From the Editor:

Washington, Release Your Returns!

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When I went to work for the Justice Department's Tax Division as an Honors Program attorney, I underwent a background check that lasted about six months. It was pretty grueling. FBI agents left business cards on my neighbors' doors. Childhood friends were asked if they had any reason to doubt my loyalty to the United States. And my finances, including my tax returns, were scrutinized.

I don't know what my neighbors had to say about me, but I passed the test. Had there been tax problems, however, I probably wouldn't have.

I had to turn my tax information over to the FBI, not to the American people in general. But I would have, had I been called on to do so as a public servant. Should all our leaders in Washington release their returns? Joseph Thorndike challenges them to do just that in the wake of Tom Daschle's, Timothy Geithner's, and Nancy Killefer's tax problems. He suggests throwing a spotlight on tax compliance by taking a look at the returns of every member of Congress, every Cabinet secretary, and every member of the White House senior staff. How many of them would have serious problems? I have no idea, but I agree with Thorndike that it would be mighty interesting to find out.

What about it, Washington? Are you up to the Thorndike challenge (p. 691)?

I bet a lot of returns would be in as bad a shape as Daschle's. His woes are examined by Lee Sheppard. According to Sheppard, he betrayed the public with his failure to report large amounts of income and put the credibility of the Obama administration to the test. I think that's right. For Sheppard's news analysis, turn to p. 694.

Stimulus

As of press time, it was looking less and less likely that the stimulus package would receive widespread bipartisan support. Republicans and Democrats in the Senate spent most of last week arguing about whether the $900 billion should be injected into the economy in the form of tax cuts or government spending. The acrimony derailed efforts to hold a vote late Thursday night, and caused President Obama to go on the offensive against Republicans' preference for nothing but tax cuts. For full coverage of the Senate stimulus debate, see p. 698.

Sen. Johnny Isakson, R-Ga., did succeed in adding one proposal to the Senate bill: an extension of the home buyer credit first passed last year. Martin Sullivan takes a close look at Isakson's expanded home buyer credit and doesn't like what he sees. Sullivan concludes that the focus on housing prices is misplaced. Congress should be focusing on the mortgage market, not the housing market. In his analysis, Sullivan doesn't see how the home buyer credit will do much to stimulate the economy and writes that Congress should be looking to reduce tax subsidies to the housing industry, not increase them (p. 701).

Donald Alexander

There is sad news this week. Donald Alexander, who served as IRS commissioner from 1973 to 1977, died of cancer on February 2 at the age of 87 (p. 703). Appointed by President Nixon, Alexander served during the Watergate scandal. He famously resisted pressure from the White House to use the power of the IRS against people on Nixon's "enemies list." As Tax Analysts' president and publisher, Christopher Bergin, says in a letter to the editor on p. 805, Alexander was a great American. The tax community will miss him. We are fortunate to feature news analysis on p. 705 with Alexander's own words on Obama's tax cuts.

Commentary

The carried interest portion of private equity fund managers' compensation has recently come under fire in Congress and the press. In a special report, Gregg Polsky writes that he is surprised that this furor hasn't been directed at a commonly used technique to convert a portion of a manager's annual management fee into additional carried interest — a conversion that, if successful, substantially alters the tax consequences of the compensation by converting it from ordinary income into capital gain (p. 743). Polsky analyzes several approaches that the IRS could use to challenge these fee conversions, and concludes that the safe harbors for profits interests do not apply to these transactions because the additional carried interest is capable of easy valuation.

The recent UBS and Liechtenstein bank scandals have prompted new interest in voluntary disclosures. In a practice article, Steven Mopsick and Betty Williams think that taxpayers are eager to confess before the IRS discovers their use of foreign bank and trading accounts, because of a long-standing policy at the IRS and Justice Department to refrain from prosecuting those who disclose before they are discovered. The authors look at the dangers and opportunities presented to practitioners in the voluntary disclosure area (p. 733).

In a second practice article, Robert Wood looks at when litigation settlements might face fine or capital treatment (p. 736). Wood writes about the issues facing defendants in structuring a settlement agreement and how defendants need to become more sensitive to tax issues and more sophisticated in their analysis of deductibility. Wendy Gerzog analyzes the *Hurford* decision by the Tax Court, in Estate and Gift Rap on p. 799. She tries to draw a few pointers about family limited partnership practice from the Tax Court's opinion. Robert Willens wonders if the accumulated earnings tax might make a comeback (p. 791). If corporations try to postpone capital spending projects and halt dividend payments in the current financial environment, the IRS might try to impose the little-known tax if those accumulations are beyond the "reasonable needs" of the business. Willens writes about the case law surrounding the accumulated earnings tax and how corporations might avoid an unexpected tax bill.

While generally welcoming the guidance in Notice 2008-78, the New York State Bar Association (NYSBA) Tax Section has a few suggestions for safe harbor clarifications and additions. The full NYSBA report starts on p. 769. Jasper Cummings looks at the curious argument made by the taxpayer in the appeal of *Merrill Lynch* (p. 795).

In letters to the editor, Prof. Richard Malamud questions the premise of Lily Batchelder's recent article on estate taxes, taking issue with her belief that the estate tax can be used to achieve parity between the rich and poor (p. 805). Malamud calls the estate tax "just another tax." David Click says that Martin Sullivan's analysis of the energy research credit might raise important questions about the credit's efficacy, but that it also made several mistakes (p. 806). In our final letter, an anonymous writer adds yet another voice to the widespread criticism of the First Circuit's recent *Textron* decision (p. 806). The letter argues that "the courts should not lose their good sense in technicalities, and the *Textron* result should not survive." ■