Forty Years of Change, One Constant: Tax Analysts

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Foreword

40 Years of Memories — An Open Letter From the Chairman of the Board of Tax Analysts

by Martin Lobel, chairman of the board of Tax Analysts

Tax Analysts is now 40 years old. I can't believe it. It seems like yesterday when I got a call from Tom Field, who worked in Treasury and was my most reliable source of information about oil industry tax subsidies when I worked for Sen. William Proxmire. Tom wanted to know whether I would join with a small group of like-minded citizens to push for tax reform. After getting permission from Sen. Proxmire, I signed on for what has turned out to be a far more successful operation than any of us ever dreamed of.

We rapidly discovered that even the most reform-minded foundations were uninterested in funding tax reform, for fairly obvious reasons. More importantly, we discovered that we weren't sure what tax reform meant in every situation. Fortunately, because of Tom's drive and flexibility, we discovered that lawyers and accountants who considered themselves tax experts were willing to pay what we considered exorbitant sums for accurate, timely information. *Tax Notes* was born.

As time went on, *Tax Notes* paved the way for *Tax Notes International*, *State Tax Notes*, CD-ROMs, and the websites Tax.com and Tax.org, which we acquired because of Tom's foresight. And the staff grew too. No longer a little band of beleaguered staffers who did everything, we were able to attract people like Lee Sheppard and Marty Sullivan, whose articles are must-reads for anyone who deals with tax policy.

When Tom decided to retire, his handpicked successor, Chris Bergin, was ready and able to carry on our goal of providing accurate and timely information to decision-makers. Under his leadership we were able to sell the various pieces of real estate that Tax Analysts had acquired and build a modern building that could house all of our employees under one roof. We have also managed to improve the breadth and timeliness of the information we provide through the use of the Web and technology that I must admit I don't understand. That we continue to be the premier force in generating current awareness is due to our dedicated staff and board, who care about getting our tax and economic policy right by presenting as much accurate information as possible from whatever source is available.

It's been a hell of a run, and while sometimes we came all too close to financial shoals, I am confident that the next 40 years will see us become even more relevant to the tax and economic discussions that we all know we must have.

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of revenue ERTA saved taxpayers in 1986 through indexing, according to the Joint Committee on Taxation.[1] Put another way, that is the amount that was not available to be doled out as favors by the taxwriting committees led by the now seemingly mere mortal chairmen. Imagine how fantastically brilliant Sam Gibbons, Bill Archer, Bill Thomas, Charlie Rangel, Patrick Moynihan, and Charles Grassley would all seem if they had had $88 billion a year — $45 billion adjusted for inflation — to spend.

Pointing to the monster that the tax code has become, others may cite the actual creation of the income tax as more significant. However, just as you do not lay blame for a criminal's actions on his birth, I do not believe you can blame this behemoth's current form on its inception or, for that matter, the 16th Amendment to the Constitution for allowing it.

If anything, indexing for inflation has slowed the code's mutation. Look, for example, at the bizarre annual ritual now required by the individual alternative minimum tax and the patch needed to keep its unindexed burden from falling on millions of taxpayers. Indexing has at least protected the rates and exemptions from this bizarre contortion.

1. There appears to be some discrepancy as to indexing's cost, with the text of the blue book analysis of ERTA putting the 1986 price at $36 billion and the revenue table at the back of the blue book putting it at $45 billion.

Evan M. Liddiard

Senior Tax Policy Adviser to Sen. Orrin G. Hatch
Washington

One of the biggest changes I have seen over the past 20 years in tax policy is the great proliferation of tax credits. While tax credits were hardly a new feature of the Internal Revenue Code when I began working as a tax policy aide in the Senate in 1988, their use has blossomed in recent years as members of Congress have increasingly turned to them to further their social, economic, energy, and environmental goals.

Larry Lipsher

Guangzhou, China

As I prepare to go into my 45th year of doing taxes, there are two events of earthshaking proportions that have had so substantial an impact on me that I will always remember them.

The Tax Act of 1984 changed so much that return preparers throughout the country all saw major income increases because of all the taxpayers this brought out of the proverbial woodwork. This definitely helped in financing my first children's university education.

Twenty-two years later, Sen. Chuck Grassley, R-Iowa, who single-handedly added in provisions of the Tax Increase Prevention and Reconciliation Act, made me a big beneficiary of his inclusion of limits on the foreign housing exclusion and the elimination of the graduated income tax provisions for those eligible for the foreign earned income exclusion who had income in excess of the exclusion.

"Tax increase prevention"? Ha! One client with the same exact income and housing expense found himself paying $54,000 more because of "tax increase prevention." Congress had absolutely no idea what it passed. Expats residing in low-tax/high-cost-of-living jurisdictions (i.e., Singapore, Hong Kong, and Dubai) all had problems they never anticipated having. Thank you, Sen. Grassley. You are the reason I have been able to finish financing my daughter's education.

Of course, the impact of the Foreign Account Tax Compliance Act might very well be bigger for me than either of the other two events. In my opinion, FATCA really is a stupid law. Yet who am I to scorn a stupid law that just might be the method of financing my retirement.

Richard Malamud

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What's the biggest change in the last 40 years? The answer must be personal computers and tax preparation software. These tools have allowed Congress to pass hundreds of changes that no tax preparer could calculate by hand. If he or she could, the time spent on them would make the bill so high that no one could afford to have their taxes professionally prepared. Forty years ago it wasn't that hard to prepare a tax return by hand with an adding machine; that is no longer the case.

How about taxing such simple things as Social Security benefits? Just remembering the different rules is daunting enough. What are the limits for the exemption of Social Security benefits, the 50 percent inclusion, or the 85 percent inclusion? Once you figure those out, what if the taxpayer is not single, but married filing jointly, married filing separately, or head of household? Does anyone who prepares a return by computer know the answer? Probably not. Similar headaches for calculating depreciation, accumulated depreciation, and depreciation recapture are just a few keystrokes away when using tax software. Without it, no one could quickly or accurately prepare a Schedule C or the related self-employment tax calculations that accompany the form.

Not only do the tax rates change for inflation, but so do the standard deduction and personal exemption amounts. Similarly, does anyone know if the 2009 exclusion of unemployment benefits still applies in 2010? No problem; just input the unemployment income and the tax software will figure it out.

Forty years ago there were few tax credits and none for college or retirement. There were also no above-the-line deductions for health savings accounts or for self-employed health insurance payments. This isn't a question of fairness but of complexity. Not only has Congress added numerous credits and deductions, but many of them phase out at different adjusted gross income limits.

What allows Congress to require all these calculations while not substantially complicating the tax preparation process, and thus not hearing complaints from the tax preparation community? Tax preparation software. When faced with the phase-outs and phase-ins, just put everything into the computer, and like magic the software produces a complete and properly calculated tax return. This is especially true with the alternative minimum tax calculations. Anyone want to try the AMT by hand, especially if there are depreciation and passive activity losses?

For those who would argue that it's not that hard to calculate these things, they may be correct — until the tax rules change. With computers, that's no big deal. Making the last-minute changes can be done in microseconds; by hand they could take hours. Does anyone know how to calculate the long-term capital gains for low-income taxpayers? The IRS worksheet contains 35 lines for calculating the applicable capital gains rates. How long would that take to calculate manually?

Of course, the problem with tax preparation software being accurate is that garbage in creates garbage out. For the computer to properly calculate the different capital gains rates, one has to know what is a collectible. The meaning and application of collectibles, like many other definitions, have not been made palatable by computer software programs. The software makes calculations palatable only once the preparer has properly identified the classification. Preparers still have to figure out which rate or rule applies.

Unlike 40 years ago, it no longer seems realistic to prepare a tax return by hand, including Form 1040EZ. That's especially true if you live in a state that also requires tax returns. The complications involved in the numerous calculations, especially those adjustments required to calculate the AMT, have made year-end tax planning a new sport with a short season. The same is true of payroll tax preparation.

If not for tax software, where would return preparers be? Maybe better off, as Congress might not have added so many changes over the last 40 years.

Michael J. Murphy

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My career at the IRS went from 1962 to 1992, followed by 10 years with the Tax Executives Institute and now with Sutherland Asbill & Brennan LLP. It's been a great time to be involved in tax administration in this country. Here are my candidates for the most significant event over the last 40 years:

- *Early 1970s*: President Nixon directs the IRS to administer the Economic Stabilization Program (wage/price controls). Don Alexander was commissioner.
- *1980*: President Reagan's tax reforms placed heavy burdens on the IRS and Treasury. The department and the IRS came through with flying colors. Roscoe Egger and Larry Gibbs were commissioners. Ken Gideon, Fred Goldberg, and Will Nelson were chief counsels during this challenging time.
- *Late 1980s - Early 1990s*: The IRS became strongly committed to electronic filing. Larry Gibbs and Fred Goldberg were commissioners.
- *Late 1990s*: The 1998 Restructuring Act was a major change for the IRS and taxpayers. The IRS moved from being highly decentralized, with regional and district offices, to being more centralized with line and functional management taking place in five major divisions headquartered in Washington. Charles Rossotti was the commissioner responsible for the implementation of the restructuring. Margaret Richardson and Fred Goldberg were members of the restructuring committee.