



Spring 3-1-1993

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Recommended Citation

Tax Policy As The Twenty-First Century Approaches, 50 Wash. & Lee L. Rev. 439 (1993).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol50/iss2/2>

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WASHINGTON AND LEE LAW REVIEW

Volume 50

Spring 1993

Number 2

TAX POLICY AS THE TWENTY-FIRST CENTURY APPROACHES

INTRODUCTION

The 1980s produced a plethora of major tax acts that drastically changed the means by which the federal government raises revenue. Under the policy vanguards of "fairness" and "simplicity," the Reagan Administration and the Congress wrought steep reductions in marginal income tax rates and a significant broadening of the income tax base. Because spending reductions did not accompany the rate reductions, massive federal budget deficits are prompting the newly empowered Clinton Administration and Congress to reexamine the basic structure of the federal tax system. On March 5, 1993, the Washington and Lee University School of Law hosted a symposium to discuss the future of tax policy. This issue of the *Washington and Lee Law Review* contains the papers discussed at the symposium as well as contributions from authors with expertise in various discrete areas of taxation.

First, Bob Shapiro offers a retrospective of tax policy in which he argues that presidential politics and deficit reduction comprised the two driving forces behind tax policy for the last twelve years and will continue to impact tax policy for the foreseeable future. Next, Buck Chapoton reviews the Clinton Administration's revenue proposals in historical context and argues for spending reductions in excess of revenue increases.

Professor Martin McMahon then addresses the issues concerning individual tax policy. Professor McMahon forcefully argues for increased progressivity in the individual rate structure and for less use of the income tax system as a means to affect economic growth. Professor Glenn Coven then examines the tax policy issues confronting corporations and shareholders. He argues for the integration of corporate and shareholder taxes and reviews the significant considerations that various integration models entail. Next, Dr. Ed Schnee assesses the future of partnership tax policy. Dr. Schnee argues for a revision of both the Internal Revenue Code section 751(b) distribution rules and the overly complex matrix of loss disallowance provisions.

Next, Professor John Donaldson persuasively proposes the wholesale repeal of the current estate and gift taxation scheme due to its excessively intricate means of producing only a de minimis contribution to the federal fisc. Professor Donaldson proposes the adoption of an accessions tax under which recipients would either pay a transfer tax on the value of property received or include the value of the property received in their taxable incomes. Curt Fochtman, Frank Plan and Thomas Minor then address the issues concerning insurance tax policy and health care reform. They cogently separate the provisions of the Internal Revenue Code that Congress should retain from those that need modification with respect to three key players in the soon-to-be-reformed health care system: Blue Cross and Blue Shield organizations, health maintenance organizations and medical malpractice insurance companies.

Finally, Professors Tim Philipps and Gwen Handelman conclude by addressing the taxpayer and preparer standards for taking tax return positions. Professor Philipps reviews the differing standards promulgated by the American Bar Association, the Treasury and the Internal Revenue Service (IRS) and argues for greater uniformity among the differing sets of standards as well as the consideration of a broader range of authorities in determining a "realistic possibility of success." In contrast, Professor Handelman applauds the Treasury and IRS standards, particularly the limitation of the sources on which taxpayers and practitioners may rely in submitting tax return positions represented as in compliance with the revenue laws. She argues that only interpretations of tax statutes promulgated by decision-makers with political authority can be considered "law."

In 1787, in his classic argument for the proposed constitution's remedy for the evils of political faction, James Madison wrote:

The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.¹

Two centuries later, Madison's wisdom still rings true as Congress continues to battle over the current president's tax legislation. As the present struggle subsides and new ones emerge, the following essays offer legislators and citizens of various factions reason to pause and thoughtfully reflect on the appropriate direction for our republic in shaping tax policy as the twenty-first century approaches.

Ed R. Haden
Symposium Editor

1. THE FEDERALIST No. 10, at 80 (James Madison) (Clinton Rossiter ed., 1961).