

Forty Years of Change, One Constant: Tax Analysts



Foreword

**40 Years of Memories — An Open Letter
From the Chairman of the Board of Tax Analysts**

by Martin Lobel, chairman of the board of Tax Analysts

Tax Analysts is now 40 years old. I can't believe it. It seems like yesterday when I got a call from Tom Field, who worked in Treasury and was my most reliable source of information about oil industry tax subsidies when I worked for Sen. William Proxmire. Tom wanted to know whether I would join with a small group of like-minded citizens to push for tax reform. After getting permission from Sen. Proxmire, I signed on for what has turned out to be a far more successful operation than any of us ever dreamed of.

We rapidly discovered that even the most reform-minded foundations were uninterested in funding tax reform, for fairly obvious reasons. More importantly, we discovered that we weren't sure what tax reform meant in every situation. Fortunately, because of Tom's drive and flexibility, we discovered that lawyers and accountants who considered themselves tax experts were willing to pay what we considered exorbitant sums for accurate, timely information. *Tax Notes* was born.

As time went on, *Tax Notes* paved the way for *Tax Notes International*, *State Tax Notes*, CD-ROMs, and the websites Tax.com and Tax.org, which we acquired because of Tom's foresight. And the staff grew too. No longer a little band of beleaguered staffers who did everything, we were able to attract people like Lee Sheppard and Marty Sullivan, whose articles are must-reads for anyone who deals with tax policy.

When Tom decided to retire, his handpicked successor, Chris Bergin, was ready and able to carry on our goal of providing accurate and timely information to decision-makers. Under his leadership we were able to sell the various pieces of real estate that Tax Analysts had acquired and build a modern building that could house all of our employees under one roof. We have also managed to improve the breadth and timeliness of the information we provide through the use of the Web and technology that I must admit I don't understand. That we continue to be the premier force in generating current awareness is due to our dedicated staff and board, who care about getting our tax and economic policy right by presenting as much accurate information as possible from whatever source is available.

It's been a hell of a run, and while sometimes we came all too close to financial shoals, I am confident that the next 40 years will see us become even more relevant to the tax and economic discussions that we all know we must have.

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Introduction

You Probably Know My Answer to the Question

by Christopher Bergin, president and publisher of Tax Analysts

Tax Analysts turned 40 this year. So far it has been an amazing journey.

Founded in the summer of 1970 by Thomas F. Field, Tax Analysts and Advocates, as it was then known, was a fledgling organization with a small number of dedicated supporters and employees. Its corporate headquarters: Tom Field's basement.

Today Tax Analysts is headquartered in a modern office building, and its reach is truly global. It has a staff of almost 200 employees who are as dedicated to the mission as were the founders on whose shoulders we stand.

That mission today: provide premier tax information worldwide; work for the transparency of tax rules; foster increased dialogue between taxing authorities and their taxpayers; and provide forums for education and debate. By doing these things, we seek to encourage the development of tax systems that are fairer, simpler, and more economically efficient.

Tax Analysts has never been shy about setting lofty goals. And it has never been more relevant than it is today.

This little bit of history is not to insinuate that in our first 40 years we have not seen our fair share of difficulties, or faced our fair share of challenges. As we all know, growing up isn't so easy. Through it all, the organization's people have been its greatest asset. Their passion, dedication, curiosity, intelligence, and hard work have been the hallmarks of our culture.

We also have been guided by an incredible board of directors, some of whom have been with the organization from the beginning. And we owe a tremendous debt of gratitude to our supporters, including the readers of and contributors to our publications.

All of this brings me to this electronic book that commemorates the 40th anniversary of Tax Analysts. It is a compilation of answers to the following question:

What is one of the most significant changes to tax administration, practice, or policy that you have seen in your professional career?

That's it. Typical of us, we asked that the responses take no specific form, be of no specific length, and involve no red tape whatsoever. You will be able to see that in the articles (and I use that term loosely) that follow from an impressive list of contributors.

Because the editors asked me to write the introduction to this e-book, I get first crack at answering the question, and here's where the headline to this article comes into play. What do I think is one of the most significant changes to tax administration, practice, or policy in my professional career? That's easy: Tax Analysts.

Let's take them one at a time.

Tax administration in the United States has never been the same after Tax Analysts. Ask any former commissioner of the Internal Revenue Service. Now, you may get some comments about whether Tax Analysts' influence on tax administration in this country has always been for the good — not everybody appreciates a watchdog all the time — but the effect of that influence is unquestioned.

Tax Analysts has worked and will continue to work to get the IRS comfortable with the concept of transparency, not only as it applies to the regulated but also as it applies to the regulator. I can tell you from personal experience that this is not always the most pleasant of tasks. But it is essential.

In our role as watchdog, we have been critical of the IRS, to be sure. But we have also stood up for the IRS — when others didn't — by reporting facts. The IRS can be an easy political target, and politicians can play fast and loose with facts; we try not to let them get away with that.

As for the practice of tax law, Tom Field changed it forever. Lawyers of my generation take for granted private letter rulings, technical advice memorandums, and other guidance documents essential to tax research. But 40 years ago, they were available only to IRS lawyers and a privileged few on the outside.

Tom Field thought secret law was an abomination. And when he had a point to make, he stuck to it. That legacy is still alive and well today at Tax Analysts.

When it comes to tax policy, Tax Analysts' contributions have been enormous. Its publications have informed and fueled the tax debate for decades while providing forums for that debate to be held in a fair and nonpartisan manner.

As an organization and in its reporting, Tax Analysts has no agenda, political or otherwise. But we are also quite fond of smart, opinionated people. We at Tax Analysts have no fear of differing points of view; we encourage them because we believe that is a way we can learn from each other.

In fact, the best way to communicate to the tax policy community is through Tax Analysts' publications or its public forums. The finest policy professionals throughout the world have written for our publications. The number of times information provided by Tax Analysts is cited around the globe is nothing less than astonishing.

Right about now I can guess what many readers are thinking: What else would you expect the company president and publisher to say?

So I will end on a personal note. When I came to Tax Analysts, I had already been in tax publishing for about 10 years. I was thinking of maybe trying something different. I viewed Tax Analysts as a brief way station along my own journey.

Then I began working with an incredibly dedicated staff who foolishly believed they could change the world. It seemed to me that most of them instinctively knew how to take care of problems, take care of their stakeholders, and take care of each other. And then I met Tom Field.

That was almost 20 years ago.

Since then I've held many jobs at Tax Analysts, including editor of the flagship publication *Tax Notes*. My current role? I'm the guy who followed the founder. I guess by now it's pretty clear that I love the place.

Enjoy what follows. It's a good read.



What is one of the most significant changes to tax administration, practice, or policy that you have seen in your professional career?

Henry J. Aaron

*The Brookings Institution
Washington*

My response, only half facetious, is tax preparation software.

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Kimberly Blanchard

*Weil, Gotshal & Manges LLP
New York*

The most significant change was a gradual one that took place incrementally and is proceeding apace: The shift in the definition of income for purposes of the income tax on individuals, from a net to a gross tax base. When I first began practice in 1981, the individual tax was still largely a tax on net income, with few exceptions. The only items of expense or loss that were not deductible, other than capital items, were truly personal items (that is, expenses that did not relate to the production of gross income). That is not the case today. This shift has included, in no particular order:

- phaseout of the personal exemption and the cutback on itemized deductions (even more severely in New York state);
- expansion of the alternative minimum tax, which functions as a disallowance of the deduction for state income taxes;
- virtual elimination of the deductions for section 212 expenses and medical expenses;
- the cap on the mortgage interest deduction;
- numerous caps on tax-deferred retirement savings;
- other rules limiting the use of losses, interest deductions, etc. (including the failure to index the \$3,000 cap on capital losses of individuals);
- removal of the cap on the 2.9 percent Medicare tax;
- the repeal of the *General Utilities* doctrine and reinforcement of double taxation on corporate profits;
- enactment of the passive loss rules, which for the first time put a class of income on a separate schedule to eliminate base stripping; and
- enactment of the passive foreign investment company rules.

There are doubtless others that I have forgotten, but the trend is clear. Many of these changes — such as the last two — represented very sound tax policy. Others represented nothing more than a revenue grab. Whatever the motivation, the cumulative effect has been to build a fairly bulletproof tax on gross income.

The shift has been so incremental that virtually no tax policy academic or economist appears to realize what has happened. Many observers — most prominently Paul Krugman — write in terms of *tax rates* being at an all-time low and compare today's rates favorably with those that existed early in the 20th century. Their implication is that *tax burdens* are lower today and, therefore, there must be room for tax hikes. But we know that taxes are not lower today. How could they possibly be when government revenues are so much larger, even as adjusted for inflation? The increasing size of the national deficit cannot explain the gap, which was already in evidence during the Clinton years.

The average individual taxpayer is frustrated and confused because she hears that tax rates are down but somehow she believes (correctly) that her taxes keep going up. What has occurred is that the base has expanded dramatically, leading to taxes far higher than those paid by individuals historically. And we will see more of this. In modern tax policy parlance, any exception from a tax on gross income is labeled a subsidy or tax expenditure. So we have the average taxpayer looking in one direction, and the average policy wonk looking in the opposite direction. The failure on both sides to honestly assess where we are, and how we got here, is creating the most tax-related public acrimony that I have witnessed since I started practicing.

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Nathan Boidman

*Davies Ward Phillips & Vineberg LLP
Montreal*

Inasmuch as I graduated from university in the same year (1962) that the United States adopted subpart F, I have had the fortune (good or bad) of being witness — first as an accountant and then as an attorney — to every significant development in the modern era of international tax.

Although any of those could make a fine candidate as the most significant development of the past 40 years, I would instead point to a fundamental tax policy that has not changed but may be seen to have been substantially abandoned.

We see the U.S. stubbornly clinging — nominally — to the spent policy of imposing worldwide as opposed to territorial taxation on foreign subsidiaries, while all around it others (most recently Japan and the United Kingdom) are abandoning it. We say “nominally” because doesn’t the enactment of code section 965 show both the futility of the policy and the effective abandonment of it? U.S. companies do not put their fiscal heads into the grasping jaw of the Treasury. They do not have their foreign subsidiaries pay dividends that would produce U.S. tax. Instead they either simply have their foreign subsidiaries reinvest their profits outside the U.S. or achieve strategies to repatriate without paying material U.S. tax.

This dynamic, and the undesirable effect it has of depriving the U.S. economy of the benefits of repatriated foreign profits, led directly to the enactment a few years back of section 965 and its special incentive rate (5.25 percent) on repatriated foreign profits. According to a March 4, 2010, government report,¹ 843 U.S. multinationals repatriated funds totaling \$312 billion previously kept abroad. The report indicates that, with another \$958 billion of undistributed controlled foreign corporation profits built up since 2005, multinationals are expecting a repeat.

In Canada the benefits of territoriality are being creatively — some would say radically — bartered by the government with tax havens for taxpayer information under a combination of tax information exchange agreements and domestic law. Before 1976 Canada had a full territorial system (or as Europeans call it, a participation exemption); since then territoriality has been linked to the mere existence of an income tax treaty or TIEA.

Viewed together, the Canadian and U.S. sides of the territorial-vs.-worldwide debate tell a compelling story — one that for me is as significant as any since *Tax Analysts* was established 40 years ago or I started professional practice 48 years ago.

1. See Congressional Research Service, “Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis,” by Donald J. Marples and Jane G. Gravelle, Mar. 4, 2010, 7-5700, R40178 (prepared for members and committees of Congress). Available at www.crs.gov. See also the IRS Spring 2008 *Statistics of Income Bulletin*.

Michael Boskin

*Hoover Institution, Stanford University
Palo Alto, Calif.*

Economists, myself included, have long proposed broader tax bases and lower marginal tax rates, ideally on consumed income. Thus the substantial reduction in marginal income tax rates compared with 1980 and indexing the tax brackets get the gold medal for tax policy in the last few decades. The silver medal goes to the implementation of tax-deferred saving — such as 401(k)s and IRAs — moving us closer to a consumption tax base, however imperfectly. The bronze medal goes to lower dividend and capital gains taxes, reducing the double taxation of corporate income, again quite imperfectly.

Turning to the dunce caps, the bronze goes to the failure to substantially broaden the tax base. The code is not only more complex, but the proliferation of deductions and credits, some now refundable, seriously erodes the base. The silver for worst policy in recent decades is the high U.S. corporate tax rate — the second highest among advanced economies (although somewhat less out of line in the effective rate). Finally, the gold goes to the failure to control spending and successfully tie together tax and spending policy. The government’s budget constraint requires the present discounted value of future taxes to cover the present value of future spending plus the national debt (net of government assets). Thus, large deficits and exploding national debt imply higher future taxes unless spending is controlled. This constitutes the biggest failure of tax policy.

Special (dis)honorable mention goes to the immense instability of the tax code, as frequent changes and temporary provisions create unnecessary tax planning and economic chaos.

Herman Bouma

*Buchanan Ingersoll & Rooney PC
Washington*

From my perspective as an international tax attorney, the most significant policy development I have seen in the last 40 years is the serious consideration by more and more members of the U.S. Congress of a move to a territorial system.

Donald Bruce

*University of Tennessee
Knoxville, Tenn.*

Tax bases have simply become much more mobile thanks to technological advances, improved transportation systems, and the digital age. This expanded margin for tax planning and tax-induced distortions of economic activity has completely transformed tax administration, practice, and policy. Prominent examples within the United States include corporate income tax apportionment and related policies (combined reporting, throw-back rules, and the like), the Streamlined Sales Tax Project, and reciprocity agreements regarding state personal income taxes. The earlier focus among researchers on the effects of taxes on the level of economic activity is gradually giving way to a broader consideration of the effects of taxes on the location of activity.

Congratulations to Tax Analysts on 40 years of excellent service! I can't imagine life as an academic tax researcher without you.

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David Brunori

*Tax Analysts
Falls Church, Va.*

In thinking about the last 40 years of state and local taxation, one realizes how much has changed. Indeed, anyone who practiced or studied state and local taxation before 1970 would hardly recognize the current system. Obviously, globalization and technological advancements have changed how state and local governments collect revenue. The shift in the economy from manufacturing to services affected everything from the corporate tax to the sales tax to the property tax. The tax revolts of the late 1970s and early 1980s introduced a political factor that has curbed taxing authority at all levels of government. The property tax revolts shifted public finance — particularly for education — from localities to states. And the proliferation of tax incentives made a mockery of good tax policy.

In my writing and teaching, I have often been asked: What is the most important judicial decision in the state and local tax area during the past four decades? Many people think the answer is *Quill*. It certainly ranks among the most controversial and the most frequently cited. And it is important. Its holding that a state does not have sales tax jurisdiction over a vendor without a

physical presence has cost the public fisc billions of dollars. It has made many a remote vendor very happy, since those vendors can sell without collecting and remitting sales tax. That provides a tremendous market advantage over those poor businesses that must comply with the law. And although it made little sense in 1992, it makes no sense at all today. It is asinine to believe that in 2010, requiring a remote vendor to collect sales tax would be a burden on interstate commerce. No one believes that.

Yet for all its fanfare, *Quill* pales in comparison with *Complete Auto Transit, Inc. v. Brady*, the landmark 1977 U.S. Supreme Court case. Before that case, states found it difficult — often impossible — to impose a tax on any part of a transaction that was in the stream of interstate commerce. If a company sold all of its products out of state, it was likely to incur no state tax liability. That never made sense. The company was using state services and taking advantage of the protections of state law. But the courts had continually held that taxing any aspect of interstate commerce would violate the Constitution. This was known by some old-timers as the *Spector* doctrine. As the Supreme Court stated, *Spector* “reflects an underlying philosophy that interstate commerce should enjoy a sort of ‘free trade’ immunity from state taxation.” In *Complete Auto*, the taxpayer was in the business of delivering automobiles made in Michigan to dealerships in Mississippi. Mississippi merely wanted to tax the part of the transaction that occurred in its state. The taxpayer balked, claiming that would be a burden on interstate commerce and thus would violate the commerce clause.

To its credit, the Supreme Court sounded the death knell for the notion that states could not per se tax any aspect of interstate commerce. Rather, the Court imposed a four-part test to determine whether a tax violates the commerce clause. The commerce clause will not apply if the activity being taxed is sufficiently connected to the state; the tax is related to the benefits provided; the tax does not discriminate; and the tax is fairly apportioned. In upholding the Mississippi law, the Supreme Court allowed the states to impose taxes commensurate with a taxpayer's activities in the state.

Joseph Caliano

*Grant Thornton LLP
Washington*

When it comes to cross-border transactions, few areas of international tax have received the visibility, and have been the focus of both U.S. and foreign taxing authorities, as transfer pricing. This should come as no surprise given the large increase in cross-border transactions resulting from the globalization of business and the tax revenue that can result from transfer pricing adjustments.

The United States has made transfer pricing a top priority. This can be seen from the recent wave of IRS guidance issued (the cost-sharing and controlled services regulations), high-profile litigation (the *Veritas* and *Xilinx* cases), and increased IRS scrutiny of transfer pricing methods and documentation, including the imposition of large penalties. There also have been proposals by the Obama administration targeting transfer pricing, such as the proposal to limit the shifting of income through transfers of intangible property.

Other countries have also become more sophisticated on transfer pricing matters. They have made the area a priority by devoting significant resources to establishing transfer pricing guidelines and initiating transfer pricing audits, which can lead to significant adjustments and increased tax revenue. For instance, China has been focusing on transfer pricing adjustments as a way of increasing its tax revenue.

Another testament to the role of transfer pricing is the expansion of programs designed to resolve potential transfer pricing issues prospectively. One such U.S. program that has grown considerably over the years is the advance pricing agreement program, which offers taxpayers the ability to address certain transfer pricing issues with the IRS before they become potential disputes and, from the IRS's perspective, helps ensure compliance with U.S. transfer pricing rules. In some instances, the relevant foreign taxing authority may be part of a bilateral APA.

Finally, the increased use and the expanded role of the competent authority process — through mutual agreement procedures in tax treaties — to address transfer pricing disputes reflects how these issues have come to the forefront. This trend of countries focusing on transfer pricing issues likely will continue, especially given the dollars at stake.

Franz Capraro

*GLSC & Co., PLLC
Miami*

I have been in the tax field since 1966. The practice has changed from finding the fair tax that the taxpayer owes to a totally adversary system in which each side wants to win at the expense of the other side.

In retrospect, the preparer-penalty system is, in my opinion, the most crucial development. With it, the IRS is able to outsource its auditing function to the private sector and collect more revenue to boot. Additionally, it has given the IRS a further advantage (other than the burden-of-proof advantage it always had) by now being able to put considerable pressure on the preparer industry to toe the line and see things its way or else.

I am not speaking sour grapes; this is only my observation. A preparer penalty has never been assessed against me, nor have I ever been threatened with one. But the system is now totally out of balance in favor of the government.

Paul L. Caron

*University of Cincinnati College of Law
Cincinnati*

Technology has dramatically changed tax administration, tax practice, and tax policy over the past 40 years. The overall result of these changes is to make tax law more accessible and more affordable for the taxpayer and tax practitioner.

Sheldon Cohen

*Farr, Miller & Washington LLC
Washington*

I was chief counsel and commissioner of internal revenue during the move to computerized and centralized filings. When I started practice in 1952 in the old L&R Division, tax returns were filed in close to 70 places, and they were stored where they were filed. While I was commissioner, we reduced the number of centralized filing places at IRS service centers. We also moved to the Taxpayer Compliance Measurement Program (TCMP) to aid in the selection of returns for audit. Before TCMP, about 50 percent of returns chosen for audit were “no change” returns. As a result of

TCMP, the no-change rate went down to about 18 percent, a remarkable savings of time and effort. Later Congress thought TCMP audits were too tough and so forbade them to the detriment of the system.

Michael Cohn

*SourceMedia
New York*

I would say the most significant change I've seen is the IRS's move to require registration, testing, and continuing education for tax preparers. That will produce profound effects on the tax preparer community, including accounting firms and sole practitioners. It will make preparers more responsible for the tax returns they produce for their clients, give the IRS a greater ability to keep track of preparers and any mistakes they've committed, and put more onus on preparers to stay current with the latest changes in tax laws and regulations.

Jasper L. Cummings, Jr.

*Alston & Bird LLP
Raleigh, N.C.*

The most significant change in tax administration since I attended the New York University graduate tax program is the creation of the economic substance doctrine without the benefit of legislation, Supreme Court action, or even Treasury regulations. The doctrine is still without the benefit of legislation because Congress did not, in code section 7701(o), codify the doctrine that now functions as a positive rule of law; it merely codified the facts that the taxpayer must prove to escape the doctrine's application, when applicable.

Whereas today there should probably be a separate course on the economic substance doctrine, in those days it was not even mentioned in tax school because no court had called its name. Sure, we knew about *Gregory* (a case of statutory construction) and *Knetsch* (a fact-finding case), and Harvey Dale told us that substance controls all the time — except when it does not. But we did not know that a taxpayer who complies with the law as fully interpreted, and whose facts conformed to the law's requirements as found under the fullness of fact-finding methods, could still lose a tax benefit by failing to prove out of the doctrine.

The realization came slowly. The *ACM Partnership* Tax Court memo opinion in 1997 seemed to

start the ball rolling downhill, and the efforts of two unusually aggressive IRS chief counsels finally produced a string of economic substance doctrine victories in the early 21st century that made believers of many taxpayers and even tax advisers. However, the Supreme Court has never spoken on the economic substance doctrine. Treasury has never written a regulation that announces an overarching positive rule of law saying, "The economic substance doctrine that says you lose, even if you otherwise would win." And Congress has done no more than to say, "If courts want to use this thing, they have to let taxpayers out of the trap if they can prove X and Y."

This amounts to a very significant change because the IRS wants to assert the economic substance doctrine every time it sees a taxpayer planning for a tax benefit that it thinks Congress did not have in mind. That can be pretty often. Of course, practitioners have long wrung their hands over the tax law going to hell in a handbasket when it moves away from literalism and formalism. The *Gregory* decision was greeted with great anxiety, and most of the early pro-government tax planning cases were reversals of a formalistic Board of Tax Appeals.

Nevertheless, this time it is different. We now have a doctrine of the same stature as the assignment of income doctrine, or the tax benefit rule, but with no Supreme Court imprimatur and only about a 25-year history.

Tom Downey

*Member of U.S. Congress, 1975-1993
West Islip, N.Y.*

I'm sure I could go on and on about tax matters we considered in the House Ways and Means Committee, but many others will do that. I'm just going to leave you with one pithy comment, and hope that suffices: "I've found that the making of tax policy is like politics and much of life; if you expect ingratitude, you are rarely disappointed."

Bruce Ely

*Bradley Arant Boult Cummings LLP
Birmingham, Ala.*

One of the most notable and refreshing changes I've witnessed during my almost 30 years of practice has been the increased number of women tax practitioners as well as tax vice presidents, tax directors, and other senior in-house tax staff. That trend is of course also reflected in law school and accounting program enrollment, and I am delighted to see it. The trend is a bit slower, but nevertheless clear within the state departments of revenue or finance as well. Heck, statistics show that us old white guys will be in the distinct minority within 30 years, so we'd better become more involved in recruiting and mentoring bright young women for the state and local tax (SALT) profession who will succeed us one day.

I hope that our efforts to recruit and mentor bright young African-American SALT talent will become more successful in the next few years than I have witnessed so far — but alas, that may be my perspective as a tax lawyer from the Deep South. Our law firm is having good success in recruiting African-American lawyers for other fields of law, but not SALT. What's up with that? Are they afraid to butt heads with that scruffy David Brunori, Rev. Huddleston, or that wild and crazy Bruce Fort?

They're missing out on all the fun.

Jeff Friedman

*Sutherland Asbill & Brennan LLP
Washington*

I believe that the heightened sophistication of state departments of revenue is the most significant change I have seen in my career. The challenges faced by states generally, and departments of revenue specifically, have been met with creative and interesting responses. State legislatures have implemented new types of taxes, reduced reliance on conformity to the Internal Revenue Code, adopted antiabuse regimes, and mandated streamlined tax compliance. State departments of revenue have met each of those challenges with novel responses.

However, the most obvious examples demonstrating the increased sophistication of state departments of revenue are the growing number of significant court decisions. Constitutional limitations and statutory construction challenges permeate the field of state and local taxation. State departments of revenue are under pressure to formulate

positions and arguments dealing with these and other issues that are ultimately tested in court. Whether successful or not, their novel arguments have changed the shape of our field — which has benefited all state tax systems.

Many of the solutions, whether creative, novel, or otherwise, have been fashioned by departments of revenue in times of financial crisis and dwindling resources. The ingenuity and depth of thinking advanced by state departments of revenue show no sign of slowing down. If their sophistication continues on the same path that has been followed over the last couple of decades, we can be certain that the field of state taxation will continue to be an interesting, challenging, and rewarding field of law.

Bryan Gates

*American Academy of Tax Practice
Belleair, Fla.*

One of the most significant changes to tax administration, practice, or policy ever seen in a professional career is as follows:

The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained. Property rights must yield provisionally to governmental need. Thus, while protection of life and liberty from administrative action alleged to be illegal may be obtained promptly by the writ of habeas corpus, the statutory prohibition of any "suit for the purpose of restraining the assessment or collection of any tax" postpones redress for the alleged invasion of property rights if the exaction is made under color of their offices by revenue officers charged with the general authority to assess and collect the revenue.

These words by Justice Louis Brandeis in *Phillips v. Commissioner* (1931) continued an IRS practice that stunned its victims for 67 more years until 1998. And then:

No levy may be made on any property or right to property of any person unless the Secretary has notified such person in writing of their right to a hearing under this section [6330] before such levy is made.

Thus, with the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998, more than 200 years of seizures without rights to a prior hearing ended.

J. Russell George

*Treasury Inspector General for Tax Administration
Washington*

Without question, one of the most significant changes is the migration of tax administration to the Internet and the electronic environment. The move to electronic filing has greatly expanded the options for taxpayers to electronically file their tax returns at any time, day or night, without having to go through a paid preparer. As computer usage continues to be inextricably integrated into core IRS business processes, the need for effective information system security has become essential to ensure the confidentiality, integrity, and availability of data. The IRS relies extensively on its computer systems to carry out the demanding responsibilities of administering the nation's tax laws, including processing federal tax returns and collecting federal taxes. IRS computer systems process hundreds of millions of tax returns and contain confidential tax information for over 100 million taxpayers. From a security standpoint, the IRS is responsible for maintaining effective information security controls to protect confidential taxpayer information from inadvertent or deliberate misuse, improper disclosure, or destruction.

From a law enforcement point of view, the electronic environment has increased internal and external vulnerabilities that can be exploited by criminals. Attacks on the integrity of the system have been launched from around the world, and an astonishing amount of damage can be done by a single individual hacker or by a foreign government through sophisticated intrusions into computer networks. If an intrusion is successful, it could result in substantial economic disruption.

Recently, in a case my agency worked on jointly with the IRS Criminal Investigation division, individuals were arrested for their participation in an online international phishing scheme to steal income tax refunds intended for U.S. taxpayers. After taxpayers uploaded their tax information seeking refunds for federal and state taxes, co-conspirators in Belarus collected the data and altered the returns so that legitimate tax refund payments would be redirected to U.S. bank accounts under their control.

Lawrence Gibbs

*Miller & Chevalier
Washington*

On October 22, 1986, in my capacity as the commissioner of internal revenue, I attended the ceremony on the South Lawn of the White House at which President Ronald Reagan signed the documents necessary to enact into law the Tax Reform Act of 1986, which marked the triumph of leadership, optimism, determination, and capability of so many elected, appointed, and career governmental officials and employees who worked together on a bipartisan basis to pass legislation that reduced tax rates, expanded the tax base, and accomplished what few, before and since, have been able to achieve to make our federal tax system better.

Lenny Goldberg

*California Tax Reform Association
Sacramento, Calif.*

The biggest change I have seen in California policy has been the serious erosion of California's once-exemplary corporation tax. The two-thirds vote requirements for both budget and taxes has led to sophisticated hostage-taking, which included the embarrassing elective single sales factor by which multistate taxpayers can choose their own formula each year, depending on their tax position, by which to apportion income to California. This elective fiasco occurred because of the theory held by more than one-third of the State Legislature that no taxpayer should ever pay an increased tax, an ideology which is new over the past 15 years. Generally, the inability to consider any tax increases, or even appropriate tax changes which might disadvantage a single taxpayer, has made tax policy formation in California no longer subject to rational discussion.

Jane Gravelle

*Congressional Research Service
Washington*

The most significant policy change I have seen in my career is the recognition and addressing (in the Tax Reform Act of 1986) of the differential effects of investment subsidies on the allocation of capital investment.

When I first started working on this topic, there was not even clear agreement on what neutral policy was. Investment subsidies in the tax code, beginning in the 1960s, drove effective tax rates on equipment investment to extremely low levels, while maintaining high tax rates on land, structures, and inventories. By my estimates, in 1980 the effective tax rate on equipment was about 14 percent, although the statutory rate was 48 percent. Even lower rates, which actually became negative rates averaging -32 percent for equipment, were adopted (with phase-ins) in the Economic Recovery Tax Act of 1981. About that time, many researchers, including myself, were writing papers showing the distortions in the treatment of investments and the effective tax rates which varied by asset type.

The effective tax rate proved to be a marvelous device for communicating the effect of tax subsidies to policymakers. To what extent this analysis played any role in the significant reform of corporate and business taxes in the Tax Reform Act of 1986 cannot be known. Nevertheless, that legislation eliminated the investment credit, slowed depreciation, and lowered tax rates, producing a much more fundamental change for business taxes than for the individual tax. Because of these changes, corporate tax expenditures are a much smaller share of revenues than are individual tax expenditures of individual income tax revenue. Given the expected inflation rates in 1986, the accelerated depreciation largely offset the understatement of depreciation due to inflation, and assets were largely subject to effective tax rates close to the statutory rate (30 percent for equipment and around the statutory rate of 35 percent for buildings).

This state of affairs has slipped a little since that time. Falling inflation rates lowered tax burdens disproportionately for equipment, and the 1993 legislation lengthened the depreciation periods for commercial buildings to pay for a benefit for real estate agents from the passive loss restriction. Today I would estimate the aggregate rate for equipment to be 26 percent and the rate to be around 36 to 37 percent for nonresidential buildings. (This

number for equipment assumes bonus depreciation will not be extended indefinitely; it lowers the equipment rate to 20 percent.)

Unfortunately, such success stories are rare. My most powerful impressions over a career of more than 40 years are not how things have improved, but how myths and misinformation persist, such as the idea that VAT rebates on exports matter to trade deficits, that international competitiveness has meaning, that capital import neutrality is neutral, that small business is the engine of growth, or that the estate tax affects a lot of people.

Kendall L. Houghton

*Baker & McKenzie LLP
Washington*

During the course of my career (roughly half the age of Tax Analysts), I have found that the level of sophistication in the dialogue between state taxpayers and their representatives on one side, and state tax administrators and their advocates on the other side, has increased greatly.

Of course, there have been insightful leaders and deep thinkers engaged in all the great tax policy debates of the past several decades: articulation of constitutional nexus standards across tax types, delineation between tax incentives for economic investment and discriminatory tax regimes, identification of the proper forum (Congress? Streamlined Sales Tax Project? National Conference of State Legislatures?) for collaborative rule-making, and the like. Still, the tremendous growth of our professional tax organizations and communities, as well as the widespread availability of technical resources and online networks, has escalated the dissemination of ideas, drawn more participants into the debates, and strengthened the quality of our dialogue.

Joe Huddleston

*Multistate Tax Commission
Washington*

I see a trend toward the thought that tax issues can be effectively solved by moving the forum for discussion from the state or local level to the national level.

In the multistate or multinational corporate view, it is believed to be too difficult to deal with the states. We have seen an increasing effort to achieve national moratoriums or federal preemptions over state taxes. I believe this is wrongheaded for a variety of reasons. In the end, businesses may find that the flexibility afforded by the various states provides a fuel for business development and that federal mandates will only stifle those efforts.

Monte Jackel

*PricewaterhouseCoopers LLP
Silver Spring, Md.*

I have been giving a lot of thought to your question: What is one of the most significant changes to tax administration, practice, or policy that you have seen in your professional career? It is not easy for me to answer.

I started in the tax practice years back at a boutique law firm in New York City. At that time, there was not the intense pressure there is today to keep up with current developments, as the Internet was just at its inception, faxes were new, and professionals kept up by reading paper copies of *Tax Notes*, as well as other publications, in the order of the distribution list on the publication circulating around the office. Such a system, of course, did not lead to the almost immediate dissemination and demand for information as exists today. The newer you were to the firm, the lower you were on the distribution list. Today, of course, things are totally different. Today the demand for information is almost instantaneous. Items must be digested almost as soon as they are made publicly available.

Over the years, I have seen the extent of information in *Tax Notes* and other publications grow and grow. It is harder and harder now to keep up with things. It did not seem like this was the case years back, when one would receive his or her daily news through a paper routing slip of copies of *Tax Notes*. It is this continuing struggle to keep up with an ever-increasing volume of information

on an almost instantaneous basis that I believe is the most significant change in the tax profession that I have seen in over 30 years of practice in the profession. I thank Tax Analysts for doing the job that it does in providing the information now needed on so current a basis.

Calvin Johnson

*University of Texas School of Law
Austin, Texas*

I know of two inspirational tax stories in the last 40 years.

Tax Reform Act of 1986: The inspirational lesson of the Tax Reform Act of 1986 is that this nation and this Congress can join together to create a tax system that is fairer and more efficient. The best tax systems have a tax base that describes moneys available for standard of living and is neutral among competing investments, that creates tax that is not avoidable, and that has rates that are as low as possible. Proposals to expand the tax base to reach a fairer and more efficient system can be adopted, the Tax Reform Act tells us, even by people who are adverse in the competition for political election.

Tom Field: Tom founded Tax Analysts and Advocates and started a weekly mimeograph product called *Tax Notes*, published from the skinny little basement of his house. He tried lots of business models that did not go very far. Tax Analysts and Advocates was going to be a public interest law firm that would live off court-awarded attorney fees from public interest lawsuits. But then the taxpayer standing rules and court award fees got too tough to live with. Tax Analysts was going to be a supplier of tax expertise to the general media, but then it turned out that newspapers did not want to pay other reporters for things they wanted to cover. Tax Analysts was going to live off private foundation money to make better tax policy, but the foundations could not support legislative initiatives and were even skeptical about tax reform. So Tax Analysts sued the government for release of the PLRs, TAMs, and GMs and published them in a magazine the profession was willing to buy.

Tom was always trying something new, with every dime and ounce of energy at his disposal. Eventually *Tax Notes* became the publication of record for the tax policy community. It is a beautiful edifice, created in the name of tax reform. Tom's was a lifetime achievement of which he can be very proud, because he tried every which way to get there.

Trevor Johnson

Yorkshire, U.K.

Forty years ago I was a lowly member of the U.K. Inland Revenue working in a provincial office. It was the last century in more ways than one. The office would be unrecognizable to today's staff. All the work was carried out manually and recorded on paper without the aid of electronic calculators. True, we had charts printed on cards which gave us the tax due on various amounts of income, but often we had to perform calculations using brainpower, which has long since been abandoned in the modern HM Revenue & Customs.

In those days married women were not recognised by the tax system. Indeed at one stage they were classed as "incapacitated persons" along with "any infant, person of unsound mind, lunatic, idiot or insane person." A wife's income was aggregated with that of her husband and assessed to tax on him. This could lead to difficulties where the Revenue were aware of a wife's interest-producing bank deposit of which the husband was in ignorance! How could he declare the interest if she had kept the account secret, and how could the Revenue tell him without creating marital difficulties? It was only 20 years ago that this anachronistic system was replaced by what was then termed "independent taxation," where each spouse was responsible for their own tax affairs and each had their own personal allowance and lower tax rate bands.

While independent taxation was a major change in the U.K. tax system, by far the most revolutionary change was the introduction of self-assessment in 1996. For nearly 200 years U.K. taxpayers were not required to pay any tax directly until they received a demand notice. Suddenly they were expected to take the initiative and pay tax without being prompted by the government. This was a tremendous culture shock for many people. They still expected to receive a demand, and as a result incurred late payment charges.

Another aspect of self-assessment which took some time to get used to was that fact that, other than in cases selected for enquiry, the Revenue did not formally agree or even comment on a taxpayer's liability for the year. This led to uncertainty as to whether the return had been accepted as correct or whether it might be challenged in the near future. It also put the onus on the taxpayer to ensure the return was correct. Under the old regime you could send in your return and accounts, the tax inspector would write back with a list of queries to which you would respond, and most times you would end

up with an agreed liability which was not likely to be reopened in the future. It was obviously labour-intensive, but it worked reasonably well and provided certainty.

Self-assessment brought with it a system of automatic penalties and interest charges for late filing of returns and payment of tax. This also took some people by surprise. Previously, if a penalty was charged it meant that someone had done something wrong. Hence when an automatic late filing penalty was charged, it seems that nearly everyone lodged an appeal. I was sitting as an appeal commissioner at the time, and we were inundated with such appeals, none of which had any chance of success. It struck me that fewer appeals would have been made if, instead of being called a penalty, it had been described as a late filing fee.

It is now 14 years since the introduction of self-assessment in the U.K., and I think we are now over those initial problems, or at least we now understand what is involved and what is expected of us. Its introduction has enabled HMRC to reduce its manpower and presumably the cost of tax collection. However, current anecdotal evidence suggests that the pendulum has swung too far the other way and that HMRC may no longer be fit for purpose.

Kenneth J. Kies

*Federal Policy Group
Washington*

Without a doubt the single most significant change in tax policy in the history of the U.S. income tax code was the decision to index for inflation the minimum and maximum dollar amounts for the marginal rate brackets and the personal exemption as provided in the Economic Recovery Tax Act of 1981 (ERTA).

With one single provision, Congress ended the annual ritual doling out of condolences made possible by bracket creep's ever deeper grasp into Americans' pockets. And just as surely as Major League Baseball's crackdown on steroids has tipped the balance of the game away from the hitter and back to the pitchers and fielders, so has indexing tipped the balance away from the taxwriting committees — and their chairmen in particular — and back to the taxpayer.

There is a reason why the chairmen of the last quarter-century have not seemed to measure up to the Wilbur Mills and Russell Longs of years gone by. That reason is \$45 billion: the amount

of revenue ERTA saved taxpayers in 1986 through indexing, according to the Joint Committee on Taxation.¹ Put another way, that is the amount that was not available to be doled out as favors by the taxwriting committees led by the now seemingly mere mortal chairmen. Imagine how fantastically brilliant Sam Gibbons, Bill Archer, Bill Thomas, Charlie Rangel, Patrick Moynihan, and Charles Grassley would all seem if they had had \$88 billion a year — \$45 billion adjusted for inflation — to spend.

Pointing to the monster that the tax code has become, others may cite the actual creation of the income tax as more significant. However, just as you do not lay blame for a criminal's actions on his birth, I do not believe you can blame this behemoth's current form on its inception or, for that matter, the 16th Amendment to the Constitution for allowing it.

If anything, indexing for inflation has slowed the code's mutation. Look, for example, at the bizarre annual ritual now required by the individual alternative minimum tax and the patch needed to keep its unindexed burden from falling on millions of taxpayers. Indexing has at least protected the rates and exemptions from this bizarre contortion.

1. There appears to be some discrepancy as to indexing's cost, with the text of the blue book analysis of ERTA putting the 1986 price at \$36 billion and the revenue table at the back of the blue book putting it at \$45 billion.

Evan M. Liddiard

*Senior Tax Policy Adviser to Sen. Orrin G. Hatch
Washington*

One of the biggest changes I have seen over the past 20 years in tax policy is the great proliferation of tax credits. While tax credits were hardly a new feature of the Internal Revenue Code when I began working as a tax policy aide in the Senate in 1988, their use has blossomed in recent years as members of Congress have increasingly turned to them to further their social, economic, energy, and environmental goals.

Larry Lipsher

Guangzhou, China

As I prepare to go into my 45th year of doing taxes, there are two events of earthshaking proportions that have had so substantial an impact on me that I will always remember them.

The Tax Act of 1984 changed so much that return preparers throughout the country all saw major income increases because of all the taxpayers this brought out of the proverbial woodwork. This definitely helped in financing my first children's university education.

Twenty-two years later, Sen. Chuck Grassley, R-Iowa, who single-handedly added in provisions of the Tax Increase Prevention and Reconciliation Act, made me a big beneficiary of his inclusion of limits on the foreign housing exclusion and the elimination of the graduated income tax provisions for those eligible for the foreign earned income exclusion who had income in excess of the exclusion.

"Tax increase prevention"? Ha! One client with the same exact income and housing expense found himself paying \$54,000 more because of "tax increase prevention." Congress had absolutely no idea what it passed. Expats residing in low-tax/high-cost-of-living jurisdictions (i.e., Singapore, Hong Kong, and Dubai) all had problems they never anticipated having. Thank you, Sen. Grassley. You are the reason I have been able to finish financing my daughter's education.

Of course, the impact of the Foreign Account Tax Compliance Act might very well be bigger for me than either of the other two events. In my opinion, FATCA really is a stupid law. Yet who am I to scorn a stupid law that just might be the method of financing my retirement.

Richard Malamud

*California State University
Carson, Calif.*

What's the biggest change in the last 40 years? The answer must be personal computers and tax preparation software. These tools have allowed Congress to pass hundreds of changes that no tax preparer could calculate by hand. If he or she could, the time spent on them would make the bill so high that no one could afford to have their taxes professionally prepared. Forty years ago it wasn't that hard to prepare a tax return by hand with an adding machine; that is no longer the case.

How about taxing such simple things as Social Security benefits? Just remembering the different rules is daunting enough. What are the limits for the exemption of Social Security benefits, the 50 percent inclusion, or the 85 percent inclusion? Once you figure those out, what if the taxpayer is not single, but married filing jointly, married filing

separately, or head of household? Does anyone who prepares a return by computer know the answer? Probably not. Similar headaches for calculating depreciation, accumulated depreciation, and depreciation recapture are just a few keystrokes away when using tax software. Without it, no one could quickly or accurately prepare a Schedule C or the related self-employment tax calculations that accompany the form.

Not only do the tax rates change for inflation, but so do the standard deduction and personal exemption amounts. Similarly, does anyone know if the 2009 exclusion of unemployment benefits still applies in 2010? No problem; just input the unemployment income and the tax software will figure it out.

Forty years ago there were few tax credits and none for college or retirement. There were also no above-the-line deductions for health savings accounts or for self-employed health insurance payments. This isn't a question of fairness but of complexity. Not only has Congress added numerous credits and deductions, but many of them phase out at different adjusted gross income limits.

What allows Congress to require all these calculations while not substantially complicating the tax preparation process, and thus not hearing complaints from the tax preparation community? Tax preparation software. When faced with the phase-outs and phase-ins, just put everything into the computer, and like magic the software produces a complete and properly calculated tax return. This is especially true with the alternative minimum tax calculations. Anyone want to try the AMT by hand, especially if there are depreciation and passive activity losses?

For those who would argue that it's not that hard to calculate these things, they may be correct — until the tax rules change. With computers, that's no big deal. Making the last-minute changes can be done in microseconds; by hand they could take hours. Does anyone know how to calculate the long-term capital gains for low-income taxpayers? The IRS worksheet contains 35 lines for calculating the applicable capital gains rates. How long would that take to calculate manually?

Of course, the problem with tax preparation software being accurate is that garbage in creates garbage out. For the computer to properly calculate the different capital gains rates, one has to know what is a collectible. The meaning and application of collectibles, like many other definitions, have not been made palatable by computer software programs. The software makes calcula-

tions palatable only once the preparer has properly identified the classification. Preparers still have to figure out which rate or rule applies.

Unlike 40 years ago, it no longer seems realistic to prepare a tax return by hand, including Form 1040EZ. That's especially true if you live in a state that also requires tax returns. The complications involved in the numerous calculations, especially those adjustments required to calculate the AMT, have made year-end tax planning a new sport with a short season. The same is true of payroll tax preparation.

If not for tax software, where would return preparers be? Maybe better off, as Congress might not have added so many changes over the last 40 years.

Michael J. Murphy

*Sutherland Asbill & Brennan LLP
Washington*

My career at the IRS went from 1962 to 1992, followed by 10 years with the Tax Executives Institute and now with Sutherland Asbill & Brennan LLP. It's been a great time to be involved in tax administration in this country. Here are my candidates for the most significant event over the last 40 years:

- *Early 1970s:* President Nixon directs the IRS to administer the Economic Stabilization Program (wage/price controls). Don Alexander was commissioner.
- *1980:* President Reagan's tax reforms placed heavy burdens on the IRS and Treasury. The department and the IRS came through with flying colors. Roscoe Egger and Larry Gibbs were commissioners. Ken Gideon, Fred Goldberg, and Will Nelson were chief counsels during this challenging time.
- *Late 1980s - Early 1990s:* The IRS became strongly committed to electronic filing. Larry Gibbs and Fred Goldberg were commissioners.
- *Late 1990s:* The 1998 Restructuring Act was a major change for the IRS and taxpayers. The IRS moved from being highly decentralized, with regional and district offices, to being more centralized with line and functional management taking place in five major divisions headquartered in Washington. Charles Rossotti was the commissioner responsible for the implementation of the restructuring. Margaret Richardson and Fred Goldberg were members of the restructuring committee.

I'm sure there are many more issues to be covered by other commentators. I continue to feel that my years with the IRS were the best of my professional life. To me it was an honor to be a career executive working closely with many fine political appointees. That combination has always been the key to success in tax administration. Thanks for the trip down memory lane.

Tom O'Shea

*Queen Mary University
London*

The date was December 16, 1960. The case was *Humblet v. Belgium*. It was the first judgment of the European Court of Justice in the field of direct taxes. It was the dawn of European tax law, the first time an EU member state's direct tax rules were found to be incompatible with EU law.

Mr. Humblet was an employee of the European Community (now the European Union). Belgium taxed his wife and determined the rate applicable to his wife's salary by taking into account his salary. Humblet argued that Belgium was not entitled to do that because under article 11(B) of the protocol on the privileges and immunities of the European Coal and Steel Community Treaty, only the Community itself could tax his salary.

The ECJ held that the protocol conferred individual rights on the "officials of the institutions of the Community." Accordingly, Community officials could bring this type of dispute before the ECJ. Moreover, the ECJ pointed out that the words "shall be exempt from any tax on salaries" indicate "clearly and unambiguously exemption from any fiscal charge based directly or indirectly on the exempted remuneration." The ECJ explained that the "application of national tax laws to the salaries paid by the Community would thus detrimentally affect the Community's exclusive power to fix the amount of those salaries."

Taken as a whole, the Court held that the Community treaties "withdraw the remuneration paid to officials of the Community from the Member States' sovereignty in tax matters." The Court indicated that the taxation of salaries of Community officials was a matter exclusively for the Community, while the other income of officials remains subject to taxation by the member states. The Court stated that this "division of reciprocal fiscal jurisdiction must exclude any taxation, direct or indirect, of income which is not within the jurisdiction of the Member States." Consequently,

the Court concluded that it was "an infringement of the Treaty to take into account remuneration referred to in Article 11(B) of the Protocol in order to calculate the rate applicable to other income of the person concerned." Belgium was therefore obliged to nullify the effects of the tax assessment at issue.

Humblet was the first ECJ direct tax case. It established that EU law could trump the national tax rules of the EU member states when they conflicted with EU law; that EU nationals had been conferred with certain individual rights under the Community treaties; that certain competences in the field of direct taxation had been transferred to the Community and were exclusive to the Community; and that EU member states could be sued by their own nationals using EU law rules.

EU tax law celebrates its 50th birthday in 2010. Since its *Humblet* judgment in 1960, the ECJ has continued to deliver judgments in the direct tax field, building up an evolving and expanding body of jurisprudence. Its case law is of interest to international tax practitioners and academics around the globe whenever a national tax rule (or double tax convention) of an EU member state comes into conflict with EU law.

Arthur R. Rosen

*McDermott Will & Emery LLP
New York*

We may not be rock stars yet, but we're getting there. State and local tax practitioners were, when I first became one, afforded little respect by the tax world in general and were given even less respect by corporate management. This sorry state of affairs has given way to an environment in which SALT practitioners need not be embarrassed by their chosen area of specialization (at least when spending time with other types of tax nerds).

It may be different for young practitioners to imagine, but Lexis — which for many years was the only electronic legal database service — did not provide any state and local tax authorities other than those published in fully judicial court reporters. As a result of my feeling terribly discriminated against because of this situation, I contacted Mead Corp., the owner of Lexis at the time, and suggested that Lexis be expanded to include the same type of authorities that it included for federal taxes. I was working for the New York State Department of Taxation and Finance at the

time, and so the proposal Mead made to me was that for a fee, New York tax authorities would be put in the system; in return, New York state would receive royalties for subscribers' use of the material. People in the governor's office decided that the government should not be "in business," so we rejected Mead's offer.

I then asked Mead management whether they would reconsider putting state and local tax authorities in the system if I could prove that there would be substantial usage; they agreed. So I conducted a written survey of the American Bar Association's State and Local Tax Committee and members of the New York State Bar Association Tax Section. The responses, of course, reflected the general expectation of substantial usage. A short while after I submitted those responses to Mead, it agreed to, and did, start including state and local material in the Lexis system.

New York University — for decades and decades — had offered a federal tax program to the tax practitioners each summer. Once again feeling discriminated against, I contacted the appropriate parties at NYU and registered my complaint. Their response was straightforward: If I wanted to pull together and coordinate such an offering, they would sponsor/host the program. The program is now well into its second decade.

These are just two examples of how far the SALT world has come. There are, of course, many other examples — many much more significant than those described above. For example, *State Tax Notes*, under the wonderful leadership of Carol Douglas, has become a daily valuable necessity in many of our lives comparable in importance to food and shelter. The development of independent tax tribunals throughout the country is evidence of the importance of state and local tax being recognized. More and more law schools are offering SALT courses at both the law school and the LLM levels. We even have state and local tax professionals becoming top tax persons in several major corporations. We have congressional — and state and legislative — staff seeking the valuable impact of organizations such as COST. And in contrast to the former situation when individuals became SALT professionals simply due to serendipity, we actually have recent law school graduates affirmatively seeking jobs in the SALT field!

In other words, we've come a long way, baby.

Eric Ryan

*DLA Piper LLP
Palo Alto, Calif.*

The most significant change to tax administration I have seen in the last 40 years is the development of the advance pricing agreement program.

As one of the contributors to the first APA for Apple Computer, I recall our motivations at the time were to gain certainty in transfer pricing methodology, certainty in actual operating profit results, ability to make post-year-end pricing adjustments, and savings of time and expense in avoiding lengthy audits many years after the fact. Before APAs, the IRS would not take transfer pricing matters under any sort of private letter ruling, as it was believed that those issues were too fact intensive.

That initial APA was a great success for Apple Computer, and other taxpayers soon followed. Apple Computer obtained several more APAs with other jurisdictions. Over the next 20 years, more and more jurisdictions followed the lead of the United States, to the point where dozens of countries now allow the practice. In addition to becoming a standard administrative tool, the APA program has allowed tax authorities and taxpayers worldwide to develop a standardized framework for developing comparable benchmarks and ascribing the economic results to many common transactions. Although a few unique transfer pricing disputes still go to trial (witness the *Xilinx* and *Veritas* cases), that remedy is now employed quite rarely, in large part because of the availability of APAs and the relatively well-known, standardized profit benchmarks employed by most taxpayers.

Lee A. Sheppard

*Tax Analysts
New York*

As I write this, the satirical newspaper *The Onion* is running a story headlined "American People Hire High-Powered Lobbyist to Push Interests in Congress." It's *The Onion* at its most pointed — the fictional lobbyist admits to an uphill battle to get Congress to care: "The veteran D.C. power player admitted that his new client is at a disadvantage because it lacks the money and power of other groups."

The article says it's all about where the United States is as a country. Arianna Huffington is cor-

rect that the United States is on a path to becoming a Third World country if present policies continue. A banker class will rule over a class of waiters, janitors, salesclerks, masseurs, fitness trainers, and astrologers. She is from Greece, where no one in the upper class bothers to pay taxes, so she knows whereof she speaks.

Taxation is the main relationship that people have with their government. As this piece is being written, there is no estate tax, and a Congress controlled by Democrats cannot muster the votes to raise rates for the top end of the increasingly unequal income scale. Both parties have been completely captured by business interests, as Ralph Nader, a great friend of Tax Analysts, has repeatedly pointed out.

Congress is completely corrupt, much as it was in the late 19th century, except that we have no Theodore Roosevelt to fight the corruption. The recent Supreme Court decision in *Citizens United* cements the obvious corporate control of the political process. It is ironic for the president to complain about it, when he, like his opponents, has been bought and paid for by the banks.

The corruption is not just financial but philosophical. The entire ruling class, regardless of party affiliation, has been persuaded to see the world through the eyes of the investor class. The shorthand for this is “free markets,” but markets are never really free, and investors prefer to have them rigged in their favor. And as the meltdown has shown, it is not true that what benefits the investor class benefits everyone else.

The investor class dislikes taxation of investment income or gains, inflation, regulation, and renegotiation of failed debts. The investor class likes deregulation, captive central bankers, and the unfettered flow of capital across national borders.

We are not talking about low taxes. We are talking about no taxation whatsoever, guaranteed by bilateral treaties and foolish practices like respect for paper corporations that allow income to be shifted wholesale to tax havens.

The shorthand for the unfettered flow of capital is “globalization,” which is attributed to technology rather than deregulation. Globalization benefits no one but the investor class. The American ruling classes treat the unfettered flow of capital as though it is an unstoppable weather phenomenon, oblivious to the havoc it has wreaked on national economies and local workers. But governments need not turn a blind eye to the harm. Brazil has just imposed capital controls by means of excise taxes on inbound investment, and other developing countries are following.

The American economy has been thoroughly financialized. Public goods, from transportation infrastructure to schools, have withered as the income and wealth disparity exceeds that of Britain and Brazil. What were once public goods have been turned into opportunities for economic rent collection; one cannot watch television or drink water without paying a fee.

Taxation With Representation (TWR) — as Tax Analysts was originally known — was founded 40 years ago to bring sunshine to the corrupt legislative process, on the assumption that if legislators and bureaucrats were outed, they would clean up their acts. We assumed the existence of shame.

Sunshine did not turn out to be a disinfectant — indeed, it seemed to be an advertisement for services. We wrongly assumed that any of the players had a sense of shame. Things have gotten worse in the last 40 years. Congress is paralyzed, and legislators’ votes are for sale.

TWR originally went after tax benefits for oil companies and other large corporate actors. Then came the successful FOIA lawsuit that revealed the private law that the IRS had been making for decades. That and the loss of tax exemption for TWR effectively turned the organization into a tax publisher.

Then came me. I’m either a dissident or a class traitor or just a nut, depending on the reader’s point of view. Whatever, I am a tax specialist capable of understanding the intricacies of the law and where the bodies are buried. I can call malfeasance on all sides. At the moment, news gathering has degenerated so much that comedians, dissidents, and class traitors are making the financial news.

The founders of TWR were concerned about statutes and regulations that subsidized activities that oil companies and manufacturers would undertake in any event to stay in business — items like the investment tax credit and intangible drilling costs. Oh, for those more innocent times! At least oil companies and manufacturers produced something that people could use and enjoy.

The meltdown of 2008 — which many financial writers, including this one, saw coming — is the singular event of our lives. It is not over yet, and the root causes have not been adequately addressed. Eventually the rest of the country will have to be taxed to pay for the misdeeds of a relative handful of banks, which were bailed out without any thought to whether their activities served any social or economic purpose. And taxes will have to be increased to pay for the occupation of two Middle Eastern countries at a cost of \$1 million per soldier per year.

No one thought about financial intermediaries trading for their own accounts. We always knew we didn't know how to measure their income properly, but as recently as in the first few years of the 21st century, financial intermediation was not the main activity of the U.S. economy. Policy-makers are still not thinking about how to tax banks and other financial intermediaries.

The individual income tax has morphed into a consumption tax, and not in a good way. Most individuals have consumption treatment for savings in the form of retirement accounts. As the late economist David Bradford, another great friend of Tax Analysts, cogently argued, a consumption tax is a tax on labor income. With capital gains rates of zero and 15 percent, and most dividends taxed at 15 percent if they are taxed at all, the income tax effectively reaches only labor income. And not even all of that, since many service partners enjoy capital gain treatment of what is essentially income from services.

Enactment of a value added tax on top of the individual income tax would just put more of the burden of government on households while removing it from businesses. As for individual tax reform, no reform is possible unless the mortgage interest deduction, which is now the largest individual tax expenditure, is eliminated. That step is now being discussed by a budget commission.

Rich people are indignant that their efforts to hide from the tax collector are being probed after being winked at for so many years. They blame enforcement on revenue need, as if the point of taxation were not revenue collection. But for the embarrassing information provided by Bradley Birkenfeld, however, no such crackdown would have occurred.

We've had some small triumphs along the way. The investment tax credit is gone. The home mortgage interest deduction has been capped. Policy-makers are beginning to ask whether the U.S. tax system should subsidize foreign investment.

There are stupid decisions we are still fighting. Half of U.S. businesses do not pay tax at the entity level — which effectively means that their income is not properly measured and taxed. We couldn't prevent the widespread adoption of the LLC and federal permission to treat it as a partnership. No natural law says that partnerships cannot be taxed at the entity level, as they are in many other countries and some states.

Transfer pricing has become a newspaper pejorative for the entirely foreseeable consequences of the foolish continuation of separate company accounting for the affiliates of large multinationals.

Most American states now force combined reporting, and the European Union is working on it, so transfer pricing may well be gone in a decade, replaced by formulary apportionment.

For years multinationals were disunited in their approach to taxation of foreign income, given their differing tax positions. Recent attempts to tighten the foreign tax credit appear to have united them. They are now lobbying for a quasi-territorial system with no strings, which would have them paying even less tax than they do now. So they are busy lining up academic support to give intellectual respectability to yet another tax cut.

Isn't it logical to cut corporate income taxes while properly measured unemployment is 16 percent and people are being thrown out of their houses on the basis of faulty documents? We would perform a great public service if we could just convince our legislators that workers are not paid out of after-tax profits.

In the wake of the check-the-box rules, there is very little left of subpart F. As the current Treasury deputy assistant secretary for international affairs has stated, American multinationals enjoy a do-it-yourself system combining transfer price manipulation, deferral, transmutation of income, and generous foreign tax credits that is better than exemption. As this article is being written, multinationals are lobbying for repatriation relief once again because they have succeeded in stashing so much money in havens.

We conclude with a partial list of the dumbest things Congress and tax administrators have done in the past 40 years:

- *1981*: Safe harbor leasing
- *1984*: 60/40 treatment for futures contracts
- *1986*: Alternative minimum tax
- *1988*: Limited liability companies as partnerships
- *1996*: Internet Tax Freedom Act
- *1997*: Check-the-box rules
- *2001*: Individual tax cuts
- *2005*: Repatriation

Paula Singer

*Windstar Technologies
Norwood, Mass.*

In 1998 Congress passed the IRS Restructuring and Reform Act, refocusing the IRS on customer service rather than compliance enforcement and eliminating a central focus on international tax administration. As a result, all of the IRS's international resources were either transferred to the Large and Midsize Business Division or redeployed to domestic tax duties. Tax lawyers found themselves dealing with IRS personnel with no international tax experience on such matters as foreign death taxes on estate tax returns.

I bombarded Commissioner Rossotti and others at the IRS with letters voicing my concerns about the lack of IRS resources for international issues of individual taxpayers and their employers and payers. The letter campaign waged by individuals from colleges and universities resulted in two IRS staff being redeployed to LMSB. The restructuring led to the eventual closing of all but 3 of the IRS's 26 overseas offices that served individual taxpayers. When the office in Ottawa closed, it was the end of a resource for the over 11,000 U.S. citizens living in Canada. For a period of time following the restructuring, the only IRS resource for individual taxpayers and employers needing international tax assistance was the call center in Puerto Rico, which had audio messages about various international tax return matters, very limited hours of operation, and staff untrained in issues such as withholding and reporting obligations.

It appeared that the architects of the new IRS structure thought that only major companies had international issues, an unusual opinion considering the growth of cross-border services in the 1990s and the fact that international markets were increasingly available to small and medium-size companies, soon to be spurred on by the Internet. The restructured IRS was no doubt responsible for a growing lack of U.S. tax compliance by U.S. citizens who lived and worked abroad.

Eugene Steuerle

*The Urban Institute
Washington*

I'm tempted to list the 1986 Tax Reform Act, but I'll let others decide that matter since I was too intimately involved. My other candidate is

the following: Perhaps nothing has had greater impact on the development of tax policy in recent years than the increasing centralization of tax policy development outside those offices and committees that handle tax policy — in particular, the centralization of power in the House in the speaker's office, rather than Ways and Means, and the centralization of tax policy decisions in the executive branch in the White House rather than in the Office of Tax Policy in Treasury. Not all of this was instantaneous, although there are certainly moments that stand out, such as when Newt Gingrich increased the power of the speaker's office. Nor has centralization necessarily been for the worse, since at least in theory it could avoid approaching various tax and spending programs only within their own silos.

Nonetheless, I do think the particular way this centralization has proceeded has enhanced the extent to which we have been getting tax provisions that are increasingly hard to administer and enforce. So far it has also made real reform even more difficult. Essentially, politics now plays a much greater role earlier in the process, lobbyists are more likely to draft provisions, and it is harder to get out studies that lay out problems. The most important consequence for the current era is that, while significant final decision-making must rest with the president and speaker, their immediate offices are not capable of developing the types of comprehensive reforms now required for government. Such reforms must make broad trade-offs, admit to past failures, recognize both sides of the government's balance sheets (somebody pays for everything it does), deal with some extraordinary complexities, and identify losers — all items that require greater initial freedom from political constraint, more time for consideration, and greater expertise than their offices possess.

William Stevenson

*National Tax Consultants
Merrick, N.Y.*

I believe the most significant change in the administration of tax policy has to do with the change in the responsibility of filing extensions and tax returns.

Before electronic filing, it was the taxpayers who were held responsible for filing their returns. Once we began electronic filing, it became the responsibility of the tax professionals to see that returns for their clients were properly electroni-

cally filed. This is particularly significant when there is a glitch in the system, either manmade or an act of nature. For example, our clients expect us to file extensions for them. We do a global filing of all those taxpayers in our system whom we believe will return to us. If something happens and we don't file the extension, either through a power failure or our own oversight, the taxpayer gets penalized. In the old days it was assumed to be the taxpayers' fault because they were responsible, and they still are responsible under current rules; therefore, they get assessed penalties for late filing.

This could apply for business returns as well as personal returns. The system does not accommodate the new scenario, and it should.

Martin A. Sullivan

*Tax Analysts
Falls Church, Va.*

Most big changes in tax policy come from legislation. What motivates Congress to make tax laws? Usually it's not concern about tax policy itself ("Gee, we really need to clean up those debt-equity rules"), but external events that gets Congress moving. The Los Angeles riots in 1992 gave the Internal Revenue Code a whole new subchapter on empowerment zones. When gas prices go up, there is new urgency for expanding tax incentives for energy. When there is a disaster, Congress bends over backwards to find new ways to use the tax code to help victims. The same applies to combat personnel every time the military goes into action.

But the most powerful motivator for big tax change in recent decades has been budget deficits. Concern about the national debt was the driving force behind the tax hikes enacted by Congress in 1982, 1984, 1990, and 1993. Concern that large budget surpluses would fuel a binge of government spending pushed Congress to enact the Bush tax cuts of 2001.

What seemed like such a big deal then seems so unimportant now. Our budget deficit is unexpectedly enormous. More importantly, in a few short years the debt will begin its rapid upward spiral to unheard-of heights. Unprecedented concerns about the national debt brought on by the aging of the population, combined with unprecedented concerns about international competitiveness brought on by globalization, mean that the future will be far more challenging than anything I have seen in my experience over the last three decades.

Robert Tannenwald

*Center on Budget and Policy Priorities
Washington*

First: Changes in the federal estate tax and the gift tax. Congress changed exemptions into an integrated credit — 1976 I believe was the year. It was significant because it is one of the few times that Congress has recognized the ability of tax credits to deliver tax protection at the low end of the scale (in this case, for taxable wealth) more efficiently and fairly than exemptions — less revenue cost because less windfall to extremely wealthy taxpayers.

Second: The introduction of the business enterprise tax in New Hampshire as a backstop to the corporate profits tax. What a great way to enact a backdoor income tax! The tax base of BET consists of wages and salaries, dividends, interest, etc.

Joseph J. Thorndike

*Tax Analysts
Falls Church, Va.*

Over the past 40 years, fiscal policy has lost its lodestar. The notion of a balanced budget — long revered by politicians of almost every stripe — has lost its capacity to shape policy.

Of course, the standard has always been aspirational, not practical. Since 1933, the federal government has run a deficit in all but 12 years. And maybe that's a good thing: Rigid standards of fiscal orthodoxy are better honored in the breach than the observance, at least for thinkers of a Keynesian bent.

But over the years, the notion of a balanced budget has had salutary effects on public policy. Even as they voted for one unbalanced budget after another, lawmakers were constrained by the pressure of this arbitrary but potent political symbol. Deficits embarrassed politicians, at least when the red ink flowed too fast. Politicians felt shame in the face of unchecked self-indulgence.

Today that shame is gone. Politicians still pay homage to the totem of a balanced budget. Indeed, the Tea Party has made a fetish of it. But their rhetoric rings hollow in the face of partisan intransigence. Balanced budgets require sacrifice and compromise, neither of which seems much in fashion these days.

It's tempting to blame this sad reality on the modern GOP, with its incongruous opposition

to both tax hikes and entitlement reform. But Democrats, too, have dug in their heels, with many unwilling to acknowledge the long-term fiscal crisis, let alone try to fix it.

In general, today's political leaders seem more interested in being right than responsible. They would rather sacrifice the nation's prosperity than their party's ideological purity. They put party over nation at almost every turn. And they should be ashamed.

Victor Thuronyi

*International Monetary Fund
Washington*

Looking back at what has changed since 1970 in the U.S., I am tempted to say the Tax Reform Act of 1986. I was involved in helping develop that legislation. On the other hand, has it stood the test of time, and how significant was it compared with all the other tax legislation we have seen in this period? One of the signature reforms of the 1986 act — equalization of the rates on capital gains with the rates on other income — was abandoned fairly quickly. So I think we have to say that even though this reform was important and inspiring, it did not achieve as lasting and significant a change as its developers had hoped.

Perhaps the most significant development in the U.S. over the period is a more gradual one, namely the steady increase in complexity of the law and tax practice. The 1986 act, although aimed in part at simplification, made virtually no headway against the steady onslaught of complexity.

If we look at changes in the tax landscape internationally, we see much more dramatic change. In 1970 fewer than a dozen countries had a VAT. By now this tax has become nearly universal, with the major exception of the United States. Also quite dramatic is the role of taxation in the so-called transition countries. Until the late 1980s and early 1990s, the Soviet Union, China, and a number of other countries did not have a market-based economy and did not know taxation in the same sense that we think of it. I was involved in the drafting of tax codes in many of these countries in the 1990s; this was one of the most eventful times in my professional life and was a key part of the political and economic change that these countries underwent. More development, of course, is still to come.

Finally, the role of the EU and of EU law has increased enormously. In 1970 there was virtually no such thing as European tax law. Today

European tax lawyers must study decisions of the European Court of Justice as well as the decisions of their national courts, and the European Commission has become an important actor in the tax policy of European countries.

Alan Weiner

*Holt Rubenstein Reminick LLP
Melville, N.Y.*

Without a doubt, near or at the top of the leader board are the user-friendly, business-friendly, and practical check-the-box regulations. You almost never need to check the box as a result of the default mechanism built into those regulations. Most of the time, no form need be filed to elect entity classification. Thank you, IRS and Treasury.

James Wetzler

*Deloitte
New York*

In the Economic Recovery Tax Act of 1981, Congress indexed the principal fixed dollar amounts in the personal income tax for inflation. Indexing took effect in 1985, after the three-year phase-in of the Reagan administration's across-the-board rate reduction. It had not been part of the original Reagan proposal, but was added to the Senate bill as a floor amendment and was included in the substitute that superseded the Ways and Means Committee bill on the House floor. Thus, this most significant development originated outside the administration and the congressional taxwriting committees.

Before indexing, taxes could be cut to stimulate the economy in a recession without fear of compromising long-run fiscal sustainability — sooner or later, inflation would raise revenues to offset tax cuts, because even low rates of inflation would produce significant tax increases over a sufficiently long time horizon. Thus, fiscal policy was liberated from concerns about sustainability and responded aggressively to recessions. Despite numerous countercyclical tax cuts (in 1964, 1971, 1975, 1977, 1978, and 1981), the income tax burden stayed roughly constant as a percentage of personal income.

Because of indexing, members of Congress rarely had to vote for a peacetime tax increase and therefore could not plausibly be accused by political opponents of raising taxes. Indeed, they

could periodically claim credit for cutting taxes when all they were really doing was compensating for bracket creep. From a political point of view, the tax issue had little salience.

The business community benefited from the lack of indexing. Legislation that reduced personal income taxes typically included business tax reductions as well. There was no need to search for business tax increases to pay for personal income tax reductions.

Contrast the situation today. With indexing, tax cuts really do erode the revenue base, and we face a serious issue of fiscal sustainability. Tax reduction appears unavailable as a tool to combat even an extraordinarily severe recession. The tax issue is front and center in our political competition. The tax legislative process devotes much time and energy to searching for ways to raise revenue from businesses to pay for personal tax reductions — all as a result of a couple of floor amendments.

Roger Wheeler

Landrum, S.C.

It was almost 40 years ago that I, as a recent graduate of Georgetown University Law School, joined the multinational corporation for which I would work some 35 years, the last 15 years as its chief tax officer.

At that time, tax staff management consisted exclusively of older men with graying hair, wearing dark blue suits. They barked orders that were carried out by younger men, neatly groomed and wearing similar blue suits. There were a goodly number of women on the staff, but they were either secretaries or secretaries who seemingly couldn't take dictation well enough so were made duty drawback clerks in the customs department. If a woman was in a supervisory position, most likely it was overseeing some kind of processing activity like filing state and local tax returns.

Over time things began to change: Women became lawyers and CPAs, human resources departments initiated diversity training followed by quota-like staffing guidelines, existing male management began to appreciate the large and capable untapped female potential. And, of course, there were a few trailblazers, both male and female, who championed the initiative at critical times. More important, however, was the compelling logic that a more diverse workforce was a better workforce. The beauty of it is that no one now even gives a second thought to women in the tax practice.

Today, at least from my vantage point, women are almost as equally represented in the tax practice as men — as chief tax officers in major corporations, partners in the most respected law and accounting firms, thought leaders in academia, and key policy-makers holding down important posts on Capitol Hill and at Treasury and the IRS. In numbers and importance, if you ask me, women have pretty much achieved parity, and this is one of the biggest (and most welcome) changes over the past 40 years. I hope I was an enabler along the way.

George White

*Tax Analysts
Falls Church, Va.*

Tom Field was not always the highly regarded figure in the tax world that he is today. Back in the day when he was shattering the insular world of D.C. tax practice, he was mighty unpopular with both the IRS and tax practitioners. As is well known, the IRS fought Tom's efforts to achieve transparency at every step of the way before yielding to judicial decisions. Not so well known is Tom's disfavor among tax practitioners who might have been expected to embrace his efforts. They didn't, at least in the D.C. tax practices of the major accounting firms. We were comfortable with the way the IRS handled the private letter ruling program, with its definite emphasis on "private."

There was no publication of PLRs, but news of novel rulings managed to circulate by word of mouth among the Big Eight(!) accounting firms. If, for example, Arthur Young (the firm where I was a partner) got an interesting spinoff ruling, we might let a friendly competitor know how the IRS was ruling on a particular issue. All that changed when the IRS was forced to publicize PLRs. The expectation among practitioners was that it would have a chilling effect on the IRS's willingness to issue PLRs and on clients' willingness to risk disclosure. In any event, publication turned out to be a mixed bag. The PLR program continued, but the required redaction of identifying details greatly reduced its usefulness to readers.

Jeffery L. Yablon

*Pillsbury Winthrop Shaw Pittman LLP
Washington*

Over the last 35 years, American tax laws have changed to reflect a citizenry that has generally become more individualistic, less honest, more sophisticated, less honorable, more worshipful of wealth, and less caring about the opinions of others. Most obvious are three related trends:

- tax laws have increasingly been used by politicians to grant financial benefits to favored parties in a manner that is harder to discern and easier to enact than direct appropriations;
- tax laws are now always subject to effectively capricious revision or repeal — the institutional reluctance to change important things without good reason that was generally present in earlier times has been severely eroded; and
- largely in response to aggressive behavior by tax professionals, broad principles have been replaced with or supplemented by a multitude of very specific rules, exceptions to rules, and exceptions to the exceptions.

The overall result is a level of complexity that would be regarded as unquestionably insane if it had occurred all at once rather than accumulating over decades.

George K. Yin

*University of Virginia
Charlottesville, Va.*

Important societal developments during the past 40 years have gradually affected the legal and tax professions. Many of the changes occurring during this period in professional firms, corporate practices, government, and academia can be attributed to the wider variety of backgrounds and experiences of the persons involved in the profession.

The challenge over the next 40 years will be to promote this increased heterogeneity while preserving within it a common tax culture of which we can all be proud. Tax Analysts has played a commendable role in these developments; as the profession has slowly moved away from the “club” model, Tax Analysts has facilitated a broader dissemination of information beyond the select few and also provided an open forum for the widespread sharing of views.

Ralph Zerbonia

*UHY LLP
Southfield, Mich.*

One of the most significant changes I have seen involves the enormous number of tax changes enacted by Congress over the past few years.

I began my career in 1973. There was one tax change from 1973 to 1981. From 1981 to around 2005, there were annual changes in tax law. However, within the past few years it seems there have been numerous tax changes in numerous bills throughout the year. Each change now is often for only a limited period of time, and each change has different effective dates — some many years in the future.

It has been extremely difficult to properly keep track of these numerous and continual changes to allow proper tax planning for our clients. Even after 37 years of experience, I find it is impossible to know even the simplest tax provisions without looking them up.

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