



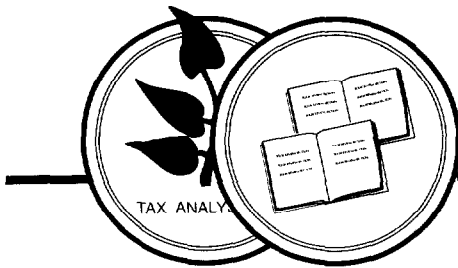
tax notesSM

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book reviews

edited by Robert J. Wells

The Failure of U.S. Tax Policy: Revenue and Politics

reviewed by David R. Beam

The Failure of U.S. Tax Policy: Revenue and Politics by Sheldon D. Pollack. Published by The Pennsylvania State University Press, 1996. 321 pp. \$29.95.

In *The Failure of U.S. Tax Policy*, Sheldon D. Pollack provides an informative interpretive historical and political discourse on federal income taxation, concentrating especially on the post-World War II era and, still more particularly, on the decade of the 1980s and years since. Published in 1996, the volume necessarily suffers from the common fate of books that address rapidly changing policy arenas, as it appeared just in advance of the significant alterations wrought by the 1997 Taxpayer Relief Act and its associated budget act and the current initiatives to reform or even abolish the Internal Revenue Service itself. However, while this limitation may suggest the desirability of a prompt second edition, Pollack offers a detailed and useful summary and background for all those interested in this continuing debate. Furthermore, major developments since the publication date would seem to confirm, rather than contradict, his major conclusions.

Major developments since the publication date would seem to confirm, rather than contradict, his major conclusions.

The volume's harsh title — *The Failure of U.S. Tax Policy* — might seem to some overly strong, perhaps suggesting a diatribe of the kind that is quite well represented in recent popular and political discussions of tax issues. But Pollack's account is carefully balanced. And his use of the term "failure" has a fairly specific meaning, one that makes sense given his vantage point as a practicing tax attorney as well as a university professor. The issue is not whether taxes are "too high," the code "too detailed" or "unfair," or the IRS itself "too aggressive." Rather, Pollack believes that tax policy has failed because it is "complicated, unstable, and unprincipled," lacks "coherence," and has been "inconsistent," even "erratic." Further, it is "highly partisan" and "excessively complex," all points em-

phasized in the book's introduction. Indeed, given the standard dictionary definition of "policy" as "a plan or course of action . . . designed to influence and determine decisions," tax policy as Pollack portrays it hardly seems to merit that appellation at all.

The volume includes a detailed history of federal taxation from the Founding through the Civil War, when the first income taxes were imposed, and the two World Wars, the later of which transformed the system from a "class tax" to the "mass tax" of the post-WWII era. This discussion, presented in chapters 2 and 3, focuses more on political factors than fiscal ones, and is consistent with the author's view that the regime's constitutional structure and the accumulated weight of past policy decisions both set significant limits on the possible actions of policymakers in each succeeding generation. There are frequent references to presidential initiatives and congressional actions, but few graphs or tables — supplements I would have welcomed.

A central thematic element of the 1960s and 1970s was the tension between competing desires to use the tax code for implementing various social and economic policies on one hand and for tax reform on the other — a "schizophrenic vision," Pollack says, "that still prevails among policymakers" (p. 73). But, while criticizing the former tendency, Pollack also protests that even the so-called "reform" bills, as passed in 1969 and 1976, were too "massive," far too complex for any single individual to comprehend, and lacking clear defining principles or philosophies.

But the main focus of Pollack's book, beginning with chapter 4, is on events of the past two decades. The 1980s initiated what he describes as an era of "perpetual tax legislation." This single decade saw seven major tax bills moving in a variety of competing directions, starting with Reagan's dramatic revenue-losing 1981 Economic Recovery Tax Act (ERTA). This was quickly counterbalanced by modestly revenue-raising legislation in 1982 and 1984 (TEFRA and DEFRA). The 1986 Tax Reform Act (TRA), the most comprehensive peacetime rewrite of the tax code, eliminated a substantial number of tax "loopholes" while simultaneously reducing marginal tax rates. Legislation thereafter included the Revenue Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Revenue Reconciliation Act of 1989, each of which also sought to gain back some additional fiscal resources or make technical corrections to the complex provisions of the TRA.

The continuing "deluge" of legislation during the 1990s is detailed in chapter 5, including discussions of the Omnibus Budget Reconciliation Act of 1990, the

1992 tax bill vetoed by President Bush, and the deficit-reducing Revenue Reconciliation Act of 1993. 1994 was especially interesting for the simultaneous advancement of numerous special-purpose tax initiatives, as promised in the new House majority Republicans' "Contract With America," and the presentation of several legislative proposals for replacing the entire income tax system with a flat, consumption-based tax. Many of the former found their way into the Seven-Year Balanced Budget Reconciliation Act of 1995, vetoed by President Clinton in the wake of the November governmental shutdown.

Pollack's account essentially ends with 1995. But issues raised by developments through that time are dissected in four succeeding chapters on the changing dynamics of tax policy and the politics of tax reform.

While some other commentators have focused their attention on specific events during the past two decades — particularly the noteworthy 1981 tax cuts, the 1986 tax reform, and the "flat tax" proposals advanced in 1995 — Pollack provides a useful service by pulling back and looking at the entire period as one. It is from this perspective that the characteristics of "failure" he emphasizes — inconsistency, incoherence, instability — come so clearly into view. There has indeed been no fixed trend in policy from year to year. Thus Pollack criticizes "the unstable political framework and lack of consensus over tax policy objectives [that] . . . could produce tax legislation such as ERTA in one year and a tax-reform bill such as TRA only five years later" (p. 162-3). With the passage of seven more years, one had in 1993 legislation that reversed the movement to lower rates and broaden the base: by then, "the politics of tax reform was nowhere to be found" (p. 133).

Pollack criticizes 'the unstable political framework and lack of consensus over tax policy objectives [that] could produce tax legislation such as ERTA in one year and a tax-reform bill such as TRA only five years later.'

But if the direction of national policy lurched first this way, and then that, individual pieces of legislation were also often lacking in coherence. The 1987 Revenue Act "had no guiding principles other than the need to squeeze some additional revenue out of the tax laws somehow without giving the impression that taxes had been raised" (p. 107). Similarly, the 1990 OBRA "reflected no clear principles or ideology" (p. 120).

Pollack's review presents two major theoretical puzzles, each of which he attempts to address and resolve: first, the generally unprincipled and (in his view) unsatisfactory state of tax policymaking throughout the course of American history and, secondly, the exaggeration of this general tendency during the 1980s and 1990s, in which tax laws were both exceptionally numerous and wildly inconsistent in their objectives.

From the most general perspective, he argues that the system suffers because officials and legislators seek to accomplish via taxation too many differing objectives. These include the central imperative of raising revenue, but also other competing aims, such as managing the national economy, advancing partisan or ideological positions, and implementing a considerable variety of specific policy goals. These many political uses of the income tax, he believes, compromise its effectiveness as a funding source and undermine its coherence as well.

For much of the modern period, Pollack notes that an "Incrementalist/Pluralist" (I/P) model¹ seemed to account for a great deal of tax policymaking. The term "incrementalism" refers to the tendency (stressed by Charles Lindblom and Aaron Wildavsky) for policy changes to normally proceed in small steps or marginal adjustments to the existing base. "Pluralism," a term associated particularly with political scientist Robert Dahl, emphasizes the dispersion of power among many interest groups operating in distinct arenas.

Linking these two concepts together, the I/P model suggests that the tax code is likely to be riddled with provisions favoring this and that organized interest — what is often called a "distributive" pattern of benefits — with resulting inconsistency, unfairness, and complexity. Given such interest group dominance, the adoption of a fundamental tax reform plan that would eliminate such special benefits, broaden the base, and simplify the system — or indeed, any significant move in that direction — appears politically impossible.

But the I/P interpretation, Pollack observes quite correctly, hardly fits much in the past two decades. During this period, tax policymaking has departed far too often from the pattern of relatively minor, incremental changes in current law. Instead, it has been extremely erratic: "running wild" in the 1980s and "highly partisan" in the 1990s. In particular, of course, the I/P model clearly did not anticipate, nor can it explain, the passage of the 1986 TRA. Neither does it account for the "unlikely crusade" for a flat tax initiated in 1994. Adding to this list such recent developments as the 1997 tax legislation and the heatedly pressed IRS reform bill in 1998 would, I think, only strengthen Pollack's claim of a sharp departure from policymaking-as-usual during this recent period.

To account for the extreme instability of tax policy since the 1980s, Pollack emphasizes three interrelated factors: the influence of crises; the rise of new actors in a more "open" political system; and the assertion of ideologically grounded views. First, as a new basic model, he suggests the need for a distinction between "normal" and "crisis" tax politics. Normal politics may be incremental as long thought, guided by the forces of pluralism, but large changes in the code have

¹This phrase was adapted from my book *Taxing Choices: The Politics of Tax Reform* (Washington, D.C.: CQ Press, 1990), co-authored with Timothy J. Conlan and Margaret T. Wrightson. We styled this pattern the "pluralist/incrementalist" perspective. See pp. 230-235.

generally appeared during times of great institutional instability. Periods of war, and the Great Depression, are examples.

There is no doubt that this "normal/crisis" distinction is essential in explaining the long-run development of the federal income tax. What is questionable in my own mind, however, is Pollack's suggestion that the 1980s and 1990s are fairly termed one of "crisis" — or, if so, that there was any direct link between such conditions and changes in tax law (as was the case, for example, when income tax levies were sharply increased to finance World War II).

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Pollack recognizes that there was no comparable regime crisis, or external environmental crisis, during the 1980s and 1990s. However, he supports his position by pointing to the slowdown in economic growth that began in 1973 and the new budget pressures that emerged in 1981 as factors that impinged on, and led to departures from, normal incrementalist-pluralist or "distributive" politics.

Further, he quite correctly describes a number of important political changes affecting this period, including the weakening of party and committee hierarchies, the rise of the media, the increasing influence of public-interest groups and think tanks, and (perhaps as a result) the emergence of tax policy entrepreneurs and other "new players." These dynamics are nicely detailed in chapter 6, while the political role and policy orientation of tax experts is treated separately in chapter 8. He adds the possibility that, in the long-run historical view, the 1980s will be viewed as a major shift in the post-New Deal political party system a period of "realignment" favoring a new Republican majority or at least a "dealignment" or deterioration of the traditional party system.

Pollack also stresses that the 1980s were a period in which ideologies and ideologues were increasingly influential. Here, he emphasizes an earlier point where he took issue with Stanley Surrey's classic article, "The Congress and the Tax Lobbyist: How Special Tax Provisions Get Enacted."² Surrey's formulation, Pollack commented in a footnote, well described the role of special interest lobbyists but "totally ignores all other legislation that reflects ideological commitment to specific policies (such as the Republican tax policies of the 1940s and 1990s, as well as the supply-side economics pursued in ERTA) . . ." (p. 254n). Elaborating on this theme, he stresses in his conclusion that

Ideology and partisanship have resurfaced as strong, even dominant forces shaping contemporary tax policy — most recently when supply-

side economics dominated tax policy in 1981, when the ideological movement for tax reform virtually rewrote the tax code in 1986, and then again when the conservative Republican majority took control of the tax policy agenda in 1995. In all of these cases, radical political ideologies dominated the tax-policymaking process in ways very much at odds with what would be predicted by an incrementalist/pluralist model (p. 270).

The intellectual challenge that Pollack set for himself, of not only describing but then also explaining the numerous conflicting tax statutes of the 1980s and 1990s, is enormous. Certainly he has made a contribution to the thinking of any reader concerned with the same questions. But I do find it difficult to accept his characterization of the 1981 ERTA, the 1995 Republican tax agenda, and the 1986 Tax Reform Act as being similar "ideological movements," and particularly question depicting the motive force behind TRA 86 as a "radical political ideology."

Pollack is quite correct in pointing out that each of these three did depart from "normal" incremental-pluralist tax policymaking. Further, it would seem fair to add that each represented a political style in which "ideas" were as or more influential than the organized "interests" long thought to determine the contours of American taxation.

But I believe it might be useful to distinguish between policies resting on theories advanced by a tiny minority of largely self-proclaimed experts — as was the case with the 1981 supply-side tax cuts — and those that took their foundation from mainstream scholars and experts inside and outside government, built up over many years, as with TRA 86. These could be seen as two distinct kinds of policy outcomes, each meriting a separate form of explanation.

Pollack definitely does not believe that such a distinction is warranted, however. Earlier, he had emphasized that "the case for tax reform is really an outgrowth of the preference for a comprehensive tax base and a commitment to the underlying values expressed by the principles of vertical and horizontal equity" (p. 226). Despite its wide acceptance by tax experts, Pollack seemed to challenge its foundations, writing:

While tax experts (both lawyers and economists, but especially the lawyers) would like to describe their own commitment in terms of 'professional' standards and objective principles derived from economics or the science of public policy, their shared values really constitute an ideology, or 'worldview' . . ." (p. 240).

Explaining past actions is difficult enough, but predicting the future is even harder. Whether Pollack's model of "crisis politics" offers a fully adequate explanation of these recent trends is one question, but it clearly is of little value in making forecasts, as he takes pains to stress. Thus, he marks no firm prediction concerning the likelihood of the adoption of any of the various "flat tax" proposals, which are described and dissected in a postscript.

Harsh as he is in his criticism of current tax politics and its resultant code, Pollack believes that these alter-

²Stanley S. Surrey, "The Congress and the Tax Lobbyist: How Special Tax Provisions Get Enacted," *Harvard Law Review* 70 (May 1957): 1145-82.

natives offer no panacea. In particular, he argues that a flat tax statute would not provide a lasting cure for the complexity of the current income tax because it would repeal only current tax legislation and not the laws of tax politics. Specifically, he writes, "the . . . same political impulses that led congressmen to use the tax code to curry favor with constituents, implement their favorite social policies, and fine-tune the economy would also soon result in an increasingly complicated flat tax" (p. 279).

Overall, *The Failure of U.S. Tax Policy* presents a useful and critical account of the development and revision of the federal income tax.

He similarly questions other claims of flat tax proponents: that it would be "fairer," encourage savings and investment, and be more "pro-family." Little in the volume is humorous, but it is hard to repress a laugh at his retort to the last argument: "Since when

do conservatives believe that the morality and cohesion of American families depends upon whether or not the federal government supplies the appropriate level of tax credits, deductions, and exemptions?" (pp. 281-2).

Overall, *The Failure of U.S. Tax Policy* presents a useful and critical account of the development and revision of the federal income tax. It especially stresses inconsistencies, the lack of commitment to clear principle — a problem long associated with interest group influences, but grown worse under the changed economic and political conditions of the 1980s and 1990s, all points that are documented carefully. Many readers will find it to be indispensable as both a source of factual information and thoughtful interpretation.

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