PRESIDENT'S ADVISORY PANEL ON FEDERAL TAX REFORM

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Senator Connie Mack
Chairman Advisory Panel on Tax Reform
United States Senate
Washington, D.C. 20036

Dear Senator Mack:

Congratulations on your chairmanship. I agree wholeheartedly with your objectives. Let me enclose a couple of columns I have written in the past, on the subject of tax reform, borrowing some ideas from the late Stanley Surrey, who was Assistant Secretary of the Treasury for Tax Policy, as you will recall, under Jack Kennedy, then a distinguished professor at Harvard Law School and briefly a colleague of mine at Gaston Snow.

Sincerely yours,

Joseph W. Bartlett

JWB/JT

Enclosure

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Flat Taxes and Slot Machines[1]

There is a good deal of 'hoo ha' about flat tax proposals, prompted in part by the success of Steve Forbes in his exhibition of political alchemy .... translating cash money into votes. A flat tax is appealingly simple: all taxpayers pay a given percentage of their income ... no deductions, no loopholes. Most critics fear the flat tax is regressive; the poor and petit bourgeois will suffer, the rich will get richer. The often-overlooked point is that regressive flat taxes are not a hypothetical in today's world but already a reality. Sales taxes are 'flat taxes,' for example,; keyed initially to consumption but derivatively to income they fall proportionately on lower incomes because of the law of diminishing returns.

Moreover, the most regressive flat tax of them all-state-sponsored gambling – is sweeping the country right under Steve Forbes' nose. Ironically, the original proponents of flat taxes, Henry George, for example, were leftists by today's standards. They had a wealth tax in mind. While simple and easy to collect, the gambling tax, on the other hand, exempts the rich almost entirely. The rich gamble, but at short odds. They do not play the lottery or the slots, conceding huge amounts of 'vigorish' to the State; they gamble on *i.e.*, the stock market ... and usually win. The public schools, etc., will increasingly be financed by a fixed levy on the earnings of the most desperate. Forbes, in that sense, is a copycat.

Repeal All Tax Breaks[2]

Stan Surrey, JFK's Assistant Secretary for Tax Policy; despised 'tax breaks,' a/k/a backdoor financing. His reasons were cogent. Tax breaks usually favor special interests; they are a clumsy method of income redistribution (dollars for low income housing wind up in the pockets of suburban developers of housing for the well-to-do-elderly); sharp practices abound as the borderline players zig and zag through the inevitable loopholes in the Code; most of all, they are addictive – gutless politicians, too timid to appropriate benefits, use backdoor financing because it appears to be "free" ... "free," of course, if you neglect the fact that a tax cut for some favored segments of the citizenry is a tax increase for everyone else.

However, Clinton, ever a slave to his pollsters, has decreed a tax break for the people who, he thinks, decided to vote against him in '94. Gingrich has called and raised for the benefit of people with Newt the Brute thinks will vote against Clinton in '96.

Our suggestion is simple. Forget 'tax breaks.' Indeed, eliminate all confusion by allowing the two political parties to pay voters directly. No more middlemen. To keep costs down, the cash goes only to registered independents. No reason to pay people whose minds are already made up. Clinton offers $1,000 per vote plus an invite to the Renaissance Weekend. Gingrich counters with $1,500 plus free rides at Disneyland. Think of it. No additional calculations on one's tax return. Cash on the barrelhead – the dough gets into circulation P.D.Q. More importantly, no hypocrisy.

Get Rid of Tax Breaks[3]

The Clinton Administration, yet to take office, has, nonetheless, gotten off to a sensational start. Clinton, apparently, has a grasp of domestic economics which exceeds that of any president in our lifetime. One singular achievement of the Administration, less than a month from office: There has been no ground swell in favor of impeachment as yet by the mad-dog, attack journalists. (Ed. Note: This dates back to 1993.) However, there is a cloud on the horizon which, more in sorrow than anger, we bring to your attention. Clinton, like all incoming presidents, has made bold promises about cutting the deficit, decreasing taxes and increasing spending. It doesn't take the proverbial rocket scientist to see that these are mutually inconsistent objectives. Accordingly, the news from Washington and Little Rock stresses a number of measure which purportedly goose the economy in the right direction but do not impact the government's revenues or expenses. And, obviously, there are sensible things to be done. (We have, indeed, plumped on occasion for regulatory relief which will, in our opinion, make the private market for capital more efficient.) What alarms this corner is the galloping (entirely irresponsible in our view) resort to the term "tax breaks" when a particular social objective is being advanced. A one time

1 Tireasis, *Au Contraire,* "Flat Taxes and Slot Machines," (Xlibris, 2002) p. 108

2 *Id.*, "Repeal All Tax Breaks," p. 63.

3 *Id.*, "Get Rid of Tax Breaks" p. 157

colleague at Gaston & Snow, Harvard Law Professor Stanley Surrey, was adamant to the point of obsession on the proposition that "tax breaks" – *i.e.*, special tax deductions for special categories of taxpayers in order to induce them to do something socially or politically useful – are the most loathsome form of back-door financing one could imagine.

In the first place, to a beleaguered politician 'tax breaks' appear to be free money ... much in the same way turning on the printing presses in a Third World country seems to create capital out of whole cloth. Tax breaks are Scotch whiskey and the pols are alcoholics. Secondly, the Internal Revenue Code is now 5,000 pages long in the Fed. Sec. L. Rep. (CCH) version; it contains literally thousands of special 'tax breaks' for politically powerful taxpayer groups ... producers of something called 'marl,' for example. no one living today, we suspect, can recall the rationale for most of these special privileges ... the moral and economic equivalent of the indulgences against Martin Luther railed at Wittenberg.

Furthermore, back-door spending is a classically inefficient way of achieving a social objective. Staffers from the Senate Finance Committee, the Ways and Means Committee and the Internal Revenue get together under extreme pressure and publish language which attempts to limit the expenditure (tax deductions and credits *are* government expense items) to the social purpose in question. They have one bite at the apple – when the statute or regulation is published in the *Federal Register* Then, of course, the fun begins. The private tax bar (most of them ex-staffers) get together and, with all the time in the world, figure out how to outwit their former colleagues. How can their clients legally obtain the boodle without the annoying requirement that they undertake the burden of, say, building low income housing? And, the tax consultants almost always 'win.' They have more time and money to use in playing the game; the rule makes have to show their hand first (the same disadvantage experienced by a gambler other than the dealer at blackjack); tax enforcement is a lottery, with most tax 'minimization' effective because it goes unchallenged; and, the taxpayers have Marty Ginsburg on their side (This last is for insiders only.) Maybe a little low income housing gets built, but a huge amount of government money is spent (*i.e.*, foregone) in the process. Direct government spending can be administered by a bureaucrat with a hand on the spigot; back-door financing is a one shot affair – the Congress writes a law and then can only hope its purposes will not be subverted.

With Surrey's untimely death, there appears no one left to take up his crusade. Well, we volunteer. The Code is festooned with archaic, irrational special provisions customized for the politically astute Here below we add a simple note – a quotation from the Internal Revenue Code of a 'tax break,' now written in granite, the whimsical nature of which will, we trust be self evident. Thus, we begin this process with Section 28 of the 'Code.'

[Sec. 28(a)]

> "(a) GENERAL RULE – There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

[Sec. 28(b)]

> "(b) QUALIFIED CLINICAL TESTING EXPENSES—
>
> "(A) IN GENERAL – Except as otherwise provided in this paragraph, the term "qualified clinical testing expenses" means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of this section 41 if such subsection were applied with the modifications set forth in subparagraph (B) ... ."