

JANUARY 7, 2013

Person of the Year: Tax Policy Center

Summary by **taxanalysts**™

The Urban-Brookings Tax Policy Center is the 2012 Tax Notes Person of the Year, for the indelible mark it made on the presidential campaign; nine other contenders for the title round out the feature.

Full Text Published by **taxanalysts**™

If you were told a year ago that a tax policy report produced by a nonpartisan organization would play a central role in the presidential campaign and be a source of heated contention in the debates, would you have believed it? That's precisely what happened after the Urban-Brookings Tax Policy Center (TPC) released a report examining the tax policy proposals of Republican presidential nominee Mitt Romney.

The TPC released its report during a campaign in which tax policy was front and center, thanks in large part to the fiscal cliff. The campaign season was marked by the media's emphasis on fact-checking, and perhaps no purported fact was so influential or controversial as the report's claim that Romney could not realistically achieve his tax policy goals without adding to the deficit or raising taxes on middle-income earners.

William Gale, a founder of the TPC, C. Eugene Steuerle of the Urban Institute, and Leonard Burman, a professor at the Maxwell School of Syracuse University, wrote the paper, which was released in August 2012. They concluded that a revenue-neutral tax reform plan that hewed to Romney's stated objectives would shift about \$86 billion in tax burdens from upper- to middle-income earners.

The TPC analyzed Romney's plan according to assumptions based on statements made by the nominee or his advisers. Those assumptions were that the plan would lower all marginal tax rates by 20 percent, preserve incentives for savings and investment such as preferential rates for capital gains and dividends, eliminate the estate tax, eliminate the alternative minimum tax, and be revenue neutral. The TPC also assumed that the elimination of deductions and expenditures to make up lost revenue would begin at the top -- that is, expenditures would be cut for the highest-income earners first.

The TPC found that under a tax reform plan based on those assumptions, after-tax income for those making more than \$1 million annually would increase by 4.1 percent, but it would decrease by 0.8 percent for those making between \$200,000 and \$500,000. "It is not possible to design a revenue-neutral plan that does not reduce average tax burdens and the share of taxes paid by high-income taxpayers" while remaining faithful to Romney's objectives, the TPC said.

President Obama's campaign seized on the report, and within hours of its release, he alluded to it in a campaign speech, telling a crowd in Mansfield, Ohio, that Romney was "asking you to pay more so that people like him can get a big tax cut."

Romney and his advisers spent the rest of the campaign denying the report's conclusions and attacking the TPC for an alleged bias. A Romney adviser said the day the report was released that Obama continued to "tout liberal studies calling for more tax hikes and more government spending." Romney said of the TPC several days later in an interview with *Fortune* magazine that "they made garbage assumptions and they reached a garbage conclusion."

The report could not be dismissed so easily, however. In his speech at the Democratic National Convention, former

President Clinton cited TPC figures showing that under Romney's tax plan, taxes for those making \$3 million a year would decrease by \$250,000, while taxes for middle-income earners would increase by \$2,000.

The accusation that Romney's tax plan could not lower tax rates for middle-income earners while remaining revenue neutral led to some of the most memorable exchanges during the presidential debates. During the first debates in Denver on October 3, Obama cited the TPC study, quoting independent studies that he said showed that "the only way to meet Governor Romney's pledge of not . . . adding to the deficit is by burdening middle-class families."

Romney denied the charge: "I will not, under any circumstances, raise taxes on middle-income families. I will lower taxes on middle-income families."

The TPC's founders saw the controversy over the report as confirmation that a nonpartisan source of quality data and analyses of tax policy was needed. In an interview with Tax Analysts, Burman said the attention given to the report was a testament to how much the TPC has accomplished since opening in 2002.

Another topic came to play a large role in the campaign and highlighted the extent of the TPC's influence: the claim that 47 percent of Americans pay no federal income taxes. That figure came from a 2009 TPC analysis (a 2011 TPC analysis placed the number at 46 percent). Although conservatives accused the TPC of being a liberal organization, they had no trouble using it as a rallying cry.

The claim backfired for Romney. In now infamous remarks made and covertly recorded at a fundraiser in Boca Raton, Fla., Romney said 47 percent of the people would vote for Obama no matter what, essentially because they are government-dependent and believe they are victims. Romney tried to downplay the remarks, saying they were inelegantly stated, but the fallout dogged him for the rest of 2012.

It is difficult to say how much the TPC affected the outcome of the presidential election, but it had an indisputable influence, shaping the terms of the tax policy debate.

Mitt Romney

Romney's ideas dominated the tax policy discussion during the election because his opponent had little new to offer. But despite Romney's injection of new proposals into the campaign discussion, his tax returns won the honor of being among the tax highlights of 2012. The Obama campaign hammered home its message about protecting middle-income earners while continually denouncing Romney's resistance to releasing his pre-2010 tax returns.

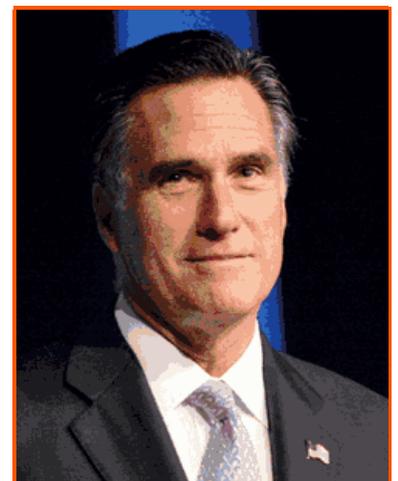
Romney's tax returns for 2010 and 2011 showed \$21 million and \$13 million of income, respectively. Because most of Romney's income was from investments, his returns threw the difference between marginal rates on earned income and rates on capital gains into sharp relief. Romney raised questions of double taxation when questioned about the fairness of people who make \$50,000 a year paying a higher effective tax rate than he does. "One of the reasons the capital gains rate is lower is because capital has already been taxed once, at the corporate level," he said in an interview on *60 Minutes*.

The Obama campaign was more interested in discussing why Romney would not release more of his returns.

While Romney stood by his decision not to release additional returns, instead offering a letter from PricewaterhouseCoopers LLP  outlining its review of his returns for tax years 1990 to 2009, the hundreds of pages of returns he did release provided fodder for critics. His returns showed that he gave large sums to charity in



Tax Policy Center Logo



Willard Mitt Romney

2011 -- at far higher rates than either Obama or Vice President Joe Biden -- and that he decided to forgo some of the charitable deductions he could have taken. But Romney's assets in foreign tax havens and blind trusts became a source of speculation (although claims of impropriety appear to have been baseless).

Chief Justice John G. Roberts Jr.

Chief Justice John G. Roberts Jr. will go down in history as the justice who saved Obamacare. His rescue mission based the constitutionality of the shared responsibility payment of the Affordable Care Act (ACA) on the taxing power, earning him a spot as a runner-up on the *Tax Notes* 2012 Person of the Year list. He told the nation that Congress enacted a constitutionally protected tax, even though it had refused to use those words.

Before Roberts could reach that conclusion, he had to dispatch the problem of the Anti-Injunction Act (AIA). He declined to defer any decision on the constitutionality of the shared responsibility payment until after the first payments are required in 2014, on the grounds that those were not taxes for purposes of the AIA because Congress didn't label them that way. (For political reasons, Congress was careful not to call the penalty for failing to obtain health insurance a tax.) Roberts concluded that the shared responsibility payment provision is a tax for constitutional purposes and is permissible under the taxing power. (*National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012) [Q](#).)



John G. Roberts,

Congress's power to tax is broad, and Roberts relied on that breadth to support the ACA's penalty when the commerce clause couldn't support the mandate to buy insurance. The opinion established that Congress can levy a tax on inactivity. Consequently, Roberts's opinion eliminated, at least for purposes of the ACA penalty provision, the public accountability that lawmakers are supposed to face when enacting new taxes.

Roberts concluded that the shared responsibility payment is not a direct tax subject to apportionment under the Constitution, but his opinion did little to clarify what constitutes a direct tax -- a constitutional debate that even the Founders could not resolve.

NFIB is not the finest treatment of the taxing power or the direct tax clause that Roberts could have delivered, but it stands out as the most important tax decision of the year.

Manal Corwin

Manal Corwin, Treasury deputy assistant secretary for international tax affairs, has surely racked up frequent flier miles this year promoting the Foreign Account Tax Compliance Act and its related intergovernmental agreements (IGAs).

In February Treasury announced that it would consider an approach to implementing FATCA that included IGAs. In the following months, it released two model agreements that establish a framework for having foreign financial institutions report U.S. account information to their tax authorities for information exchange with the United States (Model I), or report directly to the IRS under an existing tax treaty or tax information exchange agreement (Model II).

As of January 7, Corwin, as U.S. signatory, has succeeded in concluding IGAs with six countries; discussions are underway with more than 50 others. (Related coverage [Q](#).)



Before moving into her current position in the spring of 2010, Corwin served in Treasury's Office of International Tax Counsel. Corwin was a principal in the Washington National Tax office of KPMG LLP before joining the government.

Manal Corwin (Tax Analysts/Derek Squires)

Corwin received her JD from the Boston University School of Law, where she was editor in chief of the law review, and she received her undergraduate degree from Harvard University.

Tamara Ashford

Unlike some parts of the U.S. code, Title 26 affects just about everyone. When tax questions are appealed, decisions made by the appellate and Supreme courts can create shockwaves. And at the center of those waves is the Justice Department's top appellate tax strategist, Tamara Ashford.

As deputy assistant attorney general (appellate and review) in the Tax Division, Ashford and her office handle almost all civil and criminal tax appeals.

When the government seeks an appeal, the Tax Division looks at the likelihood of prevailing, which it must balance with its obligation to ensure that the law is applied equally. It must then get approval to appeal the case from the solicitor general's office.

As a result, Ashford, who joined the Justice Department in August 2011 from Dewey & LeBoeuf LLP, must work closely with both the IRS and the solicitor general's office to determine the government's unified strategy. Although 2012 started off on a disappointing note (*Home Concrete* [📄](#)), things improved (*Hall* [📄](#), *NFIB*, and *Historic Boardwalk Hall* [📄](#)).



Tamara W. Ashford

Ashford has been praised for more than her success in the courts. Along with John DiCicco, the division's principal deputy assistant attorney general, Ashford helped fill the prolonged vacancy in the top position in the Tax Division. In March 2012 the Senate confirmed Kathryn Keneally as assistant attorney general.

The position is the latest in a string of notable roles for Ashford, who began her career practicing law as an attorney-adviser in the Tax Division. After three years with Miller & Chevalier, Ashford returned to the government as an assistant to the IRS commissioner and senior adviser to the commissioner of the IRS Large and Midsize Business Division.

Ashford received her LLM in taxation from the University of Miami School of Law, her JD from Vanderbilt University Law School, and her BA from Duke University.

Erskine Bowles

Almost two years after he was named co-chair of the National Commission on Fiscal Responsibility and Reform, Erskine Bowles continued to have a voice in the fiscal cliff debate. While no longer a policymaker, Bowles found himself appearing on news shows with Alan Simpson, his fellow former co-chair. As the country stared over the fiscal cliff, the two called on lawmakers to work together to draft a balanced deficit reduction plan. (Related coverage [📄](#).)

Bowles soon emerged as a potential candidate for Treasury secretary, but he made it clear he wasn't interested. Appearing on CNN's *Fareed Zakaria GPS* in May, Bowles, when asked if he would accept a nomination to head Treasury, said, "No, I'm living in North Carolina, and that's where I want to live."

Bowles's name even appeared in the fiscal cliff proposal offered by House Republicans. The plan included \$1.4 trillion in spending cuts and \$800 billion in revenue from pro-growth tax reform. House Republicans labeled it the "Bowles plan," but Bowles quickly dismissed speculation that the 2011 Simpson-Bowles deficit reduction plan was similar to the GOP's proposal.

"The letter Speaker Boehner sent to the president does not represent the Simpson-Bowles plan, nor is it the Bowles plan," Bowles said in December. "The Joint Select Committee failed to reach a deal, and circumstances have changed since then."

Scott D. Michel

Scott D. Michel, president of Caplin & Drysdale, in 2012 played an oversized role in the international tax arena. He and his firm handled a significant number of cases involving taxpayers participating in the IRS's offshore voluntary disclosure programs, and he frequently spoke on tax practice topics, including FATCA and Circular 230.

Michel represented taxpayers facing sensitive civil tax examinations, criminal tax fraud investigations, international tax compliance questions (for both U.S. citizens and nonresidents with foreign activity), and internal corporate tax investigations.



Scott D. Michel

In 2012 Michel helped lead an effort to launch a new conference devoted to international tax enforcement topics. Sponsored by the American Bar Association Section of Taxation, the International Bar Association Taxes Committee, and the Tax Executives Institute, the first International Tax Enforcement conference convened in November and focused on helping tax professionals gain a practical understanding of international tax enforcement rules and procedures.

Michel is an adjunct professor at the University of Miami School of Law Graduate Program in Taxation, a fellow of the American College of Tax Counsel, and a council director for the ABA tax section. He received his JD from the University of Virginia and his BS from Northwestern University.

Dean A. Zerbe

Dean A. Zerbe of Zerbe, Fingeret, Frank & Jadav PC gained significant recognition in 2012 for his involvement in helping spur the IRS to action on whistleblower award payments. As a former Senate Finance Committee aide who worked on the 2006 revisions to the whistleblower law, Zerbe has helped shape the administrative framework of section 7623 through client representation and comment letters.

Zerbe was part of the legal team that helped former UBS banker Bradley Birkenfeld obtain a \$104 million award payment from the IRS for information the federal government used to pursue a deferred prosecution agreement against the foreign bank, as well as launch investigations into thousands of unreported offshore accounts held by U.S. taxpayers.



Erskine Bowles

Following the award, Zerbe said, "The IRS today sent 104 million messages to whistleblowers around the world -- that there is now a safe and secure way to report tax fraud and that the IRS is now paying awards. The IRS also sent 104 million messages to banks around the world -- stop enabling tax cheats or you will get caught."

As counsel to the National Whistleblowers Center, Zerbe has frequently commented on the government's development of the revised IRS whistleblower program. He has pressed the IRS to develop guidance on whistleblower anonymity and to define proceeds for award payments and timelines for acting on whistleblower information. Further, Zerbe, on behalf of the center, filed an amicus brief with the Tax Court regarding the interaction of the Administrative Procedure Act with IRS determinations in whistleblower award cases.

Bryan T. Camp

Bryan T. Camp of Texas Tech University and his colleagues drew attention to the tax administration implications that would result from the lawsuit against the individual health insurance mandate in section 5000A.

"I've always been interested in the [AIA] and tax administration," said Camp. "It's hard to think of a statute that is more central to the administration of tax law."

When the AIA took center stage at the Supreme Court, Camp, Jordan M. Barry of the University of San Diego, Patricia A. Cain of Santa Clara University, and T. Keith Fogg of Villanova University filed an amicus brief urging the court to apply the AIA to bar the suit against the individual mandate. The brief argued that the statutory language of section 5000A, as well as the elimination of enforcement mechanisms for noncompliance, showed that Congress intended the AIA to apply to the mandate.

The plaintiffs and the government both argued that the AIA did not apply, and the Court appointed Robert A. Long of Covington & Burling LLP to argue that it did. Ultimately, the Court held that the AIA did not apply because Congress didn't refer to the penalty as a tax in the statute.

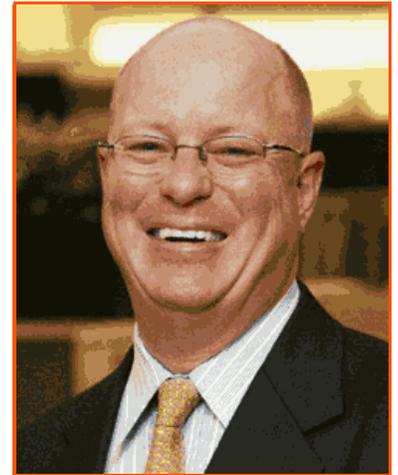
"It remains to be seen how much damage the Supreme Court has done to the Anti-Injunction Act," said Camp. He published an article in *Tax Notes* critiquing the Court's opinion, noting that its literalist approach opens the door to prepayment challenges of other provisions. (For the article, see *Tax Notes*, Sept. 10, 2012, p. 1335 [Q](#).)

Camp's scholarship has focused on tax administration and procedure. He is working on a paper arguing that the AIA may not have the same importance that it did when it was first enacted in 1867, because most income taxes are paid through withholding rather than annually with the taxpayer's return.

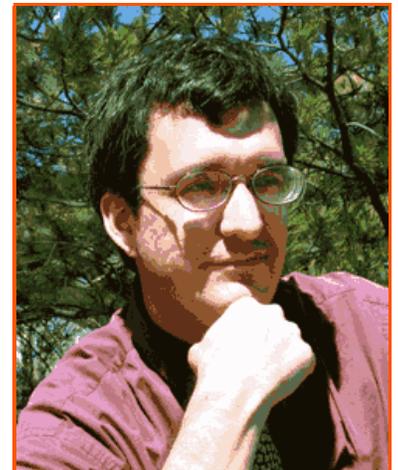
Elizabeth A. Copeland

Elizabeth A. Copeland has been a major force in ensuring that financially strapped Texans no longer have to face Tax Court calendar calls without the guidance of a lawyer. As chair of the State Bar of Texas Section of Taxation's Pro Bono Committee in 2008, Copeland helped form the nation's first statewide, bar-sponsored pro bono program in which tax attorneys volunteer to advise pro se taxpayers on the law and Tax Court procedures.

In 2012 that program assisted more than 70 taxpayers during 30 separate calendar calls, and since its inception it



Dean A. Zerbe (Dean Zerbe)



Bryan T. Camp

has been used as a model by numerous state and local bar associations. Copeland, a partner at Strasburger Price Oppenheimer Blend in San Antonio, said the program is "a huge benefit to our community, particularly where a case can be settled in the taxpayer's favor. The program is helpful to the Tax Court as well because the taxpayers coming before the court are better prepared for trial."

Copeland is an expert in civil tax controversy, covering both domestic and international issues. In 2012 she wrote an article with Camp on defense strategies for innocent spouse cases and frequently spoke on both FATCA and innocent spouse issues.

In 2009 Copeland received the prestigious American Bar Association Section of Taxation Janet R. Spragens Pro Bono Award. She is immediate past chair of that section's Committee on Appointments to the Tax Court, has served on the Pro Bono Committee, and is chair-elect of the State Bar of Texas Section of Taxation.



Elizabeth A. Copeland

A CPA previously with Ernst & Young LLP in Dallas, Copeland earned her JD from the University of Texas School of Law and served as attorney-adviser to Tax Court Judge Mary Ann Cohen.

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