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Recent Legislative Changes As To The Reporting And Payment Of The Gift Tax: A Step Toward Tax Simplification

U.S. SENATOR HARRY F. BYRD, JR.

The overly complex nature of the nation's tax laws has spurred congressional action to simplify the tax code. United States Senator Harry F. Byrd, Jr. has demonstrated his commitment toward this goal by his recent introduction of the Annual Gift Tax Return Act. This measure, enacted as part of the Economic Recovery Tax Act of 1981, provides a return to the system of annual gift tax reporting. More significantly, it demonstrates that simplification of the tax laws can be achieved without sacrificing other goals, and without additional costs to the taxpayer.

I. Introduction

One of the most consistent trends in federal taxation for the past several decades has been the increasing complexity of the law. Substantial concern over the costs of this complexity has led to congressional hearings on the subject, to conferences in the private tax community, and to the publication of a number of articles and studies.[1]

1. Congressional hearings on simplification include those held before the House Ways and Means Committee in the 93rd and 94th Congresses, on February 5, 1973. "Quite aside from the irreducible complexity of even the simplest income tax, a host of additional complexities in existing law are the result of policy deci-

The American tax system has long enjoyed the benefits of substantial voluntary compliance and self-assessment. Recently, however, fears have been expressed that the increasing complexity of the law is eroding that tradition. Simplification of these laws can strengthen the self-assessing aspect of the system. By making the law easier to understand for both taxpayers and their tax advisors, voluntary compliance would be facilitated. Similarly, simplification would assist the federal government in its enforcement and administration of the laws. It may also provide for more uniform enforcement and compliance by strengthening the belief that others are also paying their fair share.

Despite the mounting concern over increased complexity in tax legislation, this general trend has not been halted. For example, the adoption of the windfall profits tax,[2] whatever its other advan-

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sions that are not likely to be reversed in the foreseeable future." *The Subject of General Tax Reform: Panel Discussions Before the House Comm. on Ways and Means*, 93d Cong., 1st Sess. 123 (1973) (statement of Boris I. Bittker, Professor, Yale University); and June 24, 1975 ("[W]e have gradually built up over the years an appallingly complicated tax structure without realizing at any given step the total effect of that complexity. It has led to some abuses by both taxpayers and by overzealous Government agents, and at times it has shaken the essential public confidence." *The Subject of Tax Reform: Panel Discussions Before the House Comm. on Ways and Means*, 94th Cong., 1st Sess. 126 (1975) (statement of John S. Nolan, former Commissioner of the Internal Revenue Service), respectively, and before the Senate Subcommittee on Taxation and Debt Management of the Committee on Finance, on June 22, 1979 ("The Internal Revenue Code is growing in length at a rapid rate. In 1953, the income, estate and gift tax provisions of the code were 670 pages long. By 1963, these had grown to 1,038 pages and by 1973 to 1,728 pages." *Tax Simplification: Hearings on S. 1062 and S. 1063 Before the Subcomm. on Taxation and Debt Management of the Senate Comm. on Finance*, 96th Cong., 1st Sess. 24 (1979) (statement of Charles R. Lees, Vice-Chairman, Federal Tax Division, American Institute of Certified Public Accountants). Recent studies and articles on tax simplification include a Report by the Staff of the Joint Committee on Taxation, which states that "The Joint Committee recognizes the importance and desirability of simplifying the tax laws." *Issues in Simplification of the Income Tax Laws: Report prepared by the Staff for the Joint Comm. on Taxation*, 95th Cong., 1st Sess. III (1977). *See also* C. GUSTAFSON, FEDERAL INCOME TAX SIMPLIFICATION (1979).

2. Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 229 (1980) (codified as amended in scattered sections of 26 U.S.C.). The Act was needed because of the Carter Administration's decision to end price controls on crude oil, the country's dependence on imported oil, and the rising prices of that oil. The tax sought to balance the incentive to produce domestic oil against the additional profits that oil producers and owners would receive as a result of oil price decontrol.

There were six major parts of the Act. The first imposed a windfall profit tax on domestic oil producers and royalty owners. The second provided tax incentives to encourage energy conservation in homes. The third provided tax incentives to encourage energy conservation by businesses and to develop alternative energy sources. The fourth involved programs to aid lower income families in coping with high energy costs. The fifth portion established a Transportation Trust Fund, a Low-Income Energy Assistance Trust Fund, and a Taxpayer Trust Fund. The sixth and final provision was the repeal of the carryover basis which was enacted only two years before.

tages and disadvantages, added an entire new body of law.[3] Yet, there has also been some success in the move toward simplification of the tax laws. The repeal of the carryover basis in estate tax law, for instance, eliminated a complex and administratively burdensome tax provision.[4] Similarly, the accelerated cost recovery system, which has recently replaced the traditional depreciation method,[5] should provide a major simplification. Additionally,

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3. *See* note 2 *supra*.

4. *Id.* The Crude Oil Windfall Profit Tax Act of 1980 repealed the carryover basis and treated the basis of property acquired from a decedent as the fair market value of the property at the time of death. Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 401(a), 94 Stat. 229 (1980). Under the carryover basis approach, a person who acquired property from a decedent acquired the adjusted basis of the property that the decedent held at the time of his death. However, the basis is adjusted upward for federal or state estate taxes. In addition, certain property is not subject to the carryover basis rule, such as life insurance proceeds from the decedent's life, personal and household effects not exceeding $10,000 which the executor elected to exclude, gross income in respect of a decedent, certain joint and survivor annuities, and some stock or stock options. Determining how much to increase the basis or which property items were not included in the carryover basis involved the use of complicated formulas and definitions, as well as many cross-references to other parts of the Code. I.R.C. § 1023 (1976) (Repealed by Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, § 401(a), 94 Stat. 229 (1980). The Senate realized that these provisions were "unduly complicated," and that as a result they increased the time and raised the cost of administering an estate. S. REP. No. 394, 96th Cong., 2d Sess. 122, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 410, 530-31.

5. Depreciation is based upon the belief that the cost of an asset should be allocated over the period that the asset is used to produce income. Normally, property can be depreciated if it is used in a trade or business or for the production of income, and subject to wear, tear, decay or decline from natural causes, exhaustion, or obsolescence. Under the old law, the amount of the depreciation deduction depended upon the type of property, its useful life, and the method used. The useful life of personal property is determined either by the Asset Depreciation Range (which groups assets into over 100 classes and assigned each class a useful life), or is determined according to the facts and circumstances pertaining to each asset. Real property's useful life is determined under either the above facts and circumstances test or by guidelines found in Revenue Procedure 62-21 (1962-2 C.B. 418). While both types of property could use the straight-line method of depreciation, there were restrictions placed on the use of the accelerated methods depending upon the type of either real or personal property being depreciated. In the belief that the "present rules for determining depreciation allowances . . . need to be replaced because they do not provide the investment stimulus that is essential for economic expansion . . . (and) are unnecessarily complicated," S. REP. NO. 144, 97th Cong., 1st Sess. 47, *reprinted in* 1981 U.S. CODE CONG. & AD. NEWS 194, 238, the Accelerated Cost Recovery System was enacted. Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 201(a), 95 Stat. 203 (1981). This new method depreciates property under either a statutorily determined accelerated depreciation method or a straight-line method. The exact amount of the accelerated depreciation, along with the recovery period, depends upon the type of property it is. The recovery period is either 3 years (for automobiles, light-duty

the increase in the unified credit applicable to the estate and gift tax,[6] the unlimited marital deduction,[7] and the increased gift tax exclusion,[8] in exempting many taxpayers from estate taxes, will simplify the estate tax law.

While tax law simplification may occur as a result of broader policy changes, it is widely recognized today that a program of legislation aimed specifically at simplification is necessary.[9] Accordingly, in the last congressional session, a concerted effort to deal with the problem of overly complex tax legislation was undertaken.

II. A New Direction

The Subcommittee on Taxation and Debt Management of the Committee on Finance,[10] of which the author of this article was Chairman, held hearings on the general subject of tax law simplification in June of 1979. These hearings indicated that tax complexity would not be eliminated overnight. However, a foundation was established for adoption of a series of highly specific, frequently unglamorous, technical changes. While no one of these changes will make the Internal Revenue Code simple, they cumulatively may help alleviate the problem over a period of time.

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trucks, and equipment used in research and development), 5 years (for all tangible property), 10 years (for some public utility property and theme park structures), or 15 years (for other public utility property). I.R.C. § 168 (1981).

6. Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 401, 95 Stat. 202 (1981) (amending I.R.C. §§ 2010(a), 2505(a)(1), 2505(b), 6018(a). The increase in the unified credit applicable to the estate and gift tax allows an increase from the former amount of $47,000 to $192,800. This permits an estate as great as $600,000 to pass free from estate and gift taxes. This is to be contrasted with the former amount which allowed only estates up to $175,000 to pass without such taxes.

7. Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 403, 95 Stat. 304 (1981). The former law, contained in the Tax Reform Act of 1976, allowed an estate tax marital deduction equal to the greater of one-half of the adjusted gross estate or $250,000. It also allowed an unlimited gift tax marital deduction for gifts up to $100,000 to a spouse and a 50% deduction for gifts over $200,000. The new law allows unlimited amounts of property to be transferred to the surviving spouse free of gift taxes. There is an exception for certain terminable interests, on which taxes must be paid. The Economic Recovery Tax Act thus eliminates the monetary ceiling on the estate and gift tax marital deductions for estates of decedents dying after 1981.

8. Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 441, 95 Stat. 282 (1981). The increase in the annual gift tax exclusion allows for an annual exclusion of up to $10,000 from the present amount of $3,000. This new figure is effective for gifts made after 1981.

9. *See* note 1 *supra*.

10. The Subcommittee on Taxation and Debt Management of the Senate Committee on Finance first appeared in 1977 at the 95th Congress, first session. In the 97th Congress, its membership consisted of Harry F. Byrd, Jr., (Virginia), Robert W. Packwood (Oregon), Lloyd M. Bensten (Texas), Spark M. Matsunaga (Hawaii), Russell B. Long (Louisiana), John C. Danforth (Missouri), John H. Chafee (Rhode Island), Malcolm Wallop (Wyoming), and William L. Armstrong (Colorado).

To begin the process of introducing specific changes designed to simplify the tax laws, two bills were presented and discussed at the hearing. The first, Senate Bill 1062, contained a number of technical simplifications in tax procedure and was ultimately adopted in 1979.[11] The second, Senate Bill 1063, sought to amend and simplify the rules relating to installment sales. A significantly modified version of the bill was eventually enacted in October of 1980.[12] The author introduced a third bill aimed at

11. Senate Bill 1062 was enacted as Public Law 96-167 and made several technical simplifications in the tax code. Before the new law, a person who transferred income producing property valued at over $50,000 to an exempt organization which the transferor knew was subject to tax on its unrelated business income (under I.R.C. §§ 511(a) or (b)) had to file a return which described the transferred property, and give the date of transfer and fair market value of the property. However, since the exempt organization also maintained records and furnished this same information, there was no need to require the transferors to report the transfer. S. REP. NO. 433, 96th Cong., 1st Sess. 7-8, *reprinted in* 1979 U.S. CODE CONG & AD. NEWS 2594, 2600, 2603.

A final simplification was the repeal of the requirement that a corporation file an annual information return when it transferred a share of stock to a person pursuant to his exercise of a qualified stock option (I.R.C. § 422) or restricted stock option (I.R.C. § 424). Act of December 29, 1979, Pub. L. No. 96-167, § 7, 93 Stat. 1273 (1979).

12. The purpose of reporting income under an installment method is to allow a person to spread out the payment of income tax over the period in which he receives payments for the sale of the property, thereby avoiding a liquidity problem in the year of the sale. S. REP. NO. 1000, 96th Cong., 2d Sess. 7, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 4696, 4701. To accomplish this, the old law under I.R.C. § 453 allowed a person to elect to report as a gain in a taxable year "that proportion of the installment payments actually received in that year which the gross profit, realized or to be realized when payment is completed, bears to the total contract price." In order to make an election, the amount received in the year of the sale of real estate or nondealer personal property could not be more than 30% of the total to be received. In addition, there had to be more than two payments made, and in the case of casual sales of personal property, the sale price must have been over $1,000. I.R.C. § 453 (1954) (amended by Installment Sales Revision Act of 1980, Pub. L. No. 96-471, 94 Stat. 2247 (1980)). These requirements caused several problems. For example, the 30% requirement is an arbitrary number, and those unaware of it who receive 31% of the total purchase price on installment in the year of the sale would have to report the entire gain from the sale in that year, and as a result could face a liquidity problem. Another problem was that sales where a seller accepted less than 30% of the selling price in one year, and then the rest the next year came under the two payment year, while sales where the seller received payment the year of the sale and received the total amount ten years later did not. It was also difficult at times to distinguish, for purposes of the $1,000 sale amount, if the sale consisted of several goods sold together for over $1,000, or several goods sold separately which added up to over $1,000. The latter transaction was not allowed. The Installment Sales Revision Act of 1981 was enacted to correct these problems and simplify installment sales reporting. A person still reported the gain on the sale by way of the above mentioned formula, but the 30% initial payment limit, two-payment rule, and $1,000 sales price for personal

simplification of gift tax reporting.[13] It was enacted as part of the Economic Recovery Tax Act of 1981.[14]

This bill repealed the previous legislation that required that gift tax returns be filed, and the tax paid, on a quarterly basis. Instead, the law was returned to its original system of annual filing. While the purpose of this bill was to address one specific aspect of tax administration, it did illustrate the direction in which changes are likely to occur in the recent effort to simplify the tax code.

III. Development of the Gift Tax and the Requirement of Quarterly Filing

To understand the significance of this change in gift tax reporting, a brief review of the origin of the gift tax and the change to a quarterly system of payment is in order. The evolution of a system requiring payment of a gift tax on a quarterly basis shows that the goal of simplification sometimes conflicts with other policy goals, and often simplification is sacrificed to achieve these other objectives.

Prior to 1932, the United States had briefly experimented with a gift tax several times. The most recent provision at that time had been repealed in 1926, only two years after it was enacted.[15] The

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property requirement were repealed. Installment Sales Revision Act of 1980, Pub. L. No. 96-471, § 2, 94 Stat. 2247 (1980) (Current version I.R.C. § 453(d) (1980)). In addition, installment sales that met the new relaxed requirements are automatically considered to fall under the installment treatment, unless the taxpayer elects not to have the payment so treated. *Id.*

The structure of I.R.C. § 453 was also altered. Under the old law, § 453 covered installment method reporting for dealers in personal property, for sales of real property, for sales of nondealer personal property, and special disposition rules. The Act separated these transactions, such that installment method reporting rules for nondealer transactions are contained in I.R.C. § 453, personal property dealer rules are contained in I.R.C. § 453A, and generally applicable installment obligation disposition rules are contained in I.R.C. § 453B. Installment Sales Revision Act of 1980, Pub. L. No. 96-471, § 2, 94 Stat. 2247 (1980).

13. Annual Gift Tax Return Act, S. 3080, 96th Cong., 2d Sess. (1980). The bill provides for the annual payment of gift taxes for gifts made after 1981. The due date for these returns are the 15th day of the fourth month following the close of a calendar year. If the donor dies during the calendar year, the return must be filed not later than the date required for filing his estate tax return.

14. *See* notes 6-8 *supra* and accompanying text.

15. The gift tax has its origins in the Civil War. The Death Tax Act of 1862, ch. 119, 12 Stat. 432 (1863) included or considered many features which are part of the present federal gift and estate tax law. The modern estate and gift tax law can be considered a descendant of the Revenue Act of 1916, ch. 463, 39 Stat. 756 (1916), which grew out of World War I.

The Revenue Act of 1924, ch. 234, 43 Stat. 253 (1924), added a gift tax with the same rate schedule as the estate tax. Stiff opposition to the estate and gift taxes increased during the mid-1920's and, in 1926, the gift tax was repealed. Although repealed, the gift tax did stimulate the action of the United States Supreme Court

Great Depression in the 1930's reduced income tax revenues and increased public demand for federal funds to finance various new government projects. The United States was confronted with a projected deficit of over $1 billion for fiscal year 1933, which in those days seemed an alarming sum.[16] To cover the deficit, Congress reduced expenditures while it simultaneously provided additional revenues through the Revenue Act of 1932,[17] which reintroduced the gift tax.[18] A gift tax return was required to be filed annually, at the close of any calendar year in which a gift in excess of $3,000 was made to any one individual.[19]

The next significant change occurred in 1970, again in response to a desire to reduce a projected deficit. The House of Representatives passed the Excise, Estate and Gift Tax Adjustment Act of 1970 which attempted to increase the revenue by accelerating certain tax collections.[20] To achieve an acceleration of gift tax, the Act provided for the filing of gift tax returns and the payment of gift taxes on a quarterly rather than an annual basis.[21]

The new law was designed to produce an immediate, but onetime, increase in tax revenues of $100 million for fiscal year 1971. In addition, small future savings in interest payments by the federal government were anticipated as a result of the shift to quarterly payment of gift taxes.[22] These revenue benefits, however, were achieved at the cost of continuing compliance problems for

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to uphold its constitutionality. In Bromley v. McCaughn, 280 U.S. 124 (1929), the Court held that the gift tax was a constitutional excise tax.

16. S. REP. NO. 665, 72nd Cong., 1st Sess. 496 (1932).

17. Revenue Act of 1932, ch. 209, § 1006(a), 47 Stat. 169 (1932). It was anticipated that the tax bill would increase revenues by approximately $1 billion during fiscal year 1933, and that the government economy program would reduce expenditures by at least $230,000,000. S. REP. No. 665, 72nd Cong., 1st Sess. 496 (1932).

18. *Id.*

19. Revenue Act of 1932, ch. 209, § 1006(a), 47 Stat. 169 (1932). In the codification of the Internal Revenue Code in 1954, the income tax filing date was changed to April 15, as it exists presently. The gift tax return filing requirement was likewise changed to April 15, following the calendar year in which a gift was made. I.R.C. § 6075(b) (1954).

20. Excise, Estate and Gift Tax Adjustment Act of 1970, Pub. L. No. 91-614, 84 Stat. 1836 (1970).

21. *See* note 20 *supra*. The return and payment were to be due on or before the 15th day of the second month following the close of the calendar quarter in which a gift was made in excess of the annual $3,000 exclusion per donee. Thus, the gift tax return and payment for a gift made on February 1, 1971, for example, would be due on or before May 15, 1971. If this same taxpayer also made a taxable gift on September 10, 1971, he would file a second gift tax return and pay the tax attributable to that gift by November 15, 1971.

22. H.R. REP. No. 1635, 91st Cong., 2d Sess. 13 (1970).

affected taxpayers. Individuals required to pay an estimated *income* tax in quarterly installments generally make regular payments. The gift tax is less well-known than the income tax, and very few taxpayers regularly make quarterly gift tax payments. Since filing was an occasional, sporadic event which neither taxpayers nor their professional advisors could readily remember or work into a routine, the quarterly filing requirement created a trap for unwary taxpayers. To further compound the practical problem, none of the due dates for the gift tax quarterly payments coincided with the income tax quarterly payment dates. This made them even more difficult to remember.

The Internal Revenue Service has also had its share of administrative headaches arising from the quarterly gift tax return filing requirement. Prior to its enactment, the Service processed an average of 142,000 gift tax returns annually. More specifically, for the calendar years 1967, 1968, and 1969, the Service processed 137,000, 139,000, and 151,000 gift tax returns, respectively. By contrast, for calendar years 1973, 1974, and 1975, after enactment of the quarterly gift tax return requirement, the Service processed 244,000, 253,000, and 270,000 gift tax returns. But, by 1976, the total amount of actual gift tax collected was slightly less than collections in 1970.[23] In short, the goal of simplification has in the past been deliberately sacrificed to the goal of increasing revenue. However, even the latter goal, except for a transitory, one-time acceleration, had suffered as well.

The trend away from complex tax legislation began in 1976, with the Tax Reform Act of that year.[24] The Act provided that for gifts made after December 31, 1976, a quarterly gift tax return was required *only* when the sum of taxable gifts made during the calendar quarter, plus all other taxable gifts made during the calendar

23. H.R. REP. NO. 1380, 94th Cong., 2d Sess. 62 (1976).

24. Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520 (1976). The Tax Reform Act of 1976 was designed to achieve four objectives; first, to improve the equity of income tax at all income levels; second, to simplify many of the tax provisions and delete unnecessary language; third, to continue the economic stimulus created by the Tax Reduction Act of 1975, Pub. L. No. 94-12, 89 Stat. 26 (1975); and fourth, to make improvements in the administration of the tax laws. H.R. REP. NO. 658, 94th Cong., 2d Sess. 3, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 2897, 2897. The first objective was accomplished by eliminating some of the abuses of tax shelters (such as limiting artificial losses on farming, oil, and gas, and movie activities), strengthened some of the recapture rules, and increased the minimum tax rate for individuals. *Id.* at 4, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 2897, 2898-99. Simplification of some of the tax provisions was accomplished by making the alimony deduction available to taxpayers who claim the standard deduction, eliminating the complex sick pay exclusion (except for permanently and totally disabled persons), and revising the optional tax tables by basing them on taxable income instead of adjusted gross income. S. REP. NO. 938, 94th Cong., 2d Sess. 5, *reprinted in* 1976 U.S. CODE CONG. & AD. NEWS 3439, 3442.

year for which a return had not been filed, exceeded $25,000. This change both decreased the burden of compliance for the smaller donors and reduced the heavy administrative burden on the Service.[25]

Finally, in 1979, a bill was enacted that changed the filing date of the gift tax return for the fourth quarter from February 15 to April 15.[26] This change permitted the preparation of the gift tax return to be coordinated with preparation of the income tax return. This was a helpful step in clarifying the confusion which had resulted from the 1970 Act, but it left unchanged the May, August, and November payment dates, which still did not coincide with the quarterly payment dates.

IV. The Return to Annual Filing and Payment

In the 96th Congress, the author introduced legislation to provide relief from the complex and confusing quarterly gift tax filing requirement. Senate Bill 3080 provided for the annual reporting and payment of the gift tax.[27]

A hearing was held on the bill before the Subcommittee on Taxation and Debt Management at which the bill received strong support. Daniel Halperin, Deputy Assistant Secretary for the Treasury for Tax Policy, testified that "the present quarterly filing requirement has resulted in compliance problems for and confusion among affected taxpayers and administration burdens for the IRS."[28] He concluded that "a simplified reporting system will be

25. *See* note 24 *supra*. The burden of compliance and administration was reduced by the overall effect of the Act. The Tax Reform Act of 1976 made many changes in the Internal Revenue Code of 1954. It created a unified estate and gift tax, with a single graduated rate of tax imposed on both lifetime gifts and testamentary transfers. The gift tax continues to be cumulative. The rate of tax on each successive taxable gift is higher throughout the donor's entire lifetime. After 1976, however, the gift tax is cumulative with the estate tax. Transfers made at death are treated in effect as the last taxable gift of the deceased donor. Therefore, the amount of lifetime taxable gifts affects the rate of tax imposed on the donor's taxable estate. The estate and gift tax rates which graduated to a maximum tax rate of 70% were on cumulative gifts or taxable estates of more than $5 million.

26. *See* note 11 *supra*. This change in the filing date of the gift tax return for the fourth quarter permitted the coordination of preparation of gift tax returns with the preparation of the fourth quarter of income taxes for those persons who pay income taxes on a quarterly basis. It still left the other dates unchanged, however.

27. *See* note 13 *supra* and accompanying text.

28. *Before the Subcomm. on Taxation and Debt Management of the Senate Comm. on Finance*, 96th Cong., 2d Sess. 17 (1980).

beneficial in terms of tax administration."[29]

The sentiments of Daniel Halperin were echoed by witnesses from the Tax Section of the American Bar Association,[30] and from the American Bankers Association.[31] Representatives of these groups pointed out the reduced importance and amount of gift tax collections under the present unified credit and marital deduction provisions of the Tax Reform Act of 1976.[32] Representatives of both groups characterized the new bill as a significant step toward simplification of the tax laws.

After the hearings, the Senate Finance Committee added the bill as an amendment to a different bill passed earlier by the House of Representatives.[33] It was subsequently approved by the Senate. The bill was then returned to the House, along with several other bills, which it repassed with most Senate amendments intact. The House, however, deleted the gift tax provision. Since this occurred within the final hours of the 96th Congress, the Senate accepted the House decision. Although no official statement was made, discussion of the main bill, to which the gift tax reporting provision was amended by the Ways and Means Committee, showed that the added provision was not deleted because the Representatives disagreed with it on the merits. The objection to the amendment was that the Ways and Means Committee had never held a hearing on the provision and there was not enough time left in the 96th session of Congress to permit a hearing at that time.

In the early days of the 97th Congress, the author, along with co-sponsor, Senator Robert Packwood,[34] once again introduced a new bill which would provide for the annual reporting of the gift

29. *See* note 28 *supra*.

30. *Before the Subcomm. on Taxation and Debt Management of the Senate Finance Comm.*, 96th Cong., 2d Sess. 17 (1980) (statement of Harvie Branscomb, Jr., Chairman of the Section of Taxation of the American Bar Association).

31. *Before the Subcomm. on Taxation and Debt Management of the Senate Finance Comm.*, 96th Cong., 2d Sess. 17 (1980) (statement of Donald W. Thurmond).

32. *See* notes 6, 7 & 26 *supra*.

33. H.R. 5505, 96th Cong., 1st Sess. (1980). H.R. 5505 provided for, among other things, the amendment of the Internal Revenue Code for the payment of interest to persons whose property was wrongfully seized by the Internal Revenue Service; for the repeal of the requirement that a person who transfers property with a fair market value of over $50,000 to a tax-exempt organization file an informational return detailing the transfer; for the repeal of a 25% tax penalty for taxpayers who try to conceal their property or remove it from the country to avoid paying taxes on it; and for the conformation of due dates of gift tax returns when an extension for the filing of the donor's income tax return is granted.

34. Senator Robert Packwood is a Republican from Oregon, first elected in 1968. Prior to his election to the United States Senate, he was a member of the House of Representatives of the State of Oregon from the years 1962 through 1968. He was also a practicing attorney from 1958 through 1968.

tax.[35] The purpose of the new bill was identical to Senate Bill 3080, which had been introduced in the 96th Congress, but contained technical improvements in drafting which had been developed during the proceedings held the previous year.[36]

On June 5, 1981, a hearing was held on a number of bills, including Senate Bill 955, the new gift tax reporting bill, before the Subcommittee on Estate and Gift Taxation of the Senate Committee on Finance. While no representative from the Treasury Department testified at the hearing, the ABA's support for the annual reporting concept was repeated.[37]

Five days later, Congressman Conable introduced the proposal for annual gift tax returns in the House.[38] It was hoped that this would avoid another rejection of the proposal by the House such as had occurred in the final hours of the 96th Congress.

The original tax proposals of the Reagan Administration neither included a provision on annual gift tax returns, nor was the subject covered by the Senate version of the Economic Recovery Tax Act.[39] However, such a provision was included in both the House Ways and Means tax bill,[40] and the alternative Conable-Hance bill.[41] Accordingly, it was part of the final House bill and was accepted by the Conference Committee without dissent.[42]

The end of the legislative road was reached when the Economic Recovery Tax Act was signed by President Reagan on August 13, 1981. The system of annual reports and payments will be effective for gifts made on and after January 1, 1982.[43]

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35. S. 955, 97th Cong., 1st Sess., (1981).

36. The bills are identical in purpose.

37. Statement of Harvie Branscomb, Jr., Chairman of the Section of Taxation of the American Bar Association. *See also* Statement of John A. Wallace, American College of Probate Counsel.

38. H.R. 4260, 97th Cong., 1st Sess., (1981). Benjamin Conable, Jr. is a Republican from New York who was elected to Congress in 1964. He is the ranking minority leader on the Ways and Means Committee. His bill was designed to amend the Internal Revenue Code so as to reduce tax rates for individuals, and was very similar to H.R. 4242, 97th Cong., 1st Sess. (1981).

39. H.R. 3873, 97th Cong., 1st Sess. (1981).

40. H.R. 4242, 97th Cong., 1st Sess. (1981).

41. *See* note 38 *supra*.

42. S. REP. No. 97-176, 97th Cong., 1st Sess. 257 (1981).

43. Note that in the case of the death of the donor, the return for the year in which the donor died would be due at the same time as the donor's estate tax return, including extensions.

V. LEGISLATIVE FACTORS IN THE SIMPLIFICATION PROGRAM

The restoration of the annual reporting system for the gift tax illustrates a number of aspects of the tax simplification movement. It is particularly interesting because it is a laboratory example of simplification. It does not raise revenue and, except as to timing, it does not lose revenue. It is neither intended to reform the law, nor cater to special interests. It is purely a simplification of the tax laws, and is regarded as such by both liberals and conservatives. The fact that it is a non-controversial, nonpartisan simplification measure, however, does not mean that it had no obstacles to surmount. Since other simplification projects have faced, and will continue to face, the same or similar obstacles, it is worthwhile to comment briefly on a few of them.

A. Competing Objectives

In this instance there was only one competing objective, the acceleration of tax revenue. The measure involved no loss of revenue in terms of total tax receipts; the question was solely one of timing. Just as the introduction of the quarterly system accelerated tax revenue, the return to the annual system deferred revenue. Thus, the legislation presented a choice between the advantages of simplification, on the one hand, and the disadvantages of a one-time revenue deferral on the other.

B. Revenue Estimates

It is always important for Congress to recognize the dollar cost of a proposed tax measure, even when the cost is only a matter of deferral. As a subcommittee chairman, the author always requires revenue estimates for bills being considered at the hearings. While some simplification provisions involve no ascertainable revenue cost, those that do should be measured against such cost, as should other legislation.

Revenue estimates are prepared by the staff of the Joint Committee on Taxation. At the time of the hearing on Senate Bill 955, the second proposed gift tax reporting bill, it was estimated that the deferral effect of the bill would reduce revenues by $20 million in fiscal year 1981, by $65 million in fiscal year 1982, and by less than $5 million annually in each fiscal year therafter.[44] These figures presumed the enactment of the bill alone. The actual rev-

44. The revenue estimate does not attempt to deal with the savings to both government and taxpayer from having fewer forms to fill out and audit, and the possible increased collections from a higher level of taxpayer compliance and cooperation.

enue deferral will be much less in light of other provisions of the Economic Recovery Tax Act, such as those increasing the gift tax exclusion, the unified credit, and the allowance of an unlimited marital deduction.

C. The Drafting Process

The first step in developing legislation is formulating the concept and the purpose it is to serve. A critical second step is converting the concept to explicit, statutory language. Haste or simple human error in this conversion process can have disastrous results. Drafting legislation is a tedious, time consuming process. A sense of the detailed, line-by-line work involved in legislative drafting can be gained from simply comparing Senate Bill 3080, the first proposed gift tax reporting bill, as originally introduced in September of 1980, with the language that was ultimately incorporated into the Tax Reform Act of 1981.

D. The Hearing Process

Today there is a widespread belief, in both the House and the Senate, that subjecting proposed legislation to the test of a public hearing is of great importance. Even seemly noncontroversial proposals such as simplification measures should have this exposure.

In the case of the gift tax legislation, the hearing process helped to generate support for the measure, as well as for the general concept of simplification. By contrast, a hearing on the first version of the bill to simplify installment sales reporting[45] uncovered a major defect of the bill.

E. Coordination Between the Houses of Congress

As the history of the gift tax reporting legislation illustrates, coordination of bills between both houses of Congress is crucial. The introduction of the bill in the House in June, 1981, by Congressman Conable, is an example of the benefits of such coordination. The fact that Mr. Conable is the ranking minority member on the Ways and Means Committee made this particularly significant in gaining House approval.

45. *See* note 12 *supra*.

VI. Conclusion

The Internal Revenue Code may always be a complex document, but it is imperative that it be made much simpler than it is today. To actually achieve the goal of greater simplification will require a series of legislative changes, such as the gift tax reporting bill. Many of these changes will be technical and unglamorous. Moreover, all of them will have to contend with the delays and problems inherent in the legislative process and compete with the numerous other demands on Congress.

Looking on the brighter side, however, the successful enactment of this proposal, less than one year after it was first introduced, shows strong bipartisan support for the goal of simplification. This legislative goodwill was an essential ingredient in the success of the proposal, and should be of the utmost importance in future simplification efforts.