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Introduction

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INTRODUCTION

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Federal income tax reform is never a finished or final product. Sometimes it plods forward, and at times moves backwards. Of course, what seems to be reverse to some may be the opposite to others. On rare occasions, however, the movement is a leap forward, and by my lights 1986 was such an occasion.

Tax reform proceeds from an interplay of many individuals and groups, and often from a conflict and a confluence of ideas and goals. The players include those with narrow and parochial interests, and there are those whose concerns are crassly political. But in significant number, in and out of government, there are also those whose interests are unselfish and public spirited. The process of effective tax reform requires an opportunity for all of the participants to express themselves and to confront each other, and for the political leaders and the public to listen, to learn and to cast their die.

The Villanova Law School and its *Law Review* made a useful contribution in calling together a group of distinguished tax and public finance analysts from the public and academic sectors to express their views on tax policy, and it did so at the right time, in February of 1986 when the Treasury Department, the White House, the House of Representatives and the leadership in the Senate had made it clear that a major revision of the income tax was in prospect. The Treasury's proposals differed from the President's, and the House Bill differed from both. The Senate was still a wild card, no one knowing just how it would be played.

The Villanova symposium brought to the podium a remarkable group of speakers, tax scholars and activists both. I was privileged to introduce them at the Law School in February, when whether and what tax reform would be were still open questions.

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I am delighted now, after *The Tax Reform Act of 1986* (1986 Act), to introduce their papers to the world-wide audience of the *Villanova Law Review*.

Charles E. McLure, Jr., a public finance economist and former Deputy Assistant Secretary of the Treasury for Tax Policy, has written *Where Tax Reform Went Astray*. Dr. McLure is also the principal author of *Treasury I*,¹ the thoughtful and courageous guide to comprehensive income tax reform which, in November of 1984, started the country on the journey which ended in the 1986 Act.² His proposals were not accepted by the President or the Congress in their totality, and so he believes that tax reform went astray, but without his work, data, analysis and extrapolation, relatively free of politically inspired shortfall and compromise, the country would not have come close to the major tax reform it achieved in 1986.

Stanley S. Surrey was the country's leading tax policy scholar and activist for more than 50 years,³ and whenever political realities prevented his achieving all he sought, his attitude was that of the optimist, not lamenting what the nation had failed to attain, but looking back only to measure how far it had come while he prepared immediately for renewed battle the next day or next year. The work of Charles McLure moved us forward, not as far as he would have liked, but "astray" distorts the fact that we have advanced significantly in the general direction to which his work pointed. His paper shows us where we were, where we might have gone, why we did not and where we may yet decide to go.⁴

David Brockway, Chief of the Staff of the Congressional Joint Taxation Committee, an able and feisty tax lawyer and administrator, led his non-partisan staff and helped to lead the House and Senate through the tortuous path of the legislative process which produced the 1986 Act. His talk, which focused on the development of the House Bill, opened wide a window which, for many of us, had been opaque and barred. Printed at the end of the collection of symposium papers, it sheds light on the political process

1. TREASURY DEP'T, *TAX REFORM FOR FAIRNESS, SIMPLICITY, AND ECONOMIC GROWTH: THE TREASURY DEPARTMENT REPORT TO THE PRESIDENT* (1984) [hereinafter cited as *TREASURY I*].

2. On occasion, Dr. McLure has referred to *Treasury I* as a "free market manifesto."

3. To many he was the embodiment of the spirit of tax reform and its inspiring intellectual leader. See *In Memoriam: Stanley S. Surrey*, 98 HARV. L. REV. 331-50 (1984).

4. See also McLure & Zodrow, *Treasury I and the Tax Reform Act of 1986: The Economics and Politics of Tax Return*, forthcoming in 1 J. ECON. PERSP. (1987).

that stimulates, inhibits, and ultimately provides whatever tax reform we are to have.

Professor Nancy E. Shurtz of the University of Oregon Law School stepped back from the immediate fray to allow us to consider the question of comprehensive tax reform from a more general and critical perspective. Her paper, *A Critical View of Traditional Tax Policy Theory: A Pragmatic Alternative*, looks to “considerations of economic and administrative efficiency” as the essential criteria in a “pragmatic approach” to the design of a successful tax system and the development of tax policy. It would be interesting for her now to examine the 1986 Act in the light of her approach and to tell us whether it meets or comes close to her goal.

William J. Turnier, Professor of Law at the University of North Carolina Law School, has provided us with an interesting analysis of *Personal Deductions and Tax Reform: The High and the Low Road*, rejecting the received and the conventional where they fall short of his mark. He tells us that “personal deductions can perform the function of refining the tax base so that receipts are properly adjusted, thereby producing the result that only income is subject to tax.” Since the 1986 Act has cut back on some personal deductions and not on others, it would be interesting to learn whether, for Professor Turnier, that aspect of the Act makes the grade.

Finally, there is Gerard M. Brannon, one of the statesmen of tax policy. His experience is that of economist, government analyst and administrator, private consultant and professor. Called *Tax Loopholes as Original Sin: Lessons from Tax History*, his paper is illuminating. It tells us that many of our “current tax problems were born in the original sin of sloppy thinking . . . [and have] resisted baptism.” Developing the metaphor, it helps us to understand the nature and relative intractability of some of the more fundamental problems we continue to face.

The 1986 Act has given us a more comprehensive income tax base and lower marginal rates. It eliminated many uneconomic tax shelter opportunities, and it repealed the preferential rate for capital gains. It shifted about \$120 billion of tax burden from the individual to the corporate sector, and it made the corporate income tax simpler and less capricious by its repeal of the *General Utilities* doctrine.⁵ Far from perfect, I believe that for the most

5. By the shorthand, *General Utilities*, I mean *General Utilities & Operating Co. v. Helvering*, 296 U.S. 200 (1935), the doctrine that emerged from the case,

part the reforms it made were sensible.⁶ Time will tell, and so will thinkers like those whose papers this volume presents.

and the doctrine's codification in §§ 311, 336, and 337 of the Internal Revenue Code of 1954. That doctrine provided rather arbitrary opportunity for some corporations on some occasions to avoid tax by distributing appreciated assets to shareholders or by selling the assets and distributing their proceeds.

6. Further corporate tax reform is on the horizon. See Wolfman, *Subchapter C and the 100th Congress*, 33 TAX NOTES 669 (1986).