



Straight from the Muse

Reflections of a Worldly Philosopher

Iipse Dixit

Something is afoot in Washington. Newspapers yesterday (May 13th) contained a tidbit regarding the Internal Revenue Service's (IRS) decision not to file an appeal with the Supreme Court. The adverse ruling in question was delivered in February by the U.S. Court of Appeal.

The subject of the case, *Loving v. IRS*, concerned the agency's authority to regulate paid tax-preparers. In its decision, the appeals court argued the IRS overreached when it decided tax return preparers are representatives of their clients; and, so could be regulated by the IRS.

The court disagreed, citing the circular logic of the agency's brief — they are, because the IRS claims they are. Its ruling was based, in part, on the fact that tax preparers have no independent authority to act on their client's behalf before the IRS or to bind their clients to a settlement with the agency. Paid tax preparers are thus not representatives in the intended sense of the word.

What may be pure coincidence, but, I suspect is not, were hearings on Tuesday April 8th, by the Senate Finance Committee on the matter incompetent and unethical tax preparers. With all due respect to that august assembly, has the kitchen been spiking the Senate Bean Soup with sherry again? Otherwise, I am at a loss to explain why the Senate Finance Committee wasted precious time when more urgent matters are before it.

Okay — the hearings provided for good press and engendered comradely among committee members. After all, who will openly admit to advocating incompetence or unethical behavior in any profession? But let's face facts — the hearings were a sideshow. The most urgent task confronting the committee is the reform, reduction

and simplification of the US tax code.

Furthermore, I contend, a radical overhaul of the nation's tax code will effect, as a desired consequence, a reduction in fraud and incompetence by paid tax preparers.

The reason for my confidence? A less prolix and complex tax code will deter fewer Americans from completing their own returns. Second, a streamlined, transparent tax code will be easier for the IRS to administer, enabling it to deploy more resources to fraud prevention, tax payer assistance and compliance. And, finally, tax preparers will be free to devote more time and energy to helping clients with the remaining complex tax situations. Given the tax code's current length, its minutia and opacity, I contend only an exceptional few are able prepare a range of moderately complex tax returns without error.

Until root-and-branch tax reform is carried to completion, more regulation is not the prescription for the problem. Only when we have winnowed down the tax code's length and parsed away the unnecessary complexity, then, and only then, should legislation be considered.

Just how long the US tax code for the average individual income tax return filer is subject to debate. On the one hand, Internal Revenue Service (IRS) Publication 17 (entitled, *Your Federal Income Tax*) numbers some 289 pages in a dense, three column format in small type. Now I keep a single volume reference encyclopedia handy on my desk. The volume consists of 1,500 two column pages of text of a similar font size as Publication 17. I estimate that if one were to convert Publication 17 to the same format — in term of page size, column number and font — the result would equate to roughly 365 pages.

Please bear in mind, Publication 17,

"What is bureaucracy? An arrangement of individual incompetences for the purpose of general responsibility."

Anton Kuh (1890 to 1941), Austrian Journalist and Commentator

"By continuing a process of inflation, government can confiscate, secretly and unobserved, an important part of the wealth of their citizens."

John Maynard Keynes (1883 to 1943), British Economist and Political Commentator

"Corporation, n. An ingenious device for obtaining individual profit without individual responsibility."

From the *Devil's Dictionary*

Ambrose Bierce (1842 to 1913?), American Journalist and Writer

Yeah, I am on Twitter too. Follow my sporadic tweets at [my-museclio](#).



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"A good politician is quite as unthinkable as an honest burglar."

H.L. Mencken (1880 to 1956),
American Man of Letters

"I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts."

Abraham Lincoln (1809 to 1865),
16th President of the United States

while reasonably comprehensive, is just one of over 1,900 forms and publications listed on the IRS website. While many apply to businesses, a fair number are relevant to individual filers. Some of the applicable topics are mundane, others strike me as fairly esoteric. But who am I to judge. Whether one situation applies or not to an individual, requires some time and effort on his behalf. Realistically, the true length of the tax code and instructions relevant to the average citizen exceeds the estimated 365 pages based on my admittedly back-of-envelope computation. After trolling through the IRS website, I suspect 500 to 750 pages is not a ridiculous guess; even, 1,000 pages is perhaps not an outlandish number.

An intermediate estimate is the number of pages in a complete set of Title 26 of the US Code of Regulations available from the US Government Printing Office. I have read the volumes total some 13,000 plus pages. Since this represents just the IRS authored portion, one must also acquire the companion set of Title 26 as legislated by Congress. This set I have read numbers more than 3,000 pages. Combined the two total almost 17,000 pages.

If there are any Churchill aficionados among you, you will be please to know the combined total of his four greatest works (*Marlborough: His Life and Times*, *A History of the English-Speaking People*, *The Second World War* and *The World Crisis*) number about 12,000 pages. For a significantly less investment in time, one will be considerable more informed and entertained than if one were foolhardy enough to embark on reading the entire canon that constitutes Title 26.

The outside (and, horrific) estimate is the 73,000 plus (and growing) *Standard Federal Tax Reporter* available from Wolters Kluwer. To be fair, the *Standard Federal Tax Reporter* includes far more than just the final income tax law regulations; it also en-

compasses proposed rules and administrative case law. Since many of the final provisions are anything but crystal clear, interpretative rulings are a must for any practitioner. Since I have provided benchmarks for other two benchmarks, I will strive to do so here as well.

One comparison is the *Encyclopaedia Britannica*. Most readers, I think will concur, it is one of a handful of authoritative sources on the sum total of man's knowledge. The 32 volume 2010 edition of the *Encyclopaedia Britannica* is just under 33,000 pages.

And, while The Holy Bible is considerably shorter than Wolters Kluwer's *Standard Federal Tax Reporter*, the sum total of pages of exegesis through the ages of The Bible probably exceeds 73,000 pages. Again, I assume if one is able to count all pages written in the Christian-Judaic tradition on its books and verses, then more pages have probably been written explaining The Bible than the US income tax code.

But in light of the fact that the modern US income tax dates only from the 16th Amendment (ratified in 1913), we have been rather prolific in adding to a volume of documents on a subject most Americans would agree hardly merits the same dedication as The Word of God or the sum total of man's knowledge.

Using the most narrow measure, then, yes, it is feasible for one person to become fully conversant with the federal tax code as it applies to most individuals. A prodigious memory – bordering on the photographic – would help but is most likely not an essential. Now as one broadens the scope (of what a practitioner should know), well, then a photographic memory becomes a minimum requirement.

If I have not overburdened you with comparative statistics, then, allow me to introduce one more statistic for your consideration. According to a HuffPost/YouGov poll



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conducted in 2013 — on the subject of Americans' reading habits — 28 percent of respondents had not read a single book in the preceding twelve months. Fiction or non-fiction. When the question is limited to non-fiction works, the proportion climbs to 42 percent. In other words, the average joe is unlikely to go to the trouble of even reading IRS Publication 17.

Nothing I relate should come as a surprise. Year in, year out, the Taxpayer Advocate Service cites the complexity of the tax code in his annual report to Congress as the most serious problem confronting the federal government in its efforts to raise revenue. I am certain the members of the Finance Committee are familiar with the report; and, I am also certain during their tenure they have heard abundant testimony to that effect. But year in, year out, Congress fails to take any action to slim down the tax code.

Of course there were those who flocked to offer testimony on why it is important to empower the IRS to weed out incompetent practitioners. Such testimony goes under the heading of rent seeking. Numerous businesses and professional organizations have a vested increase in thwarting root and branch tax reform. Why? A slimmed down tax code along with a streamlined computation of a family's income tax liability, threatens their livelihoods by making their services less than necessary.

Not only must Americans pay taxes to the federal government, but, each year countless citizens pay what I refer to as the "Turbo Tax Surtax" or the "CPA Levy". Many do so, who do not even have what are deemed complicated tax returns. By this I refer to the self-employed, partners in a business, those holding real or financial assets abroad, owning rental properties, having an interest in a farm, oil well or timber stand or receive income from a trust.

Yet millions still find the tax code ob-

scure and obtuse to the point of being utterly incomprehensible. But unfortunately ignorance or the tax code's incomprehensibility is no defense. Here too the Tax Payer Advocate has repeatedly warned Congress of the billions hard working and hard pressed American families must spend each year just to file their tax returns.

If the Senate Finance Committee persists in its folly then it behooves the committee to demand the same standards and credentials of IRS employees. After all, What is good for the goose, is good for the gander.

As the Tax Payer Advocate has acknowledged, IRS employees frequently do not know all of the tax code's nuances or idiosyncrasies. So I wonder how many of the IRS employees charged with audit or enforcement duties are themselves capable of preparing returns for a range of filers without error. Perhaps most can. If so, then holding those individuals to the same standards proposed for tax preparers will provide a measure of assurance to the general public.

I fear though it is easier for Congress to accede to the rent seekers, to empower the IRS to regulate tax return preparers, than to acknowledge the obvious and simplify the tax code. Alas, the latter requires tough decisions, trade-offs and compromise — actions parties on both side of the aisle have repeatedly demonstrated they are incapable of.

If the challenge is not enjoined, the real danger to the nation is the prolixity and complexity of the tax code is inconsistent with a system of voluntary tax compliance. After all ignorance is no defense; because *a priori* any ignorance is deemed willful, an attempt to avoid paying the tax.

But if the tax code has become so complex that mistakes in returns — many unintentional — are commonplace, is a voluntary system of compliance viable? Or, even real-

"Nature abhors a moron."

H.L. Mencken (1880 to 1956),
American Man of Letters

"An unlimited power to tax involves, necessarily, a power to destroy."

Daniel Webster (1782 to 1852),
American Senator, Statesman and Jurist

"It will be to little avail to the people that the laws are made by men of their own choice if the laws are so voluminous that they cannot be read, or so incoherent that they cannot be understood."

James Madison (1751 to 1836),
American Political Theorist and 4th President of the United States



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istic? I shudder to contemplate the alternative: one in which the state sends a bill of what it thinks a taxpayer owes. Given the nature of bureaucracies, such a system is ultimately incompatible with personal liberty. At best, countless numbers will find their time consumed contesting their assessment. The worst is many may awake to find wages garnished and their homes seized.

Thus there is no real alternative to tax reform and simplification. Commonsense commends it and the commonwealth demands it, lest America chokes on the tax law's prolixity.

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