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1969: THE BIRTH OF TAX REFORM

MARK WRIGHT COCHRAN*

A small step, a giant leap,
An oath that Nixon wouldn’t keep,
Manson, My Lai, Chappaquiddick,
Biafra, Belfast, Vietnam,
James Earl Ray and Sirhan sentenced,
Justice Fortas under cloud,
A trial of Chicago’s Seven,
Midnight Cowboy, Sundance Kid,
Three days at Woodstock, Easy Rider,
Vonnegut, the Miracle Mets,
“Oh! Calcutta!,” Jimi Hendrix,
I Know Why the Caged Bird Sings.

A tumultuous end to a tumultuous decade,
A crucible of social change
Revolutionary in dimension.
Amid the flotsam all but lost
As just another novel concept
In an ocean full of novel concepts
Wailed an infant—Tax Reform. 1

The name was new, but was it different
From the twenty-five preceding changes
Dating back for fifty years?
Was Reform a new idea
Or just a new name
For “amendment”
(Or perhaps a name
For “big amendment,”
Given its enormous scope)? 2

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* Professor, St. Mary’s University School of Law. A.B.J., University of Georgia; J.D., Vanderbilt University; LL.M., University of Florida. Special thanks to John Teeter for recommending Robert Penn Warren’s epic poem Brother to Dragons (New York 1979), which provided stylistic inspiration for this effort.
Like Romeo's rose—
What's in a name?
Is Reform by any other name as good,
Or Tax Increase as bad?
For fifty years it didn't matter.
"Revenue" sufficed as package
For revisions regular as rain.

Now "Reform"—
A declaration of
A higher aspiration.
Each new law must have
Its mission,
And bear a title
Like a woman's name:
ERISA, ERTA, TEFRA, TAMRA,
Like so many sisters
Giving life to the statutory frame.³

And even "Revenue"
Won't stand alone,
But must be "Miscellaneous"
Or "Reconciled."⁴

But putting aside
The question of names
And how much they matter,
Assuming they do,
Why Reform,
In name or in substance,
What catalyst caused it,
Whence did it come?

Seven years before
A Young President vowed
"A major program of tax reform."
But he equivocated,
And Congress did not deliver.⁵
The minions at Treasury
Toiled at a package
But the Young President's
War-weary successor
Had other distractions
And Tax Reform was not
On his agenda.

But the package
Was completed
In Lyndon's lame-duck days
And left
To sink or swim
With the new administration.\(^6\)

Presenting the package,
The Treasury Chief
Put loopholes in the limelight
When he spoke of those
Who paid no tax
On incomes in the millions.
He warned of a revolt.\(^7\)

The reform proposal,
A would-be orphan,
Was adopted and nurtured
By a person positioned
To give it a life—
The Ways and Means Chairman,
Who controlled the tax agenda
(Until he met his Tidal Basin Waterloo).
If Wilbur blessed it,
It got done.
And Wilbur blessed Reform.
With perceptive fingers
On the public pulse
Wilbur held forth
About an acquaintance,
A person with wealth,
Who set out to cut his tax to zero
Just to prove it could be done.
He did, of course,
And there were others
Whose conduct mocked the system
And its ideal of taxes
Based on ability to pay.\(^8\)

How could the Tax Code let this happen?
What loopholes led to this result?
Deductions, quite legitimate,
But in larger doses
Than anyone foresaw.

The wealthy could reduce their taxes
In any (or all)
Of a number of ways.
Not the seedy, greedy shelters,
No beaver pelts or almond groves,
Just deductions and exclusions,
Pure and simple,
And without limit.

Consider, for instance,
A person of means
Whose sole source of income
Was interest on bonds.
If all of the bonds
Were municipal issues
The tax would be zero
Even though
The interest was millions.
And interest paid on money borrowed
Might exceed current income
If one borrowed to invest
In growth stocks
On a grand scale.

An owner of property
 Might give it away
And satisfy charitable urges
While deriving a greater benefit
Than by selling it for cash.9
And donations large and regular
Could wipe out all income
Under a rule enacted
For a Philadelphia nun.10

Hence Reform.
To shore up the system
And enhance the ideal
Of contributions to the fisc
Proportionate to the resources
Of the contributor.

No more charitable deductions without limit.
No exception for the nun.
New restrictions
On in-kind donations.
And limits on deducting interest
On money borrowed to invest.11

As a second line of defense,
Assurance that all would pay
Something,
A Minimum Tax
On so-called "preference items."12
This was not the end
But just the beginning.
Three times since,
"Reform" has been invoked
To cast out demons
And rebuild trust.
To curb the abuses
And broaden the base.13

Which brings us again
To the question of names
And whether
Reform was real.
Why did they need to
Reform again
When they just got through
Reforming?

Was Reform an Ideal
Or a cynic's contrivance
To foster a scheme
Of bargaining benefits
For interest-group lucre?14

The threat of reform
Is powerful leverage,
And those being threatened
Will certainly pay.
But such is the nature
Of representative democracy
(Until reform reaches
to campaign finance).

And the task begun
Was incomplete.
The problem of shelters
Was clear.
And getting worse.
Reform.15
They first attempted
To curtail the shelters
By limiting write-offs
To actual risk.
But the rule had exceptions,
And the shelters persisted
As stubborn reminders
Of the work that remained.
Reform.\textsuperscript{16}

And then the big Showdown,
The Biggest Reform,
Reform of a magnitude
Not before known.
Tax shelters demolished,
Deductions repealed,
A quantum leap forward
Toward the Ideal.
Reform.\textsuperscript{17}

Along with the shelters
Fell personal write-offs—
For sales tax
And interest
On personal debt.\textsuperscript{18}

But, alas, disappointment.
A lower rate
Times a broader base
Equaled little change for most,
Who must have expected
To pay less
When Congress caught
"That fellow behind the tree."\textsuperscript{19}

What's in a name
Indeed,
If Reform
Means more of the same.
And if desire to catch
The fellow
Behind the tree
Fuels the engines
Of Reform,
Will the engines stall
When we discover
That fellow
Behind the tree
Is Me?

Or were they really onto something
Five and twenty years ago?
A small step
On a long road
But a giant leap
Toward an Ideal,
Maybe unattainable
Given the constraints
(Political and Economic,
Fiscal and Practical),
But still an Ideal.
Reform.

A Sisyphean boulder,
Perhaps.
A system doomed
To perpetual Reform
Because of its nature
And the nature of
The political process.

But a goal nonetheless.
A consciousness raised
By naming the task.
Reform.
Dateline Washington
Associated Press
IRS reports nearly eight hundred
Paid no tax in 1990
On incomes in excess
Of two-hundred-grand.\textsuperscript{20}

Plus ça change,
Plus c'est la même chose?

Reform.

NOTES


Later this year, I shall present to Congress a major program of tax reform. This broad program will re-examine tax rates and the definition of the income tax base. It will be aimed at simplification of our tax structure, the equal treatment of equally situated
persons, and the strengthening of incentives for individual effort and productive investment.

*Id.* at 158 (quoting from Public Papers of the President, John F. Kennedy, 1962 (Government Printing Office 1963)). The President's proposal ultimately emphasized rate cuts more than reforms, and most of the reform provisions were left out of the package that was ultimately enacted in 1964. *See id.* at 155-65 (discussing events leading to Revenue Act of 1964).

7. *See id.* (quoting speech by outgoing Treasury Secretary Joseph Barr).

9. Assume, for example, that Taxpayer owns an asset worth $500.00 for which Taxpayer paid $100.00. A sale of the asset for cash would yield a gain of $400.00 (assuming a 70% rate). This would leave the Taxpayer with $220.00 after tax ($500.00 of sale proceeds less $280.00 of tax). Compare the result if Taxpayer were to contribute the asset to charity and were allowed a deduction for its fair market value. The deduction would result in a tax benefit to Taxpayer worth $350.00 ($500.00 times 70%).

10. Prior to 1969, charitable contributions were deductible only to the extent that they did not exceed 30% of the taxpayer's adjusted gross income. An exception provided that the limitation did not apply to taxpayers whose charitable contributions plus income taxes exceeded 90% of taxable income for 8 of the 10 years preceding the tax year in question. This provision reportedly was enacted to benefit a nun who had inherited an income interest in a trust and paid all the income to her order pursuant to a vow of poverty. Representative Mills described the origins of the "Philadelphia Nun" exception in his remarks to the Committee of the Whole House. *115 CONG. REC.* 22,562-63 (1969). As Representative Mills explained, this well-intentioned exception enabled many wealthy taxpayers to wipe out their income entirely through charitable contributions of appreciated assets. *Id.* The exception was originally enacted in 1924. *See Revenue Act of 1924,* Pub. L. No. 68-176, § 214(10)(E), 43 Stat. 253, 271 (stating exception to charitable contributions).


14. Professors Doernberg and McChesney suggest that more frequent tax reform legislation provides a way for legislators on the tax-writing committees to derive larger campaign contributions from interest groups seeking to prevent the elimination of favorable tax provisions. Richard L. Doemberg & Fred S. McChesney, On the Accelerating Rate and Decreasing Durability of Tax Reform, 71 MINN. L. REV. 913, 933-45 (1987).


