Senator Levin Castigates Caterpillar for Using Legal Loopholes

Using the power of the bully pulpit as chairman of the Senate Permanent Subcommittee on Investigations, Michigan Senator Carl Levin attacked Caterpillar on Tuesday for using loopholes in the law to save the company an estimated $2.4 billion in taxes since 2000. Executives from Caterpillar, as well as the company's accounting firm PriceWaterhouseCoopers (PWC), were called on the carpet for cutting its tax bill and thus costing the U.S. government billions in revenue.

In his opening statement, Levin gave lip service to the history of the company, now nearly 90 years old, with revenues approaching $70 billion annually and employing more than 125,000 people worldwide. He then went on the attack:

> This Subcommittee for many years has investigated how some of our most profitable corporations exploit loopholes in the U.S. tax code to shift income and profits to offshore tax havens, thereby denying tax revenue to Uncle Sam….
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> Tax avoidance through the use of dubious tax loopholes costs the treasury tens of billions each year.

After reviewing the tax strategy recommended by PWC and implemented by the company back in 1999, Levin said:

> Starting in 1999, its parts operation assumed a new and key role in Caterpillar's tax strategy. That's when Caterpillar paid PWC to design and implement a Swiss tax strategy, at an eventual cost of more than $55 million.
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> After Caterpillar put that strategy in place, it went from reporting about 85% or more of its foreign parts profits on its U.S. tax return to reporting 15% or less to Uncle Sam, and shifting the remaining profits offshore to its Swiss affiliate.
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> In Switzerland, Caterpillar had negotiated a special effective Swiss tax rate varying from 4% to 6%, which was below the Swiss statutory tax rate of 8.5%….
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> When Caterpillar and its tax advisers launched this tax avoidance scheme, almost nothing changed in the real world. The manufacturing workers who make world-class parts, the managers who operate its parts operations, the warehouses where they are stored — none of that changed.
>
> But in the fantasy land that is international tax law, tax lawyers waved a magic wand to make millions of dollars in U.S. taxes disappear.

Taking advantage of the imminent April 15 deadline when Americans must file their own income tax reports, Levin implied that their taxes were higher than they would be if companies such as Caterpillar would only pay their fair share. He also promoted his big government agenda along the way:

> The revenue lost to those strategies increases the tax burden on working families, and it reduces our ability to make investments in education and training, research and development, trade promotion, intellectual property protection, infrastructure, national security and more — investments on which Caterpillar and other U.S. companies depend for their success.
>
> It is long past time to stop offshore profit shifting and start ensuring that profitable U.S. multinationals meet their U.S. tax obligations.

A closer look at the taxes that Caterpillar pays, based upon its annual report and other sources, indicates that it pays its fair share and then some. From 2000 through 2009, the company paid $2.68 billion in taxes on $12.3 billion in U.S. revenues, plus another $2.97 billion on foreign revenues of $14.4 billion, for a total of $6.65 billion. When state taxes are added in, Caterpillar paid nearly $7 billion in taxes over that period, at an effective average tax rate of 26 percent, or more than a quarter of its profits.

In defending the company against Levin's charges, a company vice president, Julie Lagacy, said:

> The structure complies with existing law and offends no U.S. tax policy. Caterpillar stands by this structure….
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> We pay everything we owe.
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> We cannot remain competitive, we cannot create jobs and we cannot increase exports by incurring unnecessary expenses.
>
> Americans pay the taxes they owe, but not more. And as an American company, we pay the taxes we owe, not more.

This is in line with Supreme Court Judge Learned Hand, who wrote in *Helvering v. Gregory* in 1954:

> Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

What makes Levin's claims all the more senseless is the IRS itself, which has audited Caterpillar every year since 1999. In her testimony before Levin's committee, Robin Beran, Caterpillar's chief tax officer, noted that the IRS has not made any changes or adjustments, adding, "We're under continuous examination. The IRS literally sits right outside my office."

Levin is picking on Caterpillar for using loopholes to save its stockholders money — money that Levin seems to think belongs to the government. In May his committee interrogated Apple's CEO Tim Cook, claiming that his company had similarly avoided paying some $9 billion in U.S. taxes in 2012. Facebook and Google also used similar complex (and expensive) tax strategies to keep more of the money they earned away from the IRS.

Levin has an agenda. He has little interest in raising revenue for the IRS, but instead is looking to clamp down with more regulations on companies such as Caterpillar, Apple, Google and others. He also has a bill pending in the Senate to close those so-called loopholes that Congress itself enacted in order to soften the impact of the world's highest corporate tax rate and keep the U.S. competitive worldwide.

There's also the matter of attempts by the Organization for Economic Cooperation and Development (OECD) and the Group of 20 (G-20) (favored by Levin) to implement a worldwide income tax system, designed so that there are no loopholes and no places to escape the tax man.

Levin appears to want to leave the Senate in a blaze of progressive glory. After six terms as the senior senator from Michigan, he has compiled a far-left legislative history second to none, showing up in the latest Freedom Index with an astonishing rating of just 12.

If raising revenue were Levin's real purpose in castigating successful companies such as Caterpillar, he would instead offer a bill to reduce substantially the government's excessively high corporate tax rates. If those rates were cut sufficiently, Caterpillar, Apple, Google, and others wouldn't have to hire expensive accountants to devise ways around and through the present labyrinthine tax code in order to keep more of the money they have earned. Instead, efforts and man-hours could be invested in much more profitable ventures such as devising better ways to serve their customers rather than ways to save on taxes. Revenues would likely increase to the Treasury as a result.

But Levin clearly has a different agenda.

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