

Finance Committee Republicans, said that committee members are concerned about the idea and that they questioned Treasury Secretary Timothy Geithner about it at a hearing.

Grassley's proposal to increase the charitable mileage deduction from the current 14 cents per mile also was discussed. Though the provision was not part of the recent stimulus act, it is expected to come up again (*Doc 2009-5055*).

Investment Issues

Conference participants also wondered about the possible consequences for private foundations that made investments with Madoff, including whether the foundations may be penalized by the IRS. Lois Lerner, director of the IRS Exempt Organizations Division, said officials at the Service are monitoring developments surrounding the Madoff investments (*Doc 2009-4876*).

Marcus S. Owens of Caplin & Drysdale, who was director of the Exempt Organizations Division in the 1990s, expressed doubt that foundations would be penalized for their Madoff investments, citing statutes of limitations.

Owens was more certain about the IRS's overall enforcement activity regarding exempt organizations, which he expects to be aggressive when it involves executive compensation. He criticized the method the IRS uses to evaluate compensation, calling it subjective and not based on a legal standard.

Owens also urged exempt organizations to be careful when it comes to putting material on their Web sites, noting that the IRS looks at them. He also said if an IRS agent conducting an examination asks for records outside the year under investigation, an organization has a right to ask why that information is needed (*Doc 2009-4872*).

Governance Controversy

As she has done at other events, Lerner assured exempt organizations that the presence of questions on the redesigned Form 990, "Return of Organization Exempt From Income Tax," that ask whether filers have various governance policies does not mean they must adopt those policies. That position will be made clear to IRS agents who will undergo training on governance this spring, she added.

Pattara suggested Congress might have to give the IRS enhanced authority if Form 990 filers balk at completing the governance and transparency questions (*Doc 2009-5052*). ■

TAX ANALYSTS EXCLUSIVE

Conversations: Richard E. Neal

By Chuck O'Toole — chuck_otoole@tax.org



In February Rep. Richard E. Neal, D-Mass., held the first hearing of his second term as chair of the House Ways and Means Select Revenue Measures Subcommittee.

The panel, which develops legislation on specific tax-related issues chosen by committee Chair Charles B. Rangel, D-N.Y., began the 111th Congress looking into retirement security, tax-exempt bonds, transportation and infrastructure, and minority representation among users of the new markets tax credit.

Neal, an 11-term lawmaker and former mayor of Springfield, Mass., is widely considered Rangel's top lieutenant on tax policy and a possible future chair of the full committee. Recently he has focused his energy on repealing the alternative minimum tax, curbing the use of offshore tax havens, and strengthening tax-preferred retirement plans. A Neal proposal to temporarily exempt private activity bonds from the AMT was included in the recent economic stimulus bill, and the Obama administration included another Neal bill — requiring companies to enroll employees automatically in 401(k) plans or IRAs — in the president's fiscal 2010 budget outline. On March 5 Neal sat down with Tax Analysts to discuss the outlook for tax reform and his goals with his subcommittee.

Tax Analysts: You asked Obama administration budget director Peter Orszag about comprehensive tax reform, and he said it wasn't one of the administration's top priorities.

Richard Neal: He said, "Yes, but not yet."

TA: Do you think there's a chance of getting it done in the 111th Congress?

Neal: I do, and I think that even though he said that for them it probably ranked fourth or fifth, it was also pretty apparent in the manner that Mr. Rangel introduced me, that he's pretty earnest about it. The committee and the subcommittee can do a lot of work on that front. Maybe not resurfacing the street, but certainly putting the gravel down to start with.

TA: So what are your top priorities as you're putting that gravel down?

Neal: Well, part of it is obviously based on referral, whatever the chairman wants to send to us. But I have a keen interest in retirement savings. It's pretty complicated. To the extent that the automatic IRA bill has been well met by the administration, we certainly want to engage that issue. [For prior coverage, see *Tax Notes*, June 30, 2008, p. 1317, *Doc 2008-14286*, or *2008 TNT 125-2*.] But there needs to be a continuing discussion about the whole retirement picture, given the fact of what's happening right now for people who are going to have to work a little bit longer in this atmosphere. We saw what happened in the Social Security debate to President Bush, and I think that the whole idea of encouraging people to get into a retirement savings plan and enhancing or encouraging individual savings, it's all part of it. So for me, it's a big deal. You might expect that in the Northeast we're very interested as well.

TA: Other priorities?

Neal: And part of the agenda this year certainly is on the energy front — we did hearings last year — and it's clear that that's an administration favorite.

TA: How do you respond to Republican criticism that a cap-and-trade regime for cutting greenhouse gas emissions is essentially a tax, and that it violates President Obama's pledge not to raise taxes on taxpayers earning less than \$250,000?

Neal: I think there's an acknowledgement that we need to do something on that front. One of the things that the Republicans are very effective at — they holler taxes no matter what the issue. And it strikes me that if that's the opening position, coupled with Orszag's argument that tax cuts don't pay for themselves, that argument seems to be wanting.

TA: On the subject of broad, comprehensive tax reform, Rangel's 2007 "mother of all tax reforms" bill coupled an awful lot of revenue raisers with a reduction in the corporate tax. But now the Obama administration is proposing using several of those revenue raisers without the corporate reduction. Did the business community miss the window for that *quid pro quo*?

Neal: No. I think that one of the things that Chairman Rangel has repeatedly challenged them with is the idea of offering some proposals that would broaden the base and give them some rate relief. But I don't think anyone is backing away from that. Incidentally, I think that's a good place for us to be as Democrats.

TA: Do you think that's something that could come piecemeal rather than in the context of a big tax reform package?

Neal: I do. Some of this I think will be driven by a lot of different factors, including the necessity of the moment.

TA: Now that the AMT patch is assumed in the budget, what does Congress do next? A permanent patch?

Neal: The concern I've expressed is that by taking it off the table so quickly, it takes it off the radar screen, and generally people don't feel it. It's not a point of discussion. And I think there was a lot of urgency last year to get it done, as you recall. I mean, there was a lot of nervousness as to how and when it would get done. We kept saying, "It's gotta get done, it's gotta get done," but we didn't get it done until very late in the session. So I'm concerned that if it becomes your opening position, you can't alert people to what the closing position looks like.

TA: But you think that that lost revenue still needs to be offset?

Neal: I would hope so. I thought the AMT patch was a pretty good piece of work. I thought it was well met everywhere, what we did in 2007 and 2008 in a few votes on the House floor. . . . In our caucus it united everybody. Every group in the caucus was onboard.

TA: Going back to the topic of retirement, there was a news story recently about public pension funds teetering on the brink. What tools do you think the committee has at its disposal to deal with these massive shortfalls?

Neal: Certainly the starting point would be a conversation, and we'd start to hear what needs to be done. And at the same time acknowledge the reality that the stock market doesn't go up forever. I've always thought that a floor for retirement savings was a very good idea. Private savings, private pensions, and Social Security. All one has to do is examine what happened to the Bush Social Security proposal to understand the anxiety people feel about retirement. I mean, for us, it's our biggest domestic victory. Interestingly enough, it united Democrats and divided Republicans. What was fascinating was how it allowed us to look at the number of people who rely solely on Social Security for their retirement. So I think using the tax code to augment that retirement makes some sense.

But also as part of that conversation, we need to do a better job of figuring out — even though it's not a big revenue source for the private sector — how to get a lot of people into a retirement plan that aren't in one now. And that's where I think the auto-IRA is part of the answer. But also to try to engage them so that they'll start thinking of what age 65 or 66 starts to look like. That's not easy when you're talking to people in their twenties.

TA: It doesn't sound like you're in favor of the idea of House Education and Labor Committee

Chair George Miller, D-Calif., of taking away the tax preferences for 401(k) plans.

Neal: It's not going to happen. We need to figure out how we go forward, but the idea that you're going to take away the tax advantage for 401(k) plans and others — it doesn't strike me as being very practical. That argument is one we should have had 15 or 20 years ago. I mean, at the same time, you can use the code to encourage more savings. Look what's happened with the ability for those 55 and older to make catch-up contributions and put additional money aside. You can see how attractive that's become, that catch-up provision. That works very well.

Look, if I could make a recommendation to somebody: Get a defined pension. That's where you want to be. But how practical is that now?

TA: With all these pension funds falling apart, do you expect your subcommittee to look at pension assets as you tackle retirement issues?

Neal: It would depend on whether the chairman decided he wanted to take a look at it. I certainly am open to it, but it depends on what he wants to do. Let's go back to the Bush Social Security initiative for a moment. If you take the Bush initiative, take what has been the downturned stock market, and you look at what has happened to private savings prior to the recession, you can see how this is going to be a potent political issue for years to come. And we have to get our arms around that now. It just makes good sense.

What retirement looks like when you consider life expectancy — what retirement is going to be like when you consider nutrition and senior living — people are concerned about the retirement picture. They're nervous about the prospect of losing or outliving their annuity. So you have all of these things kind of bubbling out there, and I think it's a good chance for us almost in a New Deal fashion to tackle the issue.

TA: How long do you think this "Obama window" will last? Do you have two years, the 111th Congress, to make these changes, or longer?

Neal: Certainly start the conversation now. People are thinking about it. People weren't thinking about Social Security until President Bush said he wanted to change it, but when he said he wanted to change it, they thought about it.

TA: One specific issue with pensions: Should pension obligation bonds be tax exempt?

Neal: Obviously you'd like to. But I think in this atmosphere, anything that counts as a revenue source is pretty tough to engage.

TA: Because of the deficits?

Neal: Because of the deficits.

TA: Shifting gears, in the budget, there's a \$210 billion hole for international tax reform. What would you like to see fill that hole?

Neal: The idea that President Obama mentioned it in his budget, coupled with the fact that British Prime Minister Gordon Brown mentioned it during his visit here and that Treasury Secretary Tim Geithner, in private conversation as well as public testimony, has indicated it's a priority for the administration — but what did Geithner and Brown have in common? They both said that the G-20 summit beginning on April 2 presents the opportunity. You know, the 20 industrialized nations and I think everyone is figuring out that this kind of bidding up your address for the purpose of tax avoidance is roiling markets across the industrialized world. And as I've indicated, to me it's striking — this was not an issue that was propelled by the AFL-CIO or a citizens group. This is from businesses that have an American address — the reinsurance industry in particular — who like having an American address, think it's patriotic to have an American address, and they're getting penalized for having an American address.

TA: And so you're planning to reintroduce your reinsurance provision?

Neal: You got that right.

TA: And you're supporting the Stop Tax Haven Abuse Act. Are there any other areas in international tax reform where you'd like to see action?

Neal: It is complicated. But if you have the 20 industrialized nations saying that we now see the downside — and again, one can draw a distinction between deferral and avoidance — but tax avoidance and the tax gap, they've become massive issues. I don't know how one can defend a strategy that takes money offshore for the purpose of avoiding American taxes. Again, big employers are coming in here saying that we're being disadvantaged by keeping an American address. And the issue, by the way, is starting to get some legs over here from the Republican members. I just thought it was fascinating that Gordon Brown mentioned it.

TA: It got a pretty big round of applause, too. So you think this is one area where there's a potential for bipartisan agreement?

Neal: I think there should be. I mean, how can you defend it? We've asked the chairman if we can look into it.

TA: A question on tax-exempt and tax credit bonds. It seems like there's a balancing act between the proliferation of these bonds, along with some of the seemingly systemic abuses like the pay-or-play controversy that derailed New Mexico Gov. Bill Richardson (D) from becoming commerce secretary. What are the issues you want to focus on?

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Neal: I was mayor. I know what tax-exempt bonding does. That's how you finance a lot of long-term city investments. As to the pay-or-play angle, that seems to me like something that is resolved with the state attorney generals and U.S. attorneys and if they determine that there's something untoward. But I don't think that that ought to discourage us from trying to determine or figure out how a local government or a state government has an opportunity to get a lot of well-warranted initiatives out the door. I mean, that's how you build schools, for example. You go to the market, and that's how you do major construction programs. And I'll be honest — overall, I think it's worked out very well.

TA: The recession has really taken a bite out of the value of some of these bonds. That's presumably a short-term problem. Is there anything the committee can do to mitigate the damage?

Neal: That's a tough one. There are so many competing arguments about when this thing is going to turn around. I thought it was interesting when Tim Geithner said he thought we'd return to 3 percent growth in 2011. Who knows? I think he was quoting Fed Chairman Ben Bernanke or Orszag. So you're careful about all of that.

TA: The stimulus package eliminated the AMT on private activity bonds for 2009-2010. Is that something that you would want to make permanent? Or is that just to address the short term?

Neal: You may have to come back to it again. And you know, there are really not a lot of short-term things that ever happen around here. I think we're going to have a busy year with the committee. In this atmosphere there's a chance to do some really important and long-overdue things. We should take advantage of it. In the political lexicon, I'd rather be perceived as trying to do something as opposed to saying just no. ■