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From the Editor:

Herman Cain Follows in Steve Forbes's Footsteps

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In late 1995, publisher Steve Forbes stormed to the front of the Republican presidential campaign by touting the flat tax — a complete overhaul of the nation's tax system that would cut taxes for most Americans and reduce income tax returns to the size of a postcard. Before Forbes's opponents were able to drive up the plan's negatives by pointing out the loss of mortgage interest and charitable deductions, the political neophyte took over the lead in New Hampshire polls and was frequently featured on the covers of most major newsmagazines. Forbes ultimately sputtered, failing to win New Hampshire and showing dismally in Iowa, and the Republican nomination was won by Bob Dole. But that hasn't stopped Herman Cain from trying a similar formula, relying on outsider status and a seemingly simple tax reform plan to outperform expectations.

Cain isn't quite Forbes. For most of the campaign, Cain's tax plan took a back seat to the former pizza mogul's quirky style. But with Cain's recent victory in the overrated Florida straw poll (held again for the first time since the 1996 campaign), the media has begun paying closer attention to his 999 plan. The plan calls for the implementation of a 9 percent income tax, a 9 percent corporate tax, and a 9 percent national sales tax similar to the FairTax proposal. According to Joseph Thorndike, Cain is secretive about the drafters of the 999 plan and has been evasive about how much revenue the plan would raise. In his analysis of Cain's plan, Thorndike says the proposal is largely a campaign gimmick, which means that it doesn't have any more or less detail than most presidential campaign tax proposals. Although Cain argues that his plan is revenue neutral, he has pledged in recent days to produce a more precise revenue score, Thorndike writes. (For Thorndike's analysis, see p. 14.)

Forbes's tax plan was a bit more developed than Cain's 999 proposal, and the flat tax was almost the sole reason that the publisher shot to prominence in the nomination fight. The flat tax played to the public's ire over the complicated income tax system and took advantage of growing dissatisfaction with the 1993 Clinton tax increase. Cain's sudden rise in Republican polls has very little to do with the 999 plan, which until recently was almost an afterthought. Although Cain is quick to push the plan when asked what he would do if in office, his win in Florida owes much more to dissatisfaction with Gov. Rick Perry than to his tax proposal. Cain will probably lack staying power in the ongoing Republican fight (which is still likely to be mostly between Perry and Mitt Romney), and his 999 plan, much like Forbes's flat tax, will be mostly forgotten in the coming months.

FATCA

As the date of FATCA's implementation grows near, its popularity overseas and at home continues to plummet. The Canadian government recently took out advertisements in the United States arguing that applying FATCA to Canadian taxpayers is unfair and violates the spirit of the tax agreements between the two countries. In an adaptation of remarks she made at Villanova, Lee Sheppard discusses alternatives to FATCA and the basis for many of the law's provisions. Comparing it to a military drone, Sheppard argues that many of the United States' problems with tax havens are a result of the government looking the other way until the UBS scandal. The United States has traditionally only used withholding as a negotiating tool and tacitly accepts the use of tax havens in order to encourage foreign investment, she argues. (For her article, see p. 7.)

Commentary

Section 170 allows C corporations to deduct amounts in excess of their basis for charitable inventory contributions used for the care of the ill, needy, or infants. The contributions must be made to qualified charities. Section 170(e)(3) hides a provision that has often been overlooked by lawmakers that provides a significant benefit to taxpayers, according to Christine Kim and Roland Hjorth (p. 49). They argue that the code allows pharmaceutical companies to donate expiring inventory and claim a tax deduction that is enormously costly for the government in terms of lost tax revenue. In 1977 the cost of section 170(e)(3) was $19 million, but it had jumped to $3.5 billion by 2005, they write. Kim and Hjorth conclude that the marginal benefits of the enhanced inventory deduction outweigh the considerable costs and that Congress should reexamine the provision.

In acquisitive D reorganizations in which there is a complete identity of shareholders between the target and the acquirer, the IRS and circuit courts have held that E&P should be combined to determine the amount of taxable boot. Gary Scanlon and Brian Reed write that neither the courts nor the government has addressed how the boot dividend should be sourced from the E&P pools of each company if the aggregate E&P is greater than the gain recognized by the target shareholders (p. 63). They offer four possible approaches for sourcing boot dividends under the combined E&P approach. Scanlon and Reed also argue that the IRS has not required a single ordering rule for sourcing a boot dividend, and therefore they don't address what that rule might be.

The government and taxpayers continue to fight over the extended six-year statute of limitations for overstated basis. Last week the Supreme Court granted certiorari in one of the cases, opening the possibility that the dispute will finally be settled. Many practitioners expect the Court to expand on its ruling in *Mayo* and clarify when the IRS can overrule judicial precedent through regulations. (For coverage, see p. 16.) The disagreement between the government and taxpayers is the result of a fatal error in the line of son-of-BOSS cases, and both sides are looking at the wrong statute, writes Donald Susswein (p. 83). TEFRA partnership rules require partners to omit income resulting from an overstated basis by the partnership, making section 6501(e) inapplicable, he argues. He concludes that the rules specifically intend for partners not to face an extended statute of limitations because of any overstatements of partnership basis.

National Taxpayer Advocate Nina Olson has frequently criticized the IRS for the manner in which it automatically pursues liens. She argues that automatically placing a lien on every taxpayer reduces the chances that many will be able to repay their tax debts and causes undue economic hardship. T. Keith Fogg agrees and suggests that the IRS implement a better system for exercising judgment when filing the notice of federal tax lien on low-dollar delinquent accounts (p. 88). The current system puts taxpayers with low-dollar liens in the worst position, according to Fogg. He writes that the removal of individual judgment in the lien-filing process should be reversed and that the decision to file a lien should be based on real estate ownership and equity.

President Obama's deficit reduction plan consists mostly of higher taxes on high-income taxpayers, spending cuts related to troop drawdowns, and the elimination of several tax expenditures targeted to multinationals and oil and gas companies. Caroline Harris says the president's plan is confusing because none of its provisions result in lower individual or corporate rates or increased competitiveness for U.S. business (p. 99). In fact, she argues that it would accomplish just the opposite. Harris details how the proposal has broadly stated goals involving lower corporate tax rates, fairness in the individual tax code, increased economic growth, and comprehensive tax reform. She concludes, however, that none of the details revealed so far match those goals.

A recent *New York Times* article called into question whether the video game industry should be receiving the section 199 domestic production deduction. George White details the lobbying behind the section 199 credit and argues that the provision is not very well drafted by Congress (p. 101). The popularity of the credit also casts doubt on the sincerity of corporations' push for lower corporate rate cuts, according to White.

Worker classification issues have returned to the forefront of the tax world, with the IRS announcing a partnership with states and the Department of Labor. Robert Wood writes about the current state of section 530 relief and wonders if the IRS has pushed the bar too high (p. 105). He concludes that taxpayers will continue to assert section 530, but that the IRS will undoubtedly resist.

Technology has change the way corporate tax departments operate and increased the efficiency of compliance efforts. Despite the widespread adoption of more advanced data collection methods, Scott Stein and David Steiner write that significant opportunities still exist for tax departments to increase efficiency because many still manually cleanse and manage data (p. 79). They highlight collaboration between tax teams, transparency with stakeholders, and more effective decision-making as areas where many tax departments could improve. ■

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