REFLECTIONS OF A FORMER NTA PRESIDENT

Frederic W. Hickman, NTA President, 1989-1990

MY ASSIGNMENT IS "REFLECTIONS," AND THAT is pretty open-ended. It's also dangerous because I am 80 and I have a lot of reflections. Reflections tend to verge on pontifications, and I'll try to be careful.

I became a full-time tax lawyer in 1956, 51 years ago. The income tax was only 43 years old then. So I have been on hand more than half of its existence.

Tax lawyers don't think a lot about the grand scheme of taxation—just the rules. I was no exception. I did think a lot about tax legislation because my law firm was one of the original tax firms in the country; and we had a very active legislative practice, both federal and state, at a time when there were maybe 20 or so lawyers on that beat. Today there are hundreds of tax lobbyists. In 1969 I was a principal draftsman of the Illinois income tax, which was drafted in our office because the State of Illinois had no income tax professionals and had to go outside for expertise. I found that legislators were not much different from lawyers in not thinking much about economics.

I was an economics major in college, but it didn't help a great deal. What education I have in tax economics is thanks to the great staff at the Treasury's Office of Tax Analysis in the years 1971 to 1975.

I became acquainted with the National Tax Association in the 1970s through Larry Woodworth, who was the immensely talented and highly respected Chief of Staff of the Joint Committee on Taxation. I had known Larry in my pre-Treasury days and I worked closely with him during the Treasury years. He was the single most influential person in the field of federal tax legislation. He was also a President of the NTA.

At the time, Larry and Stanley Surrey were ringleaders at the NTA. Stanley, too, was president of the NTA in the 1970s. For those too young to know about Surrey, he was the Number One, original tax activist. He was very influential because he was brilliant and articulate and unrelenting. He had two "bully pulpits" - as tax professor at Harvard and as the first Assistant Secretary of the Treasury for Tax Policy.

Larry persuaded me to speak at the NTA and to become a member when I left the Treasury. The NTA Journal index shows my first NTA paper appeared in 1975. In 1977 I presented a paper that appears in Volume 30 of the *National Tax Journal*. It dealt with Treasury regulations and the desirability of having regulations that spell out principles, not just rules. I reread the paper in preparation for this appearance. I could give it again with very little change.

That thought leads to a "reflection"—an overarching reflection—that although there have been many tax changes, the more things have changed in the tax arena, the more things have stayed the same. We're still talking about the same problems.

That goes for the NTA as well as the tax law.

In 1989, when I became president of the NTA, we were concerned with dwindling active membership. We are still concerned.

I was particularly concerned that NTA's interdisciplinary character was evaporating. Lawyers, accountants, and corporate officials were disappearing.

When I first joined NTA in 1975, there had been a smattering—a healthy smattering, but a smattering nonetheless—of tax lawyers, accountants, and corporate tax vice-presidents. In 1989, when I became president, there were only a few left.

Looking back, today, I wonder if my early years in the 1970s were atypical. Tax reform was a live subject then. Woodworth and Surrey were probably the two most important reform voices —Surrey on the outside, Woodworth behind the scenes. The lawyers, accountants, and corporate types may have become active in the NTA just to keep tabs on those two men.

I thought a major factor in the disappearance of private sector persons was that economic discussions had come to be couched in language incomprehensible to noneconomists. I said so in my presidential address that year. I was accused of scolding.

But, in fact, I had been careful to say that noneconomists were equally at fault. Economists, lawyers, accountants, and corporate tax officials had all tended to become "niche-niks"—each was preoccupied with his own small practice niche and unaware and uninterested in the larger picture. This was true in my own law firm. My current reflection is that that is all unfortunate, but probably inevitable and irreversible, at least in my lifetime. We have to recognize it and deal with it, but it is useless to worry about it.

Even in this sad state, however, it is still important for all disciplines to be as comprehensible as possible to others. Otherwise there is no hope at all.

THE *NATIONAL TAX JOURNAL*

My impression is that the *Journal* is much improved in comprehensibility. The summaries and abstracts are a good idea, although they, too, would profit from tougher editing.

I don't keep the *National Tax Journal* on my bedside table, but I do look at each issue and there are usually articles that I read, or at least peruse. I especially like the book reviews. Eric Toder's review of Mike Graetz' book in the December 1997 issue, for example, is so thoughtful and well written that I was tempted to think I didn't need to buy the book.

More recently, the article in the current issue, June 2007, on state and local pension funds by my co-panelists, Fred Giertz and Leslie Papke, is what I would like to see much more of. It is a timely, thorough, incisive, and comprehensible and it deals with an important current problem.

As an organization, the NTA is not equipped and cannot aspire to become a public spokesman on tax issues. But it is a resource for those who do speak. The Brookings Institution, the Urban Institute, the American Enterprise Institute, the Tax Policy Center, Cato, the Heritage Foundation—all offer a stream of comments in public forums. NTA produces a product that helps keep them honest.

In non-tax areas there are organizations designed to assist writers in making their divergent views available for publication in newspapers and other media. The Washington Writers group is an example. Perhaps that is an area in which NTA might perform a useful service not only to its members, but to the public.

NTA MEETINGS

I have the impression that many presentations at NTA meetings are still narrow and technical. That may be because, for academics, that kind of presentation is necessary to qualify for academic credit and travel reimbursement—a fact of life.

The original intent in instituting the Spring Symposium was to discuss current political tax developments in a nonacademic way. The intent seems to have slipped and attendance by nonacademics has slipped commensurately. Perhaps there should be refocus on the original intent.

THE ANNUAL MEETING

The Annual Meeting is another kettle of fish.

The concurrent sessions skip from subject to subject and consist of fragments loosely related and seldom tied together. More and more of the presentations are what I called in my presidential address, "statistical etudes"—just explanations of how the presenter went about finding and manipulating data. I come away glassy-eyed and completely at sea about what conclusions might be drawn. I can't believe that even the most mathematical of economists can really digest the equations as they flash on and off the PowerPoint screen. All this is not to deny the importance of methodology. But it isn't important if it didn't find anything useful —didn't lead to any conclusion.

I suggest that speakers be requested (I would say "directed" if I thought that would be heeded) to hold back the formulas, spreadsheets, and graphs and to explain, first, *in words,* what factors they are attempting to take into account, how they went about it—in general, what conclusions they draw and why they feel the conclusions are sound or not. If they can't draw conclusions, maybe the study is not worth talking about in the first place. Although *sometimes* – maybe not often—it is an important conclusion that the data don't lead to any conclusion. The conclusion is, "no conclusion."

The formulas and detailed numbers would be distributed in advance to the commentators, who could then comment on the soundness of the methodology. The audience could see the data in post-presentation handouts or on the presenter's Web site.

The complete study, with all the equations and data, would be published in the *Proceedings*, and the author would still get academic brownie points, plus a travel allowance to the Annual Meeting, where he "presented" his paper.

A further, related suggestion is that for the next Annual Meeting—as a trial—we announce that there will be neither PowerPoints nor overheads. I think we would get not only a better presentation, but the audience would concentrate on the speaker, and he on them, and, as they say, "Attention would be paid." (There has developed a large literature on the hazards and limitations of PowerPoint presentations, beginning with the seminal criticism by Yale professor, Edward Tufte (2003), first in pamphlet and then in a book entitled, *The Cognitive Style of PowerPoint*.)

This leads to another, big question, raised from the floor at yesterday's luncheon, "How can the NTA participate and best contribute to public understanding and action?"

We should, of course, continue to do what we have being doing, albeit with improvements of the kind suggested above.

But we can, I think, do a better job at our meetings and in the *Journal* at pulling subjects together.

We could as an organization—in addition to our present formats—focus on selected major topics and treat them with both more breadth and more depth at our meeting and in the *Journal*. Present them so that the audience will go away feeling that they have had a good survey of the entire subject.

We—the Board, with help—could get up a list of major issues and then make them—one after another—a theme of a meeting or an issue of the *Journal*. We might have a "theme of the year" —a part of the Annual Meeting or an issue of the *Journal* could be built around the theme. We have done some of that before, but not in a systematically major way.

POSSIBLE TOPICS

We would want the topics to be timely—politically timely—something currently "on the stove," warm, if not hot.

The topics should be big, but not cosmic.

With properly selected "themes," the meetings would be more likely to get the attention of non-economists (and economists, too) than a themeless potpourri of fragments.

Here are some suggestions—to do and not to do:

Simplification Out

Too cosmic. Tax reformers always want simplification. It has been discussed *ad nauseum*. It never happens. The actors know how to do it if they want to and they seldom want to.

Consumption Taxes

Out, at least for now. Not really on the stove, notwithstanding much talk and many op-ed pieces. Too many transition problems. The road to a consumption tax looks more like a journey for Don Quixote, than for the NTA.

Taxation of Foreign Income Out

Important but too narrow. Capital export neutralists have been skirmishing with capital import neutralists for decades. The theoretical issues have been explored in depth and no great truths have emerged or been agreed on. Pragmatism, not theory, is the order of the day.

Tax Shelters

Out. They're still around, but much less so. In the case of individuals, the reduction in top marginal rates reduced incentives and did more to curb shelters than any statutory rule or the IRS could ever achieve.

Integration of the Corporate and Individual Income Taxes

Out. This was a hot topic 30 years ago, and for a short while it looked as if something might actually be done. But not now. It could come back. Maybe some day.

Budget Deficits and Starving the Revenues

A promising topic. Milton Friedman was an alumnus of Treasury's Office of Tax Analysis. He had well-formed tax views. But in later years he became a "tax hedgehog," so to speak. He knew "one big thing": hold the government sector down. He said Congress would spend all the revenue it had and then would keep spending until it perceived disaster looming. The only way to hold Congress back, he said, was to starve the revenue, which meant holding taxes down. As a result, he came to favor almost any proposal for a general tax cut.[1]

Conventional wisdom now says that's what Reagan was doing all along, when he went for tax cuts that produced huge budget deficits. Friedman was in and out of the White House often in the early Reagan days, but Reagan never admitted he was pursuing the Friedman strategy.

Does starving the revenues work? Or does it just make things worse? That seems to me a big, basic question. Maybe the actors have now come around to the view that deficits just don't matter at all and they don't need to worry about looming disaster.

This leads into the question of whether deficits are responsible for the falling value of the dollar. The value of the dollar is now, and will likely continue to be a huge economic issue in the next few years. Some newspaper accounts, and some economists' comments, suggest that the pressure on the dollar would largely disappear if only the budget deficit were eliminated. That seems wrong to me and to some economists I've talked to. But I have yet to see a sensible analysis of this point in the public press. Maybe this issue goes beyond the turf of public finance economists, but I don't think so because taxes and deficits are related. Economists should get to it before the demagogues.

The Effect of Tax Cuts

Maybe. Do tax cuts have a feedback effect? If so, to what extent and under what conditions? This is a very fundamental issue, always hot – much heat but little light.

Most of us are sick of the issue, which has been ongoing for 20-plus years. No research is or is likely to be conclusive. Substantial segments of the Congress and probably the public have made up their minds, one way or the other, and the facts will not sway them. But have we reached the point at which the cumulative evidence is robust enough to be persuasive if presented in a fashion that the general public could understand? I suspect not yet. But if and when the time comes, a good survey of the evidence would be an important contribution.

We used to worry about taxes destroying investment incentives and about "crowding out" the savings available for investment. It hasn't happened. There has been plenty of investment. Some say the demand for investments today exceeds the supply of good investments. Budget deficits have indeed reduced domestic savings, but foreign savings poured in. But they may pour out again, or, at least, stop pouring in. That takes us back to the question of the dollar's value. The interrelation of all these factors looks to be one of the biggest unexplored issues of the immediate future.

Payroll Taxes

A topic ripe for re-exploration. Payroll taxes get very little attention, but for millions they are the largest taxes paid. Pending proposals would raise the top limit. Has the time come that we need to rethink the role of payroll taxes? In the case of Social Security, payroll taxes were sold originally as premiums for retirement annuities to be received. But at upper-income levels, the premium value exceeds the annuity value; and at lower income levels, the annuity value exceeds the premium value (vastly exceeds it, when the earned income credit is taken into account.) And the married-single "inequity" can be great here, too. This looks to me like a major redistribution of incomes. Why is it good to do that with a payroll tax? In the case of Medicare, why should a job-related payroll tax be a funding device at all?

Health Insurance

This is a hot item. Big, but not too big. The problem is larger than taxes, which are only the funding medium. But taxes are important and we should stick to that aspect.

Jane Gravelle (2006) says even though the tax advantage of employer plans discriminates against individuals not in such plans, we don't want to get rid of employer plans because they are the primary device for risk pooling. But they are perverse in regard to the population as a whole because they drain off the best risks—adults, not too old, healthy enough to be working—leaving the remainder, most of the population, with higher average risks. The tax subsidy makes it worse because it promotes more employer plans, taking more good risks out of the non-covered pool.

ESTATE AND GIFT TAXES

Federal estate and gift tax rules are up for grabs in the next three years. I have attended several seminars on the subject and get the impression that economists don't really have clear convictions on the subject. They mostly talk about whether they are taxes on capital and whether they have a significant effect on GDP; and whether it is the decedent or the heir who is most impacted. Estate and gift taxes are not a major revenue item and not surprisingly they don't find much effect on GDP. That alone is relevant, of course.

But these are not the most controversial aspects today. The hot political issue—the social issue, if you will—concerns the growing disparities in income and wealth across the entire population. What role do these taxes play in that regard? And what role do they play in charitable giving?

Given the 2010 "drop dead," date this could be an exceptionally timely issue.

STATE AND LOCAL TAXES

Maybe the most important work of the NTA lies in the field of state and local taxation, if only because that field is more neglected elsewhere. The whole area is hot because states are perennially scrounging for revenue.

Local governments are circumscribed by the fact that they cannot create money. In a global, mobile economy it is increasingly difficult to hang on to a tax base. Real property is about the only tax base that can't move, and it is under extra pressure because of that. Legislatures are more apt to be dysfunctional.

NTA members have contributed much good research in this area. Tax incentives for business, property tax and sales tax problems, education—all have been studied in-depth and deserve ongoing attention. Two big emerging areas are gambling and the Internet. And they each seem to be good "theme" candidates.

We had some gambling presentations on this program, but, again, they were just fragments and I wasn't sure what the conclusions were.

Local attempts to tax Internet operators and attempts to tax Internet sales need to be disentangled and treated as separate issues. The Internet sales issue seems to be a genuine and growing threat to state revenues.

Note

[1] See Friedman (1978, 1981).

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