

Amending a Chairman's Mark While Recognizing Tax Policy Principles

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**"Economic Perspective" column reprinted with
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Document date: March 12, 2001

Released online: March 12, 2001

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As tax bills go through the Ways and Means and Senate Finance Committees, a crucial question arises. How can provisions be targeted effectively and legitimate tax policy principles be maintained? Given wide disagreement over the exact shape of an ideal tax system, that may sound like an unattainable goal. But it's not.

There's a difference between principled and unprincipled disagreement, and one goal of the taxwriting committees should be to keep choices within the principled category. One way of achieving that goal is through the committee rules under which a "chairman's mark"—the initial bill set out by the chairman for debate—can be amended.

Let me be clear. By principled disagreement, I mean those disagreements among individuals over the weight to give to different principles. In tax policy, the biggest disagreements almost always center on conflicts over the size of government and over progressivity. Those wanting larger government generally believe that it is required to deal with unmet needs in society, while their opponents believe that larger government tends to deter the creative activity of individuals. Similarly, those who seek greater progressivity believe that it would be better to distribute more from those with more to those who have less, while those who primarily focus on efficiency tend to worry about the distortions and disincentives that may be involved in that redistribution.

Compromise is inevitably required, as no government is going to have a tax rate of 100 percent or zero percent. Nor is any government going to have a perfectly regressive structure under which everybody pays exactly the same dollar amount, or a perfectly progressive structure under which those with the highest incomes are leveled down with 100 percent tax rates until they have the same income as those who started out with less income.

The search for compromise here and the ensuing debates are valuable because they center on principles. Moreover, no one answer is right at all times and in all places. For the most part, the solution to these debates within the tax system centers on the shape of the tax rate structure. One can agree or disagree with President Bush's rate proposals from both a budget and progressivity perspective, for instance, but for the most part they are targeted on their goal of reducing tax rates in an efficient manner.

An unprincipled way to address these same issues is to create havoc in the tax code simply for the sake of achieving some size of government or progressivity objective. Not all tax cuts or increases are equal. Crucial to determining their merit are other tax policy principles: equal justice or equal treatment of equals, simplicity, and efficiency or effectiveness in achieving the goal of the provision. Thus, the alternative minimum tax as currently designed is a bad tax because it violates most or all of the other tax policy principles in its pursuit primarily of the progressivity objective. (See also story on p. 1443.) Better simply to adjust the tax rate schedules or the tax base where appropriate to measure income correctly.

Other issues are more complicated. Reducing marriage penalties is a principled goal, but the trick is to do so effectively. The standard being pursued is one of equal justice between married and unmarried couples, but, again, other principles, such as the equal treatment of all workers earning the same amount, can also be raised.

Estate tax relief may be worthy, but the mechanisms involved can or cannot involve considerable complexity for taxpayers.

The president's plan includes a number of efforts affecting charities, but, if done the wrong way, they may be less efficient at enhancing charitable activity—their primary goal—while adding unnecessary complexity to the tax system.

Traditionally, the rules for amending a chairman's mark have centered around the available budget. One rule commonly applied is that any amendment must be "paid for." A member of Congress proposing an additional \$100 million tax reduction in one area presumably is required to come up with \$100 million in another area. Admittedly, games still are played, as when the new costs are paid for only within a particular budget window but after that budget time period is over, net costs are allowed to arise. Still, even with the games, this "pay-for" rule is an important way in which the chairs of the taxwriting committees keep some constraint on the process. An additional constraint that might be imposed here is that costs (say, relative to national income) cannot rise after the 5th or 7th year or 10th year of a budget window.

The chairs could impose further constraints on the process that reflect traditional tax principles. For example, they could give greater weight to the simplification process by trying to get the committee members to limit amendments that would make the tax system more complex. They could stress the equal justice principle by restricting amendments that favored one industry over another or one taxpayer over another with equal incomes. Moreover, any time such a principle appears violated, the chairs could ask the Joint Committee on Taxation staff for alternatives that might achieve similar objectives more effectively and with less or no violation of the principle involved. Or they could require supermajority votes within the taxwriting committees when such principles tend to be violated.

I recognize that a fair amount of judgment is still required. For example, the standard of equal justice requires defining who are equals, which is not easy to do. But the burden of proof should still be put on those who would discriminate in favor a particular industry or particular type of individual.

Another tough issue for the chairs of the taxwriting committees is that they often must "sell subscriptions" to a bill by granting each member one amendment or a set amount of money. Here the temptation is extraordinary for each member to favor the taxpayers in his or her own state or jurisdiction. That places at a disadvantage the elected official who might place greater importance on broader public goals, such as keeping rates as low as possible or adjusting child and earned income credits to reduce marriage penalties. Here, again, at least some requirement should be imposed that limits how far these amendments can violate tax policy principles, such as simplicity. For example, a formal analysis could be made public over just how much other taxpayers have to fork over to pay for each amendment. Also, the Tax Complexity Analysis now required of the Joint Committee on Taxation (in consultation with the IRS and the Treasury Department) under the Internal Revenue Service Reform and Restructuring Act of 1998 might be just the vehicle needed to give some weight to simplicity concerns.

No one method is perfect, and goodwill is required. Still, a committee must adopt rules over what types of amendments are allowed to bills being considered, so it may as well attempt to set up those rules with tax policy principles in mind.

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