From the Editor:

Romney and Obama Plans Show Differing Priorities

By Jeremy Scott — jscott@tax.org

President Obama's long-awaited corporate reform plan was released last week, and the president disappointed many observers by proposing a reduction in the corporate rate to only 28 percent (some were hoping for 25 percent or lower). Obama's plan lacked detail on how he would pay for the rate reduction and only alluded to the minimum tax on foreign earnings that the president has argued is essential to preserving the U.S. tax system. In an effort to upstage the president (or perhaps to revive his inconsistent campaign), Republican presidential candidate Mitt Romney released a new corporate and tax reform plan the same day. Romney's proposal delivers the 25 percent rate for corporations and also includes an across-the-board 20 percent tax cut for everyone, lowering the top individual rate to 25 percent as well.

The Romney plan is a bit more detailed than Obama's corporate framework. While the former governor relies on dynamic scoring to keep his proposal revenue neutral, he does include several key revenue raisers. Romney details some spending cuts, along with limitations on deductions, exemptions, and credits for upper-income taxpayers. He would also eliminate the estate tax and the AMT and move to a territorial system. The Romney campaign stated that the new proposal was designed to work in tandem with the ''Believe in America'' proposals released by the candidate in September. (For coverage, see p. 1054.)

Obama's plan does not include individual tax reform. The president would lower the corporate rate to 28 percent, although expanded deductions mean that manufacturers would pay a 25 percent rate. The framework outlines several pay-fors, but not nearly enough to pay for the corporate rate reduction. Obama would eliminate LIFO and curtail the section 199 deduction for some companies. Several hints in the plan suggest that the president might target accelerated depreciation and other corporate deductions. It does not specifically propose moving large passthroughs under the corporate tax regime, but Treasury was rumored to be considering that idea last summer. (For coverage, see p. 1045.)

Normally, it would be easy to dismiss Romney's plan as simply a campaign promise and view the president's plan as a possible foundation for a corporate tax reform compromise with congressional Republicans. But the reality is that Obama's plan is not any more likely to become law than his likely Republican opponent's. Both should be viewed as differing degrees of electioneering. And, frankly, Romney's 20 percent tax cut for all taxpayers is likely to resonate with voters better than Obama's overly complicated and schizophrenic 28 percent corporate reform plan.

ABA Meeting

The recent slew of guidance released by the IRS meant that panelists at this month's ABA Section of Taxation meeting in San Diego had no shortage of topics to discuss. *Tax Notes* has full coverage of the event starting on p. 1066. In the first article, Lee Sheppard discusses how the IRS views the taxation of financial products and banks, including one official's pledge to reduce the electivity of treatment in the taxation of financial products. Practitioners in attendance were shocked that Treasury had decided to enforce section 871(m), according to Sheppard. Other panels discussed the recent FATCA guidance (p. 1069), the FTC splitter regs (p. 1072), and ''north-south'' rulings (p. 1075).

40th Anniversary

Any major tax reform proposal starts with the premise of eliminating tax expenditures. Targeted tax provisions as a group are unpopular with policymakers and economists. However, when taken individually, tax expenditures prove surprisingly popular, and most reform efforts falter when they try to take on employer-provided healthcare, the home mortgage interest deduction, and depreciation. Tax expenditure problems are nothing new. As part of the 40th anniversary retrospective, *Tax Notes* presents two takes on tax expenditures from two different eras. In 1979 Walter Blum wrote a tongue-in-cheek analysis of the inherent complexities of the tax expenditure concept (p. 1119). Blum's goal was to show how defenders and critics of tax expenditures could no longer find common ground. More than 20 years later, John Buckley challenged the idea that eliminating tax expenditures was easy (p. 1122). Buckley wrote that many expenditures, including those that cost the most in lost revenue, support popular social policy and that it would be difficult to pay for tax reform solely by eliminating tax preferences. (For related coverage of extenders, see p. 1052.)

Commentary

Dynamic scoring of tax bills has become very popular with Republicans. GOP lawmakers are pushing legislation that would require the CBO to use dynamic scoring, and several Republican presidential candidates rely on the concept of increased economic growth to make their tax and budget plans at least semi-realistic. In his special report, John Buckley writes that dynamic scoring is being used to avoid the tough choices that face tax reform efforts (p. 1141). He analyzes the models and assumptions used by dynamic scoring and finds that the assumptions bear little relationship to the realities of a complex economy. Use of dynamic scoring could threaten the hard-won credibility of federal budget estimates with unpredictable and adverse consequences in financial markets, he concludes.

The Third Circuit's *Sunoco* decision is a powerful wake-up call for taxpayers who believe that courts may have jurisdiction over some issues relating to interest in a given tax year. In fact, differing statutes of limitation apply to taxes and interest, according to Thomas Johnston, Ian Friedman, and Richard Gagnon (p. 1155). They write that *Sunoco* warns taxpayers not to put off considering interest issues until the tax liability for the year is resolved. A taxpayer should commence litigation challenging the amount of interest on an overpayment within six years of the date the credit or refund was scheduled by the IRS, even if the statute of limitations for the relevant tax year remains open, they argue.

Refund fraud remains a problem for the IRS. Although it is difficult to estimate the amount of revenue lost, it is certainly considerable. In 1986 the IRS recovered $3 billion in revenue as a result of taxpayers being required to list dependents' Social Security numbers — 7 million dependents suddenly disappeared. Richard Ainsworth writes that a similar requirement could be used against refund fraud (p. 1165). Forms W-2 and 1099 should contain an encrypted digital signature that would make them self-certified, according to Ainsworth. The goal is to convince perpetrators of fraud that they might be caught in real time, he says.

Obama's fiscal 2013 budget proposal has received a lukewarm reception from the public and a frigid response from Capitol Hill. The president has even pulled the rug out from under the proposal by offering a much more interesting corporate reform plan. Caroline Harris doesn't think that policymakers should give Obama's budget much consideration (p. 1177). She dismisses many of the president's revenue raisers as anti-competitive and contends that the proposal raises taxes unnecessarily. Specifically, Harris criticizes the elimination of LIFO and the energy proposals that punish traditional energy producers. Many proposals in the budget have actually gotten worse than prior years' versions, according to Harris, who concludes that the president can't be trusted to produce a business-friendly reform plan.

Patent infringement and intellectual property recoveries are a significant part of the litigation practice of some firms and companies. Robert Wood discusses how the tax law treats the results of those types of cases and whether recoveries can sometimes qualify as capital gains (p. 1179). Although it is easier for patent recoveries to qualify for capital gains treatment, Wood concludes that it is possible to receive such treatment on matters related to trademarks, copyrights, service marks, and trade secrets.

In *Freeman*, a district court held that an attorney's mental and physical illnesses did not constitute reasonable cause for the late filing of an estate tax return. Bridget Crawford discusses the decision and finds that the IRS has heard virtually every excuse for missed deadlines (p. 1187). *Freeman* serves as a clear reminder that executors have some responsibilities that they cannot delegate to others, even attorneys, Crawford writes. She concludes that although the executor had a greater duty here, the attorney should have admitted the mistake so it didn't become a much bigger problem for the estate. ■