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# CAPITOL ACCOUNT

A Monthly Report on Federal Legislative Matters Affecting CPAs

JULY 1993

## Key Persons Hit Home Runs on Tax Bill

AICPA Key Persons scored big during the U.S. Senate's consideration of President Clinton's budget and tax bill.

First, Key Persons helped to convince members of the Senate Finance Committee to repeal the onerous 1991 estimated tax rules. Second, Key Persons for Senators on the Budget Committee contributed to beating back an unexpected amendment that would have expanded accountants' liability under the Employee Retirement Income Security Act of 1974 (ERISA). AICPA representatives also were instrumental in convincing the Senate to drop a change involving penalties levied against tax preparers.

### Estimated Tax

Thanks to AICPA Key Persons and others, the Senate's version of the tax and budget reconciliation bill includes a provision supported by the AICPA that is identical to the one passed by the House in May to repeal the 1991 estimated tax rules (*Capitol Account*, May/June 1993). The provision would accomplish what the AICPA has argued for since the 1991 law was passed—restoration of a measurable safe harbor to taxpayers who are required to make quarterly estimated tax payments.

Under the provision, individuals with \$150,000 or less in prior year adjusted gross income (AGI) would be allowed to use the 100 percent

previous-year tax safe harbor, while individuals whose AGI last year was more than \$150,000 would be required to use 110 percent of their previous year's tax liability.

### ERISA Amendment

A nimble response to a call for action by the AICPA to selected Key Persons helped stop an unexpected amendment by Senator Howard Metzenbaum (D-OH) that would have expanded accountants' liability exposure. At the urging of the U.S. Department of Labor, Senator

*continued on page 2*

## AICPA Unveils Financial Reform Initiatives

The AICPA strode boldly toward a vision of an improved financial reporting system in June when it unveiled initiatives to, among others, improve fraud detection and implement a new self-disciplinary system for the accounting profession.

"Fraud detection is our job," AICPA Chairman of the Board Jake Nettekville told reporters at the June 8 Washington, D.C. press conference where the initiatives were publicly unveiled. "Our goal is 100 percent

*continued on page 3*



Reporters question participants at the press conference to unveil the accounting profession's package of reforms to improve the country's financial reporting system.

*Tax Bill from page 1*

Metzenbaum succeeded in adding an amendment to the budget and tax bill that would have overturned the U.S. Supreme Court's June 1 decision that held ERISA does not authorize recovery of damages from non-fiduciaries, including accountants, for "knowing" breaches of the law. The Labor Department argued that its ability to enforce ERISA would be impaired along with its litigation on behalf of pension annuitants against Executive Life Insurance Company. However, forceful opposition from the AICPA and others in the business community, as well as a warning from the Senate Parliamentarian that the amendment would be ruled "extraneous," convinced Senator Metzenbaum to withdraw his amendment on the Senate Floor on June 24. While losing this round, he vowed to continue the battle another day. He said he will introduce legislation to assure that "litigation for improper annuity purchases is not jeopardized" and has promised to hold hearings and to move the bill quickly. The AICPA will continue its efforts to protect CPAs from undue liability exposure.

**Other Plays**

The AICPA scored in other ways on this bill, too. The relentless pursuit of more tax dollars resulted in provisions being added that would change the level at which the IRS could impose a penalty on a taxpayer or return preparer. The new level would apply even though the taxpayer had fully disclosed, when filing the return, he or she was taking a position requiring further interpretation. The intended result is that U.S. Treasury coffers over five years will gain just under \$500 million—a nominal amount in budget terms—from taxpayers taking more conservative positions and paying more tax. The AICPA believes the actual result will be that taxpayers will gamble on

not being caught instead of paying more tax. Furthermore, our system of voluntary tax compliance and the IRS' 10-year effort to encourage disclosure will suffer a major blow.

*Taxpayers will gamble on not being caught if Congress approves proposed penalty change, AICPA argues.*

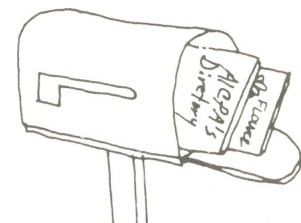
Due to the intricacies of budget scoring, preparer penalties are not scored as income, and the AICPA convinced principal senators to remove the preparer penalty provisions. The AICPA will continue its efforts to remove the entire proposal in conference.

The AICPA also wrote all U.S. Senators urging that the bill's proposal to eliminate the deduction for lobbying expenses be modified. Under the proposal, members of 501(c) organizations, such as the AICPA and state CPA societies, would not be able to deduct that portion of their dues allocable to political or lobbying expenditures. The definition of "lobbying" is so broad that even a newsletter article just informing members about legislation (without any request for action) would be considered a lobbying or political activity. Technical comments to Congress or federal agencies would also fall within the scope of "lobbying." The reporting requirements are onerous to an extreme. The AICPA projects it would take a 16,000 page report to the IRS to comply and that requisite mailings to all AICPA members would take ten days of computer time, for an estimated cost of between \$250,000 and \$300,000 annually.

Recognizing that chances of knocking this provision out of the tax and budget bill are remote, the AICPA nevertheless urged Senators to modify the definition of "lobbying" and suggested using another approach to reduce the paperwork burden—1) impose a five percent across-the-board denial on the deductibility of lobbying expenses or 2) impose a tax on allocable lobbying expenses assessed on the organization doing the lobbying as part of its unrelated business income tax. The AICPA will continue to press this case with conferees.

**Outlook**

While chances appear favorable that the estimated tax provisions will emerge from the conference unchanged, vigilance is always the better strategy, so we'll keep a watchful eye on this issue. As to the bill's ultimate fate, the battle still rages—with the conference shaping up to be one of the most contentious on record. Ultimately, the Democrats will probably be able to squeeze out the votes they need to send the bill on to President Clinton, but it promises to be a cliffhanger. We intend to stay at bat until Congress casts its final vote. We should be able to let you know our final score in the next issue of *Capitol Account*.



**LOST IN THE MAIL?**

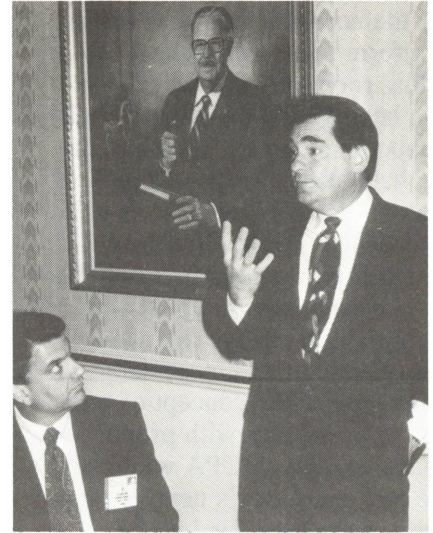
By now you should have your copy of the AICPA's directory of members of the 103rd Congress. The directories were mailed to all Key Persons in April. If you did not get your copy, please call Jessica Sacco at 202/434-9255 to have another one mailed to you.



## Come One, Come All, Sign On Now!

Rep. Billy Tauzin (D-LA) urged other Louisiana Members of Congress to co-sponsor his liability reform bill, H.R. 417, at the AICPA's June 17 luncheon for the Louisiana Congressional delegation. Pictured with Rep. Tauzin is Ed Bouterie, the Congressman's Key Person, from Houma, LA who is with Bourgeois, Bennett, Thokey & Hickey.

Rep. Tauzin doesn't confine his sales pitch for the bill to his own state delegation. He recently helped sell Reps. Scotty Baesler (D-KY) and Gary Franks (R-CT) on the idea. They signed on as co-sponsors to the Securities Private Enforcement Reform Act on June 28. Our thanks to Congressmen Tauzin, Baesler, and Franks and their Key Persons.



Rep. Billy Tauzin

*Financial Reform Initiatives from page 1* detection." To help meet that goal, the commitment by the AICPA Board of Directors included a call for a "new national disciplinary system designed to remove the bad apples from our profession." The disciplinary system, which would reside in the profession with oversight by the government, would apply to auditors of SEC-registered companies and other publicly accountable entities.

Paul Kolton, former chairman of the American Stock Exchange and a public member of the AICPA Board, stated, "In recent years, trust in the reporting system and the audit function has been eroded by a number of sudden business failures and some spectacular instances of financial fraud. Businesses may fail for many reasons: sudden downturns in the economy; bad decision making; the disappearance of markets; failure to innovate—and wrongdoing. It is in the latter area that the public—hurt and betrayed—is properly the least forgiving. And, whatever the reason for the failures, the public's first response is often, 'Where were the auditors?' Today, with these initiatives, the accounting profession is making it clear: 'The auditors are here!'"

The initiatives undertake reform in the pursuit of five principal goals:

- Improving the prevention and detection of fraud;
- Enhancing the utility of financial reporting to those who rely on it;
- Assuring the independence and objectivity of the independent auditor;
- Discouraging unwarranted litigation that inhibits innovation and undermines the profession's ability to meet evolving financial reporting needs; and
- Strengthening the accounting profession's disciplinary system.

One of the reasons Washington, D.C. was chosen as the location for the national press conference is that CPAs and the AICPA cannot implement the goals alone. Federal regulators and legislators will need to take action in order for the initiatives to be fully implemented.

Highlights of the new proposals include closing the revolving door between auditing firms and their clients by barring public companies and other organizations with public accountability from hiring the engagement partner for one year; establishing a systematic review by the accounting profession of alleged audit

failures; developing new guidelines to help auditors assess the possibility of management fraud; establishing new fraud reporting rules requiring all participants in the financial reporting system to notify auditors of possible fraud; requiring greater disclosure by management of risks and uncertainties; requiring management to report on the effectiveness of the company's internal controls over financial reporting and requiring a separate auditor's report on management's assertions.

The entire statement—*Meeting the Financial Reporting Needs of the Future: A Public Commitment From the Accounting Profession*—will appear in the August issue of the *Journal of Accountancy*.

The initiatives received wide press coverage, with articles appearing in the *Wall Street Journal*, *New York Times*, *Washington Post*, *USA Today*, *L.A. Times*, and *Investor's Business Daily*, among others. The Associated Press and the Dow Jones and Reuters news services also carried stories.

The board of directors will move to implement each of these initiatives independently. We'll be sure to let you know when there is a role for Key Persons to play in helping implement one or more of the initiatives.

## Senate Kicks Off Liability Hearings

The first Congressional hearings to air the need for securities litigation reform kicked off June 17 to a standing room only audience.

The hearings by the Senate Banking Subcommittee on Securities are being held after months of pressure by the AICPA on Congress to hold such hearings. They offer the accounting profession its first opportunity to present its case about why it's so important to change the nation's litigation system and, especially, the need to replace the concept of joint and several liability with proportionate liability. The AICPA will testify at the Subcommittee's next hearing, which is scheduled for July 21.

Neither proponents nor opponents of litigation reform "won" at this hearing. Both sides argued their case effectively, but probably no senators

were swayed from previously held views. The hearing confirmed our belief that achieving litigation reform will be a long, uphill battle.

Sen. Chris Dodd (D-CT), who is chairing the hearings, played devil's advocate to proponents and opponents alike, but seemed to be seeking a middle ground.

Opponents of reform testifying at the hearing, including William LeRach of Milbert Weiss Bershad Specthrie & LeRach, a leader in securities class action suits, argued that the present system works to protect investors against true fraud and that class action securities litigation has not had a negative impact on capital formation.

Several witnesses, including William McLucas, enforcement director for the Securities and Exchange Commission, argued against proportionate liability for accountants except possibly in cases of negligence. He said replacing joint and several liability with proportionate liability would shield professionals unduly from liability and could damage investor confidence because many defrauded investors would receive minimal recovery.

Proponents for change, including executives from high-technology

companies, argued forcefully that reform must occur to stave off class action suits by shareholders which often are filed only hours after stock prices drop, and long before the merits of the case can be determined. They told senators that such suits divert capital that could be more productively used.

Reaction from senators about the need for reform ranged from sympathetic by Senators Robert Bennett (R-UT) and Pete Domenici (R-NM) to skeptical by Senators Donald Riegle (D-MI), chairman of the full Senate Banking Committee, and Alfonse D'Amato (R-NY).

This story will be continued next month when we let you know how the AICPA testimony was received by the Securities Subcommittee.

## WYOMING UPDATE

The Wyoming Society of CPAs has changed its Key Person Coordinator. Replacing Richard Bratton are Sharon Jensen, 307/347-8867, and David Kreycik, 307/358-3933. Good luck to them both with their new responsibilities! A list of Key Person Coordinators for all states appeared in the May/June issue of *Capitol Account*.

### Capitol Account Gets New Look

Watch for *Capitol Account's* new look. We've come up with a design we think better reflects the image of the Key Person Program and its vital role in the profession's bolder and more aggressive stance in tackling the issues confronting the profession in our nation's capital.

## AICPA

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