



FROM THE CHAIR

A Renewed Call for Tax Simplification

By Charles H. Egerton*

As I write this column, President Obama's National Commission on Fiscal Responsibility and Reform (the "Fiscal Commission") has just issued its report. Although the report failed to garner the required supermajority approval of the Fiscal Commission, its recommendations have nevertheless served the salutary purpose of focusing public attention and debate on the need to reform the nation's tax laws.

The Fiscal Commission's recommendations include the elimination of a large portion of the tax expenditures that have been woven into the fabric of the Code over the years. These tax expenditures have, in part, eroded both the efficiency and fairness of the tax system and contributed substantially to the almost inscrutable complexity of today's version of the Code.

The primary objective of the Fiscal Commission was to restore fiscal responsibility to our government in a time of ballooning national debt and a looming problem with the cost of entitlements as the baby boomer generation begins to retire. However, if prior tax reform efforts are a reliable guide, implementation of all or even a significant portion of the Commission's recommendations will most likely result in a pitched and prolonged battle that can be won only with strong leadership from both the executive and legislative branches. Every tax expenditure has a vocal and well-funded constituency that will quickly assemble an army of lobbyists to protect and preserve its favored treatment under the Code. Tax simplicity, on the other hand, has no natural constituency to support its cause. For over 30 years, the Tax Section has been the only constant, vocal proponent for tax simplification.

The Fiscal Commission's focus on retooling our tax laws as a primary means for achieving its fiscal reforms presents an opportunity for the Tax Section to renew its plea for simplification of the Code. The Section has a long-standing policy of support for

simplification of our nation's tax laws. In 2009, the Section issued a white paper setting forth its call for tax simplicity, stability, and transparency. In obvious reference to the bent of Congress over the past 30 years to use the Code as a means to achieve economic and social ends, the white paper offers the following observation:

Simplicity in income taxation requires an over-arching bias against delivery of rewards and punishments through the tax system. The core, preferred approach should be an income tax base focused on the measurement of economic income, with due regard for ease of compliance, ease of administration, economic efficiency, and similar treatment for similar taxpayers.

American Bar Association Section of Taxation, *Statement of Policy Favoring Tax Simplicity, Stability, and Transparency*, available at http://www.abanet.org/tax/pubpolicy/papers/whitepaper_sopfavoringtaxsimplicitystabilityandtransparency.pdf.

As a corollary to its call for simplification, the Section also has advocated that any comprehensive overhaul of the Code should include a thoughtful and comprehensive review of the entire federal civil tax penalty regime. The Tax Section issued a white paper on this topic in 2009 (American Bar Association Section of Taxation, *Statement of Policy Favoring Reform of Federal Civil Tax Penalties*, available at <http://www.abanet.org/tax/pubpolicy/papers/>

[whitepaper_sopfavoringreformoffederalciviltaxpenalties.pdf](http://www.abanet.org/tax/pubpolicy/papers/whitepaper_sopfavoringreformoffederalciviltaxpenalties.pdf)), and has issued a number of related reports which are referenced in the white paper. The Joint Committee on Taxation also issued an excellent three-volume report in April 2001 containing numerous suggestions for simplifying the tax laws. Joint Committee on Taxation, *Study of the Overall State of the Federal Tax System and Recommendations for Simplification, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986* (JCS-3-01) (April 2001), available at <http://www.jct.gov> (Publications tab). These studies as well as numerous other published reports and recommendations provide a wealth of groundwork to support any serious effort toward simplification of the Code.

President Obama has announced that he will issue a call to Congress in the coming year to reform our tax laws, perhaps in part along the lines recommended by his Fiscal Commission. A number of leaders of both political parties have also voiced support for various aspects of the Fiscal Commission's recommendations. Although the Tax Section should not embroil itself in partisan politics as the debate begins, it nevertheless provides us with an opportunity to renew our plea for tax simplification. This will most likely be a limited window of opportunity, and I urge the Section to be prepared to add our voice to those of others who seek to achieve a simpler, fairer, and more transparent tax system. ■

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