President Reagan as a Tax Reformer

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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. 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. 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
liberal tradition, which ironically enough were enacted during Republican administrations.

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.

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.

The rate cut had an initial effect of reducing the top tax rate from seventy percent to fifty percent, thereby challenging the very notion of progressivity, a cardinal concept, at least nominally, in our tax system. 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.
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).
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. The rate cut proposal was not business-as-usual on the tax legislative front.

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, such regression would no longer be possible since the revenue could absorb no further tax cuts. The effect would be to neutralize the special interest lobbies and their pernicious effects on a leadershipless Congress.

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.\textsuperscript{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.\textsuperscript{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-


\textsuperscript{15} See generally B. Britker, 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


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).


21. Id.


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
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.

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