INTERVIEW REVISITED

Senator Bob Packwood

By Jasper L. Cummings, Jr. and Alan J.J. Swirski*

Bob Packwood represented the state of Oregon in the United States Senate from 1969 to 1995, and he was Chairman of the Senate Finance Committee during the passage of the Tax Reform Act of 1986. At the time of the interview, he was a legislative consultant in Washington, D.C.

Author’s Note: This interview was originally published in the Fall 1998 issue of the NewsQuarterly. It is the third reprint of an interview of a participant in the 1986 Tax Reform Act. We reprinted the interview with Representative Dan Rostenkowski in the Winter 2011 issue and the interview with Ward Hussey in the Spring 2013 issue. The interview with ex-Senator Packwood took place in the small, semi-basement office he was using after leaving the Senate. He was not “larger than life” like Representative Rostenkowski, whose interview also occurred after he left office, but he was feisty and proud of his achievement 12 years earlier in the 1986 Act. It seems that politicians share many things, a major one being looking back.

Q Was it suspected from the outset that the 28% individual rate, without a capital gains preference, would not hold?

A There were some critics in 1986 who complained that we would get rid of their deductions and then raise the rates, which is what eventually happened. At the time, I said that I could not guarantee that the rates would not be increased in later years because the acts of any one Congress cannot bind a future Congress. I also believe that we are going to see still more deductions and credits added to the tax code, contrary to the basic philosophy of the ’86 Act. When the marginal rates are high, as they are now, legislators like to encourage particular behavior through targeted tax breaks, whether it be a Roth IRA, an education credit or whatever else. And, with each new tax break, the code becomes a tad more complex.

As I said, there was some criticism that the rates would go up again, but the critics were mainly those who did not like what we were doing, particularly with respect to the alternative minimum tax and the elimination of passive losses, which hit real estate hard. I suppose Congress is somewhat at fault since we essentially gave real estate all those tax breaks in 1981. After the 1981 Act, many people were clearly investing for tax reasons and not business reasons. When we came to that realization in 1986, we took away many of the breaks that had been enacted in 1981. So, the criticism in 1986 was primarily that real estate interests didn’t like us undoing what they had come to rely upon. Congress doesn’t normally do that, but that is exactly what we did.

If there was a turning point in the 1986 Act, it happened the day that Pat Moynihan came in and asked me if I had seen an advertisement in a major newspaper which stated in big letters “Guaranteed Losses.” I believe that it related to investments in llamas, recording contracts or some other tax shelter scheme. Pat showed me the ad and asked, “What have we come to? We have a tax code that encourages people to buy guaranteed losses!” With, in essence, no real minimum tax, the ability to deduct passive losses and a capital gains preference, you quickly understood how someone could effectively reduce their taxes to zero, or very near zero. It wasn’t the capital gains preference by itself, of course. It was the combination of a capital gains preference, loose AMT provisions and passive losses that allowed people to escape taxation.

Q There are many opinions as to which Tax Act produced the most positive effects on the economy or, indeed, whether it is possible to quantify the economic impact of any tax legislation. Is there one particular Tax Act that you believe produced the most positive effects on the economy?
A Fundamentally, I believe that the less taxes distort individual investment decisions, the better it is for the economy. In that regard, Reagan’s ‘81 tax cuts as proposed were, by and large, not very distortive because they didn’t tend to favor one sector. Taxes were simply cut across the board for everyone.

You have some who say that the 1981 Act led to a boom in the economy and others who say that all we did was increase the deficit. But, clearly, the 1981 and 1986 acts are the two tax acts that would stand out if you tried to prove, and I’m not sure whether you could prove it to a jury of 12 people, that tax cuts spur the economy.

On the other hand, you wouldn’t find very many people, particularly economists, tax lawyers, or academics, who would support the concept that we ought to use the tax code for all kinds of incentives. I believe that a tax code with fewer deductions, which we tried to achieve in the 1986 Act, is more efficient from an economic standpoint.

In that sense, the 1981 Act was different from the 1986 Act. In the 1981 Act, Congress, in addition to cutting taxes, added a whole list of tax preferences to the code, many of which were specifically targeted to real estate, such as accelerated depreciation. That caused money to be invested in real estate that probably wouldn’t otherwise have been invested. I can remember speaking to the national hotel association on this very subject in 1988 or thereabouts. I was speaking after the executive vice president of their association and I remember his words on the 1986 Act’s impact on real estate. I’m paraphrasing, but this is very close. He said, “The hotel business used to be a wonderful business, people would invest in it for tax reasons. Now, they won’t invest unless they think they can make money.” At the time, I thought to myself, “Yes! That’s exactly what we had in mind.”

Q There has been some talk of the capital gains rate being reduced. Do you foresee a further reduction in the rate?

A It is interesting how the possibility of a further capital gains rate reduction could be helped by the increasing projections of large budget surpluses. Each time I see the Congressional Budget Office (CBO) projections of the surplus, I think to myself that it can’t possibly get any bigger. But, each new projection is bigger than the last. CBO recently estimated that the surplus will reach $1.6 trillion over the next ten years. Only seven months ago it was estimated at $600 billion. It has gone up $1 trillion dollars in just seven months, even though CBO is not assuming immense growth in the economy. The President warned Republicans during his State of the Union address against doing anything with the $600 billion surplus (before the recent upward revisions) without first taking care of Social Security. Of course, the Republicans are frightened to death of Social Security because they have been beaten over the head politically with it so often in the past. But, now that we have a $1.6 trillion surplus, the Republicans can say to the President, “Look, you wanted $600 billion for Social Security. Here it is. Now we have a trillion for tax cuts.”

It’s all somewhat ephemeral, but you’ve got to base the budget on some projections and these are the current projections. So, given the current outlook, I think the House may try a tax cut. If I were guessing, I would bet that two of the components would include a phase-out of the estate tax and some fixing of the marriage penalty. A phase-out of the estate tax would likely be a reduction of 5% each year under the so-called Dunn-Tanner bill, until it is completely phased out. Although I believe a complete phase-out is the likely scenario, I can picture that when it got as low as the capital gains tax rate there would be an argument made to freeze the estate tax at the capital gains rate. Otherwise, the argument would be that a zero estate tax rate versus a 15-20% capital gains rate would be an incentive to hold all of your assets until you die and pass them on with no tax rather than selling assets while alive and paying a capital gains tax. To that argument, I would respond that I think the 50-year-old business person, if he or she could negotiate a good deal and the capital gains tax were 15 or 20%, would go ahead and sell anyway. Also, if you have no estate tax at all, so Tommy and Sally get mom and dad’s estate with no estate tax being paid and little or no capital gains taxes paid during the parents’ lives, you can bet there’s going to be a debate about the tax basis that the kids take in the inherited assets. That would be, frankly, a happy debate to have if we ever get to that stage.

A reduction in the capital gains rate from 20% to 15% is also a real possibility, but that just depends on how much money is available. Even if there is a rate cut, I don’t anticipate the holding period being reduced to six months. I think the House can pass a capital gains rate cut in addition to the other items I mentioned, but the House has a slightly different situation than the Senate. The House can pass virtually any bill, including any tax bill, with a simple majority vote. The strict budget rules, the so-called “pay-go” (pay as you go) rules, really only apply in the Senate. The Rules Committee in the House sets the rules for debate on each bill and so, as a practical matter, the only key vote before the entire House is on the “rule” for debate when the bill reaches the House floor. The pay-go rule in the Senate was put in during the 1990 budget debate and it was insisted upon by President Bush and Senator Domenici in exchange for the tax increase. The pay-go rule basically provides that you cannot finance tax cuts by increasing the deficit, unless you can find 60 Senators to vote in favor of it, which can be very difficult. Of course, everybody was thinking about deficits at the time. The problem is that
the same wording applies to the surplus. So, in effect, you cannot finance tax cuts by using the surplus unless you can find 60 votes.

If we’re talking about tax cuts this year, which would have to occur in September, my hunch is that the Republicans might pass a tax cut in the House even if it can’t pass it in the Senate just to make the Democrats vote on it. But, I think the more interesting question is what will happen if we get to January without a big tax cut passed this year and CBO is still estimating a surplus of $1.6 trillion or maybe even $2 trillion, who knows. At that point, I believe the budget pay-go rules will be changed or, more likely, temporarily suspended for the next Congress. The pressure will be overwhelming and you simply will not be able to resist the tax cuts. At that stage, there would be no rational reason to say “no” and I would expect that a tax cut would pass by a big enough margin to overcome a Presidential veto.

Q

Why has there not been, at least in recent times, a suggestion to reduce individual rates in the context of discussing other tax cuts?

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If you look at the most prominent tax cut proposals currently on the table, the phase-out of the estate tax, further reduction in the capital gains rate, and elimination of the marriage penalty, all of these are targeted at individuals. Would you do a rate cut in addition to these proposals? I would. But, at that point, it really depends upon how much money there is to spend and whether you have higher priorities.

Q

It is a commonplace observation that corporate tax integration (i.e., eliminating or reducing the double tax on corporate earnings) will not happen because it will disproportionately favor the rich. Has the broadening of stock ownership during the recent surge in the stock market made such a change any more likely?

A

I’m not certain of the answer to your question for the following reason. I don’t know how many people are buying stocks for growth rather than dividends, in which case they don’t care if there is a tax on dividends because they don’t assume that they will be receiving dividends anyway. Their focus is solely on the capital gains rate.

However, I strongly believe the day will come when we will end the double taxation of corporations’ earnings. But, whether it will come because of the tremendous growth in stock ownership or whether it will come in the context of a Nunn-Domenici type of bill, I just don’t know. I certainly give Nunn-Domenici a great deal of credit for the effort they put into crafting their proposal. They tried hard, but it was very complicated by the time they finished and it also depended on a high marginal rate. Corporate integration will occur, but it will not be easy.

Q

How would you compare/contrast the period leading up to the Tax Reform Act of 1986 with the current movement to replace the income tax with a “flat” tax, a sales tax or any of the other consumption-based taxes? Is it possible to generate the same kind of bipartisan support around one of the current reform proposals that was so critical to the passage of the 1986 Act?

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Times were different in 1986 for two reasons. First, in 1986 we were getting beaten up academically and editorially with the unfairness, the complexity and the loopholes in the tax code. We were almost desperate to prove that we could do something good legislatively. There isn’t so much of that criticism at the moment, but maybe the 1986 Act is partially responsible for that. Secondly, the ’86 Act was reasonably equal in its treatment of all tax brackets. It avoided shifting the burden from one bracket to another. We cut the top rates and eliminated several deductions, but most of the deductions that we were getting rid of were those used by the upper income brackets anyway. So, the income distribution tables that we had the Joint Tax Committee preparing looked fairly good.

I think we will move to a consumption tax one day. A pure flat tax would have a rate of about 19%, but only if absolutely everything is counted as income, including such things as municipal bond income and fringe benefits. At the same time, deductions would have to be eliminated, including popular items like the deductions for charitable contributions, state and local property taxes, and home mortgage interest. A flat tax could be done at about 19% on that basis.

The primary argument against a consumption tax is that it will be regressive. A family with an income of up to $30,000 will likely be exempted, so they don’t pose a problem. The problem comes in the range of $30,000 to $120,000. If families under $30,000 are out and if everybody above $120,000 is going to pay 19%, which really amounts to a tax cut for that group, then where does the revenue come from if it’s going to be revenue neutral? The revenue shortfall would have to be made up from the $30,000 to $120,000 income range.

Having said that, I think tax reform could be done using a three-tier flat tax with about the same progressivity as under current law, but lower rates. Most of the deductions that you get rid of are not low-income deductions and they are only marginally middle-income deductions. When you look at the number of filers who file Form 1040 or Form 1040EZ and don’t take any deductions or very few, the process begins to resemble ’86 all over again. You are getting rid of deductions that upper income people utilize and you are lowering the rates.
Q You mentioned the criticism of loopholes in the tax code as being one of the motivating factors that led to a readiness to do something in 1986. Bashing the IRS has become popular sport in recent years. Do you see the current attacks on the IRS as an analogy to the loophole issue, potentially leading to fundamental reform of the income tax code in addition to the IRS Restructuring bill that was recently enacted?

A The recent criticism of the IRS isn’t strong enough by itself and the passion that we saw in ‘86 just isn’t there. In addition, you aren’t seeing the same level of editorials and academic articles. Leading up to the ‘86 Act, we had already gone through Treasury I and Treasury II, which were good studies. There were also innumerable academic symposiums on the subject of tax reform and it was a frequent topic on the Sunday morning talk shows. A lot of work was also done by Bill Bradley and Dick Gephart and their Fair Tax Plan. In fact, Senator Bradley was really the godfather of the ‘86 Act. All of this activity laid the necessary groundwork for the ‘86 Act.

In contrast, there have been only a handful of editorials about IRS abuses, and you don’t have mass intellectual opposition to the IRS. I think that is the difference. I can understand how the frustration with IRS develops in some circumstances, however. A tax practitioner in Portland explained it to me this way. He said, “The IRS is not bad. You have to realize that the average IRS agent in La Grande, Oregon is probably making $38,000 and doesn’t know the tax law too well. And, he certainly doesn’t know it as well as a Portland tax specialist making a half-million dollars a year. An issue comes up with a taxpayer in La Grande and the poor taxpayer doesn’t know the law, but he senses something is unfair. He hires the tax lawyer from Portland and it’s really sort of embarrassing to the agent because of the agent’s lack of knowledge. It’s not really the agent’s fault. You’ve got these agents in Topeka, La Grande, Boise and other places who are perfectly decent people, but they are not whizzes with the tax code. Then you get a personal confrontation between the taxpayer and the IRS. The lawyer eventually gets into it and it escalates.

That, in my mind, is where the really bad cases come from, not from malevolence on the part of the IRS or from the IRS being out to get taxpayers. The bad cases frequently result from an unfortunate combination of a modestly trained IRS person, a very well trained tax lawyer, and an irate taxpayer.

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I thought that some of the stories of IRS overreaching that came before the Finance Committee were instructive, but hearing those stories reminded me of the time when President Reagan talked about the welfare queen in Chicago who was receiving 40 welfare checks each month, or something like that. He concluded that the welfare queen’s situation was the problem with welfare and the law should be changed. Well, in fact, the law wasn’t the problem with welfare. What she was doing was already illegal. It wasn’t that the welfare laws allowed her to do it. In much the same way, I think that some of the cases of abuse with IRS agents bordered on illegal coercion, but may not be emblematic of widespread wrongdoing.

One may ask whether the new law is going to change drastically the method of tax collection. I don’t think so. For most people, the tax collection process is not a draconian process anyway. Most people can still file their own return or go to H&R Block and if they have only wage and interest income it is not a complicated matter. I feel sorriest for the people with their own businesses. They’ve got maybe 30 to 100 employees and they are making somewhere in the neighborhood of $150,000 to $200,000 per year, but they can’t afford Price Waterhouse, they can’t afford a great tax lawyer and they can’t figure out their taxes themselves. General Motors can figure out its taxes. If you are born into family wealth, you probably know from early on that you should start planning your estate and you can avoid most of the estate taxes. It’s that poor devil that founds his own business and doesn’t think much about tax planning and may not be able to afford it. He gets to be 65 and he hasn’t planned his estate, he doesn’t understand the tax implications of his actions, he’s making $200,000 a year, and he’s still working 12 hours a day. You can just see the clash coming when he runs into an unsympathetic IRS agent. I think that’s another place where problems frequently arise.

Q Is it realistic to believe that the income tax will be completely replaced by one of the current reform proposals or, like so many other countries, do you foresee that the income tax will survive in some form even if one of the current reform proposals is enacted? What are your views on the recent passage by the House of the Tax Code Termination Act?

A I think the income tax will survive in some form, and I view the flat tax largely as a kind of income tax; but,
I think the income tax will exist in some form even if we moved to Chairman Archer’s national sales tax or some form of that.

As for the Tax Code Termination Act, I believe it provides that if Congress has not enacted a substitute by July 1, 2001, then the present tax code continues in existence. If that is the case, then picture this scenario. It is now April of 2001 and the current income tax is going to run out at the end of the year. The annual federal budget at that stage will be about $2.1 trillion. I assume Congress will not let Social Security taxes run out, so we have taken care, more or less, of Medicare and Social Security. But, that leaves things like military retirement, federal civilian retirement, Medicaid, and defense unfunded, and the clock will be ticking on passage of a complete substitute for the income tax code. Congress will enact some revenue measures to fund these programs (and others). But, my hunch is that Congress will simply extend the current tax code another three years or five years, maybe making some modest changes like those that would be made in any tax bill. There simply won’t be enough time to rethink the entire tax system before the deadline and, at the same time, the revenue has to be raised to run the government. You’ll basically end up with a Christmas tree tax bill, with the same kind of things that would be hung on any normal tax bill and the current tax code will be extended.

How has the process of writing tax bills changed since the 1986 Act (for better or worse), and what has caused those changes?

The process of all legislation has changed. It’s not just taxes. The easiest way to view the changes is by looking over my career, which started in 1969 and ended in 1995. When I went to Congress, the most advanced word processing you had was an old IBM typewriter called an MTST, which ran on tapes. When you wanted to type letter 38, you had to wheel the tape around until it came to number 38 and then you pushed it and the letter was typed up. That was word processing. There were no faxes. Long distance telephone access was limited. We did have an internal government system called FTS, which allowed you to call other government offices, but you could not call long distance to every place in the country. And, you had many fewer lobbying groups, which I’ll refer to as “special interest” groups. However, I don’t regard that as a pejorative term. A special interest group is nothing more than a group of teachers or farmers or carpenters that have their own interests. It could even be tax lawyers, amazingly!

The first thing that has occurred is a fracturing of the special interest groups into smaller, more zealous groups, who almost become one-issue groups. If you are not with them on their issue, they are against you. In 1969, the American Medical Association, by and large, spoke for doctors. Now, there must be at least 10 to 20 specialized doctor groups. The AMA is becoming less influential and the individual special interest groups have become more influential and, not surprisingly, they see the world through their own eyes. If you can’t see the world through their eyes, then there is something wrong with you. They can’t understand why you don’t understand the problem the way they know it exists. If you were to say to a pediatrician, “Yes, but I had the orthopedist in yesterday and I had the anesthesiologist in as well,” he would undoubtedly say that the other docs don’t know what they are talking about because the real problem is the way he views it. Environmental groups are another example. You didn’t have Earth First in 1969, but you had some long-time groups like the Wildlife Federation, and now there are a whole range of environmental groups on various issues. In fact, it could be any issue. For a long period of time there was an element like that on Vietnam. They didn’t care what else you voted for.

If you supported our military efforts in Vietnam, they were against you. So, you have this fracturing of interest groups over the years.

The second factor is the rapidity with which interest groups can communicate with their members and get, literally within the hour, phone calls and telegrams sent directly to your Capitol Hill office. There are even companies now that call you up and they say, “Mr. Hanson, what do you think about the capital gains tax? Oh, you think we ought to get rid of it. Would you like to talk to your Senator?” If the constituent is willing, they are plugged right into the Senator’s office. Right then, while the constituent waits on the line. None of that existed previously. When I first arrived in Congress, I’ll say that 90% of the letters I got were personal. By the time I left, 95% were instigated by interest groups. So, all of that has changed.

When it came time to write a tax bill, I found that most members wanted to take care of their constituents. Of course, everybody does. Russell Long of Louisiana wanted to take care of oil. He got hit over the head with it, but why on earth wouldn’t he want to take care of oil and gas. I wanted to take care of timber. California likes to take care of wine. These are your constituents. But, apart from that, I found that most members genuinely wanted to do what they thought was in the national interest if they could. That wasn’t always easy to do, however. But, it was easier to do before the passage of the Sunshine laws (which required public business to be done in the open). When an interest group came in, you would say, “Gosh darn, I tried to support you. I really did. The chairman bent my arm. I did everything I could.” Then, to protect yourself, you would tell the chairman that when those guys came in, to tell them that you really fought hard on their issue.

Today, if you put together a tax bill, or any bill for that matter, in the open, you
bet better not make the mistake of saying on Tuesday that you will consider it on Thursday, or you will have an absolute plethora of opposition (and not much support) on Tuesday afternoon and Wednesday to whatever it is that you are trying to do. The whole process becomes harder. Members of Congress are human. They kind of hate to say “no” when everybody is asking them to say “yes” and not very many people are asking them to say “no.” This is when politicians are often accused of double speaking. If you came in to talk to me, and I say, “That’s a well thought out presentation. That’s one of the better presentations that I have seen. By golly, maybe that’s the best one I’ve seen, I’ll take that under serious consideration.” You’ll go away thinking that I said that I was going to support you. I haven’t said I was going to support you. So, you feel double-crossed, but it’s because I don’t want to say, “Are you out of your mind? Do you think anybody cares about that idea?” If you have to do things in public, then all of those little groups that are convinced they know that the earth is flat, come to you and just beat you over the head. That’s the biggest difference I’ve seen. So, you find the Finance Committee now, justifiably in my mind, meeting in the back room and reaching decisions, and then going out and voting on them. Did they vote in public? You bet. But, did they reach the decisions in public? No!

In 1986, the core group that Pat Moynihan refers to was meeting in my office. I would meet my staff at 7:30 a.m., including Bill Diefenderfer, Lindy Paul and the others. I would use that time with my staff to decide what I wanted to try to get the core group to do. The core group would come in at 8:30 a.m. There were six of them and they were zealous. Senator Bradley (D-NJ) was there, along with Senators Danforth (R-MO), Chafee (R-RI), Moynihan (D-NY), Wallop (R-WY) and Mitchell (D-ME). Pat Moynihan displayed the most courage of the core group. I say that because he clearly had the most to lose. Some of the things we did affected some of our constituents, but EVERYTHING we did affected all of his constituents. It didn’t matter what it was, whether it was passive losses or capital gains or anything else, everything affected him and he never flinched for a second. If you have seven in the core group out of 20 members on the Finance Committee, and then you go to a mark-up at 10:00 a.m. and all your core group shows up and one or two others don’t show up, you can get the bill through the committee. Was this process done in an open forum? No.

That’s the biggest difference I’ve seen and it isn’t just taxes, it applies to all legislation. More and more fractured special interest groups are involved, which makes the whole process more difficult. Let me emphasize this again, a “special interest” group is not a pejorative term, it’s just a group that has a narrowly targeted interest. It’s their lifetime interest. It may be saving the whales. They come very close to voting solely on their issue. In elections, it isn’t critical that a group can get 51% against you. It’s whether they can turn 4% of the vote against you that otherwise would have been with you. That’s how the elections in that 52 to 48 margin are lost. That is the frustration, but it is not limited to taxes.

In a matter of only a few years, we have seen the federal budget transform from actual and projected deficits in the range of $200 billion per year to large projected surpluses. Will the era of budget surpluses continue and, if it does continue, how will it affect tax legislation? Is it fair to make a comparison with the circumstances that led to a large tax cut being enacted in 1981, which was then followed by a large tax increase the next year?

I frankly can’t predict whether the projected surpluses will come to fruition, although I do remember the circumstances that led to the enactment of TEFRA in 1982 when Bob Dole was Chairman of the Finance Committee. The country was in a recession. In retrospect, you have to question whether that was the time to raise taxes, when revenues are falling and you are in a recession. But there was the fear that we had better try to come closer to balancing the budget, although we didn’t come close. The problem, of course, was that we didn’t foresee the immense deficits when the tax cuts were enacted in 1981. So, in that sense, the situation that we faced in 1981 could be the same as what is happening this year.

CBO has projected a $1.6 trillion surplus over the next 10 years. Let’s say we have a trillion dollars to spend on taxes and tax cuts (with $600 billion set aside for Social Security) and we do it. And then, a year later, the economy slows down. It turns out that we don’t have a trillion dollar surplus for tax cuts over ten years. You actually have only $400 billion over ten years and you are now $60 billion short each year. At that stage, it would be particularly interesting if you were short not because you are in a recession, but because the economy was growing at 1% a year instead of 2% a year. You are not going backwards, but you are still short. I don’t know what Congress would do. But the circumstances would be almost identical to what Reagan faced because, as I said, we were projecting surpluses in 1981; we weren’t assuming a deficit. We thought by cutting taxes we would get rid of the surplus and the President, I think, correctly thought that if we didn’t get rid of the surplus Congress would spend it.

It is also interesting that many people continue to believe that Reagan cut taxes in the face of looming deficits in 1981, which is completely wrong. Every now and then I give speeches on this subject and the first thing I attempt to do is disabuse various notions about the 1981 budget projections. It is becoming an absolute myth that Reagan didn’t care if he widened the deficit. We got
To me, the biggest problem is the taxpayers that have income of somewhere in the range of $50,000 to $200,000 from running a small or modest size business. It isn't just the tax code that confronts and confounds them, although it certainly does. They are faced with environmental codes, the Americans with Disabilities Act, and numerous other statutory and regulatory guidelines, none of which they can understand and all of which apply to them. They are just frustrated beyond belief. The worst part of the tax code is the incapacity of an honest, intelligent taxpayer to understand it.

Is it surprising to be sitting here talking about trillion dollar surpluses, when only a few short years ago $200 billion deficits appeared to stretch as far as the eye could see? Is there any explanation for the large surpluses?

Yes, it is surprising. The last balanced budget we had was for fiscal 1969, which then operated through the end of June, so I had a total of six months of balance during my 27 years in Congress. After that, it was nothing but deficits forever. I can understand why that situation eventually drives you to a constitutional amendment. To me, the magnitude of the projected surpluses is staggering. I'll call some of my clients and tell them that they are not going to believe that the surplus is up again. Then, I'll call them back a month later and it's another hundred billion higher. One of my clients said, "Listen, why don't you just call me every day and that will solve the problem. It's the calls that are making this happen. So, if you call frequently enough we may have enough money to get rid of the taxes."

I can tell you what I think the explanation is for the large surpluses. First, the 1990 budget agreement put in place the spending caps on appropriated money and that has made a big difference. We are squeezing and squeezing and squeezing the discretionary spending programs, because we haven't yet put an overall cap on the entitlements. The other reason is seven years of growth. When you have a big economy and you have the caps on spending that I mentioned, it doesn't take much compounding before the revenues grow. This is why, when we go into recessions, it's not because spending is out of control, but because revenues fall. You have a pretty good projection on spending. For example, even though Social Security is a massive program, it's generally very easy to predict its costs. How old are you? How much did you make? Are you 65? You ought to die in 9.4 years, so this is what it ought to cost us. We're very accurate on those predictions, unless we miss on inflation. If we thought inflation was going to be 2% and it's really 10%, then we're way off.

What do you consider to be the most serious problem facing the federal tax system today?

I remember something Malcolm Wallop (former Senator from Wyoming) used to say, "Simplicity is fairness." Some argue that you can't have a simple code and a fair code. You can have a simple code but not a fair code. To me, the biggest problem is the taxpayers that have income of somewhere in the range of $50,000 to $200,000 from running a small or modest size business. It isn't just the tax code that confronts and confounds
them, although it certainly does. They are faced with environmental codes, the Americans with Disabilities Act, and numerous other statutory and regulatory guidelines, none of which they can understand and all of which apply to them. They are just frustrated beyond belief. The worst part of the tax code is the incapacity of an honest, intelligent taxpayer to understand it.

Q Senator, we have completed our questions. Do you have any other comments?

A I’ll give you a wonderful story on the ’86 Tax Act. I get a kick out of the press who are convinced that money and campaign donations are the only things that determine the shape of legislation. Big tobacco gives money, therefore there is no tobacco bill this Congress. Big doctors give, therefore there is no Clinton health plan. In my experience, money is pretty far down the list of those things you listen to. I think there may be a game that politicians play. Sort of like me saying to you, “Jack, I think that’s a good idea. Let me think that over.” You go away. My staff then says, “Bob, you are not seriously thinking about that. That guy is out of his mind.” What happens is that you actually let donors think that their contribution matters.

Think about it in this context. Your Senate campaign costs anywhere from $2 to 10 million, but the most a donor and spouse can give you, including both, is $4,000, and that’s if they give you a thousand each in the primary and a thousand each in the general. Political Action Committees also give you money. The railroad lobby gives you money and the trucking lobby gives you money. Do you think they like each other? Do you think they will agree with each other when some piece of legislation comes along involving transportation? Of course not, they’re like oil and water.

In my experience, there are four groups of people that you listen to, long before you even get to money. One is constituents. You bet you listen to constituents. Your scheduling secretary bends over backwards to let constituents in. Do you agree with them necessarily? No, but you treat them courteously and they get in. The second group is your former staff that was with you four, five or six years. You trust them. If I was in the Senate and Lindy Paull was practicing law and she wanted to come and see me, do you think she could get in? You bet! Just like that, she’s in. Bill Diefenderfer, who led the Finance Committee in ’86 and then was Deputy Budget Director at OMB, he could get in any time he wanted. Third, are campaign workers who had given you time. Would you rather have a thousand dollar contribution or a thousand hours of someone’s time? Anybody, within reason, can give you time. Fourth, are your old friends. People who went through fire with you when you were 25. Maybe you were on the school board with them when the issue of charter schools or something came up and you and he had to fight back-to-back to get out the backdoor safely. He’s gone back to practicing law and it’s now 25 years later and you’re a Senator. Do you think he can get in to see you? You bet he can get in to see you. It doesn’t matter who he is now.

Having said all that, here is a funny story. There was a provision that the savings and loan industry wanted in 1986. I can’t remember what it was. My closest friend in Portland, Dave Barrows, was a fraternity brother and he was also a lobbyist at the Oregon legislature, not here in Washington. When I first ran for the legislature in 1962, he went out door-to-door for me 19 out of 20 nights just because we were close friends. He also happened to represent the Oregon Savings & Loan League. The Washington office for the S&Ls was smart enough to realize that they ought to have him call me if they had an issue, rather than their national lobbyist here in Washington, who I didn’t even know. Dave called me from Oregon and asked whether I could help him on the issue. I thought it had merit anyway, but I wanted to help my friend, Dave, who I think to this day probably has not given me any money. So, I’m talking with Dan Rostenkowski as we’re attempting to do the ’86 Conference Report. The two committees (Ways & Means and Finance) had delegated to Danny and me the task of negotiating the conference agreement. The two of us were meeting with only about five or six staff to determine what to do with five trillion dollars worth of revenues. I finally said, “Danny, I’ve got to have this savings and loan provision.” He said, “Are you out of your mind pal. That hasn’t got any merit. I’m not going to give you that.” I said, “Danny, I’ve got to have it!” He said, “Don’t even bother to bring it up. I’m telling you it ain’t worth it and you can’t have it. I don’t care how many times you ask for it.” I finally said, “Danny, I have to have it.” He said, “Why?” I explained that it was for my old friend Dave Barrows, a fraternity brother who stuck his neck out when I ran for the legislature and he was the only lobbyist in Oregon who supported me when I ran against Senator Morse. It would have ruined Dave’s career had I lost and I just had to do it for him. Danny said, “Well, for Heaven’s sake why didn’t you explain it that way before. Why did you waste my time. Of course, we’ll put it in the bill.”

Well, three or four days go by. We’re in Danny’s backroom and he says to me, “Hey, pal, come here. Remember your friend in the savings and loan industry?” I said, “Yeah.” Well, he says, “I got a friend too.” I said, “Oh!” As it turned out, his friend needed a $400 million capital gains grandfather provision. That was something we had not done for anybody in the bill up to that point and so I told Bill Diefenderfer, Lindy Paull and John Colvin that we had to give it to him, but we had to disguise it somehow. This was a case where there was no money changing hands for either of us and certainly no campaign contributions at stake. My hunch is that this is roughly the same way the PTA works or the Board of Directors of the YMCA works, where friendship means infinitely more than money. ■