

# **The Last 50 Years: The Evolving Role of the Joint Committee Staff in the Tax Legislative Process**

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Comments welcome.

## Background

The Joint Committee on Taxation (JCT) was created by an Act of Congress in 1926. The major Congressional concern at that time related to certain activities within the Internal Revenue Service; consequently, the main mission of the JCT then was oversight of the IRS to ensure that the agency was operating in an appropriate manner with respect to taxpayers. At that time, the roles of the JCT and particularly its staff in the tax legislative process were limited, primarily because the tax system only applied to a narrow group of taxpayers since there was not a need for significant revenues.

In the 1940s, the need for revenues grew because of World War II. As a result, the role of the JCT staff began to expand to provide nonpartisan technical support in the tax legislative process in drafting and enacting legislation to generate needed revenues. Thus, the tax legislative process focused on areas that would provide additional revenues to support the growing needs of government. In the decades since the 1940s, the role of the JCT staff has evolved as the tax legislative process has evolved; a strong, technical, nonpartisan staff was needed to provide support to the tax-writing committees.

This paper is divided into three major parts to assess the role of the JCT staff in the tax legislative process over the last 50 years. The first part describes the role of the staff 50 years ago. Second, the paper focuses on the various factors that have affected the tax legislative process over the last 50 years and the impact on the role of the staff. The third part of the paper focuses on the role of the staff today, along with the tax legislative process as it has evolved and exists in today's Congressional process.

## **Role of the Joint Committee on Taxation Staff 50 years ago (in the 1960s and 1970s)**

### Tax-Writing Committees

In the 1960s and 1970s, the Democrats were in the majority in both Houses of Congress. For the most part, the Democratic chairmen were conservative (with a small "c") and worked with the conservatives on both sides of the aisle. In effect, there was a "middle" in the Congress that controlled tax policy and could reach a consensus without having to accommodate "extreme" positions on the right or left.

In the House at that time, the Democrats on the Ways and Means Committee also served as the "Committee on Committees" which meant they made the committee assignments for Democrats in the House. This role gave them a certain political power over Democratic members and the Democratic Chairmen of the other committees. The Chairmen had to respect the Ways and

Means Democrats who had control of their committee membership. From this position of power, many Democrats on the committee looked to the JCT staff for a significant role in tax policy.

In the Senate, the members on the Finance Committee also looked to the JCT staff for a significant role in tax policy, primarily because of their time commitments since they also had responsibilities on other committees; in addition, as one of two senators for a state, each Senator had more responsibilities in their states than House members who focused more on their districts. As a result, the members also looked to the staff for a major role in the committee's policy jurisdiction. Further, until the mid-1970s the Senate Finance Committee only had one staff as the minority did not have a minority staff. Since the committee's tax staff was small, the JCT staff was called upon for a major role in taxes in the committee's tax legislative process.

In the mid-1970s, the House Ways and Means Committee expanded its membership (there are 39 members today) as did the Senate Finance Committee (26 members today).

#### Staffs of the Tax-Writing Committee and the members on those committees

Fifty years ago, the staffs of both of the tax-writing committees played a very limited role in developing tax policy, as did the legislative assistants (LA) of committee members. In the case of both tax-writing committees, the tax staffs were small (as noted above in the case of the Senate Finance Committee). It should also be noted that the JCT staff was smaller then as well.

#### Staff of the Joint Committee on Taxation

Over the years since the 1940s the JCT staff built up their technical expertise, as the new tax law became more complex, to be in a position to provide advice to both tax-writing committees in the tax legislative process. As a result, the JCT staff could serve the tax-writing committees as the committees made policy decisions during the consideration of tax proposals. The JCT staff developed a multi-disciplined staff (attorneys, economists, accountants, and revenue estimators) and individual staffers developed specialized knowledge in the key areas of the tax code to serve the tax-writing committees.

The growth of the JCT staff over the years has been mostly because of the greater need for additional economists for economic analysis, revenue estimators as a result of the focus on budget constraints, and attorneys for increased technical, legal analysis because of the expansion and complexity of the tax code, in part a response to the world becoming more of a global economy. Further, the JCT needed more resources to serve the increased tax needs as the tax staffs of the committees and committee members increased, along with more focus on the tax laws by corporations and others affected by them - in-house representatives and hired consultants and lobbyists.

## Lobbyists

Fifty years ago there were few tax lobbyists. A few corporations employed in-house lobbyists or hired lobbying firms on a full-time basis. In general, only when the Congress was considering tax bills that could affect a corporation directly or indirectly through their industry did they hire lobbyists on proposed tax legislation.

## News Media

There was limited media coverage of tax legislation, either the print press or television news reports. The mainstream media followed major tax legislation but did not closely monitor the committees or the members on a more regular basis. Most of the media did not have full-time budget and tax reporters who had time to become knowledgeable about the workings of the tax law, the legislative process, or the revenue impact of particular proposed changes to the tax code. Specialized tax media were in their infancy; for example, *Tax Notes* did not exist then.

## The Tax Legislative Process

Hearings -- Committee hearings, which could be lengthy, were coordinated by the tax committee staffs. JCT staff attended the hearings to be available as a technical resource for the members. Often the JCT staff prepared questions for the members to ask the witnesses. Even bills on relatively narrow or technical topics could be the subject of hearings at the committee or subcommittee level.

Mark-up sessions - - In the past, the mark-up sessions generally were held in executive session, which meant they were closed to the public. The committee staff attended; but not the member staffs. The JCT staff prepared the background documents for the members to use for the session. For each topic on the agenda, these documents described the present law, the reasons for possible changes, the Treasury proposal, and other possible alternatives, including comments from the witnesses at the hearings and the statements submitted for the record. Treasury Department tax staff also attended these sessions and usually sat next to the JCT staff at the table so they could comment on the proposals being discussed by the members.

In the Ways and Means Committee, the members did not take formal votes then but the Chairmen noted a consensus, which became a "tentative decision for drafting purposes." The Finance Committee often took formal votes, which were kept open until any Senator who was absent had an opportunity to vote. In both committees these were conceptual decisions which were prior to formal language being drafted.

In the Finance Committee, the JCT staff also prepared the background documents similar to what was done in the House; in addition, it described the House provision, any revisions or comments the Treasury had with respect to the House provision, and the comments from the Finance Committee hearing witnesses.

Legislation drafted - - After the tax-writing committees made their tentative decisions, the bills were drafted in the Legislation Counsel's Office in the respective House. The JCT staff participated in the drafting sessions to provide technical support consistent with the committee's decisions. The draft legislation was taken back to the committees for the final review of their policy positions and a vote by the committee to report the legislation as approved for floor consideration by the full chambers.

Committee Reports - - The Committee Reports were drafted by the JCT staff and set forth for each decision made by the committee - - the present law, the reason for change, and an explanation of the change made by the committee. The Finance Committee report noted the House position and the change made by the Finance Committee along with the reason for its change. In most cases the respective committee staffs and the Treasury Department reviewed the draft committee reports prepared by the JCT staff.

Revenue Estimates - - The JCT staff prepared the revenue estimates for each committee's legislation; the estimates were included in the Committee Report. Since the Treasury Department's revenue estimators had prepared an estimate of the Treasury proposals, their estimates and methodology were taken into account and discussed with the Treasury by the JCT staff. (It should be noted that at that time neither the Treasury nor the JCT staff had the computers that exist now and that are used for making revenue estimates.)

House/Senate Floor Consideration of Committee's legislation - - In the House, tax bills came to the floor under a "closed" or "modified closed" rule from the Rules Committee; that is, the bill as approved by the committee was not open for amendment on the floor other than what may have been allowed by the Rules Committee. The "rule" had to be approved by the full House in a floor vote. After the rule was approved, the bill was on the floor for passage. During floor consideration the JCT staff sat with the Chairman to assist with any questions from members about the committee's bill. Also, JCT staff often sat with the minority to provide the same technical assistance.

In the Senate, a tax bill reported from the Finance Committee generally was considered on the Senate floor under an "open" rule so that amendments to the bill could be offered by a Senator and considered for a vote by the full Senate. The JCT staff sat with the Chairman on the Senate floor to provide technical assistance during the consideration of amendments. Also, the JCT staff often sat with the minority to provide technical assistance during Senate floor consideration of

tax legislation.

Conference of Tax-writing Committee Members - - After both chambers passed their respective tax bills, they had to be reconciled to have the same agreed-upon legislation to take back to their respective Houses. These conference negotiations generally took place in executive session (closed sessions). The JCT staff prepared a conference document showing the differences between the House and Senate bills. In addition to preparing the Conference document, the JCT staff also participated in the discussion by the Conference Committee members to explain the two versions of the bills, as provided in the conference document, and to assist the committee in their final decisions.

Conference Report and Statement of Managers - - After the Conference Committee made its decisions to reconcile the bills, the final version was drafted by the House/Senate Legislative Counsels' Office. The JCT staff drafted the "Statement of Managers," which essentially is a statement of the agreement made by the Conference Committee to reconcile the two bills.

House/Senate Floor Action on Conference Agreement - - Next, both the House and Senate needed to approve the legislation as approved by the Conference Committee. The JCT staff assisted the Chairmen and the minority during the consideration of the Conference Report on their respective floors.

Blue Book - - Beginning with the Tax Reform Act of 1969, the JCT staff prepared a "Blue Book" on major tax legislation enacted, which in effect was a "committee report" on the enacted law. These "Blue Book" reports have been given differing weights by various courts as authoritative statements of Congressional intent.

Overall - - As noted above, the JCT staff participated very actively in all phases of the tax legislative process. Neither the committee staff nor the members' staff participated to a great extent during the process at that time. The Treasury Department was an advocate on their proposals and provided technical support as needed; the White House staff were not actively engaged in the process as the Treasury Department represented the Administration (in some cases more actively than others - - it depended on the issue).

## **Factors that Have Affected the Tax Legislative Process and the Role of the JCT Staff in the Process Over the Last 50 Years<sup>1</sup>**

Open Mark-up Sessions - - The tax-writing committees changed their mark-up sessions from closed, executive sessions to open sessions where lobbyists, the press, and members of the public could attend and watch the member discussions and how the committee members voted. Thus, it became more difficult to develop consensus, or compromise, positions on controversial issues, which might have been more easily achieved in closed sessions where discussions did not need to be aimed at markup attendees.

Increased Role of Lobbyists (in-house and in separate firms) - - Over the years, many larger corporations added in-house lobbyists, referred to as government affairs representatives (GAs), who followed all tax legislation being considered by the tax-writing committees and lobbied members, their staffs, and committee staffs, on legislation that affected their companies. Many of these GAs previously had worked on a member's staff in either the House or the Senate and had a deep understanding of the legislative process and knew how to present industry and company positions effectively. Also, many corporations and other affected taxpayers hired outside consultants to lobby members and staffs on proposals. The fact that mark-up sessions were now open allowed these lobbyists to attend these sessions and follow the committee's and members views and positions on proposals that affected their company or their client.

Increased Role of Business Groups and Industry Associations - - As tax policy impacted businesses to a greater extent, business groups and industry associations increased their role by hiring tax experts and following the tax aspects of the tax-writing committee's work closely on behalf of their membership. Also, these groups and coalitions would lobby on behalf of their membership, taking positions that broadly applied to all their members.

Role of the Media - - Because of the increased tax activity of the tax-writing committees and the broad importance of their decisions, as well as opening of the committee sessions, the media became more involved in following the committees activities and reporting on them. Particular journalists became budget and tax specialists able to dissect technical proposals and analyze their practical impact. This also led to the growth of specialized reporting.

Growth of Advocacy Think Tanks - - Over the years there has been a significant growth of

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<sup>1</sup> In this section I do not offer a complete list of all the factors that have affected the tax legislative process over the years; there are other factors that may have had an effect but are not necessarily covered in this section. Also, the factors listed in the sequel have had a different bearing on the process and on different members and the political parties in various situations.

advocacy think tanks which follow the tax laws and have people with specialized technical capability in which they take advocacy positions and communicate them to the committees and the staffs. In effect, many of them "shadow" the JCT staff and report their views to members and the staffs. Some of these "think tanks" are: CATO, Heritage, American Progress, and the Committee for Tax Justice. Also, the Brookings Institute and the American Enterprise Institute have been long time followers of tax and budget policy with a particular focus.

Make-up of Congress From New Members - - During the past 50 years, the make-up of Congress has changed to a more partisan body with strong views on legislative policy. In the past, Democrats and Republicans often worked together in developing tax policy. Today, open mark-up sessions and other factors have contributed to tax policy views of the respective parties that have made it more difficult to work together on consensus positions. As noted earlier, the make-up of the Congress and the tax-writing committees had been more in the middle of the political spectrum whereas newer members were more polarized. Thus, the two parties in the Congress became more partisan, with the Democrats representing a more liberal agenda and the Republicans a more conservative agenda, with fewer members in either party being in the middle.

Role of the Chairmen - - In the past when the committees had mark-up sessions, the Chairmen generally led the discussion, but the legislation evolved from the committee discussions which led to consensus, conceptual decisions. However, the Chairmen started designing a "Chairman's Mark" - - a draft of the Chairman's position as a starting point for the committee's decisions,. They were still subject to amendments during the mark-up. If the Administration and the Treasury had proposals, the Chairmen would decide whether to take them into account in the Mark they presented to their committee. In the past, the Senate often would work from the House-passed bill, whereas in the case now the Chairman and the staff design their own policy which does not necessarily work from the House bill or take into account the House Chairman's Mark.

Committee and Member Staffs - - Whereas in the past the Committee staffs did not have a very active role in the tax legislative process, the committees started to expand their tax staffs adding tax expertise, so that the committee staffs began to become very active in developing tax policy for the Chairman's Mark. Also, the committee's tax staffs became very involved in most aspects of the tax legislative process. In the case of member staffs, they too became more active in the process. They started to attend the mark-up sessions, which now were open, and became more involved in the entire process.

Indexing of the Tax System (1981) - - Prior to the 1981 enactment of indexing the tax system in the Economic Recovery Tax Act (ERTA), the tax-writing committees could use tax inflation (increased revenue from inflation pushing taxpayers into higher tax brackets) to pay for a number

of their tax proposals in a tax bill. However, when indexing was enacted, the tax system automatically took tax inflation into account each year by increasing the exemptions and rate brackets to cover the tax inflation. As a result, whenever the tax-writing committees or a member proposed tax reductions, they had to propose revenue-raising provisions to pay for their cost. This added controversy and complexity to the design of tax legislation

Budget Deficits - - In the 1980s, Federal budget deficits had increased to a level that Congress decided that going forward each tax bill had to be either revenue raising or revenue neutral. The deficit problem started with the Economic Recovery Tax Act of 1981 (ERTA), which produced a very large revenue loss. Congress then passed major revenue-raising bills in 1982 and 1984, but they did not raise enough revenue to offset the revenue loss from ERTA. The intent was to enact spending cuts to balance out the budget deficits, but this did not happen. As a result, the budget deficit situation added a level of pressure to the tax legislative process to pay for any tax reductions, even those that were designed to add fairness or smooth out the tax system, which in the past had been paid for by tax inflation before indexing was enacted in 1981. The Tax Reform Act of 1986 was the first tax bill passed under the revenue constraint of revenue neutrality. These budget concerns have made the economic role of the JCT staff more important, particularly in their revenue estimating role.

Growth of Economic Consulting and Revenue Estimating Capability by Outside Firms - - Because of the importance of the budget impact of tax proposals and the associated revenue estimates, there has been a growth of economic analysis and revenue estimating capability in economic consulting firms and accounting firms who provided this support to corporations and groups that advocated changes to the tax laws and presented their proposals with the economic rationale and/or the revenue estimates for their proposals. This has added more outside input and thus pressure on the JCT staff with respect to their analysis of these proposals.

"Read My Lips - No New Taxes" - - President Bush made this pledge/statement but was forced to forego it in the negotiations leading to the Budget Act in 1990, which included increased taxes as part of an overall compromise to reduce the deficit. It was believed that his signing the budget act over his pledge not to raise taxes had a significant negative political effect so that in the future Republicans hardened against supporting or agreeing to any tax increases.

Grover Norquist's Pledge Against Tax Increases- - Grover Norquist is the founder and president of Americans for Tax Reform, an organization that opposes all tax increases. He designed a "pledge" not to support any tax increases and persuaded a large number of Republicans in the House and Senate to sign it. This further added pressure on those members who signed the pledge not to support or accept any tax increases.

Role of Leadership in Both Houses of Congress - - In the past the tax-writing committees could

design tax legislation that they believed was needed at that time and brought their legislation to their respective floors for passage. Today, the leadership in both houses and both parties take an active role in the development of major tax legislation considered by the tax writing committees.

Role of the White House and the Treasury Department - - In the past, the Treasury Department designed tax bills and was the lead advocate on behalf of the Administration. In most cases the Treasury participated in the Congressional process as tax legislation was considered. In today's environment, the White House staff take the lead in policy decisions and the Treasury serves as its technical advisor. The Treasury does not participate in the process during the Congressional consideration of tax bills in the manner it did in the past.

Global Economy - - Over the years, US multinationals have had to compete in the global economy. This has put tremendous pressure on the US tax system to become more competitive with the tax systems of our trading partners, which are more favorable to their multinational corporations. There has been a lot of pressure in recent years to make our tax system more favorable to US companies competing abroad, as well for our tax system to be more favorable to attract foreign businesses to invest in the United States.

Call for Tax Reform (Simplification and Fairness) - - Over the years, our tax system has become more complicated and viewed as less fair to particular groups of taxpayers. Unfortunately, many of the changes that have been suggested are scored as losing revenue; this complicates the type of tax reform that may be advocated by members of Congress.

## **Role of the JCT Staff in the Tax Legislative Process Today**

### Tax Legislative Process Today

Over the years, the role of the JCT staff has changed as the tax legislative process changed, taking into account the factors discussed above. Of course, the tax legislative process is affected by which party is in the White House and which party controls the House and the Senate; if control is divided, other issues arise that affect the tax legislative process. In the case of the Executive Branch, tax policy will be affected by the views of the President and the White House staff, along with the key tax policy officials in the Treasury Department - - the Secretary and the Assistant Secretary for Tax Policy.

In the last eight years, there has been a Democratic President who has had more of a liberal focus on tax policy. It appears that the President and the White House staff have had a stronger hand in formulating the Administration's tax policy than the Treasury Department. Of course, the staff of

the Assistant Secretary for Tax Policy has the strong tax technical expertise as well as the revenue estimating expertise to support the Administration's tax views and proposals.

In the case of the Congress, the Republicans held control of both Houses of Congress for six of the last eight years, and the majority party had more of a conservative leaning with respect to tax policy. The differences in party control and philosophies between the President and the Congress made it more difficult to form a consensus for issues, such as tax reform. The leadership of the majority in both the House and Senate (Democratic or Republican) also took a strong hand in tax policy so that, although the Chairmen of tax-writing committees developed tax policy positions, they had to work with the leadership of their bodies on tax legislation. Because of these factors, the regular tax legislative process that existed 50 years ago when one party (the Democrats) held the White House and control of both Houses of Congress was not possible in recent years.

The tax legislation that has been enacted in recent years consisted mostly of major bills that were negotiated by the White House and the Congressional leadership, such as budget-related and bills that had to be passed so that the government would not have to close. Also, tax provisions, referred to as "tax extenders," which either had expired and had to be extended or which would lapse if not extended also were considered under similar processes.

For example, the chairmen of both tax-writing committees wanted to act on tax reform and either had bills developed by staff or proposed tax reform programs for review; however, in both bodies the majority leadership did not think tax reform should proceed at that time. Part of this reluctance was the fact that the Administration had a different view of the substance of tax reform, and the Congressional leadership did not want their members to have to take difficult positions on controversial aspects of tax reform if the legislation ultimately would not be enacted. Also, differences in policies between the Republicans and Democrats in the Senate made it difficult to forge a consensus tax reform bill that could be approved in the Finance Committee and passed on the Senate floor.

The hearing process also has changed significantly. In the past there were lengthy committee hearings where most people who asked to testify were allowed to appear as a witness at a hearing. Others were invited to submit written statements for the record, which the staff summarized for the committee members. Today, the process may be viewed as more efficient as the committee specifically invites certain witnesses to testify and panels are put together for the members' benefit. Others may submit statements for the record.

This overall dynamic described above with respect to the tax legislative process could change depending on the results of Presidential and Congressional elections. The elections could bring changes in the leadership and make-up of each House in the Congress as well as in the views of the President, the White House staff, and the Treasury Department.

## Role of the JCT Staff Today

Traditional Role of the JCT Staff for the Tax-Writing Committees - - The JCT staff still has many of the major responsibilities it has always had, which are: to participate in the committee's mark-up sessions as the technical resource for the committee members; working with the Legislative Counsel's Office in the respective Houses to provide the technical resource in the drafting of the legislation that the committee approved; drafting the committee's report on the committee-approved legislation, which includes the revenue estimates of the committee's-approved legislation; and assisting the Chairman and committee members on the House and Senate floors during the consideration of the committee's-approved bill. Also, if there is a formal conference on the two Houses' bills, the JCT staff will provide the technical assistance during the conference and assist in the technical drafting of the final conference-approved bill. The staff will also draft the Statement of Managers of the conference-approved bill and assist the Chairman and committee members during the consideration of the Conference Report on the House and Senate floors.

Developing tax policy - - Both tax-writing committees have larger tax staffs than was the case 50 years ago. These staffs play a major role in the development of tax policy, particularly for the Chairman's Mark or in the case of bills that are put together at the end of a session in developing legislation that addresses current law that has deadlines, tax extenders, etc. The legislative process of 50 years ago where bills were gradually developed during the committee process now is much more driven by the Chairman's Mark, with less policy input during markups from either the JCT staff or the Treasury Department.

Thus, the JCT staff today provides more technical expertise but less policy input than in the past. However, since the JCT staff is much larger and has deeper technical knowledge, it provides the technical support to both committees on all tax issues. In the case of policy, the staff may be called upon by the Chairman or other members of the committee for policy input, which may be provided directly to the members as requested. The JCT staff does not advocate for or against specific proposals; they may provide analysis of differing tax policy options but not from an advocacy point of view.

Revenue Estimates - - The JCT staff still has the responsibility for revenue estimates. In the past, revenue estimates were not required at the front end of every discussion on policy changes; today the cost of a proposal is critical, and the revenue estimate of the cost is necessary for every proposal at the front end of the consideration of that proposal. The JCT staff prepares these estimates for the Chairman's Mark, for committee use as needed, and for member amendments to the Chairman's Mark. Often, the Chairman's Mark or a member's proposal will include a draft of

the policy, and the JCT staff is responsible for the cost estimate of the overall proposal as well as the various parts of the proposal. Since most tax legislation must be paid for in today's budgetary environment, the JCT staff must produce an estimate on all proposed tax legislation.

### Summary

The JCT staff today continues to have a very important role in the tax legislative process, although it is a different role than it had 50 years ago because of the changes described above in the tax legislative process. There are so many more people in the tax legislative process today, both inside the Congress and the tax-writing committees as well as from outside the Congress. Also, as noted above, the role of the JCT may change further as the tax legislative process evolves because of the political process or other factors.