures estimating considerations are also involved in estimates of direct expenditure programs, we are accustomed to using totals for those programs. See Bunurr OPTIONS FOR FISCAL YEAR 1977, *supra* note 25, at 382, where it was observed: "A similar measurement problem often is present with direct outlay programs as well. For example, if veterans' college benefits were ended, outlays would probably rise in the basic educational grant program." [↑](#footnote-ref-30)
31. *See also* note 22 *supra.* [↑](#footnote-ref-31)
32. Graetz, *Assessing the Distributional Effects 4 Income Tax Revision: Some Lessons from Incidence Analysis,* 4 J. LEGAL STUDIES 351 (1975) [hereinafter cited as Graetz appears to take somewhat this view by stressing the importance of determining the precise economic effects in the economy if a tax expenditure were granted or dropped, i.e., the ultimate consequences in terms of who benefits and who loses under the tax expenditure and under an elimination of that expenditure. He then describes a long trail of taxpayer and economic reactions that must be followed in order to answer these questions. Of course, some such analysis should be made when one is considering the wisdom of the item—the program—involved, but one need not require such an analysis to answer the initial question: What is the present revenue cost of the item or program—what is the Government now spending? Whether even to determine the wisdom of a particular program one must indulge in the full extent of the analysis Graetz suggests and follow his long trail is still another issue. There is some skepticism that economists and others have the sufficient knowledge of the various possible taxpayer behavior reactions and economic consequences to enable one to pursue that trail as far as he would like. See also note 52 *infra.* [↑](#footnote-ref-32)
33. *See* BUDGET OPTIONS FOR FISCAL YEAR 1977, *supra* note 25. [↑](#footnote-ref-33)
34. BUDGET OPTIONS FOR FISCAL YEAR 1977, supra note 25, at 384-87. This list is set out in Appendix A. The differences in the Budget list and the congressional list are described in note 25, *supra.* The revenue estimates in Appendix A assume that the tax changes effected by the Revenue Adjustment Act of 1975, Act of Dec. 23, 1975, Pub. L. No. 94-164, 89 Stat. 970, are made permanent. The 1976 Joint Committee Staff Estimates, *supra* note 25; assume that these tax changes are allowed to expire according to their terms. As a result, the JCIRT staff estimates are somewhat lower than the Congressional Budget Office figures for 1977-81 in several instances. The figures given in the two estimates for the maximum tax on earned income also vary, but the difference in this instance appears to have resulted from the different mechanical estimating procedures employed. [↑](#footnote-ref-34)
35. The additions are: exclusion of interest on state and local government pollution control bonds (under "Natural Resources, environment and energy") and interest on state and local industrial development bonds (under "Commerce and transportation"), both being separated from the item exclusion of interest on general purpose state and local bonds (under "Revenue Sharing and general purpose fiscal assistance")—formerly all three were grouped together; the earned income credit (1975) and the exclusion of special benefits for disabled coal miners (under "Income Security"); the exclusion of rental value of parsonages and housing allowances of ministers (now included in excluded "Meals and lodging" under "Income security"); deferral of interest on U.S. savings bonds (under "Interest"); excess first-year depreciation and expensing of construction period interest and taxes (under "Commerce and transportation"); and cooperatives (under "Agriculture"). The exemption of credit unions has been placed under "Commerce and transportation."

 The descriptive material in the 1976 Special Analysis F, *supra* note 1, states that the exclusion of appreciation on assets contributed to charitable and educational organizations is included in the estimates for contributions to those organizations.

The earned income credit item in Special Analysis F, *supra* note I, includes only credits offsetting tax liabilities; the refundable credits are included in direct budget outlays. The Congressional Budget Office list set out in Appendix A includes both aspects.

The list may contain a few significant gaps. Thus, more study should be given to the possible existence of tax expenditures in the various accounting provisions; e.g., installment accounting and completed contract method of accounting; in the tax exempt organization area, *e.g.,* to what extent would income be present if these organizations were tested by rules applicable to entities subject to income taxation; in the various rules exempting from income tax the benefits of in-kind governmental financial assistance, *e.g.,* food stamps, rent subsidies, and the like. The Budget Analysis does discuss in-kind governmental benefits and provides an estimate for the exclusion of food stamps. It also discusses the tax treatment of various types of cooperatives, also giving estimates. Cooperatives are included in the congressional list. [↑](#footnote-ref-35)
36. There are a number of very minor tax expenditure items whose inclusion would only obscure the research and attention that should be paid to the significant items in the present list, or to significant items that may have been omitted. Thus, at the present, the search need not be for a complete list covering every single tax preference in the Internal Revenue Code. [↑](#footnote-ref-36)
37. BUDGET OPTIONS FOR FISCAL YEAR 1977, *supra* note 25, at 14-15. [↑](#footnote-ref-37)
38. See note 3 *supra.* A great deal more information on the practice in other countries will be made available through the September, 1976 Jerusalem Congress of the International Fiscal Association [IPA], which has chosen as one of its subjects *"Tax Incentives as an Instrument for Achievement of Government Coals: Their Role in Income Taxation* and a *Comparison with Alternative Instruments Regarding Both Economic and Social Goals."* The General Report for that subject, *supra* note 3, presents a summary description of the data on, and attitudes towards, tax incentives in about twenty countries, and the separate National Reports provide further detail. The picture that emerges is that only the United States and West Germany provide official data on tax expenditures. *See* Ault, supra note 3. The relation of tax expenditures or tax incentives to the fiscal process is not considered in other countries and both qualitative and quantitative data on such items are relatively or almost absolutely non-existent. In effect, nearly every country lacks knowledge and control regarding this significant aspect of its tax policy and budget policy. But we must remember that the same could be said of the United States less than ten years ago. The 1FA discussion is likely to stimulate at least academic thinking in some countries. Also, as the General Report describes, the OECD is beginning to explore ways of achieving some internationally comparable data on this subject. [↑](#footnote-ref-38)
39. See note 22 *supra* and accompanying text. [↑](#footnote-ref-39)
40. For example, for a discussion of the tax expenditures for farm operations, considered as direct farm programs, see *Hearings on Tax Reform Before the House Ways and Means Comm.,* 94th Cong., 1st Sess. 1362 (1975) (statement of Paul R. McDaniel). [↑](#footnote-ref-40)
41. The 1FA General Report, *supra* note 3, indicates that this question is scarcely being asked in any other country when the tax route is used to provide government assistance. [↑](#footnote-ref-41)
42. For a discussion of the factors involved in the choice between tax assistance and direct assistance, see SURREY, supra note 7, at 126-74. [↑](#footnote-ref-42)
43. It is sometimes said that use of a tax credit mechanism avoids the upside-down aspects of tax expenditures effected through deductions, exemptions, or exclusions. This is not necessarily so. If the tax credit itself should be taxable, then failure to include the amount of the credit in income will mean that the credit is of greater value to a wealthy taxpayer than it is to a lower-income taxpayer. To avoid the upside-down effect where a tax credit is employed, one must ask whether amounts paid under a direct financial assistance program structured like the tax credit would, under normal tax principles, be includible in gross income. If these principles would require the inclusion of direct payments in the recipient's income, then a tax credit in the same amount should also be treated as taxable income. Failure to do so will result in an upside-down tax expenditure, although the range of the benefits from upper to lower income recipients will be considerably narrower under a tax credit than under a deduction or exemption.

 For example, in 1975, Congress approved changes in the child care deduction to allow its benefits to be obtained by higher income individuals. Act of March 29, 1975, Pub, L. No. 94-12, 1/ 206, 89 Stat, 27, 32. For a family of four (two children) with $35,000 adjusted gross income, the benefit of this tax expenditure will be approximately $1728 (assuming marginal tax bracket of 36% times the maximum qualifying child care expenditures of $4800). On the other hand, a family of four with $15,000 adjusted gross income receives a maximum benefit of only $1056 (22% times $4800). The House Tax Reform Bill, 14.R. 10612, 94th Cong., 1st Sess. (1975), would have converted the child care deduction to a tax credit of 20% of child care expenses up to a maximum of $2000 of expenses for one dependent (or $4000 for 2 or more dependents). The amount of the credit, however, was not required to be included in income. (Query, does Congress have to tell the Internal Revenue Service whether each tax expenditure constitutes taxable income under § 61, even though it leaves this determination to the IRS in the case of direct expenditure programs?) Assuming that proper tax principles would require a recipient of a direct governmental subsidy for child care to include these amounts in income, failure to include the amount of the proposed child care credit in income would provide a maximum benefit of $560 for a 70 percent bracket taxpayer (20% x $4000 x 70%), $112 for a 14% bracket taxpayer, and zero to a poverty *level* taxpayer. *See general5 r,* H.R. REP. No. 658, 94th Cong., 1st Sess. 146 (1975). It has been urged that the proposed child care credit be made refundable. 122 CONG. REC. S. 3755, 3764 (daily ed. March 18, 1976) (statement of Senator Kennedy before the Senate Fin. Comm.).

 The treatment of a credit under income tax principles does not necessarily require a direct inclusion in income. Thus, a direct subsidy similar to the investment credit might be viewed as a contribution to capital requiring a corresponding reduction in the basis for depreciation. *Compare* INT. REV. CODE OF 1954 § 118, *with* 362(c). The tax credit voted in the Senate January 29, 1976, 122 CONG. REC. S. 822-877 (daily ed. Jan. 29, 1976) for organizations providing child care (equal to 20% of the first $5,000 of wages paid each welfare recipient employed in the provision of child care) if structured as direct assistance would presumably be includible in taxable income as a direct subsidy for operations. The credit as passed by the Senate was refundable, in order to make the assistance available to public and non-profit child care centers. *See* H.R. REP. No.9803, 94th Cong., 1st Sess. (1975), as reported by the Senate Finance Committee and passed in the Senate, and S. REP. No.592, 94th Cong., 2d Sess. (1976): The bill was, however, vetoed by the President.

 [↑](#footnote-ref-43)
44. 12 U.S.C. 17152-I (1970). [↑](#footnote-ref-44)
45. While there are some who would quarrel with the text statement and say that we cannot be sure that Congress would not favor upside-down direct programs, they are not explicit in giving examples of upside-down programs they believe Congress would approve. A group coming closest here is the Filer Commission Report, REPORT OF 'THE COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS. GIVING IN AMERICA 106.14, 127-34 (1975), which offers a defense of the upside-down charitable deduction. Yet one can be skeptical that this Commission would risk a congressional vote on a direct program allocating to individuals, on an upside-down basis, funds earmarked for distribution by them to charitable organizations of their choice.

 Some offer the defense for the upside-down aspect of tax expenditures that such effect is merely the reflection of the progressive individual rate structure. *See, e.g.,* Morgan Guaranty Survey, *supra* note 23, at 13: "Inescapably, of course, if Congress wishes to achieve an economic or social goal by means of 'tax expenditure,' it must rely most heavily on those most able to finance that goal: those with the most discretionary funds, i.e., those in upper-income brackets." This is quite a sentence. It can either merely be explaining the upside-down character of tax expenditures, though it neglects to point out that the funds made available are government funds involved in the tax expenditure. Or it can be saying that because we have a progressive income tax it is only right that those who pay the largest taxes should have the largest control over the spending of government funds—a view that seems a complete non-sequitur to say the least.

 While it is not necessary at this point to maintain that no direct program would be structured in an "upside-down" manner, it is proper to assert that those who defend "upside-down" tax expenditures should recognize openly that the programs are indeed "upside-down" and should be required to bear the burden of proof as to the appropriateness of such a result. [↑](#footnote-ref-45)
46. See Statement of Paul R. McDaniel, *supra* note 40, for a description of the loan programs for farm operations that are contained in present tax expenditure provisions. [↑](#footnote-ref-46)
47. *See* Appendix B. The table is taken from 121 CONG. REC. S. 9174-77 (daily ed. June 2, 1975) (statement of Senator Mondale) and is based on Treasury Department data. Similar distributional data for each tax expenditure are contained in SENATE BUDGF.T COMM., TAX EXPENDITURES: COMPENDIUM Or BACKGROUND MATERIAL ON INDIVIDUAL PROVISIONS, 94th Cong., 2d Sess. (Comm. Print, March 17, 1976). [↑](#footnote-ref-47)
48. *See* Appendix B. [↑](#footnote-ref-48)
49. *Id.* [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. Sec discussion at note 33 *supra.* [↑](#footnote-ref-51)
52. Essentially, it is this third level of description discussed in the text that is the subject of Craetz, *supra* note 32. A difficulty with this analysis is that one is tempted to push it too far, where the imponderables of the various choices available begin to defeat an understanding of the effects of the tax expenditure or its removal. Thus, it is well and good to point out that a wealthy investor in a state tax exempt bond may not gain as much as one might expect from the exclusion of the interest on the bond, because, if the exclusion were eliminated, the state, in order to meet its added interest costs, might have to resort to taxes which might have an effect on the investor, but this needlessly distracts attention from the very real benefits now being obtained by that investor because of the tax expenditure.

 It also distracts attention from the fact that the "first order" recipients of tax expenditure items extract a high commission for delivering the benefits of the tax expenditure to those ultimate beneficiaries whom Congress really intended to assist. These "messengers," so to speak, who carry the tax expenditure checks to those ultimate beneficiaries are well paid, which is but the mirror image of the inefficiency of tax expenditure assistance. *See, e.g.,* as to tax exempt bonds, *Hearings on Alternatives to Tax-Exempt State & Local Bonds Before the House Ways and Means Comm., 94th Cong., 2d Sess. 153 (1976) (statement of Stanley S. Surrey). As to other commissions to "messengers," see McDaniel, Tax Shelters and Tax Policy, 26 NATI. TAN J. 353 (1973) [hereinafter cited as McDaniel) and SURREY, supra note 7, at 244. The analysis in the Graetz article, supra 'note 32, seeks to pursue the trail further, but the assumptions are likely to become too hard to control and if pursued too far, are likely to distract us from the main effort.*

 *It may be observed that an analysis of levels of beneficiaries similar to that in the text should be used for direct expenditures as well, though presumably in such an analysis there should not be a difference, as there is in the case of tax expenditures, between the category of intended beneficiaries and that of the groups within that category caused by the "upside-down" effect of the tax technique.* [↑](#footnote-ref-52)
53. JOINT ECONOMIC COMMI1TEE, FEDERAL SUBSIDY PROGRAMS. STAFF STUDY FOR SUBCOMM. ON PRIORITIES AND ECONOMY IN GOVERNMENT, 93d Cong., 2d Sess. 4 (1974). [↑](#footnote-ref-53)
54. Congress is beginning to be made aware of the fact that one useful way of understanding the effects of a tax expenditure provision is to compare it to an existing direct expenditure program. For example, if one is analyzing the tax expenditures for agriculture as government spending programs, the structure of direct spending programs for farm operations would appear highly relevant to determining whether the tax expenditure program is furthering our overall national agricultural policy. Preliminary work in this area indicates that, in fact, tax expenditures for agriculture may be operating in a manner that is directly counter to the objectives of direct federal financial programs for farmers. *See* Statement of Paul R. McDaniel, *supra* note 40, at 1377-82. The task of comparing existing direct and tax expenditure programs has only just begun, but the technique appears to offer a fruitful method of assisting Congress in understanding and evaluating decisions to use the tax expenditure route.

 The insistence in the text of the need for examining both routes for government assistance, the tax expenditure route and the direct route, and the belief that many tax expenditures would come off second best in such a comparison does not, as some seem to assert, mean that this view is but an "idealization of the appropriations process;" *see* Shoup, *supra* note 23, at 1337, *quoting* Bittker, *supra* note 23. The belief is expressed with the full understanding that the appropriations process is far from ideal—but certainly this does not detract from the proposition that the tax expenditure process is even further from that ideal. [↑](#footnote-ref-54)
55. Shoup, *supra* note 23, raises the interesting question of whether government subsidies should be given to a business that is currently not operating at a profit. Apparently this question has not been much discussed by economists in considering subsidies. It is raised, however, by proposals to make the investment credit refundable. *See, e.g.,* 122 CONC. REC. S. 3765 (daily ed. March 18, 1976) (statement of Senator Kennedy). The question is also linked to tax shelters, since tax expenditures that cannot be directly used by a business currently not operating at a profit are made available to such business through the tax shelter device, *e.g.,* bank equipment leasing. *See* McDaniel, *supra* note 52. If government assistance is to be given only to 'profit-generating enterprises, then this factor must be injected into the criteria to be considered in choosing between the tax route and the direct route—the issue here would be which route can more readily distinguish between losing ventures and profitable ventures. Professor Shoup also mentions the aspect of promptness of paying the government assistance, and here also studies would be required on the promptness with which direct subsidies can be paid compared with tax subsidies, as well as the consequences of subsequent checks, through audits, under both routes.

 S. 2925, 94th Cong., 2d Sess. (1976), would establish a so-called "zero-base" review and evaluation procedure to require that all direct budget programs be examined each four years to determine if the programs should be continued or terminated. Senator Glenn introduced an amendment to the bill that would subject tax expenditure programs to the same zero-base review. *See* 122 Coro. REC. S. 4768 (daily ed. April 1, 1976). [↑](#footnote-ref-55)