Anthropological Notes on Federal Tax Men

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A few years ago I was introduced to an eminent foreign anthropologist visiting the United States on a foundation grant to study certain tribes of primitive people who centuries ago flourished on this continent. (Incidentally, the foundation has since lost exemption and appears to have gone out of business.) Half in jest, I suggested that he might find it profitable to investigate a contemporary tribe—the tribe of federal tax men. I had completely forgotten about this casual conversation until a few days ago. Then, to my very pleasant surprise, I received from the anthropologist a bundle of papers, accompanied by a letter explaining that these were his preliminary notes on federal tax men.

“You may use this unedited material as you see fit,” he wrote, “but you are not to disclose my identity. My reason for keeping the authorship a secret is simple. After studying the tax tribe for several years, I have decided that I would like to become a member of it.”

What follows is taken almost verbatim from the rough notes in my possession. Thus my role is merely that of a conduit in making these important anthropological observations available to you.

Tribal Membership

To begin with, the tribe very clearly has an identity crisis. Because the legal and accounting professions generally do not certify specialists, the tax tribe has had to work out its own means by which individuals can demonstrate their membership. This need fully explains something which is otherwise incomprehensible—the tremendous overindulgence of the tribe in the holding of meetings, conferences and institutes. Any person is able to certify his membership in the tribe simply by attending enough of these. Showing up at three a year seems to be the bare minimum; four is safer; and five is almost surefire—especially if the sessions last two days or more and necessitate being away from home overnight. Recently it has been discovered that a willingness to suffer travel over long distances to attend meetings is a plus factor in authenticating membership. One can, accordingly, look forward to an increasing number of United States tax meetings in Mexico, New Zealand and Hong Kong.

An even more positive badge of tribal membership is to be a speaker at a tax meeting. The underlying ratio seems to be that one speech is equal to mere attendance at four affairs. The length of the speech does not seem to be particularly important for this purpose; but a talk which later is printed in a tribal journal probably counts triple an unpublished presentation. The unpublished variety does have an offsetting advantage, however; it can be safely redelivered more often than a published effort. Some speakers prefer repeating a talk a half-dozen times instead of having it published immediately after its inaugural rendition. Others are patently printing press happy. An extreme form of this virus results in publishing the same piece twice, but
under different titles. The most gratifying combination would seem to consist of withholding publication until the talk has been repeated a goodly number of times, always before completely different groups. To accomplish this maneuver with total success, the speaker must be sure that there is no overlapping of listeners in his various audiences. It is this neat strategy which mainly accounts for why so many meetings of tax men are organized on a local or regional basis.

In the tax world there is a halfway house between giving a talk and merely sitting in the audience. This consists of being a panelist. A panelist is one who is willing to talk even though he is only partially prepared—provided that all others on the panel agree not to demonstrate that they are any better prepared. A panel leader, however, is permitted to be even less prepared, but on the condition he promises to do his best not to show it. The most successful panel leaders follow a simple prescription. They ask questions, adopt a facial expression which unmistakably indicates that they know the answers, and finally summarize whatever the other panelists had to say.

**Membership Renewal**

After one has attained full tribal membership, a need may be felt to have it reaffirmed from time to time. An efficient means of doing this is to serve as chairman of a session or, even better, as a member of the committee which plans a gathering. In due time, perennial service in either capacity makes one a tribal chieftain. Once that exalted status has been reached, it then is no longer necessary for the master to demonstrate that he knows anything at all about taxes. However, he likely will find it helpful to tell a few more or less humorous stories built around some aspect of taxation, just to show that he is not completely out of touch.

**Classifying Members**

The next matter to be considered is the internal structure of the tribe. It is possible to view this from several perspectives.

The simplest way of classifying members is in terms of the source they usually look to as the ultimate authority in taxation. A great number are fundamentalists who appeal to the Internal Revenue Code of 1954; a small group are traditionalists who prefer the 1939 Code. Many are worriers who depend on the Treasury Regulations and Internal Revenue Rulings. Some still cling to the fading notion that a majority of the United States Supreme Court has the final word. An uncounted number rely on yellow covered pamphlets sold in most drugstores and supermarkets, while a few seem to act on the basis of a certain syndicated column appearing in daily newspapers. It has been rumored that one or two consult the telephone voice of the IRS Taxpayer's Advice section.

Another possible method of classification looks to the degree of tax sophistication displayed by the tribal members. The least sophisticated perhaps are those who carry rumpled paper-bound copies of the Internal Revenue Code around with them for ready reference. Only slightly more sophisticated are those who have a rich looking leather binding put on their personal copies of this good book so as to permit them to dissimulate a bit. At the next level of sophistication are those who have memorized enough Code numbers and case names to hold them until they sneak a look at the texts. A more advanced degree of sophistication consists of first mastering the shorthand names for various doctrines and cases, and then dropping these nicknames in order to punctuate a conversation with words and phrases that seem to have deep roots. The ultimate in manifested sophistication is to act as though Code numbers, case names and shorthand labels are beneath one's dignity. These supersophisticates generally talk only in nods, frowns and pipe smoke.

A different scheme of classifying members of the tax tribe utilizes a conservative-liberal-radical axis. The conservatives do not believe in federal taxation of income or of gifts or estates. For that matter, there is some question whether they believe in government at all. The liberals concede the legitimacy of federal taxes on income or on transfers of wealth, but they believe
in using only “respectable” means of minimizing the levy on their clients. To their way of thinking, a respectable avoidance device is one which has been around for at least a dozen years and was brought to their attention by either a senior partner or a trust company. The radicals welcome income and wealth transfer taxes as challenges which are to be met and surmounted by any method. Their guiding principle is never give the government an even break. You can spot them easily by remembering that they always respond as though they were working on a contingent fee. Notwithstanding these important differences, however, all three groups share in common the attitude that Internal Revenue is the enemy—and in the wrong when it does not accept their point of view.

DIVISION OF PUBLIC—PRIVATE MEMBERS

This observation suggests another aspect of tribal life which deserves comment—the relationship between those members who work for Internal Revenue and those who work for taxpayers. The relationship is very complex. Everyone in the tribe understands that a substantial portion of the government employees will eventually move over to the other side; indeed, Internal Revenue may be viewed mainly as a school to teach skills which later are to be used against its own institutional interests. Occasionally members do move from the private side to the public side—but usually only for a short demonstration period. Despite this, however, at any moment the division between the sides is maintained with sharpness and vigor.

This dichotomy, moreover, is preserved in the face of very sudden shifts in sides. One day a public member is damned by the private members as being too partisan; the next day he leaves the government and thereafter he can be counted on to lead the parade of those who lambast his old associates for failing to be impartial. The odd thing is that the private members who most malign the public members are usually the very ones who rely most heavily on the government lawyers to practice law for them by giving out rulings, advice or rumors.

These complex interrelationships perhaps can be explained by an elementary point. The whole operation is really based on vague recollections of the childhood game of cops and robbers in which the players change sides whenever the whistle is blown. In the adult version, there fortunately is no need to specify who are the cops and who the robbers.

WHAT DOES THE TRIBE READ AND TALK ABOUT?

Another approach from which to view the tribe is to consider the nature of the material the members talk about and read. A broad cross section of current tax literature reveals that it ranks at the very top in repetitiveness. Apparently tax men like to read the same thing over and over again, if only it is punctuated in slightly different ways. What is even more remarkable is that so many of the problems discussed in the literature do not change substantially from year to year. It seems that the problems remain discussible because they remain unsettled, and they remain unsettled either because they never materialize or because nearly everybody is confused by the endless discussion.

But the precise settings for the problems change just enough so that most of the writing is slightly out-of-date not long after it appears in print. Most tax literature is not merely transitory; it is ephemeral. This rare combination of stability and change is greatly appreciated by publishers of tax materials, as well as by all those who run tax meetings. It gives everyone a chance to copy from others heavily and still appear to be somewhat original.

What the whole tribe complains about most is complexity in the tax law. This is a very interesting phenomenon. The complexity in the law is what keeps at a high level both the tribe's employment rate and its remuneration scale. Moreover, members of the tribe directly or indirectly account for almost all the complexity in the tax system. Give a committee of tribe members a direction to improve the law and they inevitably will further complicate it—especially if they set out to bring about a simplification. Then everybody else in the tribe will complain all over again. One even hears
complaints about the new complexities which are expected to be introduced into the law next year. It well might be concluded that complexity is the main energizing principle of the tribe.

Memorializing Members

The next aspect of tribal organization that calls for mention is that of memorializing members. A central problem here is that fame often attaches to a taxpayer instead of to his tax man. Take by way of illustration a tax controversy which ends up in the United States Supreme Court. The official designation of the case will memorialize the name of the taxpayer and not the name of the lawyer who argued his case, or even of the lawyer or accountant who gave him the advice which produced the controversy in the first instance. Or take the emergence on the scene of some new tax avoidance scheme. It usually will become associated with the name of the taxpayer who tried it out rather than with the tax genius who thought it up.

Note might be taken here of the suggestion that the government should correct this injustice by each year honoring the principal advisors of outstanding taxpayers. This idea has never been implemented, perhaps because there are serious doubts about the criterion to be used for picking the outstanding taxpayers. Obviously the test should not be the total amount of tax paid. Such a standard would be undemocratic. It would discriminate against the poor, against investors in tax-exempt securities, and against oil millionaires who take advantage of percentage depletion and intangible drilling expenses; and it would discriminate in favor of actors, artists and others with special talents that are highly rewarded as well as highly taxed by our society. Nor should the standard be the degree of rectitude reflected in the taxpayers’ returns. Such a standard would place too high a premium on Internal Revenue’s view of what is correct; and it could be regarded as un-American because it might tempt some individuals to comply with the official position just in order to be in line for a prize. Nor would it be appropriate to base an award on a taxpayer’s success in having his tax held to a minimum without once stepping over the line of propriety. A prize on this basis would tend to undercut the revenues and throw our governmental budget even further out of balance. All things considered, there seems to be no satisfactory prescription for the government to honor tax men on the basis of how their clients made out.

The tribe, therefore, has had to develop its own system of awards and prizes. Some are too mundane to call for more than mere mention: resounding titles for officers of tax associations and employees of Internal Revenue; top billing at conferences and institutes; and membership on very esoteric subcommittees whose missions are are never quite made clear. It is the more subtle honors that reflect the tribal ingenuity. For example, there is the homage which is paid to the practitioner who earliest discovers an unintended loophole in new legislation. This is matched only by the admiration bestowed upon the member who is able to sneak an unintended loophole into legislation in the first place. Then there is the respect shown to members who never change their views on tax policy, no matter how drastically circumstances and society change. A special affection is reserved for those tribal members who, after losing a case, never waver in asserting that they were 100 per cent right all along. And then there is the silent adulation for the members who can achieve full schizophrenia by holding one set of views in dealing with clients and a totally different set in serving in a pro bono publico capacity. Few indeed are the number having mastered that black art.

As yet there has been no move to establish a tribal Hall of Fame. Such a development is probably inevitable. And no doubt Washington, D.C. will be the site. It takes little imagination to envisage a long line of color photographs, or maybe even oil paintings, portraying some past Commissioners of Internal Revenue, some past Chairman of the Ways and Means Committee, a past Tax Legislative Counsel or two, the inventor of the collapsible corporation, the developer of the multiple trust, the creator of the first foreign personal holding company, and the anonymous authors of that
unusual literary and educational achievement, “The Standard Federal Tax Reporter.”

The standing of philosophers and humorists in the tribe is peculiar. Most members would probably maintain that taxes and philosophy cannot mix because our taxes are inherently beyond the reach of reason. But some tribesmen try to write with a philosophic bent, and the rest have had to accommodate to this fact. They have done so either by ignoring the think pieces or by jollying the authors. The frustrated authors then try to turn the tables by coating their philosophical efforts with what they hope passes in the tribe for humor. Thus one who has the reputation of being a tax philosopher is likely to be an unsuccessful tax humorist, while one who has the reputation of being a tax humorist is likely to be an aspiring tax philosopher.

**Tax Law Teachers**

The teachers of the law of taxation occupy a somewhat special position in the tribe. If they concern themselves in their teaching or research with bread and butter problems, they are virtually ignored because practitioners are better informed in this area. If they are interested in theoretical aspects of taxation, they are treated by most of the fraternity as oddballs of the harmless variety. But if a teacher becomes a government man in a policy-making position, he is immediately viewed with alarm and suspicion. He is not beyond redemption, however. Should he later go into private practice, all fortunately is forgiven, especially if he then attracts affluent clients.

The tax teachers, by the way, have come close to achieving a monopoly position. Any good young law school graduate can master enough of contracts or torts within six months to teach the subject with confidence. But not federal taxation. It takes years before one feels comfortable in the subject, and hence new young teachers strenuously avoid being pushed into it. The old tax teachers would seem to have a wonderfully protected position. But appearances are deceiving. For some unaccountable reason, half of all the practicing tax lawyers sooner or later get the idea that they would be happier teaching taxation. It is this alone which keeps the salaries of professors of taxation from rising above the wages paid to ordinary law teachers. If envious practitioners would only stick to their own tasks the tax teachers could in time perfect what would amount to a monopoly through complexity. Some of them might even wangle their way into the Hall of Fame.

The tribe has its villains as well as its heroes. High on the list of villains is the member who is invited to talk at a meeting and then reveals that he has no terminal facilities . . .

**Conclusion**

Just now it came to me in a flash that I had better resist the temptation to reveal more of these insightful anthropological notes. Therefore, in the best tradition of tribal speakers, I suggest that for the full treatment you consult my paper—if and when it is published. I feel compelled, however, to supplement the tribal record for the benefit of posterity by reproducing the menu for the official dinner tonight. You will have no difficulty seeing why it is an all-time favorite.

**Menu**

- Baked baby spare ribs, split up
- Alphabet soup, ABC
- Celery & carrot loopholes
- Lamb chop with boot
- Gregory salad
- Spaghetti à la bootstrap
- Baked collapsible Alaska
- Fruit from the tree
- Multiple beverages
- Consolidated goodies (optional)
- Nuts