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# The Income Tax: How Progressive Should It Be? by Charles O. Galvin and Boris I. Bittker

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Subject to restrictions on both sides to maintain confidentiality of their client's affairs, inclusion of government attorneys in BNA sessions would seem to provide a useful vehicle to explore the trends that prosecution agencies follow and might reduce speculation about the latest directions in antitrust prosecution. This additional input could provide an improved source for business awareness of the current focus of antitrust prosecutions.

This kind of prophylactic approach to the antitrust laws serves well the interests of the public and the financial community. Litigation is time-consuming and expensive for all concerned and consent decrees or, in some instances, criminal sanctions, are not generally attractive to a client. Good counsel on a continuing basis can aid business in avoiding these hazards, and good counsel depends upon a full exposure to current views of prosecution.

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THE INCOME TAX: HOW PROGRESSIVE SHOULD IT BE? By Charles O. Galvin and Boris I. Bittker. Washington, D.C. American Enterprise Institute for Public Policy Research, 1969. Pp. 184.

Of one thing I am certain. The monstrous complexity of the present system in this country and the inequities wrought on upper and lower income groups alike will bring the whole system crashing down around us unless we think seriously of innovative and far-reaching changes.

The subject of this dire warning is the present federal income taxation system. The speaker is Charles O. Galvin, Dean, School of Law, Southern Methodist University. If the words and fears expressed sound familiar, it is because they somewhat resemble the words of former Secretary of the Treasury Joseph W. Barr spoken near the close of the Johnson Administration, when he warned Congress of a possible taxpayer's revolt.

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\* The opinions and views expressed herein are those of the author and do not represent those of the Department of Justice or the President's Advisory Council on Executive Organization.

This book is a verbatim report of a debate sponsored by the American Enterprise Institute for Public Policy Research held in Washington, D. C. during 1969. The principals of this particular debate were Dean Galvin and Dr. Boris I. Bittker, Southmayd Professor of Law, Yale University. The controversy, as any student of tax law knows, is not new.<sup>1</sup> However, this book presents some fresh points of view (especially on the part of Dean Galvin) and in a brief fashion provides a representative synopsis of the arguments that have circulated in this area.

At the outset, it should be noted that the title of this book is somewhat misleading. The principals (particularly Dean Galvin) are not concerned with the degree of progressivity that is optimal in our system of federal income taxation. Rather, they go to the more primary question of whether our federal income taxation system should be a progressive one, as opposed to a proportionate one. Professor Galvin is in no way convinced that progressive taxation is desirable and that we should merely be concerned with the degree of progression that is ideal. Professor Bittker, on the other hand, is not quite convinced that progressive taxation is as undesirable as Dean Galvin makes it out to be.

Dean Galvin's proposals for a reformed tax system stem from widely-spread views regarding the present system of income taxation: reform is needed; loopholes should be closed; and taxes should be equitable. In order to effect such views, Dean Galvin sets forth two basic steps: (1) the base subject to income tax should be broadened; and (2) income should be taxed at a flat or proportionate rate.

Although (1) and (2) above could be interdependent, Dean Galvin handles them separately for purposes of this discussion, while personally favoring a combination, since a flat rate tax is more possible with a broadened base than with the present narrow base. Dean Galvin envisions that a broad-based, flat rate system would largely remove taxes as an allocator of resources in the economy. Choices of investment, risk taking, new job opportunities, and the like would be made on the basis of traditional free market mechanisms, such as the balancing of costs, prices, profit margins, optimum employment of skills and talents, etc. Also, a system such as this would release intellectual resources that would otherwise be allocated toward planning the "tax angle" of business and investment undertakings.

Dean Galvin's starting point for base broadening is the Haig-Simons

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<sup>1</sup> Perhaps one of the best critical analysis of the case for progressivity is Blum and Kalven, *The Uneasy Case for Progressive Taxation*, 19 U. CHI. L. REV. 417 (1952).

definition of income.<sup>2</sup> This definition basically regards an individual as a taxable economic unit who throughout his lifetime is a recipient of net accretions to his wealth in the form of wages, bequests, interest, etc., so that at his death he has an accumulation of wealth than can be expressed in dollars. To this amount would be added the transfers of wealth by the individual during his lifetime plus the market value of rights exercised in consumption during his lifetime. The result is his total income. The total income will be allocated to annual accounting periods for purposes of assessment and payment of an annual income tax.

Galvin freely admits that a detailed analysis of the multitude of issues that are suggested by the Haig-Simons definition is not possible in a study of this size. However, he does indicate the aspects of that definition which would result in a substantial increase in the income tax base over the present one, namely: (1) the recognition of appreciation and depreciation of property values from year to year; (2) the inclusion in the base of items of imputed income attributable to the property ownership; (3) the inclusion in the income base of the value of special services and transfer and payments from government and other agencies; (4) the recognition as income of property received as gifts, bequests or inheritances; and (5) the disallowance of consumption or personal expenditures. The result would be to bring all income into the base, a step which Galvin regards as essential to obtaining across-the-board fairness. Dean Galvin is well aware of the multitude of problems particularly from an accounting and statistical point of view that such a system will engender. However, he relies on the "amazing" developments in data retrieval to carry out the much more sophisticated demands that this kind of system would entail. He goes on to stress that the means for accomplishing these tasks are available and that they probably can be done more efficiently in a broad-base system than they are now done under the complexities of the present tax law. Consequently, there should be no "hang-up" in any discussion of major substantive changes, as is usually the case. Most importantly, Dean Galvin points out that base broadening is really a transitional matter relating to both the base and the rate structure.

With respect to the flat tax rate, Dean Galvin points out that the progressive rate schedule bears little relationship to the effective rate. He claims that the argument most widely used in favor of a progressive income tax is that it produces proportionate sacrifice; however, Dean Galvin thinks that it produces great disparity instead, as well as

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<sup>2</sup> See R. HAIG, *THE FEDERAL INCOME TAX* 7 (1912); H. SIMONS, *PERSONAL INCOME TAXATION* 61-62 (1938).

yielding great complexity. According to Galvin, progressivity yields complexity in that high tax rates usually require Congress to enact various ameliorative provisions to soften the impact of the rates. Galvin points to the Revenue Acts and Technical Amendments of the last decade, which he views as being designed either to provide relief from the raw application of the established rates to a particular quantum of income, or to close loopholes or prevent unintended benefits resulting from earlier legislation which in turn was intended to provide relief.

Galvin will concede, if backed to the wall, that he would be willing to go along with some form of narrow base and a flat rate. In this way, he thinks that the pressures on the Congress to offer relief legislation would be substantially lessened, the rash of institutional arrangements designed to avoid the progressive rate structure would diminish, and the strains of administration and litigation would be eased. Galvin thinks that a flat rate on some form of narrow base will cause a broader base to naturally come about.

In the second lecture, Dr. Boris I. Bittker presents his case for a progressive income tax. At the beginning of his presentation, Bittker disclaims any expertise as an economist, philosopher, moral theologian, politician, etc., but rather emphasizes that he is a layman with no expertise or professional discipline to guide him in choosing among the conflicting claims which he states abound in this area. As a guideline, Bittker devotes himself primarily to fairness, a concept which he thinks is agreed to be of major importance in this area.

Bittker's introductory principle is that there is no magic in the idea of proportionality as opposed to progression. Bittker feels that commentators accept proportionality without putting it to the burden of proof that the progressive tax system must usually endure, in other words, that there is a bias in favor of proportionality is no more entitled to a presumption of fairness than is progression, and that proportionality must be treated by the same canons of criticism as is progression.

Bittker's main points for favoring a substantial degree of progression in our Federal tax system can be summarized as follows. Progression counterbalances the regressive tendencies of other Federal, state, and local taxes, and it is an inevitable consequence of allowing personal exemptions in computing income tax liabilities. Economic security increases more than proportionately as we move up the income scale. Therefore, we should consider the source of income. Inherited or accumulated wealth is more secure than wealth earned from labor or wages. Just as the English system applies different rates to different

types of income, Bittker thinks the progressive system indirectly and reasonably accomplishes the same result of imposing a heavier burden on unearned income. This is based on the theory that unearned income probably rises fairly steadily with total income. Although every tax bracket contains a range of taxpayers with nothing but earned income to nothing but investment income, and therefore some high bracket wage earners will feel pinched, Bittker thinks this is better than ignoring the fact that the source of income has a bearing on the ability to pay or establishing a system of taxing each income source separately. Also, the fact that this hurts high bracket wage earners is tempered by the fact that very high salaries evidence a degree of security comparable to the security generated by income from property. In addition, the benefit of government expenditures increases progressively with income and wealth. As a result, Bittker thinks that the progressive rate schedule may do no more than partially mitigate a bias in public expenditures and in the incidence of other taxes that together favor upper income taxpayers. Finally, Bittker believes that progression reduces economic inequality.

In view of these factors, Bittker concludes that the case for progressive taxation is uneasy, but that it seems no more uneasy than the case for proportionality or for preferring one tax base over another.

In rebuttal to Galvin's arguments, Bittker points out that Galvin's case rests heavily, almost exclusively, on the elimination of complexities in planning and effectuating business and personal transactions in determining the taxpayer's liability and administering tax laws. However, Bittker thinks that Galvin greatly overestimates the contribution that a flat rate applied to a broad base would make toward simplification. Bittker then reviews the five major points that Galvin raises in connection with a system based on the Haig-Simons definition of income and discusses the great complexities that these would produce. He concludes that broadening the tax base will create, as well as dissipate, complexities and will invite enactment of relief provisions to soften the impact and reinstate some of its casualties.

In rebuttal, Galvin states that there is a remarkable consensus among writers in this field toward base broadening, but that there is a lot of disagreement over procedures and transition. Galvin's greatest criticism of Bittker's position is that he thinks Bittker is not concerned with either the incidence of an income tax or the base to which it is to be applied. To Galvin, questions of base must be discussed along with questions of rate structure.

Most persons who read this book will think of many problems, objections and questions. Conveniently, the remainder of the book

contains a transcript of a question and answer period involving Galvin, Bittker and other leading authorities in the field of tax law. Some of the questions raised by a reader are likely to be found in the question and answer discussion. As can be expected, however, the reader will not find a categorical answer to the question which Dean Galvin asks—whether the income tax should be progressive at all?

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\* The views expressed are those of the author, and do not represent those of the Treasury Department or the Internal Revenue Service.