INTERVIEW

Robert S. McIntyre

By Jasper L. Cummings, Jr.*

Robert S. McIntyre is Director of Citizens for Tax Justice (CTJ), a nonpartisan research and advocacy group that fights for tax fairness—at the federal, state, and local levels. CTJ regularly issues reports, sometimes in conjunction with other organizations. For example, in February 2014 it issued a report entitled "The Sorry State of Corporate Taxes: What Fortune 500 Firms Pay (or Don't Pay) in the USA And What they Pay Abroad—2008 to 2012."

Q Tell us how did Citizens for Tax Justice begin and what was your original role?

A When CTJ started I was not here, although I did help get it started. I was working for another tax reform group, Public Citizen's Tax Reform Research Group. The initial purpose of Citizens for Tax Justice was to deal with the property tax revolt that began in California with Howard Jarvis and Proposition 13 back in 1978. That was kind of a sad story, at least from our point of view. Jerry Brown was governor then, his first round, and they had a huge problem in California with property taxes. Home values were going up so rapidly and business properties were not going up so rapidly. Over the space of about three or four years the California property tax, which had been about two-to-one business versus individuals, flipped and went two-to-one individuals versus business. California lawmakers could not solve the problem without changing the law. They could, and did, cut the property tax rate, but it still left homeowners paying a lot more. So they proposed a bill in the legislature that would have adopted a classification system, which means they would have had a different rate on people versus businesses to try to keep the tax ratios where people had liked them. The bill failed by one vote in the California legislature. A lot of people blamed Jerry Brown for not getting the votes together because his enthusiasm for solving the problem was low.

So when the bill failed, then came Prop. 13. Homeowners were kind of desperate, so most of them voted for it, and that was the end of the California's high-quality public school system eventually. It had been among the best in the country; now it is around the bottom.

Anyway, some of the public employee unions and the do-good groups said, "Well, (a) we have to keep this from spreading and (b) Jarvis is coming back the next year to go after the California income tax." So that is how CTJ got started. In the summer of 1979, polls showed that California voters were two-to-one in favor of Jarvis's enormous income tax cut (called Proposition 9). CTJ helped run a campaign against the income tax cut, in which we pointed out a number of things about the income tax that were different from the property tax: (a) the California income tax was progressive, with lower rates on middle incomes and lower incomes, and higher rates on the wealthy; (b) it was indexed for inflation, unlike the property tax, and thus had not been going up on most people; and (c) it paid for a whole bunch of public services that people liked. This campaign was a big success for us. In November, Jarvis's income tax proposal lost by a two-to-one margin.

In 1980, Ralph Nader and I had our first falling out, over nothing to do with policy or anything, but I found it annoying. So I decided to call up Dean Tipps, who was running Citizens for Tax Justice at the time. I said, "I'm thinking about changing jobs. Would you like me to work for you?" Dean was pleased to hear that for some reason, and so CTJ is where I've been ever since the fall of 1980. CTJ was focused on state tax issues at the time, but when I came my specialty was federal, and so we added that component. I arrived at CTJ just in time to see Ronald Reagan's big tax cuts adopted in 1981. We almost had it beat. It would not have passed until John Hinckley showed up. Reagan handled the assassination attempt very well. He remembered a lot of good old movie lines. And so, his tax cut passed. And, as it moved through Congress, it turned into a free for all for corporate tax breaks.

That was quite disappointing, because I actually thought I had done a really good job explaining why Reagan's tax proposals were bad. But then fate intervened. Soon after that, however, in the fall of 1981, things started to turn around. Congress had overreached in the 1981 tax cut act and passed something called "safe-harbor leasing," which basically let corporations sell their excess tax credits to other companies without going through all the hard work of setting up a real leasing operation. At first, it seemed to me to just be another bad part of a very bad tax bill. But in October 1981, soon after the tax cut was enacted, a Washington Post reporter called me and said, "Did you see this story about Occidental Petroleum selling its tax breaks to GE?" I said, "Tom, everything stinks. Everything is bad." He said, "Well, this is different. Do some work for me here—help me explain to people what this all means." So I helped him out, he got a big story in the *Washington Post*, and the whole thing turned into a public scandal.

In fact, it set the stage for things to start to turn around, and helped Bob

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Dole, then the chairman of the Senate Finance Committee, and others talk Ronald Reagan into what became the Tax Equity and Fiscal Responsibility Act of 1982. Dole, Fed Chairman Paul Volcker and House Ways and Means Chairman Dan Rostenkowski went to see Reagan. Volker said, "Listen, if you do not go along with us by scaling back the federal tax cuts you just passed, mainly on the business side, I'm going to step on the ... brake with higher interest rates. And if I do that while you're stepping on the gas pedal with deficit spending, it's going to be an economic mess." Reagan was already a bit disappointed in "supply-side" economics, because Dave Stockman, his budget director, had just told him that the theory that cutting taxes would increase revenues was not panning out. Stockman showed Reagan the next year's federal budget and it was way in the hole. Reagan was not happy and—according to Stockman's book—he said to Stockman, "You mean Tip O'Neill was right?" So Reagan agreed to a rather large tax increase in 1982, and the economy did well afterwards (because Volcker eased up on interest rates as part of the deal). The big spike in unemployment up to 10 or 11% went away, and things started getting better. Then Reagan raised taxes again in 1984, and the economy kept chugging along. He kind of got used to switching from tax cutter to tax raiser.

In 1984, I spent the summer on my first big corporate tax study. It was harder in those days, because there were no personal computers. I had only a Hewlett-Packard calculator and a stack of legal pads. My task was to read hundreds and hundreds of corporate annual reports to try to figure out what the companies were paying, or not paying, in federal income taxes. CTJ put out our first corporate tax study in the fall of 1984, and it showed that half the companies in our report paid no federal income tax over the previous three years. We could only fit 250 companies into the report. I had data on a dozen or so more firms, but had to keep just the biggest 250, because when I finally had access to a personal computer to type in my results for printing, the spreadsheet program only allowed 256 lines of data. I needed a few for the titles and the totals, so that is how 250 happened. The revelation that more than half of these well-known, profitable corporations paid nothing in taxes in at least one of three years got huge play in the newspapers and on television. And it resonated among lawmakers; in those days, politicians could be embarrassed by such things.

According to Don Regan, who was the Secretary of the Treasury at the time, he went to see Reagan right after our study came out and told him that General Electric, Reagan's former employer, was not paying any federal income taxes. (GE was our champion no-tax company.) According to Regan, Reagan got excited and told Regan to go full speed ahead on tax reform to stop the corporate tax avoidance. The eventual result was the Tax Reform Act of 1986, which some people give me a lot of credit for helping make happen. The 1986 Act was a great thing, except it did not raise enough money to pay for the government, because it was supposed to be revenue neutral. Distributionally, it made things a little better: it particularly helped poor people, while the rich people got mixed results. Half of them were into tax shelters and the other half of them were not. So half of them had a big tax increase and half of them had a big tax cut. Of course, the problem of insufficient revenues was a big issue. I had a lot of friends who said to me, "Why are you supporting revenue neutral? Our government needs more money." I said, "Don't worry, it's going to be easy to raise the rates. They are just so doggone low." And soon, under the first President Bush and then more so under Bill Clinton, tax rates on the wealthy were increased a lot. And from fiscal 1997 to 2001, the federal budget was balanced.

Q What today are the principal sources of support for the organization?

A When we started it was largely funded by labor, way back in the ancient days, because they had money. There were also do-good groups on our board, but they had no money. But as time went by and the labor unions kept getting smaller and less wealthy, we have moved into mostly foundation funding. We also have about ten thousand or so individual members, who mostly donate $25 or $35 each a year, but mostly it is foundations. We still get a small amount of labor money, but only five or six percent of our budget.

Q The earliest quotation that we could find in *Tax Notes* from you was in 1984 when you characterized the argument for a flat tax as "nothing but a restatement of Andrew Mellon's famous 'trickle-down' dictum that 'the prosperity of the lower and middle classes depends upon the good fortune and light taxes of the rich.'" 23 Tax Notes 1166 (June 11, 1984). Has your view about that changed?

A The fights over taxes do not change much, although the rhetoric sometimes changes slightly. In the days leading up to the 1986 tax reform, you had Bill Bradley and Dick Gephardt with their progressive reform plan, and on the other side you had Hall and Rabushka, who were the authors of the original flat tax proposal. Their flat tax picked up some support from Jack Kemp and others on the GOP side. Oddly, Hall and Rabushka were incredibly honest about the plan, at least at first. They did not say it was going to be distributionally neutral. Instead, they admitted that their plan was regressive. There was a great line in their first book, which they took out of the second edition. They said, "Now for some bad news," and went on to say that their plan was going to raise taxes on almost everybody except the rich, who were going to get a big tax cut. But they still thought their plan was a good idea, and that ordinary Americans would like it.

The flat tax reappears every once in a while, although its proponents have dropped the honesty routine. For example, they claim they want to close loopholes, but the truth is that the flat tax is more of a loophole consolidation program. For instance, we have various capital gains breaks; they want to consolidate those into a total exemption for capital gains, as well as for interest and dividends. You don't really need much in the way of corporate loopholes if your plan is to turn the corporate income tax into a quasi-value added tax. And so forth. One thing that is interesting, however, is that they try to sell their flat tax using rhetoric much like what I say in support of progressive tax reform, like "You know we have to do something to simplify the system and make it fairer." Back in the early 1980s, the flat tax rhetoric from politicians such as Jack Kemp, while inconsistent with their actual plan, actually helped propel progressive tax reform. At first, I worried about the flat taxers using my best lines, but then I realized, well, if they're going to use my sales pitch, then I'm going to win. If the Devil comes into church and starts insincerely preaching "Love Jesus," then Jesus wins.

Q CTJ and you began making proposals and comments on the nascent plans for tax reform as early as 1984 and you followed the twists and turns of the 1986 Code to enactment. That process and the 1986 Code generally have received high marks, both for cooperative politics and good tax theory—which is usually shorthanded as broaden the base and lower the rate. In the hindsight of almost another 30 years how do you now rate the politics and that tax theory?

A Passage of the 1986 Tax Reform Act was a miracle. The stars were somehow aligned. Reagan, who had been the big tax cutter and willing to throw loopholes at everything and everyone, all of a sudden became a born-again tax reformer. Dan Rostenkowski, who some people thought was a little bit of a hack, got really into it. Bob Packwood, who had been Mr. Loophole in the Finance Committee, became my new best friend. I was already getting along well with Senate Majority Leader Dole's staff. Congressional Republicans were a little different in those days: many of them could take two and two and add it up to four, which was cool. How did all those stars get aligned? Well, the general public was angry at the corporations avoiding taxes, that was part of it. Then, you had the Democrats, who had always been somewhat fond of tax reform because they thought it would help the poor and be a way to make corporations and the rich pay more. Tip O'Neill in the House was great on tax reform issues. Then you had had a Republican president and a Republican Senate, led by moderate Republicans like Dole and Packwood. I keep hoping that the stars will align again, but maybe it was once in a lifetime.

Q Reviewing the CTJ reports over the years suggests that somehow or other things never change in the tax world in the U.S.: some taxpayer groups say taxes are too high and some taxpayer groups say taxes are too low and the net result has been a ballooning of the federal deficit caused in part by large tax cuts; meanwhile some tax groups complain taxes are too high still. Do you despair over the utility of reasoned debate about taxes in America?

A Things do not always stay the same. We had this relatively long period of time where there was sort of a consensus, starting with the run up to the 1986 Tax Reform Act all the way until the George W. Bush presidency. Of course, we did not have everybody on board for the idea of fair and adequate taxes. The precursors to the tea party were in Congress—people such as Kemp, Bill Archer who became chairman of the Ways and Means Committee, and Newt Gingrich—and they tried like heck to kill the 1986 reforms. They hated them. In fact, on my 37th birthday—December 11, 1985—I went over to an office with a television with some friends for a few beers to celebrate the passage of what became the 1986 Tax Reform Act in the House. We had barely popped the top off a beer when, to our dismay, the rule failed to pass in the House, because Kemp and Archer and Gingrich had persuaded a lot of the Republicans to vote against it. To tell the truth, I was not too nervous about this setback. I was a little disappointed, but I figured that tax reform was inevitable by that point. Indeed, President Reagan went and twisted a few arms and he got the bill out of the House. And, with a few changes, it passed the Senate, almost unanimously.

After that, Clinton gets elected and with the help of Al Gore's tie-breaking vote in the Senate, 51/50, Congress passed his tax program in 1993, which pushed the top tax rate all the way up to almost 40%. A few years later, those tax increases helped produce balanced federal budgets. So, by the end of the 1990s, we had a tax system that wasn't perfect, but was in pretty doggone good shape from a big picture point of view. There were storm clouds in the air, especially involving multinational corporations, but still, it was a pretty good system. It raised enough to pay for the government and did so in a reasonably fair way.

And then we had George Bush, who promised he could do everything: save Social Security, pay down the national debt, and cut everybody's taxes. It was a happy thought, had it been true. But, of course, it wasn't, and we'll pay for Bush's reckless tax cuts for a very long time.

Q We noted previously in your most recent report, your 2014 report entitled "The Sorry State of Corporate

Taxes," what Fortune 500 firms pay or do not pay in the U.S. and what they paid abroad from 2008 to 2012. As you indicated, you first issued a similar report for the period 1981–1983. You said at that time: "It's clear, when over half the companies we surveyed—enormously profitable companies—are paying taxes at rates lower than the average American family, that American business is no longer paying its fair share." Why has this situation not changed in 30 years?

A Well, it did change. The 1986 Reform Act put the tax-avoiding companies back on the tax rolls. Indeed, studies we did soon after the 1986 Tax Act showed that even General Electric was paying a 29% effective tax rate. Then of course, the Congress changed. And the Clinton administration, while it was strong on the need to raise revenues, had very little interest in where they came from, particularly on the business side. Here's a slightly funny story: Right after the 1986 Tax Act passed, the Ways and Means staff, which was a great staff at the time, had a little party to celebrate their going off to make their fortunes. One of them said, "We've done tax reform, now we're going to do tax deform." And they did. So the very international loopholes that GE wanted were put back in. The corporate minimum tax, which was directed against GE more than anybody else, since it targeted heavily leveraged companies with lots of depreciation, was gutted. Anyway, those reforms were abandoned, but we did succeed for a while. This is a lot like Sisyphus, you know, you roll the rock up to the top of the hill, but if you look away for a second, it is going to come falling right back at you.

Q The reports of your organization cite details and statistics about corporate tax payments and other activities of taxpayers. How do you obtain this information? How reliable is it? Has it become harder over the years to get the same information and where do you see information access like this going in the future?

A For our corporate studies, all the information is from the companies' 10-K annual reports. In some ways disclosure has gotten a little bit better and in some ways it has gotten a little bit worse. I used to have to calculate for instance (and it took a long time) stock option tax benefits. It was a little bit rough, but you could find out how many options were exercised, what the issue and strike prices were, what the difference was, and figure it out. These days, corporations have to directly disclose at least their "excess" stock option tax savings.

On the other hand, as we have seen this growth in globalization, a lot of the multinational corporations, dozens of them at least, have stopped giving what I would say were even plausible allocations of where their profits were earned, between the United States and foreign. Our corporate tax reports show U.S. taxes on U.S. profits. But just because a company moved some of its U.S. profits to the Cayman Islands does not mean those profits were not earned in the U.S. In our last study we singled out some companies that we just could not analyze because we didn't believe their U.S. versus foreign income allocations. For example, Microsoft says "We made only a small portion of our profits in the United States, we made most of our profits abroad." Or Dell, which says, "We haven't made a nickel in the United States in years. Every single dollar we make is overseas." Well, I have Dell computers all over the office—they did not give them away to me. A problem here is that hardly anybody who reads corporate SEC filings cares about a company's geographic allocation of profits. Most shareholders do not care. Sometimes, I think that CTJ is the only one who cares. So companies can get away with misallocating their profits in their financial statements, which is too bad. Anyway, the quality of the information that corporations report about goes back and forth.

By the way, we do a lot of work besides corporate tax analysis. The rest of our operations rely very heavily on a microsimulation tax model that we built in the 1990s. We are updating and upgrading the model, with new data and all the tax laws, both federal laws and the laws in every single state. The model is primarily based on IRS data, supplemented with Census information. We have spent millions on our tax model over the years. We are the only organization that can do state and local tax distribution analyses, and we are one of the few outside the government that can do federal tax analyses.

The Joint Committee on Taxation staff used to do distributional analyses all the time for Congress. But when Bill Archer took over the Ways and Means Committee in the 1990s, he told them to stop doing such analyses because they felt it would embarrass him and his fellow Republicans. One of his former staffers told me that when Archer had a particularly regressive tax change proposal, he asked a JCT staffer, "Can CTJ analyze this?" "I am afraid they can," said the staffer. "Damn," said Archer.

Q Many of your reports have attacked tax incentives said to stimulate investment, grow jobs, etc. Recently changes in JCT and CBO revenue estimating procedures have made it more likely that so-called "dynamic scoring" will give support for such incentives. Furthermore, the Congressional Research Service was forced to back down on a 2012 report that failed to find support for the stimulative effect of tax cuts. Do you think these three examples reflect a pattern that is positive for obtaining fair and balanced information about taxes or not, and why?

A Well, I do not think there has been a real move towards anything like "dynamic scoring." There is a good reason why there is not. To be sure, the Joint Tax Committee and the Congressional Budget Office always have a little dynamic scoring in what they do, because they have to predict the GDP. But going further than that opens up a can of worms. At this point, dynamic scoring typically is pushed by a subset of Republicans, but imagine if everybody started pushing. For example, Democrats might have a proposal to spend another $100 billion a year on education, and they'd like to claim that their proposal would increase the GDP by $500 billion a year. If you opened up the floodgates, then everybody would be doing it and pretty soon every spending program would be scored as free and every tax cut would be scored as free, and after a while we'd find that we're spending all of our tax dollars on interest on the national debt.

So I do not think that a major move toward dynamic scoring is going to happen. Which is not to say that our lawmakers don't try to hide the true cost of things that they're proposing. Look at what Dave Camp is doing now to try to make his tax overhaul plan look "revenue-neutral." For example, he wants to push a lot of better-off employees into Roth IRAs, which are non-deductible when contributions are made, but are tax-free when withdrawals are made later. That and other gimmicks are how he pays for his tax plan in the first ten years. But over the next ten years, his plan loses money like crazy, probably about $1.7 trillion. Camp apparently doesn't think that the permanent effects of his tax program are his problem. Why would he if he can get away with such an attitude? ■

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include contributions from past and current Tax Section leaders, and will include perspectives and observations on what the Tax Section has accomplished in the last 25—and how we hope to support the profession during the next 25 years. Please look for these and other initiatives that we are undertaking to celebrate our past, present, and future.

We have three fantastic meetings to look forward to in the coming year: the Joint Fall CLE Meeting with RPTE in Denver, the Midyear Meeting in Houston—a new venue for us, and, as always, the May Meeting in Washington. In addition to the best-in-class CLE programming and fellowship with colleagues at these meetings, I encourage you to check out some of the other CLE programs that we offer throughout the year. Our incoming Vice Chair, CLE, Joan Arnold, will be coordinating in-person meetings around the United States and in Europe, as well as countless webinars designed to ensure that Tax Section members are up-to-date on all of the new issues and law developments that may affect our clients or our practice.

As I prepare to lead the Tax Section for the next year, I want to thank Michael Hirschfeld for his efforts to steer the Section during the past year. I also want to thank Janet In, the Section's Director, and the incredible team that works with her to ensure that all of our meetings, programming, publications, government outreach, and public service efforts succeed. Without these dedicated professionals, the Tax Section would not be what it is today. I look forward to working with the Officers and Council, and the Tax Section staff, to continue our tradition of excellence in professional development for our members and the public, broadening our outreach to ensure that the Tax Section welcomes tax lawyers of diverse backgrounds and perspectives, encouraging Congress and the Treasury to simplify the tax laws, working with Treasury and the Service to develop useful and timely guidance, and delivering pro bono services to the underserved. ■