

Repatriation to the Tune of 'Revolution'

By Pat Oglesby

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"Revolution" was written in 1968 by John Lennon and Paul McCartney. "If you go carrying pictures of Chairman Mao/You ain't gonna make it with anyone anyhow" provides the meter for the last couplet in each stanza. The Beatles' "Well, you know" lines are omitted. Youtube.com routinely lets people listen to the tune, as if that complied with copyright laws.

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You¹ say you want repatriation:
A tax-free corp'rate holiday.²
You talk about the job creation
That you'll produce once you can pay
Big dividends out of the cash that you've
stashed offshore;
But that didn't work when we tried in two
thousand four.³
Why don't you go and pay

¹"You" here means many U.S.-based multinational corporations. As people who now have a right to address the public under *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010), they should be able to take it as well as they dish it out.

²"Tax holiday" is a common label for H.R. 1834, the Freedom to Invest Act of 2011, and S. 1671, the Foreign Earnings Reinvestment Act, which would provide an 85 percent dividends received deduction for dividends from foreign subsidiaries; that leaves a 5.25 percent maximum tax rate. Technically, "tax holiday" describes a giveaway in a source jurisdiction, like a temporary waiver of retail sales tax. The residence country income tax break at issue today should be called "retroactive territoriality," since territorial systems often impose a small residual tax on foreign earnings, and since it applies to earnings accumulated before the date of enactment. For more on the name, see Center for New Revenue, "'Tax Repatriation Holiday': Choosing Words Strategically" (Feb. 18, 2012), [available at](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1963951) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1963951.

³The 2004 American Jobs Creation Act, P.L. 108-35, is the template for current proposals. Charley Kingdon finds the very

(Footnote continued in next column.)

That tax?
Your tax.
Your tax.

You say don't tax your foreign income:
It came from Ireland or somewhere.
Through paper comp'nies there have been
some
Shenanigans to shift it there.⁴
With so much intangibles income concealed
through Dutch
Sandwiches we don't believe we can trust⁵ you
much.
You just don't want to pay
That tax.
Your tax.
Your tax.

You've come up with a new solution⁶
Because you didn't hire last time:

name "American Jobs Creation Act" Orwellian, because "encouragement of low-taxed income abroad has been cast as the creation of U.S. jobs." "The Great American Jobs Act Tax Caper," 58 *Tax L. Rev.* 327, 329 (2005). See also Donald J. Marples and Jane G. Gravelle, "Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis," Congressional Research Service (May 27, 2011), *Doc 2011-11666*, 2011 *TNT* 105-31 (stating that "empirical evidence is unable to show [an] increase in domestic investment or employment by firms that utilized the repatriation provisions" and pointing out that currency effects may spoil the plan anyway). But see *infra* note 6.

⁴U.S. corporations can shift a lot of profits offshore that should properly be attributed to a U.S. parent." Martin A. Sullivan, "Half the Profits for None of the Work," *Tax Notes*, Sept. 15, 2005, p. 1243, *Doc 2005-18498*, or 2005 *TNT* 176-8. The income shifted is generally profits from intangibles developed in the United States and whose costs were deducted in the United States. See also Charles Duhigg and David Kocieniewski, "How Apple Sidesteps Billions in Taxes," *The New York Times*, Apr. 28, 2012, [available at](http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?_r=3) http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?_r=3.

⁵Some of my best and most honorable friends work for U.S.-based multinational corporations (so did I, in private law practice). But these corporations do not look out for America. Shaming corporate America for taking advantage of current loopholes is not the purpose here. Cf. Christopher Bergin, "Apple Sidesteps Taxes — What's Wrong With That?" (Apr. 30, 2012), [available at](http://www.tax.com/taxcom/taxblog.nsf/Permalink/UBEN-8TUMZG?OpenDocument) <http://www.tax.com/taxcom/taxblog.nsf/Permalink/UBEN-8TUMZG?OpenDocument>. The aim here is to make fun of a new giveaway.

⁶The thrust of the argument, anyway, is new and different from the pre-2004 argument that repatriating firms would create jobs: Ken Kies says "repatriated earnings can benefit the U.S. economy even if distributed to shareholders rather than being

(Footnote continued on next page.)

Now, when you make a distribution,
 The whole economy will climb.
 But when you were shifting that income the
 rules were clear:
 Pay tax on the income whenever you bring it
 here.
 So go ahead and pay
 That tax.
 Your tax.
 Your tax.

You say your plan will help the budget,⁷
 But one good pop⁸ is all we'll get.
 We won't misjudge it; you can't fudge it:
 Your scheme will just create more debt.
 Now if in your fantasy our Uncle Sam should
 drown,⁹
 You don't give a damn if your schemes bring
 the country down.
 We ought to make you pay
 That tax.
 Your tax.
 Your tax.
 Your tax.
 Your tax.
 Your tax.
 Your tax.
 Your tax.
 Your tax.

invested in the entity that brings the funds back." Kenneth J. Keis, "A Critique of the CRS Report on Repatriation," *Tax Notes*, Aug. 15, 2011, p. 737, *Doc 2011-15223*, 2011 TNT 158-6. He also says that for the 2004 Act, counting jobs directly created by repatriating firms is answering the wrong question; he argues that distributions of repatriated capital to shareholders indirectly boosted employment in the wider economy after the 2004 holiday. Kies, "Repatriation Studies Miss the Mark," *Tax Notes*, Nov. 14, 2011, p. 881, *Doc 2011-21920*, 2011 TNT 221-14. Sure, many kinds of tax breaks might stimulate the economy, including a break that singles out foreign operations and much artificially shifted income by changing the rules in the middle of the game.

⁷Grover Norquist's Americans for Tax Reform [and other groups] said . . . that a tax holiday would creat[e] \$40 billion in new tax revenue." Bernie Becker, "Norquist, Chamber Press for Repatriation," *The Hill*, Nov. 29, 2011, available at <http://thehill.com/blogs/on-the-money/domestic-taxes/196121-norquist-chamber-press-for-repatriation>.

⁸Increased revenue in the windfall holiday year is swamped by huge out-year decreases. Letter (13 pages of it) from Thomas A. Barthold, chief of staff, Joint Committee on Taxation, to Rep. Lloyd A. Doggett, D-Texas, Apr. 15, 2011, available at http://doggett.house.gov/images/pdf/jct_repatriation_score.pdf.

⁹"Mr. Norquist has famously said his goal is to shrink government 'down to the size where we can drown it in the bathtub.'" Editorial, "Rethinking Their Pledge," *The New York Times*, Apr. 21, 2011, available at <http://www.nytimes.com/2011/04/22/opinion/22fri1.html>.