University of Richmond Law Review

Volume 8 | Issue 2 Article 6

1974

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Recommended Citation

Sheldon E. Steinbach, *Tax Reform and the Voluntary Support of Higher Education*, 8 U. Rich. L. Rev. 245 (1974).
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TAX REFORM AND THE VOLUNTARY SUPPORT OF HIGHER EDUCATION

*Sheldon Elliot Steinbach**

> We urge that you do nothing which will jeopardize the vitality of our voluntary charities, which depend heavily on gifts and bequests. These organizatons are an important influence for diversity and a bulwark against over-reliance on big government. The tax privileges extended to these institutions were purged of abuse in 1969, and we believe the existing deductions for charitable gifts and bequests are an appropriate way to encourage those institutions. We believe the public accepts them as fair.
> —Secretary Shultz before the House Ways and Means Committee—April 30, 1973

> God Bless you, gentlemen.
> Learn to give
> Money to colleges while you live.
> Don't be silly and think you'll try
> To bother the colleges, when you die,
> With codicil this and codicil that,
> That Knowledge may starve while Law grows fat:
> For there never was pitcher that wouldn't spill,
> And there's always a flaw in a donkey's will.
> —Parson Turell's Legacy by Oliver Wendell Holmes, Sr.

Since colonial times voluntary support has been a major factor in the financing of American higher education. It is estimated by the Council for Financial Aid to Education that the total voluntary support of institutions of higher education in 1971-72 was slightly over $2 billion.[1] This represents an increase of $160 million or 8.6% over the $1.8 billion received in 1970-71.[2] Private philanthropy is not limited to private colleges but is increasingly being extended to state-controlled institutions so that in 1971-72 such state-controlled institutions received over 21% of the total voluntary support to higher education.[3] The financial plight of colleges and universities

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1. COUNCIL FOR FINANCIAL AID TO EDUCATION, VOLUNTARY SUPPORT OF EDUCATION 1971-72, at 3 (1973).
2. *Id.*
3. *Id.* at 6-7.

has been well documented by the leveling off of admissions, the increases in tuition to meet the rising costs of running an institution, and the number of institutions invading their endowment funds in order to meet current expenses.[4] In this light, it seems to be sound public policy, and also good economics, for Congress to increase and broaden the scope of voluntary support to higher education. Indeed, the quality and vitality of American institutions in the coming years are substantially linked to the volume of charitable gifts. Maintaining the fiscal health of institutions which are in financial difficulty is in the national interest as a preservation of one of the nation's assets. Society cannot afford to allow its colleges and universities to deteriorate beyond the point where rehabilitation becomes unreasonable.

The significance of voluntary support of higher education is demonstrated in studies by the Council for Financial Aid to Education and the American Council on Education, both of which indicate that the existing laws authorizing income, gift and estate deductions are a motivating force for much of the charitable giving to institutions.[5] This is especially true of large gifts of appreciated property. Experience dictates that any curtailment of the incentives would have a substantial chilling effect on private contributions. In a recent study, it was concluded, based on survey data, that higher education is substantially dependent upon the large gift.[6] While 95% of all gift transactions are for less than $5,000, in the aggregate these transactions produce only about 25% of all voluntary support, while the other 5% of all transactions are those over $5,000 which produced 75% of all voluntary support.[7] Also, 51% of all voluntary support in 1970-71 consisted of gifts from individuals, alumni and non-alumni.[8] In this category of donor, this same pattern of reliance

4. *See* G. HUDGINS, I. PHILLIPS & J. BRUNTLETT, PEOPLES COLLEGES IN TROUBLE (1971); JELLEMA, THE RED AND THE BLACK (1971); JELLEMA, REDDER AND MUCH REDDER (1971). *See also* H.R. REP. No. 554, 92d Cong., 2d Sess. 2201 (1969); Carnegie Commission on Higher Education, The New Depression in Higher Education (1971).

5. See yearly reports VOLUNTARY SUPPORT OF EDUCATION published by the Council for Financial Aid to Education and PATTERNS OF GIVING TO HIGHER EDUCATION I and II published in 1969 and 1973 by the American Council on Education.

6. J. LEVI & S. STEINBACH, PATTERNS OF GIVING TO HIGHER EDUCATION II: AN ANALYSIS OF VOLUNTARY SUPPORT OF AMERICAN COLLEGES AND UNIVERSITIES 1970-71 (American Council on Education 1973).

7. *Id.* at Table VI.

8. *Id.* at Table XVI.

upon the large gift is maintained. Approximately 60% of the gifts from individuals of over $5,000 were received in the form of securities, real estate and other property.[9]

Private support provides nearly 10% of the expenditures of colleges and universities for educational purposes.[10] Ranging from over 30% in the case of private men's colleges to 5% in the case of public institutions, the annual support exceeds 13% of the market value of the endowments of educational institutions.[11] These gifts represent the equivalent of a return on an endowment three times the amount of the actual endowments in the survey sample held or the income from a hypothetical additional endowment of $32 billion in contrast to the actual endowment of $11.3 billion. Thus, higher education in 1970-71, as in prior years, was dependent upon large gifts, half of which came from individuals and approximately 50% of these gifts from individuals both over and under $5,000 are in the form of securities, real estate, and other property. This demonstrates beyond doubt the significant role that large private donations make in the financing of higher education. It is, therefore, critical that any proposed tax change be measured in terms of its impact on large private gifts and bequests.

While colleges and universities are meeting their current financial plight by various means, they are also compelled to guard against any possible attack which would entail the loss of additional funds in the name of tax reform. Some law makers and the administration, along with various writers, are launching an attack in several areas which relate directly to the voluntary support of higher education. These areas are: 1) the deduction from income tax of the charitable contributions of individuals and corporations; 2) the ability to deduct the fair market value of certain property donated to charity; and 3) the estate tax deduction for charitable gifts.

Several tax writers and legislators consider the charitable deduction in the same class as deductions for state taxes, percentage depletion and accelerated depreciation. These persons argue that the charitable deduction provides only a slight incentive to voluntary giving and that it primarily benefits those individuals in the

9. *Id.* at Table VI.

10. Steinbach, *1973 Tax Reform: Possible Impact on Charitable Giving*, 54 EDUCATIONAL RECORD 24 (1973).

11. J. LEVI & S. STEINBACH, *supra* note 6, at Table IV.

higher tax brackets, because it costs such a person in the higher bracket less to make a gift than a person in a lower bracket. This group maintains, as a matter of general tax policy, that all deductions and credits, including the charitable deduction, erode the tax base and that instead of filling the tax code with back door subsidies for various groups, Congress should remove all deductions and credits and appropriate funds to meet the nation's legitimate needs directly.[12]

It is interesting to note that the debate on the Revenue Act of 1917 reflected the desire to protect the income of philanthropic organizations, and in particular, the gifts to educational institutions. Senator Hollis, who introduced the amendment to permit the deduction of contributions to charity, perceptively stated: "Look at it this way: For every dollar that a man contributes for these public charities, education, scientific, or otherwise, the public gets 100%; it is all devoted to that purpose. If it were undertaken to support such institutions through theFederal Government or local governments and the taxes were imposed for the amount, they would only get the percentage, 5, 10, 20 or 40 per cent as the case might be. Instead of getting the full amount. . . ."[13]

If it were possible to achieve a guarantee of federal appropriations to replace the deduction system of tax support, many individuals might find the approach appealing. Unfortunately, the appropriations process has not been as steady a provider of revenue as the tax deduction system. Unless and until there is some reasonable assurance that state and federal legislatures would meet the needs of education on a consistent basis, little support is likely from within the higher education community for eliminating the charitable deduction. If voluntary contributions cannot be maintained at a level sufficient to support the present services of philanthropic organizations, the nation may lose many benefits provided by such operations. The government would have to take over services that now function independently and increase taxes on the citizenry. The outcome would be increased uniformity, enlarged bureaucracy and

12. The best exposition of these views is contained in Surrey, *Federal Income Tax Reforms: The Varied Approaches Necessary to Replace Tax Expenditure with Direct Governmental Assistance*, 84 HARV. L. REV. 352 (1970). *But see* Bittker, *Charitable Contributions: Tax Deductions or Matching Grants?*, 28 TAX L. REV. 37 (1972).

13. 55 CONG. REC. 6728 (1917) (remarks of Senator Hollis).

federal intervention and control of phases of our society that now operate as charitable entities.

Many of those who challenge the charitable deduction claim that these provisions are inefficient, *i.e.*, that a large portion of charitable gifts will be forthcoming whether or not these tax provisions were in existence and that any additional contributions stimulated by the present provisions in the code are too small to justify their cost in terms of the loss of tax revenue.[14] In the Tax Reform Act of 1969, Congress recognized the incentive of the charitable contribution deduction. It increased the 30% limitation on charitable giving to 50% in order to strengthen the incentive of the charitable deduction provisions for taxpayers.[15] In recommending this change, the House Ways and Means Committee noted that the increase in the limitation would benefit taxpayers who donate substantial portions of their income to charity and for whom the incentive effect of the deduction is strong. Perhaps the most important corroboration for the view that gifts to higher education are tax induced was a study by T. Willard Hunter,[16] based on interviews with major donors in 1969. Hunter found that charitable gifts would be reduced by 42.5% if they had not been tax deductible. While he concluded that the decision to give had been tax motivated in only a subordinate way, he found that the amount of giving and the timing was greatly influenced by tax considerations. It is also interesting to note that a disproportionate amount of giving occurs toward the end of the year when large donors and their advisers are particularly aware of tax considerations.[17]

Also, as mentioned earlier, many of the gifts in excess of $5,000 by individuals are in the form of securities, real estate and other property. It would seem that the donation of these particular kinds of property would be motivated to a substantial extent by the favorable tax treatment accorded by the present provisions of the code. The importance of tax incentives to private giving is emphasized by

14. Taussig, The Charitable Contribution Deduction in the Federal Personal Income Tax, 1965 (unpublished doctoral dissertation at Massachusetts Institute of Technology). *See also* Taussig, *Economic Aspects of the Personal Income Tax Treatment of Charitable Contributions*, 20 NAT'L. TAX. J. 1 (1967).

15. H.R. REP. No. 91-413 (Part I), 91st Cong., 1st Sess. 51 (1969).

16. American College Public Relations Association, The Tax Climate for Philanthropy (1969).

17. Study undertaken in 1972-73 by the Association of American Universities.

the experience of colleges and universities when revision of the tax treatment of deferred gifts was considered in connection with the Tax Reform Act of 1969. While deferred giving in 1967 and 1968 had grown to 7.1% of total gifts by individuals, the results for each year thereafter represent a continuing significant decrease not only in the percentage of deferred giving, 3.9% in 1970-71, but also in absolute dollar amounts, even though total voluntary support from individuals increased.[18] If the percentage of deferred giving support developed prior to 1967-68 had continued in the three succeeding years, total support of higher education in this one form of giving would have been $50 million more than actually received. In 1971-72 the total support in the form of annuity trust, life income contracts and other forms of deferred giving amounted to $51.2 million, some 70% more than had been reported in 1970-71.[19] This amount constituted 6.4% of the total support received from individuals; this is the highest percentage in this category since 1967-68.

Available data thus seems to indicate that the charitable deduction is indeed an effective way for raising funds for higher education. In the absence of any evidence to the contrary, it would seem highly inappropriate to risk the repeal of the charitable deduction at a time when colleges and universities are struggling to balance their budgets. The gain in tax revenue would be slight in comparison to the possible massive disruption of the financial stability of colleges and universities.

Of particular concern to college and university officials is the proposal that gifts of appreciated property be taxed on all or a portion of their appreciation or, in the alternative, that the allowable deduction be limited to the cost basis of the property. Proponents of these reforms maintain that present legislation is unfair because it benefits only those individuals with sufficient wealth to have appreciated property and thus discriminates against individuals in lower tax brackets.[20]

As a result of the Tax Reform Act of 1969, appreciated capital assets given to a private foundation are not deductible at their full fair market value. A charitable deducation is reduced by one-half

18. J. LEVI & S. STEINBACH, *supra* note 6, at §X, p. 25.
19. *Id.*
20. Surrey, *supra* note 12, at 384.

of the capital gain the individual would have had if he had sold the property at market value. Legislation that has been introduced has proposed similar treatment for gifts of appreciated property given to any public charity. As noted earlier, higher education is greatly dependent upon gifts of appreciated property, as most of the large individual gifts come in that form. The argument that a gift of this kind costs the higher bracketed taxpayers less seems to be based on the assumption that the individual is making a conscious choice between a gift or sale of the appreciated asset.In reality, he is making no such choice, but would probably retain the property rather than make a gift. Adoption of any such proposal would reduce private support for higher education to a larger extent then it would increase the revenue realized by the Treasury.

On April 30, 1973, Secretary Shultz presented the administration's proposals for tax change to the House Ways and Means Committee. Embodied in his proposal was a provision for a minimum taxable income. The proposal is designed to insure that every individual will have a federal income tax relative to the size of his income. This will be accomplished by requiring that every individual's taxable income, to which the present graduated tax rates are applied, would be no less than his minimum taxable income(MTI) which is approximately one-half of adjusted gross income expanded by tax preferences which represent exclusions from income under the present law. Unfortunately, the Treasury proposals with respect to the MTI could have a deleterious effect on charitable contributions. In particular, colleges and universities could be affected because they depend upon large gifts from wealthy donors who may have little if any incentive to give if the Treasury's proposals are adopted. In many cases, it would substantially reduce the limitation on individual charitable contributions to public charities which Congress, in 1969, raised to 50% of adjusted gross income. In some cases, it would wipe out any benefit from charitable contributions.

Under the Treasury proposals, an individual would have to pay an ordinary tax on an amount of income which is half of his adjusted gross income before any deductions plus the four items of exclusion income. Those four items are: the otherwise untaxed one-half of long-term capital gains, the bargain element of a stock option at the time of exercise, percentage depletion in excess of basis, and income earned abroad. In actuality, the taxpayer will subtract $10,000 plus his personal exemption from the total and pay an ordinary income

rate on at least one-half of the results. The MTI proposal has been seen as a way of increasing the minimum amount of tax paid by an individual regardless of the amount and form of his income. Treasury officials advocate the proposal on grounds of equity and in response to their claim of a growing concern by the "man in the street" that increasingly high income individuals are escaping their fair share of the tax burden. The officials readily admit that there would be some loss to philanthropic organizations as a result of MTI; their calculations for colleges and universities predict a drop of $100 million. But, they maintain that this loss would be offset by annual growth in private giving, averaging 5% a year according to their figures. The philanthropic groups have argued, on the other hand, that MTI forces a high income individual to wait until the end of the taxable year before he is able to calculate his tax situation. This would affect the timing and leadership of many capital efforts. MTI virtually eliminates the carry-over provisions of the current tax law for gifts, which exceed an individual's annual limitation. Lastly, the public charities contend that the charitable deduction is a voluntary act benefiting the donee, and should not be analogized to other deductions which for the most part benefit the taxpayer. It should also be noted that the exclusion income does not include income from state and municipal bonds and that the MTI proposal would permit deductions for medical expenses and casualty losses in excess of 10% of adjusted gross income. In that manner, MTI is not totally comprehensive, but is in reality making selective choices as to which deductions shall be included therein. It would seem, therefore, that a substantial basis exists for eliminating the charitable gift from inclusion in MTI.

Congress found during the hearings preceding the Tax Reform Act of 1969 that the preferences set within the tax code enabled some individuals to receive substantial income without paying any tax whatsoever. In order to rectify this abuse, the minimum tax on tax preferences was established. Legislation has been proposed that will reduce the $30,000 exemption for tax preference to $12,000 and increase the minimum tax from 10% to 30%.[21] It has also been proposed to include within the concept of tax preferences tax exempt interest on state and local bonds, investment credit on depreciated property and charitable contributions to the extent attributable to

21. *See* S. 3378 introduced originally by Senator Nelson in March, 1972.

such appreciated property. Opponents maintain that unrealized appreciation is not income received by the donor. Inclusion of unrealized appreciation as a preference is in reality a further limitation on the charitable deduction for appreciated property which is subject to the 50% limitation and the 30% limitation on the gifts of appreciated property. The extension of this provision, however, could obviate the necessity for the enactment of any other provision designed to assure tax equity.

On February 5, 1973, the House Ways and Means Committee commenced tax reform hearings with a five-man panel discussion of general approaches to tax reform and tax simplification. Two weeks of panel discussions followed by public hearings explored in depth twenty selected tax areas outlined by Chairman Mills. One subject singled out for consideration was the estate tax provisions of the Internal Revenue Code.

The Tax Reform Act of 1969 left intact the existing estate tax regulations which were based essentially on a 1916 law and virtually ignored by Congress since 1942. The present estate tax rates and exemptions provide a system whereby a mere 4% of the estates of persons who die and only 25% of the cumulative wealth of such decedents is subject to tax.

Reformers view the entire estate tax area as a rich, untapped reservoir of tax revenues. Almost all observers agree that the estate tax system as presently constituted needs a thorough analysis in order to determine whether the rates and exemptions are compatible with present economic realities.[22] On this tax issue, as with many others, the college and university community support tax reform proposals which provide for a more equitable sharing of the tax burden and the elimination of abuses, but concurrently urge the Congress to retain the incentives for charitable giving to institutions of higher education.

Bequests have become an increasingly important means of support of American colleges and universities. The Council for Financial Aid to Education (CFAE) reports in its 1970-71 "Survey of Voluntary Support" that institutions of higher education received $266 million in bequests, an increase of 43.3% over the previous

22. *See* Kurtz & Surrey, *Reform of Death and Gift Taxes: The 1969 Treasury Proposals, The Criticisms and a Rebuttal,* 70 Col. L. Rev. 1365 (1970).

year. In 1971-72, bequests to colleges and universities decreased 4.4% to $254.3 million. The impact of bequests can be best measured when it is compared to the total voluntary support by individuals which amounted to 15.4% of the grand total of all voluntary support in 1971-72. As a share of the total support received from individual donors, bequests during 1971-72 accounted for 31.9%, down from 34.9% in the prior year.

Bequests are the largest single source of most college endowment funds. A 1968 study by Julian H. Levi and Fred S. Vorsanger for the American Council on Education (ACE) demonstrated that, based on 1962-63 data, bequests represented 25% of the gifts to higher education for capital purposes.[23]

In order to obtain more refined figures concerning the nature and kind of bequests received, as well as other information, the American Council on Education commissioned a study of 1970-71 voluntary support data.[24] One of the principal questions investigated was the form of bequest, whether the gift was in cash, securities, real estate or other property and whether the size of the gift exceeded or was less than $5,000. The figures demonstrated again the dependence of higher education on the large gift: 98% of bequests received were for more than $5,000, and 67% of the total amount received was in the form of securities, real estate or other property.[25]

The ACE study also divided bequests into categories of specific and residuary bequests. The figures indicate that almost $96,000,000 out of a total survey sample of $216,000,000 was in the form of residuary bequest.[26]

Secretary Shultz speaking for the administration on April 30,1973, before the House Ways and Means Committee made the following statement:

> Most of the controversy involving estate and gift taxes turns on matters of personal philosophy. There is no one key to truth in this area and even individuals of the same political persuasion feel differently and deeply. The permutations and combinations of options are

23. J. LEVI & S. VORSANGER, PATTERNS OF GIVING TO HIGHER EDUCATION (American Council on Education 1968).

24. J. LEVI & S. STEINBACH, *supra* note 6.

25. *Id.* at §VIII, p. 23.

26. *Id.* at Table XVIII.

> myriad. Differences in view must be compromised for they cannot be reconciled, and Congress is the best place to do it.
>
> The principal issues in the estate and gift tax area have been identified as the problem of rates, the treatment of unrealized appreciation at death, generation-skipping, a unified gift and estate tax and changes in the marital deduction. We have no magic answer to any of these items, but we shall be pleased to work with your Committee and share with you what expertise we have.

Numerous legislative proposals relating to changes in the estate tax structure have been introduced. Many of these proposals which have been advanced would create serious deterrents to the level of giving to colleges and universities.

Integration of the Estate Tax Rate with Inter Vivos Gifts

It has been proposed that the estate and gift tax structure be integrated. Under the present system, estates are taxed without regard to that portion of the wealth which is transferred by lifetime gifts. Reformers contend that the present law is slanted in favor of those individuals who reduce their estate partly by lifetime gifts and partly at death as against whose who distribute all their wealth at death.[27] This situation occurs as a result of the progressive rate structures attached to both the estate and gift tax code. An individual who availed himself of the opportunity to make lifetime gifts would be able to utilize the lowest level of the progressive rates of both the estate and gift tax system. In order to establish a more equitable situation, Representative Corman (D-Cal.), on behalf of himself and 24 colleagues, proposed in H.R. 1040 to impose a tax on the amount of the taxable estate increased by the amount of lifetime gifts.

If the estate and gift tax systems are joined, wealth transferred at death would be taxed at a higher rate because the property devised by bequest would be "stacked" on top of lifetime gifts in order to determine the appropriate tax rate. The additional tax burden imposed by such a provision would diminish the amount left in the residuary estate, thereby lessening the amount of money received by colleges and universities, and decrease the incentive of donors to use the lower gift tax rates to make gifts currently.

27. *See* note 22 *supra*.

Limitation on Charitable Deductions for Estate Tax Purposes

Another proposal which Congress is almost certain to consider would eliminate the amount of an estate which could be given tax free to a public charity. Present law places no restriction on the amount of the deduction a decedent can receive by providing for a charitable bequest. A gift of an entire estate to a charitable entity, including a private foundation, could therefore eliminate the payment of any federal estate tax. It is proposed in H.R. 1040 that the charitable deduction be limited to 50% of the gross estate.

As demonstrated by the recent ACE study, a substantial amount of the bequest dollars comes from a relatively few testators. Although there is no comprehensive data available, currently data is being gathered in order to ascertain what percent of the total estate a bequest to a college or university represents.

One can only speculate about the extent of the impact of a 50% limitation on the deductibility of charitable bequests. Such a change in the estate tax provisions of the Code will create, by its very existence, a significant drop in bequests received by colleges and universities, with the likelihood that substantial donors may well limit their testamentary gifts to those portions of their estates that are deductible.

It is contended by some college fund raisers that Congress could raise some revenue while not reducing the incentives for giving to higher education by exempting public charities from the 50% ceiling on charitable bequests. Such a provision would place further restrictions on the funding of private foundations, but preserve the giving of large bequests to colleges, museums, hospitals, symphony orchestras, etc., especially where there were no direct heirs.

Taxation of Appreciated Property Transferred at Death

Under existing law, when a taxpayer holds an appreciated asset until his death, the appreciation is not subject to income tax, while at the same time, the legatee is allowed a step-up in basis, so that on a subsequent sale, this portion of the gain is not taxable. The Treasury Department has stated that the present system of not taxing appreciation on assets transferred at death "is grossly inequitable and substantially impairs the progressivity of the tax structure." Furthermore, it has "undesirable economic effects, particularly in cases of older people." "Assets become immobilized: inves-

tors become 'locked in' by the prospect of avoiding income tax completely if they hold appreciated assets until death rather than selling them. This freezing of investment positions deprives the economy of the fruits of an unencumbered flow of capital toward areas of enterprise promising larger rewards."[28]

Representative Reuss (D-Wis.), on behalf of himself and 24 other Congressmen, has introduced H.R. 967, which provides, in part, for taxing the appreciation in assets transferred at death as if the decedent had sold it on the day of his death. An income tax would be imposed on the capital gains held by the decedent and would thus be deductible from the gross estate, thereby reducing a portion of the estate tax liability. It is estimated that enactment of this provision will yield the Treasury approximately $2 billion in additional revenue.

The Reuss bill provides for an exemption for estates of $60,000 or less along with additional exemptions for personal and household effects, and transfers to a spouse. A former Treasury Department proposal which would have excluded capital gains treatment for assets transferred at death to a public charity was not included in the Reuss bill. Unless this proposed provision is waived for public charities, the colleges and universities of this country will suffer a substantial financial set back. As noted earlier, a substantial amount of bequests come in the form of appreciated property. At the very least, bequests will be reduced by the amount of the tax, but it is not beyond the realm of possibility that the imposition of the tax could in some instances deter the donor from making the bequest.

An alternate proposal which has not yet secured legislative status would provide that a beneficiary under a will would take over the cost basis of the asset that existed at the time of the decedent's death. Presently, an heir does not have to pay taxes on the unrealized appreciation of the asset bequeathed to him and only pays taxes on the increase in value after he inherited it, his cost basis being the Federal Estate Tax valuation. A provision of this kind would not have a substantial impact on gifts of appreciated property to philanthropic entities, since there would be no tax imposed on the

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28. HOUSE WAYS & MEANS COMMITTEE AND SENATE FINANCE COMMITTEE, TAX REFORM STUDIES AND PROPOSALS 331-51 (1969).

gain when the asset was sold by the tax-exempt institution.

At this time, the House Ways and Means Committee has its immediate attention turned to trade legislation, but some pressure for tax reform seems to continue. If the Committee considers tax reform, it probably will not be before late in 1973 or early in 1974. If that time frame indeed holds true, it is quite conceivable that tax reform will become a significant issue in the 1974 Congressional elections.

In such a time frame, one must also consider the fact that reform elements in Congress are preparing an attack on the closed rule whereby bills have traditionally moved from the Ways and Means Committee to the floor of the House without any chance for amendment. Congressmen, therefore, have the sole choice of voting for or against the package. If indeed a modified open rule is secured, it is conceivable that numerous amendments could be tacked on to the Ways and Means Committee bill and that possibility of the addition of amendments could affect Congressman Mills' strategy for bringing out a bill.

One is unable to discuss tax reform without noting recent press reports that indicate that Chairman Mills may resign due to health reasons. It is still too early to assess the possible impact that the Chairman's possible resignation might have.

Within the Committee itself, observers note that the liberal-conservative conflict is eroding the solution-oriented atmosphere that has pervaded the Committee for many years, and has instilled a greater issue orientation. Some of the more liberal Democrats seem less willing to defer to the Chairman's wishes. On the Republican side with the retirement of John Byrnes, the ranking Republican, the remaining Republicans give some indication of being a less cohesive and predictable group than has existed in prior years. All these elements will have some bearing on when and how a bill will emerge from the Ways and Means Committee.

Many of the reform proposals currently being discussed could substantially curtail or severely dampen the incentives toward voluntary support of America's colleges and universities. Private support has continued to provide higher education with essential, unearmarked funds that have enabled administrators to meet their institutions' requirements and goals without incurring obligations

to external sources. No replacement for such funds is seen on the horizon.

The Internal Revenue Code, over time, has been used to implement various societal policies. It is difficult to believe that Congress presently favors the elimination of private initiatives in education that have aided both private and public institutions alike. At this critical moment in the financial history of American higher education, Congress should seek to spur further philanthropy for education and not place colleges and universities in a financially disadvantageous position under the guise of achieving tax equity.

UNIVERSITY OF RICHMOND

LAW REVIEW

VOLUME 8 | WINTER 1974 | NUMBER 2

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