

Exhibit 43

On the whole, the basis shifting transaction would not seem to foment a meaningful change in anyone's economic position, let alone the taxpayer's. Over a period of four months, options contracts, purchase contracts, and loans are put in place, some to be fulfilled and all to be unwound by the end of the year. The taxpayer's investment purpose for holding foreign bank shares is negated by the thoroughness of the risk protection that is achieved through the Cayman corporation, just like the ACM participants' hedging and scripted sales kept them from having any risk in that purported investment partnership.

In *ACM*, the Third Circuit allowed the taxpayer to deduct a real loss on the transaction. In the basis shifting transaction, the taxpayer may have a small real loss measured by his purchase price for the few foreign bank shares he does own and their selling price. That real loss, of course, would be dwarfed by the engineered loss from the basis shift. The transaction on the whole, like the *ACM* transaction, was designed to create tax losses but not real economic losses. The Third Circuit found that one piece of the *ACM* transaction had economic substance and allowed a small economic loss on that piece. Likewise, any real loss that the taxpayer in the basis shifting transaction incurs on foreign bank shares that he owned should be allowed.

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Backroom Deals, Fleeting Promises Put Income Tax Hearing in Jeopardy

By Warren Rojas — warrenr@tax.org

The future of a tentative hearing on the legality of the income tax remained in doubt last week, as a tax activist who forced a standoff with a pair of government agencies just a few weeks ago now finds himself mired in the tangled web of Washington doublespeak.

Robert Schulz, founder and head of the We The People Foundation for Constitutional Education (WTP), was the taxpayer who went on a 20-day hunger strike in July in an effort to force the government to publicly answer his questions about the validity of the income tax code. (See *Tax Notes*, July 23, 2001, p. 455.) The effort is supposed to culminate in a two-day congressional-type hearing on September 25 and 26 involving Schulz, a team of WTP tax attorneys and researchers, and officials from the Department of Justice and the Internal Revenue Service. The hearing is to be headed by Rep. Roscoe G. Bartlett, R-Md., who helped orchestrate the deal.

Whether the meeting will ever take place, however, is still a matter of dispute.

Although WTP has already taken to trumpeting the days until the "citizen's truth-in-taxation" hearing on its Web site (givemeliberty.org), officials from DOJ, the IRS, and Bartlett's offices appear reluctant to admit the meeting is a done deal.

Meanwhile, because Schulz believes the "income tax may well not survive these hearings" — should they ever actually take place — he is planning an educational campaign designed to prepare taxpayers for a world without the income tax, an option he insists is not as scary as the government would have everyone believe.

Repondez, Si! Vous Plait

At the heart of the matter right now is whether administration officials will show up at the meeting — and whether they ever even agreed to do so in the first place.

While Bartlett was able to secure a pseudo-commitment (see fax on p. 878) from Dan Bryant, Assistant Attorney General in the DOJ legal affairs department, who pledged to do everything within his power to ensure DOJ would send the appropriate representatives to the proposed meeting, any IRS involvement is based solely on an oral agreement reportedly struck between

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Bartlett and Internal Revenue Service Commissioner Charles O. Rossotti during private talks.

According to Schulz, Bartlett assured him and Bryant that based on his conversations with Rossotti, the IRS would participate in the hearing.

IRS officials do not seem to remember it that way.

IRS spokesman Frank Keith insists that although the Service acceded to the requests of various lawmakers in considering the possibility of a meeting, no formal commitments have been communicated. "As of right now, no final agreements have been made," he said.

At press time, numerous calls to the DOJ had not been returned.

Bartlett spokeswoman Lisa Wright declined to comment on the state of negotiations with the DOJ or the IRS, but said Bartlett's office was continuing with plans for the hearing based on the good-faith commitments established last month.

"It's a work in progress," she said. "And we're going to do everything that we can to ensure that it happens."

Gearing Up for Battle

According to Schulz, the two-day meeting will be held in Room 311, the House Small Business Committee hearing room, of the Cannon House Office Building. A Small Business Committee aide confirmed that the room has been reserved for use by Mr. Schulz and his organization on those specific days.

In preparation for the hearing, Schulz and tax researchers involved with the WTP "tax honesty" movement set up an open call on their Web site for taxpayers to submit their questions about the tax code. The group got the ball rolling by holding its first organizing session in Las Vegas during the weekend of July 28, an experience a WTP press release claimed "vastly exceeded expectations."

According to Schulz, a team of WTP tax attorneys and researchers plans to continue its preparatory work by: compiling all the questions, adding them to the group's existing concerns about the jurisdiction of the IRS to collect taxes, the validity of the ratification of the Sixteenth Amendment as well as other statutory challenges, and then spending the next month selecting the pertinent questions, their order, and who will ask them at the hearing.

As a courtesy, Schulz said WTP is planning to send an advance copy of its first-tier questions to both the DOJ and the IRS during the week of September 10 so agency officials won't come into the hearing cold. The questions will be posted on the WTP Web site. He said WTP also expects to

receive preliminary arguments from both agencies the following week as part of the initial information exchange.

Looking to avoid a "media circus," Schulz said the event will be videotaped by WTP and a public transcript from the meeting will be available, but that additional media coverage will be limited. Schulz listed C-Span, National Public Radio, Liberty Works Radio Network, and the Genesis Communications Network as outlets that have been invited to broadcast the event, but that all the parties involved had agreed that a full media onslaught would only hamper the proceedings.

"This is an intense, serious effort requiring a lot of concentration," he stated, adding that if he is successful, the government will have no choice but to rescind the income tax.

Filling the Void

If the code gets purged from the books, Schulz said taxpayers should be wary of allowing the government to simply trade one direct tax system for the next. He recommends backing what he calls the "no-action" alternative.

"There is no need to replace the income tax with anything," he said. "The people should not be needlessly cajoled into accepting a replacement tax such as the 'fair tax' or a national sales tax."

According to Schulz, the only "constitutionally valid federal taxing scheme" is found in Article I, Section nine (a provision that was subsequently modified by the Sixteenth Amendment), which allows the government to raise revenues by having states levy their own taxes based on the census count. He maintains that by moving toward the apportionment system originally envisioned by the founding fathers, power will shift back to the states from the federal government, and taxpayers will be able to better commit their communal resources by taxing themselves as they deem necessary.

"Let the Constitution work as it was written," he urges.

Full Text Citations

- We The People press release announcing the Capitol Hill Citizens' Truth-in-Taxation hearing. *Doc 2001-21405 (3 original pages); 2001 TNT 155-28*
- Handwritten note from Rep. Roscoe Bartlett, R-Md., agreeing to a hearing with Robert Schulz of We The People. *Doc. 2001-21324 (1 original page)*

