

a disguised sale. It makes no sense, he said, that the property-contributing partner is treated as selling a portion of the partner's interest to the cash-contributing partner equal to the reduction in the selling partner's share in liabilities.

Robinson didn't appear to recognize the problem, but said that when finalizing the partnership interest regs, the government would be tightening up loopholes in the transfers of partnership property regs. So although the proposed regs are likely to become more taxpayer-favorable, the property regs will not, she said. ■

Bush Promotes Social Security Reform

By Wesley Elmore — welmore@tax.org

The Bush administration last week continued its push for Social Security reform through the creation of personal retirement accounts, as Democrats criticized President Bush's lack of real action on the issue and others around Washington backed their own reform proposals.

Bush on January 11 held a forum at which citizens of varying ages from around the country expressed their views on the Social Security system. The event mainly emphasized Bush's goal of allowing younger workers to set aside part of their payroll taxes in personal retirement accounts, but Bush also took the opportunity to reiterate his stance against increasing payroll taxes as part of any reform effort.

"I think running up payroll taxes will slow down economic growth. The economy is beginning to kick in; it's beginning to make sense," Bush said. "I think we can solve the problem without increasing payroll taxes."

Social Security Administration official Andrew Biggs, also appearing at the event, tried to put the issue of increased payroll taxes in perspective. "To keep the system solvent permanently, to keep it solvent forever, we'd have to raise taxes today by around 3.5 percentage points, which means the payroll tax would have to go from around 12.5 percent to almost 16 percent of your wages," he said, adding that that increase is "obviously a big increase that people wouldn't like to pay."

'I think running up payroll taxes will slow down economic growth,' Bush said.

Two days later, Vice President Dick Cheney took up the administration's call for Social Security reform, including criticism of any increase in payroll taxes.

"If we turn to higher taxes to meet the projected shortfall, the payroll tax would eventually have to be nearly 10 times higher than the original rate when the program was set up," Cheney told an audience in Washington at the Catholic University of America. "Trying to fix the system by raising taxes would only buy time, and then future generations would need to come back and raise taxes again and again."

Democratic Reaction

Democrats across Washington reacted to the administration's comments with accusations that Bush continues to frame the Social Security debate dishonestly without advancing a specific plan for reform.

During a conference call with reporters January 11, House Ways and Means Committee member Sander M. Levin, D-Mich., confirmed reports that he has been named the new Ways and Means Social Security Subcommittee ranking minority member, replacing Rep. Robert T. Matsui, who died recently. Levin wasted no time explaining his position on personal accounts, accusing the Bush administration of attempting to "wreck" Social Security through their creation.

House Minority Whip Steny H. Hoyer, D-Md., continued Democrats' recent criticism of the president's description of problems with the Social Security system as a "crisis."

"President Bush did himself more harm than good by again claiming that Social Security is in 'crisis,' when the numbers show that he is exaggerating the extent of the challenge," Hoyer said. "The president's fear-mongering is counterproductive."

Ways and Means Social Security Subcommittee member Earl Pomeroy, D-N.D., was also critical, saying, "Instead of leadership on the challenges facing Social Security, we have seen the administration hyping a crisis without advancing a proposal." He added, "The president needs to reveal his plan now. No more catchphrases, no more ideology — let's put the numbers on the blackboard and see if they add up."

More Voices, More Plans

Elsewhere in Washington on January 11, the New America Foundation sponsored its own discussion on Social Security reform that featured Congressional Budget Office Director Douglas Holtz-Eakin and Charles W. Stenholm, a former Democratic House member from Texas.

Holtz-Eakin stressed that before getting into the details of any reform proposal, lawmakers must first ask whether the Social Security system should operate as a "pay as you go" program or a pre-funded program. Once that issue is decided, a discussion of the "nuts and bolts" of Social Security can begin, he said.

Stenholm, while advocating for a Social Security reform bill he drafted along with Rep. Jim Kolbe, R-Ariz., encouraged lawmakers to put their ideas on the table so that a real national debate can begin.

On January 13 several divergent ideas were put on the table, although no lawmakers were in attendance. At a forum sponsored by the Brookings Institution and the Urban-Brookings Tax Policy

Center, two speakers did not shy away from pointing to tax increases as a mode of fixing the Social Security system.

Peter Orszag, a senior fellow with Brookings, spoke in support of a plan he recently coauthored with Massachusetts Institute of Technology economist Peter Diamond that would combine benefit reductions with payroll tax increases to restore long-term solvency.

John Rother of AARP cited polling done by his organization showing that the reform option receiving the most support was an increase in the cap on wages subject to payroll taxes, which would constitute a tax increase.

'Instead of leadership on the challenges facing Social Security, we have seen the administration hyping a crisis without advancing a proposal,' Pomeroy said.

Although White House spokesman Scott McClellan has recently dodged reporters' questions about whether the president's stance against payroll tax increases also precludes an increase in the wage cap, Orszag pointed out that one of the reform models proposed by the President's Commission to Strengthen Social Security considered that increase but ruled it out as "inconsistent" with Bush's principles.

The forum's two other speakers, Jeffrey Brown and Robert Pozen, both members of the president's 2001 commission, said any reform plan that would raise payroll taxes would not be politically feasible. But Rother disagreed, arguing that people are so insistent on keeping Social Security as close as possible to the way it is now that they are willing to "roll up their sleeves" to keep it there.

Pozen, chair of MFS Investment Management, said no lawmaker would vote for the Diamond-Orszag plan because of the increase in payroll taxes and instead presented his own plan. His proposal would rely on a system of "progressive indexing," whereby the lowest wage earners would continue to receive benefits based on wage indexing, the highest wage earners would receive benefits based on price indexing, and those in the middle would receive benefits calculated somewhere between the two extremes.

Pozen said his plan would protect the benefits of low-wage earners and create personal accounts as a "political sweetener" for middle- and high-income individuals to allow them to regain the benefits they lost under progressive indexing.

A change in how benefits are indexed has become a topic of controversy after a White House

memo that was recently leaked detailed the administration's consideration of a move from wage indexing to price indexing, which would shrink the size of future Social Security benefits considerably.

Brown, who was recently nominated by Bush to serve on the Social Security Advisory Board, expressed support for a move to price indexing, saying it would put the Social Security system on a sustainable path well into the future without requiring an increase in payroll taxes. Brown also advocated the president's push for personal accounts.

However, Orszag, Rother, and Pozen all agreed that a move to full price indexing would go too far in cutting benefits. Orszag also said that when Bush cites the creation of personal accounts as a solution to the Social Security problem, it is a non sequitur because personal accounts do nothing to restore the system's solvency.

Brown and Pozen both said any reform plan that would raise payroll taxes would not be politically viable.

And, Orszag continued, the American people already have private accounts in the form of 401(k) accounts and IRAs. Regardless of how anyone thinks Social Security should be reformed, workers should be automatically enrolled in 401(k) programs to make it easier to save for retirement, according to Orszag. He also said there should be a box on individuals' income tax returns they could check to allow a portion of tax refunds to be put into an IRA.

None of the other panelists argued with Orszag's suggestions regarding 401(k) accounts and IRAs, but Brown did say that about 50 percent of Americans lack access to those accounts through their employers, and for them new personal retirement accounts would be most helpful. ■

IRS Unfairly Favoring Postal Service, FedEx and UPS Say

By Sheryl Stratton — sstratto@tax.org

The IRS has issued proposed regs that would ignore congressional intent and technological advancements in document tracking by discriminating against private delivery services in favor of the U.S. Postal Service for purposes of the timely mailing is timely filing rule, lawyers argued at a reg hearing in Washington last week.

Background

The common-law mailbox rule provides that proof of mailing a properly addressed document bearing proper postage creates a rebuttable presumption that the document was received. The rule is well settled that if a properly addressed letter can be proven to have been brought into the post office or delivered to the postman, it is presumed, based on the known course of business in the post office, that the letter reached its destination at the regular time and was received by the person to whom it was addressed.

The mailbox rule as it applies to tax documents is codified in section 7502(a), known as the timely mailing is timely filing rule. The statute and regulations provide that a properly addressed submission sent by registered or certified mail is presumed to have been delivered. If a document is sent by certified or registered mail, the statute and regs treat the proof of registration or the postmarked certified mail receipt, in conjunction with evidence that the envelope was properly addressed, as prima facie evidence that the document was delivered.

There is a conflict among the circuits, however, as to whether the provisions in section 7502 provide the exclusive means to establish prima facie evidence of delivery of a document to the IRS or the Tax Court. In response to a Ninth Circuit decision that denied the timely mailing is timely filing rule to a submission made through a private delivery service (PDS), Congress added a provision to the code in 1996 authorizing Treasury to extend the rule to a designated PDS.

The IRS has since established a list of designated PDS's for purposes of the timely mailing is timely filing rule of section 7502 for documents actually received. The rules are relevant for establishing the mailing date only when something is mailed before its due date but is delivered after. The statute does not address PDSs for purposes of establishing prima facie evidence in absence of direct proof of delivery.

On September 14, 2004, the Tenth Circuit ruled that the statute does not compel the result that the