From the Editor:

Do Education Tax Incentives Work?

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The costs of higher education continue to skyrocket. Tuition has been increasing at universities and colleges for two decades, almost doubling between 1986 and 2010. This problem has not gone unnoticed by Congress. As the price of college has increased, so too have the number of tax incentives designed to help taxpayers pay for it. But have education tax incentives actually helped ameliorate the problem, or have they possibly made it worse?

The truth is that Congress doesn't know. At a recent Senate Finance Committee hearing on education tax policy, the GAO said that lawmakers do not have access to the information needed to evaluate the effect of tax programs on tuition costs, graduation and enrollment rates, and related issues. It is entirely possible that most of the benefits of tax incentives are being captured by institutions that raise tuition in response to government subsidies, writes Marie Sapirie (p. 335). She also argues that education incentives are so complex that many families fail to use them advantageously. High-income phaseouts make some education tax credits regressive in their impact, Sapirie says. In her summary of the 18 different tax benefits available, she notes the costs of each program and the income phaseout attached to the credit. In terms of revenue forgone, the most expensive education benefits are the deduction for charitable contributions to education institutions, the HOPE and American opportunity tax credit, and the exclusion of income from interest on qualified activity bonds. Sapirie concludes that Congress deserves a failing grade for the complexity of education tax incentives and that it needs to reevaluate each of the benefits when it considers tax reform next year.

Over the next few years, many tax expenditures are likely to disappear as Congress searches for revenue to pay for deficit reduction or to make tax reform revenue neutral. Taxwriters have stressed the importance of being able to evaluate the effectiveness of individual tax expenditures. There is no doubt that there are too many different education credits available, and that the myriad eligibility rules create inefficiency. In any tax reform effort, Congress should either eliminate education benefits or tailor them to be more progressive and less easily captured by colleges and universities in the form of increased tuition. These are exactly the same issues faced by lawmakers regarding tax subsidies for homeownership (which might only benefit real estate agents and builders) and health insurance.

Top Five Tax Lobbyists

The impending expiration of numerous tax provisions and the so-called fiscal cliff means that Congress will have a lot to do when it returns for a lame-duck session after the November elections. Whether lawmakers will be able to accomplish everything that is needed to address extenders, the Bush tax cuts, and the imposition of new taxes will depend on their ability to draft very technical legislation in a short amount of time. And that's where lobbyists can help, or hinder, the process. In preparation for the fiscal cliff debate, Tax Analysts presents the top five tax lobbyists in Washington. The ability to be a successful lobbyist requires blending technical tax knowledge with insight into how bills are drafted and passed. The lobbyists featured in the story invariably have both, and years of experience working with congressional committees and their staffs. (For the feature, see p. 342.)

Deficit Reduction

Once the fiscal cliff is addressed (assuming it is), Congress will have to begin work on serious deficit reduction, according to Martin Sullivan. In his article this week, he presents the most important things to remember when considering deficit reduction. He argues that it will require $3.4 trillion in deficit reduction to put federal finances on a sustainable course. Much of that can be achieved by troop drawdowns in Afghanistan and letting the Bush tax cuts expire for upper-income earners, he writes. (For his analysis, see p. 339.)

Commentary

In the first part of their analysis of partnership terminations, Eric Sloan, Mark Opper, and Teresa Lee looked at the primary tax consequences of a technical termination under subchapter K. In the second part, they summarize the implications of a termination outside the partnership provisions of the code (p. 389). The authors address international tax issues, including foreign rules on hybrid partnerships and dual consolidated losses. They discuss the intersection of corporate and partnership tax law and accounting and timing issues. Technical partnership terminations can arise unexpectedly and in different contexts, they write. It is best for practitioners to be aware of potential terminations and their impact on transaction planning, they conclude.

It is rare that tax policy occupies such a central role in a presidential election, but the competing tax plans of Mitt Romney and President Obama have dominated the debates and airwaves this election season. Romney has been on the defensive about how he will pay for his 20 percent tax cut without burdening the middle class, while Obama continues to press for higher tax rates on what he defines as the rich. Professor Samuel Thompson looks at both candidates' tax plans and presents the issues on which they disagree (p. 417). Specifically, Thompson looks at Obama's plan to raise the top tax rate to 39.6 percent and Romney's and Obama's views on the appropriate tax treatment of foreign businesses. He argues that the federal tax system should be more progressive than the rate structure that existed before the Bush tax cuts. Thompson also pushes for an imputation system for taxing foreign income and a lower corporate tax rate.

The taxation of carried interest was briefly one of the hottest tax topics in Washington. Even after Democrats failed to pass legislation to change the tax treatment of capital gains to ordinary income, the topic remains alive as a potential revenue raiser. Cory Vargo summarizes the state of carried interest tax law and looks at several different proposals for carried interest tax reform (p. 425). He points out that a partnership profits interest is the most efficient form of compensation available. Vargo looks at the various concerns over tax equity related to carried interest compensation and how investment decisions would change after a change in treatment.

While the United States is pushing for information exchange to combat offshore tax evasion and has pressured Switzerland to end bank secrecy, other nations are taking a different approach. The United Kingdom and Germany, perhaps more interested in raising revenue than learning the identity of Swiss account holders, have agreed to anonymous withholding agreements. Under the agreements, Switzerland would agree to impose a cross-border withholding tax on account holders, but would not divulge their identities. Professor Itai Grinberg writes that anonymous withholding is an inferior approach to tax compliance and discusses how Germany and the United Kingdom are missing a golden opportunity to pursue automatic information exchange (p. 413). Grinberg also discusses how withholding would differ from FATCA. Automatic information exchange is superior to withholding, Grinberg writes, adding that information exchange can reach untaxed principal and maintains a sense of tax fairness.

Diana Furchtgott-Roth explores the concept of lower taxes and fairness in her discussion of the new book *Who's the Fairest of Them All? The Truth About Opportunity, Taxes, and Wealth in America*, by Stephen Moore (p. 433). Moore writes that cutting taxes is fair because lower rates lead to more income for everyone. Furchtgott-Roth says that Moore succeeds in making tax policy discussions enjoyable and that the book is targeted at Americans who have little free time but are curious about tax policy and economic fairness issues.

The new Circular 230 regulations change how written advice is handled. The old covered opinion rules are gone, but Circular 230's reach has been expanded. Tax practice will be changed forever under the proposed regulations, according to Monte Jackel (p. 437). He writes that the proposed rules need more thought by the government before they become finalized. He would prefer that the standards be set somewhere between the harsh and inflexible covered opinion rules and the newly proposed principles-based approach in the regulations.

In the second part of his analysis of the problems of intermediary transactions, Robert Wood discusses the IRS's attacks on transferee liability assertions. He discusses several court decisions on the subject and concludes that practitioners need to evaluate those consequences sooner rather than later (p. 443). ■