

THE TAXONOMIST

Tax Cheaters & Their Implementers

By Robert S. McIntyre

David Cay Johnston of the *New York Times* came to the Urban Institute, a Washington think tank, in January to talk about his intriguing new book, *Perfectly Legal*. In it, he argues that some of America's richest people—with the active encouragement of many of our political leaders—have successfully schemed to avoid much or most of the taxes they're supposed to pay. The event attracted a large audience, not least because Johnston's debating partner was supposed to be Washington's leading tax-shelter lobbyist, Kenneth Kies.

Unfortunately, Kies chickened out at the last minute, citing pressing client business (i.e., he didn't want to face the heat). So the organizers had to recruit conservative economist Bruce Bartlett as a replacement, and this self-described "token right winger" didn't provide the expected fireworks. But he and his fellow panelists did have some interesting things to say.

The theme of Johnston's book is that our tax system is "rigged for the super-rich." While wage-earners have to report all their income, executives and investors often thumb their noses at the rest of us. And a lack of reporting and anemic enforcement lets them get away with it. Taxes may be "the price of civilization," as Oliver Wendell Holmes put it. But, Johnston says, too many very wealthy people "want civilization on the discount."

The core of the problem, Johnston finds, is that "we have radically reduced our efforts to go after serious tax cheats. Instead, we go after petty chiselers."

Johnston points to trumped-up hearings on supposed IRS abuses held by Republicans on the Senate Finance Committee in 1997 and 1998 as a key turning point in eviscerating tax enforcement. The resulting law, he says, "handcuffed the tax police" by severely penalizing IRS employees for vigorously enforcing the law and "quickly became a boon for tax cheats of all kinds." On top of that, he notes, major accounting firms have widely marketed abusive shelters to their wealthy corporate and individual clients, while the IRS's masters in Congress and the Treasury have refused to crack down on these often-illegal schemes.

In one bit of wry humor, Johnston described seeing a picture a few years ago of a top Chrysler executive standing next to the company's tax return. It was taller than he was. The photo was supposed to illustrate how compli-

cated our tax code had become, but Johnston said his first thought was: "That pile of paper probably made them more money than all the Plymouths they built that year."

Bartlett led off his reply to Johnston by admitting he was going to disappoint the audience. He described the scheduled speaker, Ken Kies, as possibly "the richest lobbyist in Washington, who got that way by putting tax shelters into the code. If he were here, he'd probably defend them." But, Bartlett continued, "Unlike many of my Republican friends, I can't defend tax shelters—or tax cheating."

Sadly, Bartlett is right that he's unique among his cohorts. As this column has previously noted (see, e.g., *TAP*, "Tax Cheaters' Lobby," 6/14/01), conservative interest groups in Washington have almost unanimously lined up against efforts to curb offshore tax evasion by wealthy individuals and companies.

To illustrate President Bush's culpability in this regard, John Buckley, chief tax counsel for the Democrats on the House Ways and Means Committee and the third member of the panel, related how a couple of years ago, the IRS wanted to go after a capital-gains tax shelter that it thought was obviously illegal. But that seemingly routine effort was rebuffed by Bush's Treasury Department. According to Buckley, Mark Weinberger, then assistant secretary for tax policy and now back at his accounting firm, Ernst & Young, told the IRS that since Bush was against capital gains taxes, he didn't see any reason to discourage people from evading them.

Johnston makes his case—that we face a tidal wave of tax evasion and avoidance by the wealthy—anecdotally, but persuasively. As Buckley put it, "This book eliminates any remaining doubt that tax shelters are a big problem." To address this dire situation, Johnston says we need far more "tax detectives." The current 15,000 IRS agents are no match for hundreds of thousands of big-time tax evaders, he says, especially since many of the IRS agents are forced to waste their time on petty cases rather than going after the ones that really matter.

That seems like common-sense advice. But so long as our government is run by people who think that tolerating cheating is just another way to provide tax cuts, even modest advances in tax enforcement will be hard to come by.

ROBERT S. MCINTYRE is the director of Citizens for Tax Justice.