Bachmann and Robin?

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Comic book fans out there, I ask your forgiveness in advance.

Amy Elliott reports this week that presidential candidate and former IRS attorney Michelle Bachmann got her LLM in tax, despite ''hating taxes,'' because her husband told her to (see p. 114). Isn't this the same guy who likened homosexuals to barbarians in need of education and discipline? Lemme tell you what — politics aside, I don't want someone with such far-leaning views (in any direction) playing puppet master to the leader of the free world. (Frankly, I don't want someone who keeps shutting down institutions of higher learning to be the leader of the free world, but never mind.)

I guess we should be thanking ol' Marcus, though. Because of him, we have a tax attorney running for president. Let that sink in: *a tax attorney*. Our tax reform prayers have been answered!

Many have questioned Bachmann's status as a tax practitioner. And it's a valid question. Didn't Michele say she hated taxes? Yes, yes she did. But what she really means is that she hates taxes for rich people. How else do you characterize a perfect world that includes zero tax on capital gains, a 9 percent corporate rate, and at least some income tax paid by every American? And let's ask ourselves how we'd pay for anything in this perfect world of hers. I kind of doubt that we're going to reduce the deficit by ensuring that the lowest individual quintile pays its fair share, by golly. But hey, we have *loads* of money in our coffers, so let's try it for a few years and see where it gets us (you can see what great shape we're in on p. 112).

But it's not like Bachmann would be responsible for the results, good or bad. If she's going to attribute her career path to her husband, maybe she can thank him when we make Greece look like Daddy Warbucks. We all saw how a spouse with strong views went over for Bill Clinton. So go ahead, Bachmann, let your Robin lead us.

Commentary

A single page of the behemoth Dodd-Frank Wall Street Reform and Consumer Protection Act is devoted to tax, but the legislation's tax implications extend far beyond that page, according to Viva Hammer and John Bush (p. 135). In part one of their two-part special report, they discuss the tax aspects of seven aspects of the new law: (1) bank capital and liquidity, (2) ''living wills,'' (3) the Volcker rule, (4) banks as dealers in derivatives, (5) securitization, (6) derivatives, and (7) executive compensation.

In his special report, Patrick Smith writes that like the Seventh Circuit, the D.C. Circuit was mistaken in relying on the special gross receipts rule in concluding that *Colony* is no longer controlling (p. 157). According to Smith, the effects of *Colony* and the special gross receipts rule are similar only in the first step of the multi-step omission from gross income test — namely, in determining whether there has been an omission. In the later steps of the test, *Colony* and the special gross receipts rule are not at all similar, and these later steps cannot be dismissed as mere ''numerators and denominators,'' he writes.

The IRS has released the final instructions for the 2010 Schedule M-3, which includes two new reporting requirements for taxpayers filing forms 1120, 1120-L, 1120-PC, 1120-S, and 1065. One of those requirements is that taxpayers separately state their research and development expenditures for the tax year. The instructions require the taxpayer to identify R&D expenditures reported for income statement purposes, R&D expenditures reported for income tax purposes under section 174, and temporary and permanent differences between financial and tax reporting of R&D expenditures. On p. 167, Michael Mehanna, Trevor Ackerman, Michael Fishman, Charles Medallis, Adam Uttley, and Christine Kachinsky provide background on section 174 expenditures; review the content, purpose, and reporting requirements of the new Schedule M-3; and consider the practical implications of section 174 expenditures and the new Schedule M-3 requirement.

Shelf Project proposal guru Calvin Johnson departs from his typical genre and writes this week on the taxation, or lack thereof, of large corporations (p. 175). He uses GE as his example, saying it paid essentially no tax in 2010. According to Johnson, a 35 percent tax on the company's economic income would have been \$6.8 billion, or \$4.7 billion with inflation adjustments. He writes that generally accepted accounting principles and tax accounting allow too much expensing of investments and ignore predictable future income, the use of tax havens, and accelerated depreciation. Johnson says the government can most easily and fairly collect the requisite tax by imposing a tax on the fair market value of its capital. Further, the government could charge GE $6 billion to $7 billion a year for access to public markets, a price any corporation would be willing to pay to give its shareholders access to ready liquidity.

Jay Starkman examines the nearly 100-year history of the depletion allowance and other tax benefits for developing oil and mineral resources. For decades, these bounties have had a haphazard relationship with the need for energy and mineral incentives, and they are overdue for a comprehensive study and revision. Starkman details the scandal behind the benefits and concludes on p. 185 that they need an overhaul.

Bruce Bartlett examines some problems with Republican proposals for a balanced budget amendment to the Constitution, which many GOP members insist must be passed as part of a deal to raise the debt limit (p. 195). Bartlett writes that with so little time left to fully examine the merits of the GOP's demands before an agreement must be reached, it would be irresponsible to acquiesce to those demands.

Independent contractor versus employee classification controversies are a staple of tax and employment practice. They often involve a push-me-pull-you negotiation in which a major goal of the IRS is to secure employee treatment in the future, even if not in the past. Robert Wood uses a recent case to aptly illustrate his point on p. 199. ■