

JANUARY 3, 2012

Year in Review: The 2011 Person of the Year

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Summary by **taxanalysts**™

Tax Analysts names as its Person of the Year Grover Norquist, head of Americans for Tax Reform, and notes the other individuals who were considered for the title.

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The dire state of tax politics became woefully evident in 2011, as fragile optimism about the possibility of tax reform bumped into the harsh reality of political intransigence. Democrats and Republicans each complained about the other's refusal to budge on tax policy, but a common belief is that one man is at the apex of political decision-making on taxes: Grover Norquist. Whether he is a radical obstructionist or a principled hero depends on whom you ask. Regardless of our readers' perspective, Norquist's prominence has earned him the distinction of *Tax Notes'* 2011 Person of the Year.

An avowed zealot of cutting taxes, Norquist was a lightning rod in 2011 for politicians and the media. If Warren Buffett was a symbol of progressive tax idealism, Norquist became the public face of "hell no" tax reductionism.

As head of Americans for Tax Reform (ATR), Norquist has been in the spotlight because of his role in creating and promoting the taxpayer protection pledge in 1986, which is offered to all candidates and incumbents for public office, including Congress. According to ATR's website, the pledge requires that attesting politicians (or candidates) "solemnly bind themselves to oppose any and all tax increases."

The terms of the pledge are:

I, \_\_\_\_\_, pledge to the taxpayers of the (\_\_\_\_ district of the) state of \_\_\_\_\_ and to the American people that I will: ONE, oppose any and all efforts to increase the marginal income tax rate for individuals and business; and TWO, oppose any net reduction or elimination of deductions and credits, unless matched dollar for dollar by further reducing tax rates.

ATR claims that more than 1,100 lawmakers have signed the pledge, with the vast majority being Republicans. In the 112th Congress, ATR lists 238 representatives and 41 senators as pledge signers, which includes all elected Republicans except for six House members and seven senators. Only one Senate signer is a Democrat.

How long a signature is binding has been a subject of heated debate. Some lawmakers have attempted to excuse themselves from the pledge's terms by saying they signed it only under the belief that it covered the term of office for which they were running at the time. But the ATR website says it "is considered binding as long as an individual holds the office for which he or she signed the Pledge."

The spotlight on Norquist was brightest in the fall, when the media described him as the largest obstacle to finding common ground on any congressional deficit deal. To reduce the perception that Republicans could only bark on Norquist's command, conservative leaders tried to downplay his influence. In a November 3 press conference, House Speaker John A. Boehner, R-Ohio, called Norquist "some random person."

Norquist has said that ATR's pledge helped spur a broader discussion about restraining spending rather than looking to tax increases to raise revenue, which in turn helped enhance the appeal of the Republican Party and

increase its electoral prospects. Critics have countered that the pledge has done little to cut the size of the federal government and that lawmakers' adherence to it unfairly harms low- and middle-income taxpayers who bear the brunt of the economic effects of spending cuts.

Progressives tried to capitalize on Norquist's statement that allowing tax cuts to lapse was not a violation of the pledge. Regarding the soon-to-expire Bush tax cuts, Norquist told *The Washington Post* that "not continuing a tax cut is not technically a tax increase." His position gave politicians a potential opening to vote for measures that raise revenue, but Norquist later said that allowing them to expire violated the spirit of the pledge and that ATR would "oppose any effort to weaken, reduce, or not continue" cuts.

The austerity the pledge imposes on lawmakers can be illustrated by one representative's remark that he would reject a deficit reduction plan that contained \$3 trillion in spending cuts with \$8 in tax increases.



Grover Norquist, president, ATR (Tax Analysts/Derek Squires)

2011 saw a repeated wave of political failures to tackle taxes at even the most basic level. Debate over tax policy did not end well in 2010, as Democrats grudgingly helped Republicans pass a complete, two-year extension of the Bush tax cuts. Yet comprehensive tax reform was frequently touted by politicians as necessary to address the country's mounting fiscal crisis.

Earlier in the year, the so-called Gang of Six -- a bipartisan group of senators -- drafted a deficit reduction proposal that included several elements of basic tax reform. Based loosely on the recommendations of the Bowles-Simpson commission, the proposal would have reduced the deficit by almost \$4 trillion over 10 years using several measures, including tax reform based on lower rates and eliminating tax breaks. Despite initial White House support, the effort ultimately collapsed.

Congress later passed the Budget Control Act of 2011 (P.L. 112-25), which set up a high-stakes game of chicken. The law created a 12-member bipartisan legislative supercommittee tasked with identifying at least \$1.2 trillion in deficit cuts that would get an up-or-down vote in Congress. If the committee failed to pass a deficit reduction agreement, an automatic cut of the same amount in across-the-board government spending (half of which would be defense spending) would take effect in 2013. The Thanksgiving deadline passed with no proposal in place, leaving political leaders to decide how to handle the looming mandatory cuts.

Democrats blamed the supercommittee's failure on Republicans' insistence that any measures not involve tax increases, despite some attempt at compromise toward the end of the supercommittee's term. Republicans, meanwhile, said Democrats refused to accept the deep spending cuts necessary and instead focused on increasing taxes when the country could not afford to discourage job creation. Former Sen. Alan Simpson, co-chair of the president's deficit reduction commission, claimed that Norquist was ultimately at fault for the Republican supercommittee members' decision to vote against a Democratic-sponsored compromise plan.

The debate over tax cuts and how -- or if -- they should be paid for is full of nuances. For example, as Congress considered whether to extend the payroll tax cut, Norquist reportedly told House Republicans that failure to extend it should not be considered a tax increase, given the cut's temporary nature. As political pressure increased, both the White House and Norquist indicated satisfaction with extending the payroll tax cut even if it wasn't paid for and even if it would add to the budget deficit.

Ultimately, the many failures of 2011 may make 2012 a banner year, although no one can be certain whether it will be marked by continued letdowns or a real breakthrough in tax reform. If Congress fails to pass tax extenders, it may be under pressure in early 2012 to pass retroactive legislation. Also certain to create political drama are the Bush tax cuts, which are due to expire at the end of the year.

Because of the election, tax reform will undoubtedly remain on politicians' lips as a top remedy for the country's economic woes, but the likelihood of real legislative progress is doubtful. The promise of possible tax reform in 2011 was never realized because of a political deepfreeze; expect continued arctic weather this year. And Norquist will continue to be a topic of discussion as the political parties jockey for electoral advantage over tax issues -- déjà

vu all over again.

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## Jeffrey Owens

Readers may detect a pattern in our recent selections for international Person of the Year. The theme (unintended on the part of our editors) is the existence of new threats to the offshore sector and how entrenched interests respond to it.

In 2009 we named Bradley Birkenfeld, the former UBS private banker who spent years helping the superrich conceal their fortunes in Zurich bank vaults. But there are thousands of private bankers in the world -- what made Birkenfeld unique? It wasn't that he cozied up to tax cheats, but that he turned on his clients, talked to the feds, and ended up in prison. Along the way he shook the nation's confidence in cross-border enforcement practices. Some say we gave "Birk" too much credit. Then again, he gave us the Foreign Account Tax Compliance Act.



Jeffrey Owens (Photo courtesy of OECD/Paris)

In 2010 we chose Hans-Rudolf Merz, head of Switzerland's Federal Department of Finance, who led the country's damage control efforts following the UBS affair. Merz recognized that bank secrecy often mattered more to high-net-worth individuals than low tax rates. That resulted in the recent series of bilateral withholding tax agreements, which tempt foreign governments with cash remittances in lieu of information exchange. In these fiscally challenging times, few finance ministers will turn down new revenue.

Like everything else in the global economy, tax regulation has gone transnational. And in that regard, no single figure has exerted more influence over modern tax administration than Jeffrey Owens, the departing director of the OECD Centre for Tax Policy and Administration. Owens, who retires this month, has come to be known as the de facto tax cop of Planet Earth, or at least that portion of it represented by the world's leading industrialized economies.

After the Cold War, the OECD, which was generally viewed as the economic sibling of NATO, sought to redefine itself as the protector of economic policies favored by its member states. The United Nations fell silent on tax policy, and the OECD stepped forward, with Owens at the helm.

Regardless of what one thinks of the positions the OECD has advanced over the years, there's no denying that it has enjoyed an extraordinary run of influence. For decades, the contours of national tax jurisdiction have been profoundly shaped by the OECD model tax convention and transfer pricing guidelines. Owens had a major role in determining the answers to major tax questions, with trillions of dollars of taxing rights in the balance. Little wonder the *Financial Times* described Owens as one of the 10 most important people in Europe with whom to do a business lunch -- easily outranking many diplomats, CEOs, presidents, and prime ministers.

All that brings us back to the offshore sector. In 1996 the G-7 leaders agreed that their national coffers were being drained by low-tax neighbors with dubious banking regimes. They assumed those smaller, weaker enclaves could be easily pushed around and ultimately prodded into conformity with accepted international tax norms. The fact that no such norms existed was an obstacle.

The G-7 tasked the OECD with establishing standards, and the project fell squarely into Owens's lap. The role turned him into the public face of the OECD and positioned him front and center in the ensuing tax haven wars.

The drama began with the OECD's landmark 1998 policy paper on harmful tax competition -- a concept Owens pioneered. Two years later came the follow-up report, which "named and shamed" more than 30 uncooperative jurisdictions. To this day, Owens prefers not to call it a blacklist, but the label has stuck, for better or for worse. The Birkenfelds and Merzes of the world were on notice that something was up.

Tax haven status is now delineated by four criteria: low rates, ring fencing, lack of fiscal transparency, and lack of effective exchange of information. The tax havens were quick to argue hypocrisy, noting that those same features could be found in the tax systems of many OECD members. Successive U.S. Treasury secretaries in the 2000s

also countered that low rates and ring fencing were legitimate policy goals, forcing Owens to modify the project and redirect it toward information exchange practices.

Article 26 of the OECD model tax convention envisions on-demand exchange of information, but developed economies generally won't do treaties with tax havens. The OECD's solution was a lesser form of bilateral accord: the tax information exchange agreement. Rich countries can now enter into information sharing agreements with fiscal rogue states with which they'd never sign a conventional tax treaty. Since their introduction, the number of TIEAs has skyrocketed.

Critics argue that reliance on OECD-inspired TIEAs and traditional treaty-based information exchange falls short. If private bankers are doing their jobs properly, the tax collectors of country X will have no clue that their residents have unreported investment income stashed in country Y. That explains why the offshore sector thrives. On-demand exchange of information has obvious limitations, a point that Owens acknowledges. The understood goal might be automatic exchange of information, but one can reasonably question whether the body politic is ready for those reforms. Time spent in the trenches breeds pragmatism and an acceptance of incremental change. To the extent Owens's career reflects a defined body of work, it's one of evolution over revolution.

Much of what we've discussed here lies in the past. Why, then, acknowledge Owens in 2011? The answer lies in the headlines that dominated the last 12 months. We see U.S. prosecutors continuing their investigations of leading Swiss banks other than UBS. We see a financial sector in virtual panic mode over the impending FATCA regime. We see Switzerland willing to enforce withholding taxes on nonresident income to fend off harsher outcomes. We see the Obama administration trying to reverse almost a century of U.S. tax policy on the reporting of bank deposit income for nonresident aliens.

While Owens is not directly responsible for any of those measures, his fingerprints are all over them. Looking to 2012 and beyond, one imagines that international taxation will be quite different without its chief regulator. And to that end we wish Owens a pleasant retirement.

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## Dave Camp

Here we are in another presidential election year. And it remains unclear if lawmakers will opt to undertake a tax reform effort against that backdrop or wait for 2013. Regardless of how the next year plays out, House Ways and Means Committee Chair Dave Camp, R-Mich., will be at the forefront of the debate.

Camp, who was first named to the committee in 1993, has emerged as a powerful advocate for tax reform. In 2011 the Ways and Means and Senate Finance committees began a series of hearings focused on reform. Between joint hearings with the two panels and hearings at both the full and subcommittee levels, the two taxwriting committees have held more than 15 meetings. Those hearings are part of a broader effort to build the framework for a reform attempt.

Camp, in his first year as committee chair, made his biggest move on tax reform with the release of a discussion draft on how the United States could adopt a territorial system for international taxation. The paper, praised by tax observers as a serious first step in drafting future legislation, not only called for a 95 percent dividend exemption system for foreign business income and a deemed repatriation of corporate foreign dividends, it offered several base erosion proposals. It recommended lowering the top marginal corporate tax rate to 25 percent and paying for it by broadening the base.

"I am under no illusion that the task before us will be easy," Camp said in his opening statement at a January 2011 hearing. "To really reform the tax code in a way that lowers the tax rate, broadens the base, and promotes the competitiveness of American companies, we will need to make some tough choices."



Dave Camp

Camp asked for input, and at the end of 2011, the Ways and Means Select Revenue Measures Subcommittee held a hearing on the discussion draft. The stage seems to be set for Camp to help lead a substantial legislative attempt to revamp the tax code this year.

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## Victor Song

International enforcement has been a top priority for the IRS, and Victor Song, chief of the IRS Criminal Investigation division, has led the effort to end criminal tax evasion.

Song, who retired December 31, had an IRS tenure spanning 30 years. He joined in 1981 and became a special agent in 1983, rising to deputy chief of CI in 2007. He was appointed CI chief in January 2010.

Song led CI in working closely with global law enforcement agencies to combat tax evasion, often conducting joint investigations. That worldwide outreach effort, in conjunction with the two IRS offshore disclosure initiatives ending in 2009 and 2011, produced a wealth of information for the agency.

Although international enforcement dominated much of the public discussion while Song was CI chief, in 2011 he led CI in case investigations that covered employment tax, identity theft, and corporate tax shelters. CI focused on return preparer issues in 2011 as the IRS implemented its return preparer registration initiative.



Victor Song

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## Carlton M. Smith

Few practitioners have had a bigger effect on the lives of low-income taxpayers than Carlton M. Smith, director of the Benjamin N. Cardozo School of Law Tax Clinic.

Overseeing a staff of students and volunteers who take on dozens of pro bono cases each year, Smith, a former partner at Roberts & Holland LLP, constantly lobbies the IRS and Treasury to change rules that unfairly affect low-income taxpayers.

Perhaps Smith's biggest victory in 2011 was the IRS's July decision -- despite several appellate victories -- to withdraw the two-year limitations period for claims of equitable innocent spouse relief under section 6015(f).

On June 14 Smith argued in the Second Circuit on behalf of the taxpayer requesting relief in *Coulter v. Commissioner*; many commentators considered that case to be one the taxpayer could win, thus setting up a circuit split.

But a decision in *Coulter* never came, with the IRS announcing the withdrawal of the limitations period less than six weeks later. At the time, Smith said the change resulted from pressure imposed on Congress and the IRS by National Taxpayer Advocate Nina Olson.

Olson told Tax Analysts that the IRS decision came about through advocacy in all three branches of government, with Smith spearheading the litigation strategy and coordinating with low-income taxpayer clinics (LITCs). "Carl's work played an important role in bringing about the change in policy," she said. "Equally significant, his work helped LITCs for the first time collectively litigate a single high-profile issue in multiple circuits in a coordinated



Carlton M. Smith

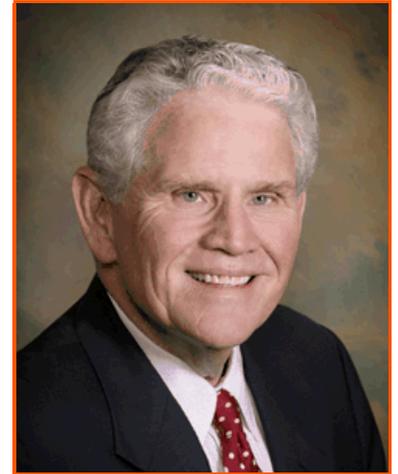
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### **Charles J. 'Chad' Muller**

Championing a hard position can sometimes be more successful when the person leading the charge is well liked. Charles J. "Chad" Muller, a shareholder at Chamberlain, Hrdlicka, White, Williams & Aughtry and chair of the Office of Professional Responsibility subgroup of the Internal Revenue Service Advisory Council, fits that description. He has been active in focusing attention on Circular 230 issues, particularly now that the IRS has sharply increased its oversight of tax return preparers.

The IRS made significant final revisions to Circular 230 in 2011. Muller and the subgroup issued a report in November that took issue with several of them. Over the course of the year, Muller advocated for the IRS to revisit implemented rules that seem to allow the commissioner to place authority for initiating practitioner disciplinary proceedings with IRS personnel other than the OPR director. Because those rules were not part of the proposed regulations, they took effect without an opportunity for the tax bar to comment. Muller has said that removing OPR as the sole authority to initiate Circular 230 complaints would give the IRS a perverse incentive in pursuing alleged ethical lapses, given its role as enforcer of the tax code.



Charles J. "Chad" Muller

In 2011 Muller was elected a fellow to the American College of Tax Counsel, and he also received the Jules Ritholz Memorial Merit Award from the American Bar Association Section of Taxation Civil and Criminal Tax Penalties Committee in recognition of his dedication, achievement, and integrity in the field of civil and criminal tax controversies.

Muller has been in private practice since the late 1970s, doing a mixture of criminal and civil tax work. Part of his practice involves advising tax professionals who are dealing with OPR investigations or litigation. A former assistant U.S. attorney and Justice Department trial attorney, he received his LLM in taxation from Georgetown University Law Center and his JD from St. Mary's School of Law.

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### **Claudia Hill**

A peek at Claudia Hill's online calendar reveals that the enrolled agent and president of TaxMam Inc. visits several cities every month for speaking engagements, evidence that she is frequently sought out as a source of tax information and advice.

In addition to being president of the Cupertino, Calif.-based tax return preparation firm, Hill is the editor of the *CCH Journal of Tax Practice and Procedure*. In 2010 she began coordinating the IRS Watch blog on Forbes.com, whose contributors she described in a post as a "dream-team of tax controversy litigators and taxpayer advocates" who "emphasize challenges taxpayers face in complying with complex tax rules, taxpayer advocacy and protection of taxpayer rights."

In her speeches, blog posts, and Twitter updates, Hill recounts tax lore and dispenses advice to individuals and practitioners. A favorite topic is the alternative minimum tax. In a blog post commemorating the tax's 25th anniversary, Hill summarized a lesson that lawmakers would do well to keep in mind as they



Claudia Hill

consider comprehensive tax reform: "Constant tinkering with one aspect of our tax system without a thorough analysis of overall interactions generates unexpected and unintended consequences. Simplification is complex."

A former chair of the National Association of Enrolled Agents (NAEA) Government Relations Committee, Hill has testified before Congress on the AMT, tax law simplification, IRS administration, and tax practice. She is now a special adviser to the NAEA Government Relations Committee.

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## Jay Starkman

In a year marked by failed congressional efforts to simplify and rationalize the tax system, dispirited tax wonks needed a diversion. They found it in Jay Starkman's entertaining book, *The Sex of a Hippopotamus: A Unique History of Taxes and Accounting*. The meticulously researched book is a collection of unusual tax-related facts and stories gleaned from tax journals, court cases, newspaper clippings, and even the *Congressional Record*. It's full of good cocktail-party conversation starters, including that the IRS was once a thoroughly corrupt agency, that only one U.S. president has ever visited the IRS building, and that an average of 25 employees of Japan's tax administration die from overwork each year.

A widely recognized expert on tax simplification who founded his own CPA practice in Atlanta in 1979, Starkman has volunteered countless hours serving in leadership roles on committees and task forces of the American Institute of Certified Public Accountants. He was honored November 9 with the AICPA's Arthur J. Dixon Memorial Award, the highest award given by the accounting profession in the area of taxation.



Jay Starkman

In 2008 Starkman was named one of the "Top 50 IRS Representation Practitioners" by *CPA Magazine*. His successful efforts to help simplify Georgia's income tax laws were recognized in 1987 with a special resolution by the Georgia House of Representatives. He is frequently quoted on tax and personal finance matters in national publications such as *The Wall Street Journal* and by Bloomberg News. His "Only Taxes" website contains an eclectic mix of informative articles and tax humor and provides the only free interest calculator for IRS tax assessments.

Starkman spent much of his early career working for three of the then Big Eight accounting firms and serving as the comptroller of a commercial finance company. His practice focuses on tax planning and compliance for wealthy individuals and small to medium-size businesses. The firm also specializes in multistate, independent contractor, and nonprofit taxation. He has an MBA in taxation and a BS in accounting from New York University.

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## Laurie M. Hatten-Boyd

Laurie M. Hatten-Boyd, a principal in KPMG LLP's information reporting practice, is a leading player in the development of the FATCA reporting regime. Along with her team at KPMG, she devoted her time in 2011 to a global FATCA education initiative that involved meeting with affected organizations, industry groups, and government agencies to discuss the law and its implications.

Hatten-Boyd is well versed in both the guidance process and in information reporting. Before joining KPMG, she was an attorney-adviser at the IRS Office of Associate Chief Counsel (International), where she focused exclusively on the section 1441 withholding regime, co-drafting amendments to the related regulations and qualified intermediary agreement. "Having been on the drafting side with respect to the current regime, I am well aware of the impact industry can have in the development of workable rules," Hatten-Boyd said.

Hatten-Boyd said the dialogue between industry and the government regarding FATCA is particularly significant because the rules contain a large stick and no carrot. The education initiative she and her colleagues have undertaken is still a work in progress, but there are signs that it is starting to bear fruit. Officials from the IRS and Treasury have indicated their willingness to listen to stakeholders and implement changes to make the rules more workable. An example is Notice 2011-53, which the government released last summer to provide transition relief. "We aren't there yet, but I am confident this will work. Perhaps we won't see the necessary concessions in the proposed regulations, but I think we will in the end," she said.

Hatten-Boyd received an LLM in taxation from Georgetown Law and a JD from Gonzaga University.



Laurie M. Hatten-Boyd

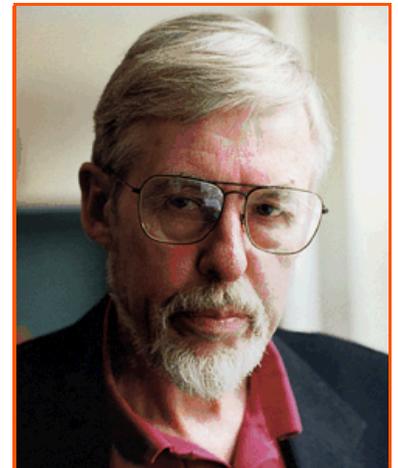
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### **In Memoriam: James S. Eustice**

The tax community lost an important member last year with the April 26 death of James S. Eustice, known throughout the tax community as the coauthor of *Federal Income Taxation of Corporations and Shareholders*. He was 78.

Throughout his career, Eustice devoted himself to learning and teaching tax law. His knowledge spanned the code, reaching far beyond corporate tax. He taught nearly every course offered by the NYU graduate tax program. "His synthesis of the entire tax system was awe-inspiring," said Katherine Pratt, a former student and colleague of Eustice who is now a professor at Loyola Law School Los Angeles. Gersham Goldstein, a partner at Stoel Rives LLP who worked with Eustice on the second edition of the treatise, called him "a true giant of the tax law."

In 1961 Eustice met Boris Bittker at an NYU teaching seminar. Bittker later asked him to be the coauthor of his corporate tax treatise, and he set out to make the treatise, already in its first edition, more useful for practitioners, Goldstein said.



James S. Eustice

The treatise, which eventually came to be known as the B&E, became the gold standard for tax students and practitioners. "If the answer isn't in the treatise, then there is no answer," said Deborah Schenk, a professor at NYU. "The hallmark of the book is its clarity," said Stephen Gardner, Eustice's former student and colleague, now a partner at Cooley LLP.

Eustice was in private practice for two years after graduating from NYU before returning to teach at his alma mater, once saying, "I've always viewed my main mission as getting people up to snuff on what the law is, rather than what it ought to be." Even after retiring from teaching full time, he continued to update the treatise. He later returned to teach with former student Lesse Castleberry, a partner at Cooley.

Eustice was generally shy but had a sense of humor he shared with those who knew him. His papers, which will be archived at the NYU Law library, contain a collection of tax cartoons. Pratt remembers Eustice delivering such tongue-in-cheek observations as "In tax, form matters . . . except when it doesn't."

"He was not pretentious in any way," said John Steines, another NYU professor. Eustice preferred to dress casually and often wore tracksuits to work, in keeping with his avid interest in running. "He did long-distance running before it was common or accepted," said George Zeitlin, a partner at Chadbourne & Parke LLP.

Although a lifelong professor, Eustice joined Kronish Lieb Weiner & Hellman LLP (which later merged with Cooley) as counsel in 1970, where he and Gardner built the tax department. Eustice maintained his affiliation with the firm until his death.

Eustice received an LLM in taxation from NYU and his LLB and bachelor's degrees from the University of Illinois at Urbana-Champaign.

Volume 65 of NYU's *Tax Law Review* will contain tributes to Eustice.

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