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J. Clifton Fleming Jr.

BYU Law, flemingc@law.byu.edu

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Ending the IRS as We Know It: Thoughts From Outside The Beltway
by J. Clifton Fleming Jr.

In the August 5 announcement of his economic program, Republican presidential candidate Bob Dole stated that if elected, he would "end the IRS as we know it." Outside-the-beltway speeches by congressional candidates and conversations with my outside-the-beltway neighbors and students give me the sense that many of Senator Dole's listeners have heard only the first three words of his seven-word promise. Since those initial three words are the more sensational part of the Dole commitment, but the concluding four words are arguably more important, it may prove useful to separately examine the two components of the Dole pledge.

End the IRS
President Reagan was overwhelmingly re-elected to a second term on the basis of promises that significantly featured his pledge to reduce government and taxes. His sincerity seems beyond doubt. Nevertheless, during that second term he became the first American president to witness more than $1 trillion of federal government expenditures during a single year of his watch - fiscal 1987. Although he often attributed this event to the misbehavior of a Democrat Congress, it is nevertheless the case that before fiscal 1987 ended, President Reagan also became the first occupant of the White House to proffer an annual budget of greater than $1 trillion. His January 1987 budget message proposed $1.02 trillion of outlays for fiscal 1988. Presidential budgets and actual annual outlays have exceeded $1 trillion in every succeeding year and outlays are expected to be more than $1.5 trillion for the current fiscal year in spite of efforts by the Republican-controlled Congress to trim government spending.

In short, our relevant history shows that regardless of which party controls the national government, we will most likely have federal expenditures that require annual tax revenues well in excess of $1 trillion if we are to balance the budget or at least keep the deficit within a tolerable range.

Nothing in the current political season suggests a deviation from this picture. The Joint Committee on Taxation currently projects that President Clinton's budget path will result in the federal government extracting $18.2 trillion of tax revenue over the next 10 years - an average of $1.82 trillion per year. And although Senator Dole has said that the differences between his and President Clinton's plans are "dramatic," the JCT projects that federal tax revenues under the August 5 Dole plan will be only 6 percent less over the next 10 years than under the Clinton approach. In other words, the dramatic Dole alternative will require average federal tax collections of $1.71 trillion per year.

I do not mean to take sides in the dispute over whether President Clinton or Senator Dole has the right approach to spending and taxes. Instead, my point is that any U.S. politician with a realistic hope of being elected president also has a spending agenda that requires annual federal revenue in excess of $1.5 trillion and the only question is, how far above $1.5 trillion will we go?

The elimination of the Internal Revenue Service is simply not in the cards.

That's a lot of money to bring into the treasury each year. President Reagan gave the following trenchant description of the magnitude involved:

A few weeks ago I called such a figure, a trillion dollars, incomprehensible, and I've been trying ever since to think of a way to illustrate how big a trillion really is. And the best I could come up with is that if you had a stack of thousand-dollar bills in your hand only four inches high, you'd

8Note 1, supra at 923.
9Note 7, supra.
10This arguably reflects the truth of David Stockman's conclusion that the American electorate does not want a barebones government coupled with a thoroughgoing free market economy but instead "wants a moderate social democracy to shield it from capitalism's rougher edges," David A. Stockman, The Triumph of Politics 394 (1986).
be a millionaire. A trillion dollars would be a stack of thousand-dollar bills 67 miles high. Assuming that President Reagan's calculations were correct, they imply that $1.5 trillion dollars amounts to a stack of thousand-dollar bills 100 miles high and the Clinton and Dole programs both require annual tax revenues in excess of that amount.

This is far too much revenue to collect by passing the hat. Our national fiscal future plainly requires an extensive structure of tax law and the enforcement thereof. Granted, we may move in the direction of consumption taxes that, if done correctly, are simpler than our current system. Consumption taxes, however, create their own opportunities for cheating that require substantial enforcement activity and such taxes involve complexities that have generally been understated by consumption tax proponents. Given the size and intricacy of the U.S. economy, the enormous amounts of revenue that the federal government must collect out of that economy and the implicit enforcement complications, we are locked into continuing an Internal Revenue Service with tens of thousands of employees. The elimination of the Internal Revenue Service is simply not in the cards. Indeed, Senator Dole did not mean to imply otherwise and those who have understood him as calling for the dismantling of our national tax administration agency have done him a disservice.

As We Know It

When Senator Dole said that he wanted to "end the IRS as we know it," the crucial part of his statement was surely the last four words — "as we know it" — that so many people seem to overlook. Indeed Senator Dole's August 5 announcement explained that instead of closing down the IRS, he intended to reform it along these lines:

- I'm an optimist. I believe the IRS can be retrained to do something useful.
- I'll start by shifting the burden of proof in IRS audits so that taxpayers in America are once again presumed innocent until proven otherwise.
- I will end the IRS' KGB-like "lifestyle audits" where there is no clear evidence of criminal activity. I will eliminate IRS filing for 40 million low- and middle-income taxpayers, privatize many IRS functions, modernize the rest, and shift the duties of IRS personnel so that their job is to help Americans give the right answers on their forms, not punish them for innocent mistakes.
- In short, my administration will free the American people from tax tyranny. I will eliminate the IRS as we know it.

The overwhelming majority of IRS employees perform their jobs courteously and with remarkable effectiveness in view of the staffing and information processing constraints under which they work.

Much of the preceding statement is directed at those instances when the IRS goes awry and engages in mindless or abusive behavior towards taxpayers. In my experience as a tax lawyer since 1967, those instances are exceptional; the overwhelming majority of IRS employees perform their jobs courteously and with remarkable effectiveness in view of the staffing and information processing constraints under which they work. Nevertheless, abuses occasionally occur, are maddening at best and destructive at worst to the victims, and ought to be halted. But since we have just adopted an expanded taxpayer bill of rights that creates an office of taxpayer advocate within the IRS, it would be prudent to track the IRS's behavior in this new taxpayer rights world for a reasonable interval before deciding whether further "retraining" of the organization is required.

With respect to Senator Dole's intention to "privatize many IRS functions," I must confess deep skepticism. I suppose that Washington's archetypal example of major privatization is the Defense Department's weapons procurement program under which weapons systems are manufactured by private contractors instead of in government factories, as was once the case. Nothing in our weapons procurement experience gives hope that privatizing the IRS's major functions will bring about quantum improvements in

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13 Note 1, supra at 924.
17 Section 7802(d).
18 See General Accounting Office, IRS' Implementation of the 1988 Taxpayer Bill of Rights 1-2, 17 (Dec. 1991) (IRS was generally successful in implementing the original taxpayer bill of rights).
costs, efficiency, and service. Indeed, the Pentagon experience suggests that outsourcing the IRS’s principal functions would result in a large IRS audit bureaucracy to keep tabs on the return processing and revenue collection organizations hired by the IRS to do those jobs. A new class of lawsuits would also arise as taxpayers litigate complaints against the contractors instead of the IRS. My skepticism is reinforced by the fact that many corporations have outsourced their credit functions to consumer credit reporting agencies and debt collection agencies and the result has not been greater happiness on the part of consumer debtors who are, after all, the analogs of taxpayers. The enactments of the Fair Credit Reporting Act,\(^\text{19}\) and the billing and garnishment provisions of the Consumer Credit Protection Act\(^\text{20}\) all testify to the abuses and extensive remedial schemes that this type of outsourcing can produce. There are surely economies and efficiencies that can be gained by carefully targeted privatization of discrete IRS activities, and this has already been done with respect to building maintenance and security, but it seems unlikely that outsourcing core IRS functions will put an end to taxpayer complaints or make our tax administration system significantly smaller and simpler.

Instead, the greatest hope for helpful change may lie in Senator Dole’s promise to “modernize” the IRS. The Service is burdened with inadequate computer and communications systems that significantly hamper its efforts at both enforcement and taxpayer service.\(^\text{21}\) Hopefully, a Dole administration would quickly sort out the questions of the content of IRS modernization and whether the necessary design work should be done inside or outside the IRS\(^\text{22}\) and would then get on with the business of updating the systems.

But an equally important aspect of modernization would be to give the IRS the resources to raise its abysmally low audit rate.\(^\text{23}\) Granted, media stories of occasional abuses by the Service have a very harmful effect on taxpayer attitudes towards government and law.\(^\text{24}\) But in my experience, taxpayer attitudes are also damaged in major ways by the news that many individuals and corporations engage in clear tax evasion, including nonfilers, without significant danger of detection because of the Service’s inadequate audit and nonfiler resources.\(^\text{25}\) Furthermore, the revenue loss from evasion is enormous.\(^\text{26}\) Any serious program to end the IRS as we know it would couple the recently expanded taxpayer bill of rights with an expanded IRS audit capability so that conscientious taxpayers will know that they will be dealt with courteously, fairly, and efficiently by the IRS and that their deviant neighbors will be detected.

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\(^\text{21}\) General Accounting Office, Transition Series: Internal Revenue Service Issues 4 (Dec. 1992) (most pressing IRS issue is “outdated and inefficient tax processing system”; communication system is fragmented).
\(^\text{23}\) In recent years, the individual audit rate has consistently been below 2 percent and has even dropped below 1 percent. See General Accounting Office, Audit Trends and Results for Individual Taxpayers 18 (April 1996); George Gutman, “What Is an Audit?” Tax Notes, Dec. 19, 1994, p. 1457.


\(^\text{25}\) General Accounting Office, Results of Nonfiler Strategy and Opportunities to Improve Future Efforts 33 (May 1996); Hoerner, supra note 24; Mason and Calvin, supra note 24 at 87.

\(^\text{26}\) The IRS estimated that the 1992 tax gap was $127 billion. General Accounting Office, Tax Research: IRS Has Made Progress but Major Challenges Remain 2 (June 1996). In contrast, the fiscal 1996 deficit is projected at $117 billion. Calmes, supra note 5. Fortunately, the percentage of noncompliant taxpayers may not be growing. Susan B. Long and David Burnham, “The Numbers Game: Changes in Tax Compliance During the Last 25 Years,” Tax Notes, Mar. 5, 1990, p. 1177.