[Tulsa Law Review](https://digitalcommons.law.utulsa.edu/tlr)

Volume 18 | Number 4

Summer 1983

President Reagan as a Tax Reformer

Ljubomir Nacev

FORUM

PRESIDENT REAGAN AS A TAX REFORMER

Ljubomir Nacev*

If it is not too shocking to ask, I wish to posit the question of whether President Reagan is a tax reformer. This is not to debate the merits of his ideas with regard to taxation, but simply to raise the initial question of whether or not he is a tax reformer. The question may be answered in the affirmative, but only if one looks at the beginning of his administration. President Reagan's brand of tax reform was not of the liberal stripe, but it was nevertheless tax reform in the sense that it challenged the current norm of tax legislation as well as the basic structure of our tax system.[1] President Reagan's initial efforts in the tax field attempted to resolve structural deficiencies in the tax law morass that his predecessor, Jimmy Carter, had articulated as our national disgrace.[2] Reagan's program was more tax reform than we have seen in recent years, at least since the 1976 and 1969 Tax Reform Acts in the

---

* Assistant Professor of Law, University of Tulsa College of Law; B.A., 1973, Johns Hopkins University; J.D., 1976, John Marshall Law School; LL.M., 1978, New York University School of Law.

1. Tax reform is above all a political concept. For a traditional, liberal definition, see T. REESE, THE POLITICS OF TAXATION xi-xvii (1980).

A more cynical, and perhaps politically more seasoned, view was voiced by Sen. Russell Long (D-La.), former Chairman of the Senate Finance Committee, who defined tax reform as a change in the tax laws that the proponent favors. That is, your deduction is a "loophole," whereas my same deduction is an equitable application of the tax laws. As Sen. Long has put it, "Don't tax you/Don't tax me/Tax that fellow behind the tree." *Id.* at xi (citing *The Thoughts of Chairman Long, Part I: The Politics of Taxation*, 10 TAX NOTES 199 (1978)).

2. In accepting the Democratic Party's nomination for the Presidency, Mr. Carter made the following observation and promise:

> It's time for a complete overhaul of our income tax system. I still tell you it's a disgrace to the human race. All my life I have heard promises of tax reform, but it never quite happens. With your help, we are finally going to make it happen and you can depend upon it.

32 CONG. Q. ALMANAC 851, 852 (1976).

liberal tradition,[3] which ironically enough were enacted during Republican administrations.[4]

It may be a truism to note that although presidential candidates almost invariably promise tax reform prior to election, upon assuming office they soon discover that while the issue of tax reform makes great campaign sloganeering, it is wrought with political liability as interest groups become affected. Tax reform is more appealing as political rhetoric than as an agenda for political action. Presidents, therefore, are just as reluctant to propose tax reform as Congress is to vote for it. Nonetheless, the early Reagan administration was committed to its brand of tax reform, a key element in its economic package, irrespective of political consequences. Unlike his predecessors, President Reagan, at least at the start of his administration, vigorously followed through on his campaign rhetoric. More than that, not since President Kennedy had a president personally involved himself in the tax legislative process as intensively and concretely as President Reagan did.[5]

Upon assuming office, President Reagan submitted a "lean" tax proposal to Congress intended to encourage productivity and capital formation. The proposal called for a thirty percent across-the-board cut in tax rates and for business write-offs in the form of accelerated depreciation deductions.[6]

The rate cut had an initial effect of reducing the top tax rate from seventy percent to fifty percent,[7] thereby challenging the very notion of progressivity, a cardinal concept, at least nominally, in our tax system.[8] Reagan's proposal also provided tax relief in the form of rate reductions to all taxpayers, rather than tax relief through expansion of the existing system of tax deductions and exemptions, the typical form of tax relief emanating from Capitol Hill. By reducing the rates of all taxpayers, the Reagan proposal adhered to a principle of liberal tax

3. *See* T. REESE, *supra* note 1, at 204-08.

4. Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487 (Nixon administration); Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (Ford administration).

5. *Reagan Lobbies Public on Tax-Cut Proposal*, DAILY TAX REP. (BNA) G-3 (July 27, 1981).

6. On Feb. 18, 1981, President Reagan announced "A Program for Economic Recovery," in which he detailed his tax proposals. The President called for individual tax rate reduction and an accelerated cost recovery system for investments.

H.R. 2400, 97th Cong., 1st Sess. (1981), embodying the administration's tax proposals, was introduced in the House on Mar. 10, 1981 and referred to the Ways and Means Committee.

7. Tax rates were to be reduced from their then applicable range of 14-70% to a new range of 10-50%. *Id.* § 101(a).

8. *See generally* B. BITTKER, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶ 3.5.3, at 3-50 to -53 (1981) (discussing history and theory of progressive tax rate in U.S.).

reform. That principle holds that the passage of deductions as a tax relief measure should be avoided since such deductions usually confer their greatest benefit on those who are most affluent, thereby eroding the tax base and passing on the tax burden to the less-affluent, who do not benefit from such deductions.[9] The rate cut proposal was not business-as-usual on the tax legislative front.[10]

An additional element of reform in this one-shot rate reduction was that the size of the tax relief precluded future tax cuts through tax deductions which would further erode the tax base. To the extent that congressional tax legislation had deteriorated to a catch-as-catch-can affair unduly influenced by special interest lobbies,[11] such regression would no longer be possible since the revenue could absorb no further tax cuts.[12] The effect would be to neutralize the special interest lobbies and their pernicious effects on a leadershipless Congress.[13] Intentional

---

9. T. REESE, *supra* note 1, at xii.

10. In contrast, more new tax deductions and tax expenditures eroding the tax base were enacted in the tax system under the preceding Carter administration than in any prior four-year period. Surrey, *Our Troubled Tax Policy: False Routes and Proper Paths to Change*, 13 TAX NOTES 179, 190 (1981).

11. *See* Surrey, *supra* note 10, at 185-86.

Since everyone is directly affected by taxes or benefits from tax deductions or exemptions, it is not surprising that the tax legislative process "is more heavily lobbied than any other policymaking process in Washington." T. REESE, *supra* note 1, at 200.

On the role such interest groups and constituencies play in the tax legislative process, see *id.* at 105-10, 159 & 186.

12. Sen. Robert Dole (R-Kan.), Chairman of the Senate Finance Committee, has argued that such tinkering with the tax laws was possible because of "bracket creep" due to the sharp increase in inflation during the 1970's, which in turn "enabled Congress to constantly rearrange the tax burden and grant special privileges [to special interest constituencies] while it claimed to be 'cutting taxes.'" Dole, *Budget-Making in the Senate*, Wall St. J., Feb. 17, 1983, at 29, col. 1.

13. The former Assistant Secretary of the Treasury for Tax Policy from 1961 through 1969, Stanley Surrey, describes the effect of lobbyists as follows:

> The disintegration in the process of consideration of legislation has produced fertile ground for lobbyists. In the tax field, the business lobbyists—plus a few powerful Congressional personalities—have moved with skill and vigor to make the most of the legislative chaos. The goals of these lobbyists have become the stabilizing force that now shapes the final tax legislation. All observers of the legislative scene have underscored the considerable skills and strength of the business lobbyists. Even the reforms that Common Cause and others sought as a means of strengthening the legislative process have been turned to advantage by the business lobbyists. Thus, "open mark-up sessions" designed to flood the committee process with sunlight have only flooded the committee rooms with business lobbyists. Those really conversant with committee operations have readily stated their view that the open sessions have meant a decline—sometimes turning into disaster—in committee deliberation.

Surrey, *supra* note 10, at 185 (footnotes omitted).

An even more strident view was voiced by former Rep. James Burke who described a tax bill's mark-up session as follows:

> Finally, I condemn in the strongest possible terms the mephistic atmosphere which pervaded the committee meeting at the time this legislation was under deliberation. Never in my 18 years on this fine committee have I ever witnessed such detestable and puerile

or not, the effect of the Reagan proposal was not bad tax reform coming from a conservative Republican.

The second part of the Reagan proposal, the accelerated business write-offs, had the impact of measurably reducing the effective corporate tax rates.[14] This proposal was a radical departure from another basic feature of our tax system, since it practically, if indirectly, eliminated, at least for capital intensive industries, the double taxation of corporate profits.[15]

Thus both parts of the Reagan proposal represented a departure from conventional tax legislation. The proposal challenged and reformed the norms of the tax laws, even if those of the liberal stripe would not view it as true reform from their perspective. The question of the merits of the direction of the proposal should not detract from the fact that the proposal was an incident of political activity challenging the stability, and hence the conservatism, of the current system.

The metamorphosis this streamlined tax package underwent on its way to enactment as the Economic Recovery Tax Act of 1981 suggests that President Reagan's role as a tax reformer was short-lived. In the ensuing congressional battle over the shape and direction of the final tax package, innumerable "add-ons" were attached to the Reagan proposal by both sides of the aisle in an attempt to attract the undecided swing votes. The result was the Christmas tree legislation of the old, conventional mode of tax legislation. The final version of the bill con-

> conduct on the part of special interest lobbyists. The systalic chants and cheers emanating from those fainéants prompted more than one member to protest the conditions under which the session was held. Their odious conduct lends a special and somehow appropriate aroma to this unfortunate legislation.

H.R. REP. No. 1748, 95th Cong., 2d Sess. (1978) (dissenting views of Rep. Burke on H.R. 14159, relating to employment status).

Reese is less disenchanted and argues that lobbyists perform a valuable service in providing quick and ready information and expertise. A Joint Committee on Taxation staff member is quoted by Reese:

> Some of the lobbyists are very helpful. If a member [of Congress] asked you a question you didn't know the answer to, you could not spend three weeks researching it. You call a lobbyist, even someone on the opposite side, and they could explain it to you. They would be honest, even if it hurt them because they knew that they were going to deal with you for a long time.

T. REESE, *supra* note 1, at 70-71.

14. *See, e.g.*, *Free Corporate Income*, Wall St. J., Oct. 20, 1981, at 22, col. 4; Arenson, *The Quiet Repeal of the Corporate Income Tax*, N.Y. Times, Aug. 2, 1981, § 3, at 19, col. 1.

15. *See generally* B. BITTKER, *supra* note 8, ¶ 2.5.1, at 2-19 to -20 (describing "double taxation" of corporate income). This effect, by the way, rendered unnecessary President Reagan's recent "unauthorized" call to abolish the corporate tax, except to the extent it was meant for selective consumption by certain political ears. *See* Jaroslovsky, *Corporate Income Tax Should Be Ended, Reagan Suggests, Later Hedging a Bit*, Wall St. J., Jan. 27, 1983, at 2, col. 3; *White House Denies Studying End to Corporate Taxation*, DAILY TAX REPORT (BNA) G-9 (Jan. 27, 1983).

tained more than two hundred amendments to the Internal Revenue Code. President Reagan accepted these "sweeteners" in order to insure the passage of his own original proposal.[16]

Mr. Reagan's capitulation as a tax reformer was helped along by the enactment of the Tax Equity and Fiscal Responsibility Act of 1982. The revenue enhancers which comprised this tax legislation had their origin in the Treasury Department,[17] the traditional proponent of tax legislation in the executive branch.[18] This piece of legislation was traditional also in its outlook, even paring down the accelerated business write-offs of President Reagan's original proposal of 1981.[19]

President Reagan began the second half of his term as president with a few stirrings in the tax reform direction suggesting that perhaps he had found his old form again. For a brief moment in early January 1983, the skies were filled with trial balloons suggesting major restructuring of our tax system. It was said that President Reagan was "intrigued" by the idea of a totally new tax system that "is fair and equitable, less complex, raises the same amount of revenue and lowers marginal tax rates."[20] The State of the Union address would have been the first step in an effort to make these "sweeping" changes part of the national agenda for the next few years.[21] The old rhetoric was back. Alternatives, such as a consumption tax, were proposed.[22] So was a flat-rate tax system.[23] But listening closely enough, one could hear in

16. *See Reagan Offers New Tax Plan to "Outsweeten" Ways and Means Bill*, DAILY TAX REP. (BNA) (July 24, 1981); Treas. Dep't, *Comparison of HR 3849, Senate Tax Bill (HJ Res 266), House Ways and Means Committee Bill, and Hance-Conable Substitute Proposal, id.* at J-26 to -35.

For the legislative history of ERTA, see JOINT COMM. ON TAX'N, GENERAL EXPLANATION OF THE ECONOMIC RECOVERY TAX ACT OF 1981, at 3-4 (Comm. Print 1982).

17. *See Treasury Provides Reform Plan Blueprint*, 14 TAX NOTES 511 (1982) (setting forth full text of all tax-related portions of Treas. Sec. Donald Regan's testimony before the Sen. Finance Comm.).

18. *See* T. REESE, *supra* note 1, at 13-39 (discussing tax policymakers in the executive branch).

19. Scheduled accelerations of depreciation effective for post-1984 years were repealed. *See* I.R.C. § 168(b)(1) (Supp. V 1981), *amended by* The Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 206, 96 Stat. 324, 431.

20. Bacon, *President Weighs Simpler Tax System As Proposal for His State of Union Speech*, Wall St. J., Jan. 12, 1983, at 2, col. 3 (citing administration official).

21. *Id.*

22. Bacon, *Feldstein Indicates Reagan Is Studying Taxing Income That Is Spent, Not Saved*, Wall St. J., Jan. 20, 1983, at 4, col. 2; *see Feldstein Links Tax Reform and Consumption Taxation*, 15 TAX NOTES 347 (1983) (setting forth excerpts from a Jan. 19, 1983 address by Martin Feldstein, chairman of the President's Council of Economic Advisers, entitled "Tax Reform and Capital Formation").

23. Bacon, *Simpler Tax Laws Are a 'Top Priority,' Reagan Says: Flat Rate Included in Study*, Wall St. J., Jan. 21, 1983, at 3, col. 2.

the background the old standby, the surtax, being suggested.[24]

The State of the Union address was the final capitulation by President Reagan as a tax reformer. No bold alternatives were proposed. Instead, the government would provide incentives to spur economic and myriad other social developments, such as, *inter alia*, incentives for economic enterprise zones and for higher education.[25] As in the past, these objectives were to be funded not directly but indirectly through tax incentives, also referred to as tax expenditures—the conventional tax incentive policy perfected during the Carter administration.[26] There was also nothing new in the proposed trigger-tax (surtax?) for fiscal 1986 and beyond to be implemented if the deficits were too high.

During the address, President Reagan also declared a freeze on federal spending—direct federal spending, that is.[27] Indirect spending through tax incentives or expenditures, which in effect represent governmental outlays and thus contribute to the budget deficits just as much as direct appropriations, will, however, continue unabated.[28]

Following the fate of his predecessors in office, President Reagan, after a valiant attempt at tax reform, has embraced the mainstream and is otherwise politically exhausted.[29]

A similar fate befell President Carter, though much sooner in his

24. Bacon, *Reagan Weighs Tying Tax Rises To Budget Gaps*, Wall St. J., Jan. 11, 1983, at 3, col. 1.

25. *See* JOINT COMM. ON TAX'N, SUMMARY OF ADMINISTRATION'S REVENUE PROPOSALS IN THE FISCAL YEAR 1984 BUDGET PROPOSAL (Comm. Print 1983).

26. Surrey, *supra* note 10, at 190.

27. *Standby Taxes, Budget Freeze Proposed by Reagan*, DAILY TAX REP. (BNA) LL-2 (Jan. 25, 1983).

28. On the concept of tax expenditures, see S. SURREY, W. WARREN, P. MCDANIEL & H. AULT, FEDERAL INCOME TAXATION, CASES AND MATERIALS 239-57 (1980).

A bill to impose budgetary constraints on the growth of federal tax expenditures was introduced, but not passed, in the 97th Congress by Senate Budget Committee member Nancy Kassebaum (R-Kan.). The Tax Expenditure Limitation and Control Bill, S.193, 97th Cong., 1st Sess. (1981), was intended to revise congressional procedures by allowing much closer coordination among committees in order to better scrutinize and control tax expenditures. Under this new procedure, new tax expenditures would have to be approved by the Senate and House tax-writing committees, as well as by the respective authorization committees *and* the budget committees. According to its sponsor, the bill was an attempt to take the first step in asserting budgetary control over tax expenditures. Under this bill, tax expenditures would not be treated by the legislative process as a tax cut but rather as an alternative to direct government appropriations. Query whether such a legislative procedure would be best suited to implement current calls to freeze federal spending and future tax cuts.

29. One veteran Washington political observer described President Reagan's fall from his apotheosis as follows:

> In the future, those looking back on the Reagan Administration will be struck by two things: how quickly what was termed "the Reagan revolution" was over, and how evident the seeds of its destruction were all along. . . . [H]is conquest was over by August of his first year in office, and the story of the Reagan Administration since then has

presidency. At the end of President Carter's first year in office, the Treasury Department released the results of a study to revamp the tax laws begun during the preceding Ford administration. The study advanced two specific proposals. One retained the present structure but broadened the tax base and provided, among other things, for integration of corporate and individual taxes and for full taxation of capital gains. The other proposal espoused a consumption tax based on the amount of goods and services purchased and consumed. The Treasury study was in conformity with President Carter's wish to overhaul the income tax system, a wish he had repeatedly expressed while campaigning for the presidency. Needless to say, nothing became of the Treasury study. It did not prove politically viable. On Capitol Hill, it was pronounced dead on arrival. A three-martini lunch, anyone? Or, is it just a nondeductible bologna sandwich?[30]

As President Reagan's saga illustrates, political power in the United States today rests, at least in the tax field, in interest groups representing their respective constituencies and in the Congress. This body politic provides stability and eschews changes in any form or direction. Impeded by this formidable bulwark against change, presidents have been ineffective as tax reformers.

---

been one of improvisation and reaction to outside forces (especially those within his own party) in an attempt to retake the high ground.

Drew, *A Reporter in Washington, D.C.—Sketchbook*, THE NEW YORKER, Feb. 14, 1983, at 97, 97.

30. Bittker, *Reflections on Tax Reform*, 47 U. CIN. L. REV. 185, 194 (1978) (discussing reaction on Capitol Hill to TREAS. DEP'T, BLUEPRINTS FOR BASIC TAX REFORM (1977)).