1963

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Recommended Citation
Charles O. Galvin, Tax Reform - What - Again, 17 Sw L.J. 203 (1963)
https://scholar.smu.edu/smulr/vol17/iss2/1

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TAX REFORM — WHAT? AGAIN?

Charles O. Galvin*

I. RUMINATIONS OF THE FORLORN

Cursed war and racking tax
Have left us scarcely raiment to our backs.
Sir Walter Scott, The Search
After Happiness, Stanza 16.

ON JANUARY 24, 1963, President Kennedy transmitted to the Congress his recommendations relative to a revision of the nation’s tax structure. The introductory paragraph of the message stated:

The most urgent task facing our Nation at home today is to end the tragic waste of unemployment and unused resources—to step up the growth and vigor of our national economy—to increase job and investment opportunities—to improve our productivity—and thereby to strengthen our Nation’s ability to meet its worldwide commitments for the defense and growth of freedom. The revision of our Federal tax system on an equitable basis is crucial to the achievement of these goals.

... But it has become increasingly clear—particularly in the last 5 years—that the largest single barrier to full employment of our manpower and resources and to a higher rate of economic growth is the unrealistically heavy drag of Federal income taxes on private purchasing power, initiative, and incentive. Our economy is checkreined today by a war-born tax system at a time when it is far more in need of the spur than the bit.¹

Few there are who would quarrel with the principles so enunciated. But there’s the rub. How does a free society saddled with an institution which affects directly or indirectly every one of its members undertake to convert that institution from what it is into what it ought to be? From the spate of articles and plethora of words on the subject, one would have supposed that some consensus, some collective judgment, would long since have been formulated. There are, however, so many conflicting claims of the community that

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almost any statement about unraveling the tangled tax skein causes a general commotion and restiveness, and if the statement is made with tones of determination, there develop real heartburn, indigestion, and atrabilias. Each taxpayer retreats to the security of a known position; for old battlements, like Linus's blanket, offer more comfort than do new skirmishes.

Perhaps all of this is as it should be. The society's importuning of the lawmaker tends over a period of time to counterbalance, to offset, to modify so that there is always an unfolding, or emerging, synthesis of what the group desires. At one time the clamor involves splitting incomes and estates; another time the order of the day concerns partnerships or corporate reorganizations; another time, natural resources; another time, insurance companies; and so on. In each instance all the processes of a free people are called into play. Suggestions are made to the legislator; a bill is introduced in the House of Representatives and referred to the Ways and Means Committee; hearings are held; drafts and redrafts are made by the staff; the issues are debated; legislation is hammered out and passed to the Senate where the processes are repeated; conferences between the House and Senate managers resolve the differences; and the bill is passed. Meanwhile, the executive departments watch closely the legislative process, urging tightening here and loosening there. Assuming that the President signs the bill, the administrative agency undertakes its work of interpretation through regulations, rulings, and informal opinions. The judiciary then enters the fray, as private litigants contest the administrator's interpretation or the legal analysis of some previous decision.

Thus, there is a continuous pitting of forces, one against the other, as each side uses the tactics and strategy of the traditional adversary system. In this manner rules are made, and changed, and revoked, and made anew. Reflecting upon this elaborate and cumbersome machinery that involves the intellectual resources of so many, one may argue that the revenue law is just what it ought to be. This

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[2] For a good discussion of the legislative, administrative, and judicial processes, see Surrey & Warren, Federal Income Taxation 36-54 (1960). In 1952 approximately 60 million returns were filed; about 6% were audited, with about 1/10% resulting in adjustments. Only about 1/10 of 1% passed beyond the audit level. Id. at 69.

[3] The is-ness and ought-ness of the law is part of the lore of the jurisprudentialists. See Friedrich, The Philosophy of Law in Historical Perspective ch. XX (1958); Fuller, The Law in Quest of Itself (1940); Fuller, American Legal Philosophy at Mid-Century,
continuing interaction of is and ought means, however, that the job is never done, and a responsible citizenry must maintain constant surveillance, must be willing to research, to study, to argue, and to engage in self-criticism in order that it does not, as the President termed, “checkrein” itself.

A review of President Kennedy’s message of January 24, 1963, and Treasury Secretary Dillon’s elaboration in his statement to the Committee on Ways and Means of February 6, 1963, is like reliving events experienced before, as in a theatre when the babble of the audience recedes to an expectant hush as the curtain rolls back on the first scene. The executive department speaks the first lines. These reflect the course and direction to which the executive and his advisers publicly commit themselves. Then follows the response from the legislators. In the meantime, the public begins to play its role; and as in a Greek drama, a chorus from one sector hails a proposal; a chorus from another sector cries nay. Business and investment interests begin to press for rules favorable to their positions.

Can anyone view this scene from a modern Mount Olympus and make judgments on what would promote the best interests of the society without regard to personal whim? Is there a way to eliminate the discoloration of bias wrought by heritage, environment, and pocketbook and examine and analyze as a scientist in the laboratory? Whether or not anyone can reply in the affirmative to these questions, a responsible citizenry ought to try to do so. Moreover, the taxing system, for all its economics, accounting, and politics, is structured in law, and lawyers, as much or more than others, ought to be able to cast aside parochialism in order to make a critical analysis of a subject of such national importance.

II. THE CONTINUING DIALOGUE

Words are like leaves; and where they most abound, Much fruit of sense beneath is rarely found.  
Alexander Pope, Essay on Criticism, Pt. II

A modern Delphian Oracle could not have produced in words more than that which has already been said on tax reform. The Con-

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6 J. Legal Ed. 457 (1954); Fuller, Positivism and Fidelity to Law—A Reply to Professor Hart, 71 Harv. L. Rev. 630 (1958); Hart, Positiveism and the Separation of Law and Morals, 71 Harv. L. Rev. 593 (1958).
7 Hearings, op. cit. supra note 1, at 1.
8 Id. at 25.

In 1962 the American Bar Association gave its 9000-member Section of Taxation a special commission to inquire into measures of broad tax reform. The Section of Taxation in turn organized a Committee on Substantive Tax Reform to direct this project.
gressional hearings in connection with the enactment of the 1954 Code, the papers submitted to the Joint Economic Committee in 1955, the lengthy hearings of 1958-59, the work of the Advisory Groups, the American Law Institute Taxation Report, the Tax Revision Compendium and the panel discussion of 1959-60 all make a formidable and impressive record.

The Ways and Means Committee, under the guidance of its former chairman, Mr. Jere Cooper, and its present chairman, Mr. Wilbur Mills, has followed the practice of inviting "public witnesses" to speak on tax revision. These witnesses are asked to make their presentation, not from a particular institutional or organizational commitment, but from a neutral, or "public," vantage point. The witnesses invited have for the most part been lawyers, economists, and accountants; many are academicians who are expected to testify unencumbered by special interests. Throughout the formal statements of these witnesses, and their verbal exchanges with the committee members, there is a surprising unanimity of view, a common mind on tax reform. Certain basic imperatives are reiterated: the rate structure should be drastically overhauled; double taxation of corporate income, eliminated or ameliorated; the capital-gain definitions and transactions, narrowed; shelters for exempt income through exclusions and deductions, largely eliminated; and the estate and gift taxes, integrated and restructured.

Detailed analyses on every aspect of revenue revision are being collected from committees of lawyers throughout the country.


11 Committees of practitioners and academicians, called Advisory Groups, were invited by the Committee on Ways and Means to prepare and submit recommendations for legislative changes. See, e.g., Advisory Group on Subchapter J of the Internal Revenue Code of 1954, Final Report on Estates, Trusts, Beneficiaries, and Decedents Received by the Subcomm. on Internal Revenue Taxation of the Comm. on Ways and Means, 86th Cong., 1st Sess. (Comm. Print 1959), introduced as H.R. 3041, 86th Cong., 2d Sess. (1959).


14 The Tax Foundation, Inc. of New York and the Tax Institute, Inc. of Princeton publish regularly studies and symposia on taxation. The Brookings Institution is presently engaged in a major project of research on current problems of public finance and taxation. Grants for independent study and research are made by foundations to groups and individuals around the country so that there is a continuous flow of new thought on the subject.
Committee hearings on tax revision operate in accordance with certain prescribed rubrics. A witness presents his formal statement, questions are asked, the witness is thanked, dismissed, and the process is repeated. If there is a panel, the order of presentation may be arranged to create an adversary approach by the panel members rather than to elicit what would be a more desirable, comprehensive, critical scrutiny. However, this is not to carp at what is done. The House Ways and Means Committee and the Senate Finance Committee are large and important committees, always with a full agenda. It is a tribute to their integrity and sheer doggedness that they hear as many witnesses as they do, resist as many pressures as they do, and approve what legislation they can. Hearings are open, and Congressmen are naturally reluctant to engage in a colloquy which may be misunderstood by constituents who are far away and who may obtain their information second and third hand. Remedially, in order to allow for probing in depth, these committees should meet more often in executive session and in off-the-record hearings to promote free and candid discussions. Under present procedures, each side, committeeman and witness, experiences a sense of unfulfillment, a feeling that much is left unexplored and unexamined. When the process is ended, both sides settle into a malaise, yearning for reform that fails to materialize.

Is the system too entrenched, too deep-rooted to undergo drastic overhaul? Is it preferable not to rock the boat too much? Is it easier to tinker here and there than to start anew? For an answer, consider the Treasury Secretary’s statement of February 6, 1963, which, although calling for reform, really calls for more tinkering. This is not reform, or if it is, it is narrow and short-ranged. Surely, such reform cannot be the conscious exercise of choice by a sophisticated electorate.

True reform would involve discarding an antiquated structure and adopting a fresh new approach, erasing the blackboard to begin again. Can we do it? I say we must, if not this year, then next, or the year after, or the year after that. We will be compelled inevitably and inescapably to do it. Considering all the problems that bedevil the nation and mankind, we cannot spare the time, effort,

14 For example, at the hearings on percentage depletion and exploration and development costs on Tuesday, December 1, 1959, the panelists were so arranged that the academicians spoke first followed by the industry representatives. Before a large audience the effect was to create an atmosphere of controversy as between academicians on one side and industry representatives on the other rather than to engage all the participants in a dispassionate, objective analysis of the whole subject. See House Comm. on Ways and Means, 86th Cong., 1st Sess., Panel Discussions on Income Tax Revision 471 (Comm. Print 1960).

15 See hearings, op. cit. supra note 1.
energy, intellectual and material resources that are now involved in wrestling with the present tax system. While the society looks for minds to do its productive and creative work, much of its brain power is frittered away in playing a complicated game of tax mah-jongg.

III. What Should Be the Nation's Annual Expenditure?

A good majority of our people regard a planned deficit as contrary to sound government and good morals.

Walter Lippmann

The United States Government operates on an annual budget of approximately 100 billion dollars, and President Kennedy's proposed budget for the fiscal year ending June 30, 1964, anticipates this continued rate of expenditure.\(^{16}\) Consideration of the subject of how much we should spend, a subject so fundamental to our national fiscal policy, defies articulation of definitive and objective criteria. There is no precise formula for calculating what the total should be. This is not to say, however, that the subject is not susceptible of rational reflective and speculative inquiry. There would be a general consensus that the annual budgets of less than 10 billion dollars that prevailed in the 1920's cannot be re-established. The hard facts of life are that for this generation and, most likely, for many succeeding generations, the federal government will continue to be committed to a scale of expenditures far in excess of those which have been experienced in the remote or immediate past. What should the total be? At present, the budget of approximately 100 billion dollars is about 20 per cent of the gross national product.\(^{17}\) By 1967, The Rockefeller Brothers in their study of the question contemplate a gross national product of approximately $83 billion, 642 billion, or 707 billion dollars, depending upon whether the annual economic rate of growth is 3, 4, or 5 per cent respectively.\(^{18}\) In comparison to these possible totals, federal, state, and local government expenditures are projected in 1967 from a low of 171 billion to a high of

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\(^{16}\) Bureau of the Budget, The Budget in Brief—1964, at 9 (1963). The summary of expenditures is:

<table>
<thead>
<tr>
<th>Dollars in billions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative budget expenditures</td>
</tr>
<tr>
<td>Trust Fund expenditures less intra governmental transactions</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

\(^{17}\) Id. at 18.

203 billion dollars.\textsuperscript{19} Eliminating state and local projections, the 1967 federal budget could range from 115 billion to 142 billion dollars. Striking an average of the gross national product figures at 645 billion dollars and an average of the national budget projections at 128 billion dollars, we may extrapolate a continuing relationship between the federal budget and gross national product at a steady 20 per cent.\textsuperscript{20}

Can the budget be reduced? Incessantly, we hear the cries of waste, bungling, and ineptness in management, whether the administration is Republican or Democratic. Appropriations of money from the national fisc, like other legislation, are determined through orderly processes. The executive departments submit their needs through echelons of departmental screening. These needs are scrutinized by the legislative branch in hearings and open debate. For example, if the Joint Chiefs of Staff recommend that the defense establishment requires X amount of money, if the Cabinet officers and presidential advisers press these demands, if bipartisan committees screen these demands and recommend appropriation figures, then the sum finally agreed upon for this purpose reflects a prudential, collective judgment which would be difficult to controvert. Surely, everyone engaged in this process cannot be charged with irrationality. Inevitably, the push and pull of competing interests and competing value judgments tend to bring the pendulum to center so that the resulting total budget reflects with considerable precision the sum which would be set if it were possible for all the people to vote directly on the amount, each person adding his own plus and minus factors.

The total outgo of the annual budgets since World War II may be roughly divided between housekeeping expenditures on the one side and the costs of past wars and prevention of future wars on the other. With respect to the latter, items of national defense, veterans' benefits, international commitments, space research, and similar items which represent our commitment to Western security are in the range of 70 per cent of the total.\textsuperscript{21}

\textsuperscript{19} Id. at 69.

\textsuperscript{20} There is a range of considered opinion that of the total gross national product there should be an allocation of a 20-25\% and 80-75\% between the public and private sections of the economy, respectively. See Kimmel, Federal Budget and Fiscal Policy, 1789-1958 (1959); National Planning Ass'n., The Need for Budget Reform (1957); National Planning Ass'n., Long Range Projections for Economic Growth: The American Economy in 1970, A Staff Report (1959); Smith, Federal Tax Reform (1961); Committee for Economic Development, Fiscal and Monetary Policy for High Employment (1951); Hearings Before the Joint Comm. on the Economic Report, 87th Cong., 2d Sess. (1962); Goode, Income, Consumption and Property as Bases of Taxation, 52 Am. Econ. Rev. 310 (1961); Brown, Tax Incentives for Investment, 52 Am. Econ. Rev. 327 (1961); Saulnier, The Budgetary Outlook and Its Meaning for Federal Expenditure and Tax Policy, 23 Tax Rev. 47 (1962).

\textsuperscript{21} Bureau of the Budget, op. cit. infra note 16, at 59-60.
To produce the revenue needed annually, we must have a primary national objective that expenditures and tax receipts shall ultimately be brought into balance. In the short run, expenditures may be balanced in part by borrowing, transfer of special funds, or deflation of currency values, but no one of these alternatives is defensible in the long run if the dictates of logic and experience are of any value. Budgeting expenditures in excess of our receipts may be a temporary expedient, the wisdom of which is left for others to debate. Long range fiscal policy, however, must presuppose that a society will tax itself to pay its own way.

IV. How Non-Progressive Is Progressivity?

We will tax and tax, and spend and spend, and elect and elect.

Harry Hopkins (ca. 1934)

At present the income tax accounts for about 70 per cent of the total administrative and trust fund receipts. As between the individual and corporate income taxes, the ratio is a little more than 2 to 1. Such heavy reliance on one source of revenue may be unwise. The income tax is so sensitive to the economic cycle that even slight recessions materially affect the total collections. Moreover, because of the sharp progression in income tax rates, the Congress has continued to increase the opportunities for limited averaging: e.g., net operating loss carry backs and carry forwards, capital loss carry forwards, spreading long term construction income, spreading bunched compensation, back pay, and damage suit recoveries, spreading gains on the sale of insurance contracts, and spreading bunched

\[\text{Id. at 13, in which the following summary is set out (figures are in billions of dollars):}\]

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Individual Income taxes</td>
<td>45.6</td>
<td>47.3</td>
<td>43.8</td>
</tr>
<tr>
<td>Corporation Income taxes</td>
<td>20.5</td>
<td>21.2</td>
<td>23.8</td>
</tr>
<tr>
<td>Excise taxes</td>
<td>9.6</td>
<td>9.9</td>
<td>10.4</td>
</tr>
<tr>
<td>Other</td>
<td>5.7</td>
<td>7.1</td>
<td>6.9</td>
</tr>
<tr>
<td>Total, administrative budget receipts</td>
<td>81.4</td>
<td>85.5</td>
<td>86.9</td>
</tr>
</tbody>
</table>

Trust Fund receipts

| Social Security receipts | 12.6 | 14.8 | 16.6 |
| Gasoline and highway | 2.9 | 3.2 | 3.3 |
| Other | 8.8 | 8.8 | 9.6 |
| Total, trust fund receipts | 24.3 | 26.9 | 29.5 |

Deduct: Intra governmental transactions

| 3.8 | 3.9 | 4.2 |
| Total, receipts from the public | 101.9 | 108.4 | 112.2 |

\[\text{One estimate is that a change of } \$10 \text{ billion in adjusted gross income would amount to a change of 15-16\% of that amount in tax. Pechman, \textit{Yield of the Individual Income Tax During a Recession}, 7 Nat'l Tax J. 1 (1954).}\]
sums that result from changes in accounting methods. These devices are necessary on grounds of equity; yet in a major downswing in business activity, there may be some proportionately greater cash drain on the national fisc aggravated by items such as loss carry back adjustments. Other techniques outside the tax system may also be employed as counter cyclical measures, as for example, tightening the Federal Reserve rediscout rates and exchange margin requirements in periods of upswing and loosening such controls in the downswing.

Although excises are less sensitive than income taxes to economic changes, they are generally regressive in their economic impact. This factor is especially so in the case of federal excises, since lower and middle income groups are already proportionately more heavily burdened with numerous excises at the state and local level. Moreover, the selection of goods and services subject to the excise evokes considerable political pressures, making a valid, economically neutral excise system difficult to achieve. With respect to their productivity, it is estimated that for the fiscal year 1963, excises on goods will account for about 14 per cent and excises on payrolls for social security will account for about 15 per cent of the total administrative and trust fund receipts. Ultimately, and sometimes immediately, these excises are passed on in price. Thus, despite the advantages in ease of administration and enforcement, the certainty of amount, and the limited countercyclical effect, the excise taxes should not constitute a larger proportion of national receipts because they are decidedly regressive in operation.

Other industrial nations have used the turnover tax. Such taxes are imposed on articles of manufacture as they pass through stages from raw materials to finished goods in the market, and they are reflected in commodity prices. However, unless they are applied uniformly they can cause imbalances when competing goods do not bear the same margin of tax.

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24 Int. Rev. Code of 1954, §§ 172, 1212, 1301, 1302, 1303, 1304, 1305, 72(e), 481.
25 A moving average on all fluctuating incomes would dilute the effect of a sharp decline in activity in one accounting period because incomes would be averaged back for, say, 5 years. Since loss carry back are effective only when there are losses, they may affect incomes more precipitately than a moving average. See notes 41-53 infra and accompanying text.
26 See Anderson, Taxation and the American Economy ch. 21 (1952); Colm & Wald, Some Comments on Tax Burden Comparisons, 5 Nat'l Tax J. 1 (1952); Musgrave, Carroll, Cook, & Franz, Distribution of Tax Payments by Income Groups: A Case Study for 1948, 4 Nat'l Tax J. 1 (1951).
27 See Anderson, op. cit. supra note 26, at ch. 22.
28 Id. at 403-04.
29 See Moss, Tax Burdens in Common Market Countries, 12 Nat'l Tax. J. 216 (1960). For an excellent comparison of yields of taxing systems, see Wai, Taxation Problems and
Therefore, in deciding upon our main source of revenue, we are led inexorably to return to that beleaguered harridan, the income tax. The income tax is defended because it is, at least as to individuals, both incapable of being shifted and self-liquidating; and a progressive income tax is defended because it is based on ability to pay.30 In this latter connection, the theory is that each additional dollar of income is worth something less than the preceding dollar and this lesser worth means that a proportionately larger tax on additional dollars has the same impact as a lower tax on the first dollars. This premise of a decreasing marginal utility of the dollar has been regarded with some dubiety, for it is not at all clear that between taxpayers at the same level of income or between incomes of the same taxpayer in different years the marginal dollar has the same value.31 Even if this premise be accepted, there is presented the almost insuperable problem of determining how progressive the structure is to be. The division of taxable brackets and the selection of respective rates per bracket have been fortuitous choices. Moreover, the sharp progressivity in the upper brackets is a patent misrepresentation, since from the standpoint of revenue collections little fruit is harvested in these fields.

As an illustration of the main source of most income tax revenue, if all taxable incomes determined and reported on individual returns according to existing rules were taxed at the present lowest rate of

Policies of Underdeveloped Countries, International Monetary Fund, Staff Papers 428 (1962). The author points out that of the high income countries the percentage of central government revenue to national income in 1959 was highest in countries like Austria (32.9%), New Zealand (31.4%), and United Kingdom (30.8%), and lowest in countries like Canada (17.6%), United States (17.1%) and Switzerland (8.1%). The median was 25%. It should be noted that these percentages relate to central government revenue and would be expected to be lower in countries in which local units obtain substantial revenues from taxes. Wai points out that of the high income countries direct tax revenue (income, property, death, and gift taxes) in 1959 as a percentage of total central government revenue was highest in countries like the United States (80%), Venezuela (65%), and The Netherlands (61%) and lowest in countries like Norway (27%), Finland (23%), and Germany (20%). The median was 43%. Id. at 431. Interestingly, he shows that of all the so-called developed countries the personal income tax in 1958 on an annual income of 10,000 pounds sterling to a married man with two children was lowest in the United States (26.7%) and highest in Japan (17.2%). The median was 43.7%. Id. at 432.

30 Anderson, op. cit. supra note 26, at 185. The ability-to-pay canon is given moral theological support in Pope John XXIII Encyclical, Mater et Magistra (Christianity and Social Progress) 46 (Paulist Press ed. 1951). Economic analysis places personal interest expense on a somewhat different footing from other personal deductions. Suppose that two people, both having income-bearing investments, plan a trip to Europe. One borrows the money at the bank for the trip instead of selling income-bearing investments; the other sells his income-bearing investments to pay for the trip. In order to accord the same treatment to each taxpayer with respect to investment income and expense, the interest paid by the borrowing taxpayer should be deductible.

20 per cent, the revenue produced would exceed 85 per cent of the total collections. If all the reported taxable incomes were taxed at 23 per cent, the revenue generated would be equal to that obtained under the present progressive rate structure.\(^3\) Finally, if the disparity of treatment between capital gains and ordinary income were eliminated, if certain items were no longer excludable from income, if omitted items of income were captured, then, using 1959 statistics, the reported adjusted gross income of about 307 billion dollars could be increased to a point more nearly approximating real personal income of 383 billion dollars. Such an increase of 76 billion dollars, if taxed at 20 per cent would produce an additional 15.2 billion dollars of revenue.\(^3\)

It is fair to state, therefore, that the illustrated proportionality is not a phantasm of academic musing. The imagination is stimulated at the prospect for simplification which could be engendered by such a system. Problems of shifting income forward or backward in time or outward to others, problems of bunched income, of deferred compensation, of corporate distributions would all pale into insignificance. Most importantly, free market mechanisms would set cost and price and allocate resources, as the effect of income taxes was muted; and business and investment choices would be unfettered by concerns for tax avoidance. Nor would such sweeping changes wrench large segments of the population, for out of 307 billion dollars of adjusted gross income in 1959, over 90 per cent was "sweat-of-the-brow" income: salaries, wages, and partnership income.\(^4\) Thus, those matters which consume inordinate quantities of time and intellectual resource of tax advisers, the Congress, the administrators, and the courts—capital gains, corporate arrangements, estate and trust problems, dividends, interest, rent and royalties—accounted for only 10 per cent of the adjusted gross income. The

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\(^3\) Total taxable income reported in 1959 was $167.9 billion; at a 20% rate, this amount would yield $33.6 billion; at a 23% rate, this amount would yield $38.6 billion. The total personal income tax liability was $39.9 billion. Staff of the Joint Economic Comm., 87th Cong., 1st Sess., The Federal Revenue System: Facts and Problems—1961, at 9 (Comm. Print 1961). The spread between personal income and taxable income increased from $114.5 billion in 1945 to $215.4 billion in 1959. Id. at 11. Estimates for 1962 indicate a personal income of about $440 billion, up $17 billion from 1959. Report of the Joint Economic Comm. on the January 1963 Economic Report of the President 47 (Comm. Print 1963). It may be expected that 1963 national personal income would exceed $450 billion. Taxable income for 1963 is estimated at $202 billion. Hearings, op. cit. supra note 1, at 708. Thus, the gap between personal income and taxable income is further widened to $248 billion. On a $202 billion taxable income estimate for 1963, the tax at present rate should yield $47 billion. Of this amount, $40 billion, or about 85% of the total, could be derived from a 20% rate applied across the board to the $202 billion of taxable income. Ibid.

\(^4\) Id. at 10.
objection to a proportional, or flat, rate is that it would not soak the rich, and, so the argument goes, the great concentrations of wealth would recur; Newport would be restored to its glory of old, and yachts would once again be playtoys for the few. Would these be the consequences? I think not.

In the first place, the present rate structure is a mirage. The progressivity of tax rates is a deception to shield a bag of tricks from which the tax adviser can pluck a “tax shelter” for the income. The wealthy have so many escape hatches that even now the average effective rate on large incomes is 40-43 per cent. This average lies, however, between the extremes of cases in which large incomes are taxed at very high rates and those in which large incomes are not taxed at all.

In the second place, the arguments that were advanced to bulwark sharp progression in the age of Roosevelt are not as meaningful in our day. There are far too many economic mechanisms and institutional arrangements to protect the society from predatory monopolism. Unions are stronger, consumers are better protected against inferior merchandising, businessmen, large and small, can fend off unfair competition and unfair trade practices. Social security, unemployment insurance, private pensions, the increase in insurance and annuity investment—all tend to level the peaks and valleys of the economic cycles and thereby to relieve the sharp pinches of economic recession. In a resilient, dynamic, free market economy operating with a highly literate society having an active conscience about its destiny, we should not fear that low tax rates would cause wealth concentration anymore than we should fear that increased automation and efficiency in production would cause excessively high profits. Communication, education, competition, and sophisticated investor, producer, and consumer choices are as effective controls as an economy can have.

With all the arguments that can be mustered for proportionality, the truth is, of course, that it has no chance. Intransigence and political pragmatism make the topic one for idle speculation, and

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36 Of 3,234 returns reporting adjusted gross income of $200,000 to $500,000 in 1954, 2,213 paid an effective rate of 42.1% (using the alternative tax on capital gains) and 721 paid an effective rate of 70.2% (not using the alternative tax). See exhibits prepared by the Treasury Department's Office of Tax Analyses on various "shelters." Hearings, op. cit. supra note 1, at 414-94.
37 The historical background may be found in Paul, Taxation in the United States ch. V (1914); Schlesinger, The Age of Roosevelt: The Coming of the New Deal 1-23 (1959); for comment on the current scene, Galbraith, The Affluent Society ch. III (1960).
generally, realistic considerations dictate the necessity for some graduation in rates. Perhaps a range of 15-18 per cent at the bottom to 30-35 per cent at the top would be politically palatable and, with the substantive reforms suggested in this Article, such rates would garner as much revenue with attendant simplification and ease of administration.38

Other considerations with respect to rate reduction concern the effect on growth of the economy. Consumption theory economists argue that each additional dollar which the workingman has to spend is a dollar which, when placed in the stream of commerce, will generate itself many times over in income and in increased gross national product. Production theory economists argue that each additional dollar which the investor or entrepreneur group has to spend is a dollar which will provide new plants for old, new products for old, new experimentation, new research, new risk-taking, and so on.39

Assuming, arguendo, that both groups are correct, then we may posit that the greater the reduction in taxes, the greater the stimulus to the economy, with the consequent increase in national income. However, as the consumer obtains more spending money, his propensity to spend may diminish and additional dollars may be placed in savings. This latter action effects a slower, long-range economic stimulus rather than the more immediate stimulus of increased spending. With respect to the investor and the entrepreneur groups, as tax rates are cut in the high brackets (say from 91 to 35 per cent), then the business risk of loss per dollar is higher because the high tax dollar is worth 9 cents to the risk-taker in one rate structure and


39 The President anticipates that rate reduction will cause such a thrust forward in economic activity that the increased income will generate sufficient revenue to overcome the revenue loss from rate reduction. Moreover, with an increased gross national product, he estimates that the public debt will increase in amount but decrease from 57% to 53% of gross national product. Hearings, op. cit. supra note 1, at 6-7. The feed back of a $10 billion tax reduction is estimated to increase gross national product the second year by $9.3 billion, personal income by $7.21 billion, and personal taxes of almost $1 billion. Report of the Joint Economic Comm., op. cit. supra note 32, at 48.
65 cents in the other. The loss of the dollar in the lower structure is, so to say, seven times as disadvantageous as the loss in the higher structure. Therefore, lower rates, although providing more money to the investor and entrepreneur groups, might deter such groups from spending in capital-intensive ventures with high risks. However, such an impediment to risk-taking would not be undesirable, for it is more efficacious in the long run that business, not tax factors, influence these choices.⁴⁰

There is another aspect to the proposed rate reduction which has been evidenced in response to the current proposals. An economy that has lived with high rates so long has built-in reflexes that are difficult to eradicate. For example, there are substantial businesses that have been developed because of high rates and liberal deduction rules. Entertainment, luxury restaurants and clubs, much of the recreational complex, and various kinds of promotional advertising thrive on the propensity of people to spend high bracket income at little real cost to themselves, and a reduction in rates may have the effect of lessening the inducement to spend for these purposes. Moreover, with respect to the high bracket groups generally, if the proposition were made to reduce ordinary rates in consideration for elimination of some of the special provisions which now aid these taxpayers, there would be a reluctance to make the exchange, although the result would be lowered tax costs. The reason is that once the members of the high-bracket group backfill all the foxholes to which they now can escape, they are exposed broadside to a gradual increase in rates and would have to begin anew to urge upon the Congress all the ameliorative subventions which have taken fifty years to chisel into the present revenue laws.

V. CAN WE BID CAPITAL GAINS GOODBYE?

The most venerable exception is the familiar dispensation for investors—the special rate for capital gains.

Louis Eisenstein,
The Ideologies of Taxation (1961)

The old saw that Hollywood’s favorite topics were sex and psychiatry until they were replaced by capital gains may be trite, yet it is demonstrative of a truism of the day. Like minks and Cadillacs, capital gains have become a status symbol, a fetishism that

has thwarted logical business and investment decisions. There is some authority that provisions with respect to capital gains were designed as a rough-and-ready averaging technique for the cases in which appreciation, which had accumulated over several accounting periods, was realized in one taxable period. Others contend that Congress was concerned with encouraging investment when it provided for a different, lower tax on capital gains. The earlier statutes provided for different holding periods; the longer the property was held, the lower the rate. However, whatever the theoretical considerations may have been, once the principle was established that there were two kinds of income, taxed at different rates, pressures were then exerted, both in negotiating private arrangements, and in legislation, to achieve capital-gain treatment for a diverse array of transactions. What followed is history. The holding period was shortened, and as the disparity between taxation of ordinary income and of capital gains was widened, capital-gain definitions were loosened and transactional areas for capital gains were enlarged.

A perfunctory analysis of the developments concerning stock options in Smith and LoBue, in the enactment of “restricted stock option” legislation, and in the promulgation of administrative regulations on “non-restricted stock options” bears eloquent testimony regarding the difficulty of distinguishing between compensation for services and gains on capital. Moreover, consider cases like Benny, Marx, Eidson, and Woolsey in which transactions were planned...

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43 Commissioner v. Smith, 324 U.S. 177 (1945) (ordinary income recognized on exercise of stock option).
and documented to give real substance to the aspect of a "sale or exchange" of "capital assets" but which upon an economic analysis involved rewards for personal competence, skill, and ability. These continuing proliferations indicate how difficult is the "escape from plunging deeper and deeper into this technical jungle. . . ."

If incomes were taxed at a proportional rate, the bunching of income in sales of capital assets would be of little concern; any graduation in ordinary rates, however, creates a bunching problem, the severity of which depends upon the quantum of income and the degree of progressivity in the rate structure. Bunching is not confined to sales or exchanges of assets; it occurs in the case of those having special skills and abilities—the professional sportsman, the entertainer, the neurosurgeon whose long years of training prepare him for a relatively few years of maximum productivity before younger and more deft hands begin to crowd him out. If averaging rules were adopted, then in an economic upswing collections might lag behind individual cash receipts and on a downswing individual liabilities would be proportionately greater than individual cash receipts. With lower and less graduated rates, however, conjoined with a moving average technique, cyclical changes would not affect any year's collections precipitately. Thus, at present an income of 100,000 dollars in one year and 10,000 dollars in the succeeding year cannot be averaged. An income of 100,000 dollars one year and a 10,000 dollar loss the succeeding year can be matched for carry back purposes but cannot be averaged. In each case, a five year moving average rule would dilute the effect of one year's performance and be more nearly consonant with the vagaries and realities of economic life. Furthermore, with such a device some fluctuations would be tolerated so that the mechanism would apply only to a relatively small segment of the taxpaying group.

Anyone who has grappled with annual accounting rules would welcome the ameliorative balm of averaging. Sharply progressive rates and hidebound adherence to the tradition of accounting on twelve-month fragments of time have deflected the energies of

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85 The President's tax message proposes that averaging be permitted when the income of the current year is more than 133 1/3% of the average of the previous four years. Hearings on the President's 1963 Tax Message Before the House Committee on Ways and Means, 88th Cong., 1st Sess. 83 (1963).
business managers to pursuits that are far from productive. A casual perusal of the rash of recent cases on income-timing problems will attest to the need for reform in this area.

VI. The Mysticism of Deductions

As those persons who despair of ever being rich make little account of small expenses, thinking that little added to a little will never make any great sum.

Plutarch, Of Man’s Progress in Virtue

The rules with respect to general trade or business deductions and expenses of investment should be terse and concise. Any attempt to elaborate by codification what is a trade or business expense is fraught with dangers of over-articulation. In this connection the 1962 legislation opened Pandora’s box regarding travel and entertainment expenses. Such legislation and the accompanying regulations invite transactions that skirt the line between what is acceptable and what is not. Instead of sensing the spirit, or purpose, of the law, business men are induced, or, rather, seduced, to mold situations that fall just inside the bounds of fair play. The area of business and investment deductions is one in which written rules should be general; and, although all recognize that abuses in business deductions have occurred, nevertheless, this is a problem of administration and enforcement in which all the processes of the adversary system are invoked. It is not a problem of codification.

With respect to personal deductions, taxpayers under present rules have the choice between the standard deductions and itemization of deductions. When the standard deduction was introduced in 1944, it was intended to provide a substitute for itemization; however, as costs of personal items have increased, it has not been used as widely as it formerly was. Of personal deductions of 41.6 billion dollars in 1959, the standard deduction accounted for 12.1 billion dollars, or less than 30 per cent. Greater use of the standard deduction would result if its ceiling limitation were liberalized or eliminated. Alter-


87 For a discussion of these new rules in a lighter vein—and it is only in a lighter vein that they should be discussed—see Blum, How To Succeed in a Business Deduction Without Really Trying, 40 Taxes 1074 (1962).


58 Present limitations are 10% of adjusted gross income up to a maximum of $500 for single people, and up to a maximum of $1,000 for married individuals. The President's tax message proposes a minimum standard deduction of $300 for single people, $400 for married individuals filing jointly, or $200 for married individuals filing separately. Hearings, op. cit. supra note 54, at 78.
natively, since the standard deduction operates as an across-the-board discount of the ordinary rates, it could be eliminated with accompanying reductions in rates. Thus, truly personal expenditures would be denied deductibility except for extraordinary medical, charitable, interest, and casualty deductions. For example, assume that extraordinary personal expenditures for these purposes in excess of 20 per cent of adjusted gross income would continue to be deductible. This proposal would accomplish a substantial simplification and yet take account of the fact that in certain circumstances personal items may be of unusual amounts beyond the taxpayer’s control (e.g., medical expenses, casualty losses, and interest expense to acquire funds to cover such items) and should, therefore, be deductible.

VII. Depreciation Reform as a Stimulus to Investment

The Nation is growing—its needs are growing—and tax revision now will steadily increase our capacity to meet those needs . . . . .

John F. Kennedy, President’s Tax Message (1963)

Both the Congressional and Treasury policy have recently moved the tax structure away from historical accounting rules which require capitalization of expenditures benefiting more than one period toward policies permitting more immediate expensing of such expenditures. In a dynamic economy in which change is a continuously experienced phenomenon, the traditional rules for spreading expenditures for plant and productive facilities over time become less defensible. Obsolescence, new technology, invention, and new processes are introduced so rapidly that they make any capital expenditure of certain benefit only for the present accounting period. Therefore, immediate expensing often comports more nearly with economic reality, with perhaps the exception of real estate improvements in which one can be sanguine of more than a few years’ use before obsolescence, competition, and change of neighborhood cause structures to become considerably less valuable.

The complexity of the new depreciation guidelines and the con-
tinuing controversy over depletion and amortization suggest the need for a policy favoring expensing in accordance with management’s exercise of discretion. Both the present administration and its predecessor have opted for greater liberality in the area of capital write-offs; both have contended that revenue losses are made up by the wholesome effect on the economy of such inoculations. A wholly discretionary policy, therefore, would seem to be the next logical step. A concomitant reform in this connection, of course, would be the elimination of capital gains on sale of real estate.

VIII. What Would the Estate Planning “Team” Do?

The first thing we do, let’s kill all the lawyers.

William Shakespeare,
King Henry VI, Pt. II, Act IV

An enormous quantity of intellectual resource is presently expended by taxpayers and their advisers in busying themselves about what has come to be known as “estate planning.” Much of this activity, although having real legal substance, often borders on the world of economic make-believe. Father and mother, the “estate owners,” consult with one whose metier is estate planning. They are advised to enter into an arrangement pursuant to which business or investment properties are transferred from the parents to a friend or relative as trustee, guardian, or custodian. Co-ownerships, joint ventures, family partnerships, family corporations are organized. There are elaborate documents, instruments of transfer, and separate accounting for interests; yet the more changes there appear to be, the more things really are the same. Legal rights, titles, obligations may change, but decisions with respect to family property continue to be effectively in the hands of the parents. Many of these arrangements are almost solely tax motivated; they proliferate into almost unbelievable intricacies in “tax shelters”; and they are principally

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63 The President’s tax message proposes to modify the present § 1231 treatment on sales of real estate so that recapture of excessive depreciation at the time of sale would result in ordinary income. Hearings, op. cit. supra note 54, at 20, 134-40. See also Staff of Joint Economic Comm., op. cit. supra note 32, at 134-36. New § 1245, added by The Revenue Act of 1962, 76 Stat. 960, effected similar changes on dispositions of personal property.
the result of a feckless attitude about revision of the rate structure.\textsuperscript{64} If reforms of the kind envisaged in this Article were enacted, the pressures to consummate these arrangements would be reduced. In addition, the elaborate trust income tax rules introduced in the 1954 Code could be simplified as the trust became less important as a device for tax avoidance.\textsuperscript{65}

In the area of estate and gift taxes, there is ample opportunity for reform. These taxes are designed to impose an excise on the transmission of wealth. The base for these taxes, however, is narrow and spottily applied,\textsuperscript{66} and with a few well known techniques the taxpayer can pass property through several generations with little tax. The marital deduction, inter vivos and testamentary discretionary trusts, use of special powers of appointment, and intrafamily annuities are all devices which may legitimately and properly be used. Taking account of the fact that those on whom the excises will fall are usually able to employ expert assistance, one may argue that intricate ground rules are justified with sophisticated players. Nevertheless, the present structure requires attention in this area.

Gift and estate tax rates should be integrated so that transfers during life would not be treated with especially greater advantage than transfers at death. There should be one cumulative exemption for both taxes, with annual exclusions for gift taxes. The wide latitude now permitted under the rules respecting special powers of appointment might be narrowed so that when economic benefits are altered or shifted from one generation to the next, the excise would apply.\textsuperscript{67}

The President's message proposes the recognition of gain upon appreciation of property values at death.\textsuperscript{68} Under present rules the taxpayer who has had to sell part or all of his capital before death

\begin{footnotes}
\item[65] Despite the inducements to use trusts as tax avoidance devices, the income reported from estates and trusts was 2\% of total reported adjusted gross income in 1958, Staff of the Joint Economic Comm., \textit{op. cit. supra} note 32, at 192. The tax on this amount in 1959, based on the percentage relation between total individual income tax liability and total adjusted gross income, would be less than $100 million.
\item[66] In 1959, of 1.5 million deaths, 38,000 left estates requiring returns; based on these returns, net estate-tax liability amounted to about 10\% of the total gross estates and about 25\% of the total net estates. Also, that year, out of the total population, there were 78,000 gift tax returns reflecting about $480 million of taxable gifts, or 33\% of total gifts before exclusions. Gift tax liability was $105 million, or 22\% of net taxable gifts. Staff of the Joint Economic Comm., \textit{op. cit. supra} note 32, at 146-47.
\item[68] \textit{Hearings, op. cit. supra} note 34, at 122-34.
\end{footnotes}
has already accounted for appreciation in value. Another who has not been compelled to sell never accounts for the gain, and the property basis "steps up" at death. If, as a matter of equity, the two are to receive approximately the same treatment, then gains should be recognized, subject, of course, to averaging to prevent bunched income. Alternatively, the gift tax rule of carry-over, rather than stepped-up, basis to the estate beneficiaries would be less onerous to the parties than a rule requiring recognition of gain at death. Moreover, the alternative would promote the desirable policy of quick settlement of estates.

IX. THE LEGERDEMAIN OF THE CORPORATE TAX

...I am for the corporation income tax because I think it is better policy, better patriotism, higher wisdom than the general income tax at this time....

Elihu Root (1909)

Before individual income taxes were sanctioned constitutionally, the corporation was subjected to an income tax, and this separate treatment of the corporation has continued to our own day.69 No one seems quite sure upon whom the incidence of the corporate tax falls.70 In a model of free competition all business costs are covered at the margin; the marginal producer has no income subject to tax. The more efficient profit-making producers, therefore, must bear their own income taxes to compete with the marginal producer. By imperfect competition, on the other hand, the taxes may be passed on to the consumers in price. Historically, as corporate taxes have increased, return on investment has not decreased. We may assume, therefore, that in the long run the impact of taxes is passed on.

Whether or not the corporate entity bears the tax, there is the equitable argument that this form of business organization should not be specially taxed. The states already unevenly impose excises on the corporation form; there are persuasive arguments, therefore, that would militate against taxing such organizations by the federal government. Alternatively, if we regard the corporation as an agent of convenience for collecting taxes, without regard to the question of the shifting of the incidence of corporate taxes to others, there is the argument that an income tax should not be imposed on the shareholders in respect to the corporate distributions made to them. Other industrial countries recognize the inequity of double

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70 See 3 House Comm. on Ways and Means, op. cit. supra note 47, at 1537-1609 (papers on the treatment of dividends); Smith, Federal Tax Reform chs. 7, 8, 9 (1961).
taxation in various ways: shareholders are taxed at a lower rate on corporate distributions, or receive credits for corporate taxes paid; corporations are taxed differently on each year's undistributed profits as against profits distributed. Corporations should be permitted to deduct dividends paid, or shareholders should be entitled to a credit for the corporate tax.

If a deduction were allowed, the corporate income distributed to exempt institutional investors would wholly escape tax. This consequence could be avoided by requiring such exempt organizations to treat their respective shares of corporate income as unrelated business income in the same manner as if it were a share of partnership business income. On the other hand, if the corporate income tax were imposed on all corporate earnings, whether distributed or not, the shareholder would then be required to "gross up" his dividend receipt by the amount of the corporate tax and then claim a credit against his individual tax for the corporate tax paid. Some provision for denial of the credit in the case of exempt organizations would assure that at least one tax was paid on the corporate income distributed to exempt shareholders.

The principal revenue from the corporate tax is derived from the large public corporations. If corporations were treated as a conduit with respect to income paid out as dividends, such income would be taxed principally to individuals in the upper brackets of any given progressive rate structure. Thus, in 1959, individuals whose adjusted gross incomes were 20,000 dollars or more accounted for 60 per cent of the total dividends reported by all individuals. Accordingly, in a proposed rate structure for individuals of 15-35 per cent, a corporate rate of 25-30 per cent would tax retained earnings at about the same rate as distributed earnings, thus effecting an equilibrium which would neither prefer growth corporations that retain earnings nor nonexpanding enterprises that regularly distribute earnings. The loss in revenue from the corporate tax could be made up by broadening the base on individuals and by more effective collection of taxes on dividends. The latter could be achieved by some limited

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71 3 House Comm. on Ways and Means, op. cit, supra note 47, at 1594-1596. See also Hearings on H.R. 10610 Before the Senate Committee on Finance, 87th Cong., 2d Sess., pt. 1, at 2289 (1962).
72 Staff of the Joint Economic Comm., op. cit, supra note 32, at 216 (of $18 billion collected in 1958, only about $2 billion was collected from corporations with $100,000 of income and less).
73 Id. at 191.
74 The Herlong-Baker Bills, H.R. 265 and H.R. 348, 88th Cong., 1st Sess. (1963), propose that corporate rates be scaled down to 42% (the highest proposed individual rate) by 1967.
withholding together with a more effective development of machine methods for data processing of information concerning dividends.\textsuperscript{75} Lower corporate and individual rates, elimination of capital gains, and deduction of dividends would remove many of the problems that presently becloud arrangements for dividends, redemptions, partial liquidations, and complete liquidations. Moreover, the exquisite niceties of such arrangements would cease to test counsel’s mettle.

The corporate reorganization provisions should continue to permit deferral of recognition of income in cases in which entities are amalgamated or separated when there are continuing enterprises and continuing interests, and, if substantive reform were accomplished in regard to the rate structure and capital gains, the pressures to proliferate reorganization techniques would be lessened. Difficult cases involving strict construction of the statutes such as \textit{Turnbow}\textsuperscript{76} and \textit{Mills}\textsuperscript{77} would be less likely to occur, or if they did occur, the disparity in tax consequences would not be so great whether the transaction were one in which gain is wholly recognized, partly recognized, or not recognized at all. With respect to loss carry backs and carry forwards, if stockholders were permitted ordinary loss treatment on worthless stocks, there would be less reason to shelter the trafficking in loss corporations. Nevertheless, there are many arrangements in which loss absorption should be permitted. A dying business is put into a new profitable activity by the same ownership interests; a dying business continues the same business but under control of new interests who make something economically useful out of a sick enterprise. Carrying forward old losses against new gains in either situation would seem appropriate. Only when both the business and ownership change does loss absorption seem unwarranted. New owners having a new investment in a new enterprise should hardly expect to reap benefit out of someone else’s cadaver.\textsuperscript{78}

It is questionable that the complexity of the 1962 legislation with respect to foreign income was necessary to achieve effective limitations on the use of “tax shelters” for income earned abroad. The Treasury estimated that if the provisions of H.R. 10650\textsuperscript{79} had been

\textsuperscript{75}H.R. 10650, 87th Cong., 2d Sess. (1962), proposed withholding on interest and dividends, but this was eliminated in the Senate. See \textit{Hearings, op. cit. supra} note 71, at 2248.
\textsuperscript{76}\textit{Turnbow} v. Commissioner, 368 U.S. 337 (1961).
\textsuperscript{77}39 T.C. No. 36 (Nov. 9, 1962).
\textsuperscript{78}Int. Rev. Code of 1954, § 382; see, e.g., Commissioner v. British Motor Car Distribs., Ltd., 278 F.2d 392 (9th Cir. 1960); Mill Ridge Coal Co. v. Patterson, 264 F.2d 713 (5th Cir.), cert. denied, 361 U.S. 816 (1959); Kolker Bros., Inc., 35 T.C. 299 (1960), appeal dismissed, (4th Cir. 1961).
\textsuperscript{79}87th Cong., 2d Sess. (1962).
enacted, there would be some 145 million dollars of revenue captured, or about one-sixth of one per cent of the budget.\textsuperscript{80} It may be supposed that a smaller amount will be captured under the terms of the bill as finally enacted.\textsuperscript{81} In contrast, a substantial portion of this income could be reclaimed with stricter enforcement of accounting rules between United States corporations and their foreign subsidiaries, more complete reporting of activities abroad, and greater attention to reciprocal aid in administration under our tax treaties. Moreover, all of these mechanisms were operative without the complications of the substantive rules under the 1962 legislation.

X. CONCLUSION, OR RUMINATIONS OF THE FORLORN REVISITED

There is a tide in the affairs of men,
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
William Shakespeare,
Julius Caesar, Act II, Sc. 3

And so one more plaintive cry for tax reform goes into an already overstuffed record. Nothing new has been said here; others have said the same things more eloquently. We seem to be repressed by an all-pervasive apathy, an insouciance, yea, a downright indolence about \textit{real} reform. And so we will limp along until the whole wretched enterprise creates such a miasma that sweet reasonableness and rational resolution have less and less possibility of success. We still have the chance to take fortune at the flood; let's not toss the chance away.

\textsuperscript{81} Revenue Act of 1962, §§ 9, 10, 11, 76 Stat. 960. See also Smith, Federal Tax Reform ch. 10 (1961).