THE TAXONOMIST

Corruption revisited and (maybe) reversed?

Bush's new tax policy chief should scrap her predecessor's accounting firm giveaway

BY ROBERT S. MCINTYRE

Mark Weinberger didn't serve long as George W. Bush's assistant treasury secretary for tax policy, but until he retired last April he was a man with a mission. Before and since—and apparently during—his brief stint at Treasury, Weinberger has worked at Ernst & Young, the outspokenly unpatriotic accounting giant (see "Putting Profits Over Patriotism," *TAP*, Mar. 25, 2002). He was detailed to the Treasury to accomplish one key goal: undermine a law requiring corporations seeking a tax credit for research and experimentation to engage in, well, actual research and experimentation.

The law that aroused the ire of Ernst & Young (along with other accounting firms) was enacted by Congress in 1986 to curb notorious abuses of the research tax break. Quite sensibly, the '86 reform added two new conditions to get the credit: a "process of experimentation" and a focus on "discovering information."

But since then, the big accounting firms have routinely advised corporations to ignore the 1986 law's requirements. To reassure their understandably nervous clients, the accountants agreed to make their huge percentage fees contingent on this audacious ploy being upheld in court. Despite all the high-priced corporate lawyers, however, as research credit cases have gradually made their way to litigation, the courts have repeatedly rejected these blatant attempts to evade the clear language of the law.

The felonious Sideshow Bob of *The Simpsons* warned he'd eventually get out of jail because "You can't keep the Democrats out of the White House forever!" Switch "Democrats" to "Republicans" and by the end of the nineties fulfilment of that hope looked like the only way the accountants' could possibly sustain their billions of dollars in ill-gotten research-credit gains.

Of course, the accountants' wish for a GOP White House came true—and Weinberger's appointment to Treasury's top tax policy job, like Harvey Pitt's to head the SEC, was one of Bush's rewards to the accounting industry for all the financial support they gave him. As soon as Weinberger took office in early 2001, he scrapped Treasury's prior, statutorily-authorized research credit rules. Then, at year's end, he proposed a very different regulation designed to give the accountants the huge payday they sought.

His nefarious mission accomplished, Weinberger left the Treasury last April and returned to a grateful Ernst & Young—to "spend some much-needed quality time" with his family, as he put it. A possibly tongue-in-cheek Ernst & Young press release in May crowed: "Weinberger joins a long list of members of Ernst & Young's tax practice who have been recruited for senior-level government positions and who subsequently rejoined the firm following their time in government service. . . . When we lost him to the Treasury Department, the country's gain was Ernst & Young's loss. However, we are unabashedly delighted to have him return to the firm."

When I wrote about the research credit rip-off earlier this year (*TAP*, Jan 1-14, 2002), the accounting firms' scheme to parlay their influence with Bush into a big bill on average taxpayers for bogus research credits seemed unstoppable. But fortunately, Weinberger's proposed regulation isn't yet final. And since he issued it, a few things have changed.

First of all, public regard for the accounting firms has gone down the toilet. Arthur Andersen's Enron debacle, Ernst & Young's brazen advice to corporate clients that "the patriotism issue needs to take a back seat" to profits, PricewaterhouseCoopers Consulting's aborted plan to reincorporate itself in tax-free Bermuda and all the other scandals have made it much harder for even the accountants' most loyal political allies to continue their public toadying.

Second, in late August, the 10th Circuit Court of Appeals issued a sharply worded decision reaffirming the 1986-enacted research credit limits, and pointedly criticized Weinberger's proposed gutting of those rules as deserving neither "deference" nor "respect."

Finally, Treasury's new assistant tax policy secretary, Pamela Olson, is distinguished by the fact that her previous employer was *not* an accounting firm. As far as one can tell from her resume, she's never had a client seeking unjustified research tax credits. And in her first few months on the job, she's shown an encouraging aversion to at least some tax-sheltering scams.

So here's a challenge, Ms. Olson. Show some guts, not to mention integrity, and reverse the indefensible Weinberger research regulation. Because if you don't—or can't—it will be another reason to dismiss President Bush's newly-professed zeal to crack down on corporate corruption as nothing but empty rhetoric.

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