View From the Top: Former IRS Commissioners Remember the Job

By William Hoffman

This year *Tax Notes* is celebrating the 40th anniversary of its inaugural issue, published on September 18, 1972.

William Hoffman interviewed more than half a dozen former IRS commissioners for their views on how the agency has progressed on technology, service and enforcement, the 1998 reforms, and other critical issues during and since their service at the top of the nation's tax collecting agency.

IRS commissioner may be the job most loved by those who hold it and most hated by those on the outside.

''It was a thrilling, rewarding, and humbling chapter of my life,'' said former Commissioner Fred Goldberg Jr. (1989-1992), now a partner at Skadden, Arps, Slate, Meagher & Flom LLP in Washington. ''I wouldn't give it up for the world.''

Others have expressed feelings of excitement and satisfaction about being the public face of a government agency consistently rated among the most reviled. Despite vehement, sometimes vicious public criticism; a rotating cast of tardy, fickle, and partisan congressional taxwriters; a growing workload that seems to have less and less to do with taxes; and management challenges ranging from the annoyingly persistent to the seemingly intractable, many of the IRS's leaders echoed the sentiment of two-time acting Commissioner (1993 and 1997) Michael P. Dolan: ''I'm sort of an unreformed advocate of the IRS. I feel it's an organization that's got a critical mission and has been the beneficiary of some really decent, smart people who have invested their careers in trying to make it a good place.''

Mortimer Caplin, founder of and senior member at Caplin & Drysdale, recalls with pride the day in 1961 that John F. Kennedy became the first president in U.S. history to visit the IRS.

Settling into his new post as IRS commissioner, Caplin felt hopeful when he called top White House aide Kenneth O'Donnell and asked for a presidential visit. ''[O'Donnell] replied, '''Are you kidding? There's no votes in the IRS!''' Caplin said. But on May 1 the IRS got its first — and to date, only — presidential visit. ''I had wonderful support from the White House,'' said Caplin, who served as IRS commissioner from 1961 to 1964. ''They were pretty exciting days.''

''It was really fun,'' said Kevin M. Brown, acting commissioner in mid-2007 and now U.S. leader of PricewaterhouseCoopers LLP's tax controversy and dispute resolution team in Washington. ''The sheer variety of issues that are presented to you on a daily basis, and the number of decisions you make that have great importance — it was extraordinary.''

In conversations with Tax Analysts, eight former IRS commissioners shared their opinions about ongoing management issues at the Service; what experiences and lessons they brought to and took from the agency; and their proudest moments and occasional regrets about their tenures atop the tax-collecting arm of the federal government. What emerged is a portrait of an agency that's almost constantly reinventing itself and struggling to find the balance between service and enforcement, but is staffed by individuals determined to ''do more with less'' — and sometimes worried where that business school mantra might lead their beloved IRS.

Making the Technology Work

Sheldon S. Cohen, IRS commissioner from 1965 to 1969, counts among his proudest accomplishments that the agency ''installed the computer system without a major disaster.''

In the era of moon missions and room-size computers, Cohen said, ''the people who ran our computer were basically people who had been recruited out of the Defense Department; they were the only ones who had computers back then.''

''The technicians wanted me to go cold turkey the first year [and] only keep the records on the computer,'' said Cohen, now with Farr, Miller & Washington LLC. ''But I refused, and we did it both ways the first year. I wasn't going to be the first guy that faltered on collections.''

> ***'It was extraordinary,' Brown said.***

Caplin laid the groundwork for the IRS's first modern computer system, and the National Computer Center in Martinsburg, W.Va., was erected in 1961. Computerized tax processing ''is an unbelievable task, really, in terms of the information returns that are filed and . . . giving people throughout the country and in the Service access to all this different information,'' Caplin said, adding, ''It's very trying.''

Today's business systems modernization program, including this year's successful rollout of the Customer Account Data Engine 2, has allowed the IRS to process tax returns daily instead of weekly and has helped move almost 80 percent of returns to speedier, more efficient electronic filing formats. (For prior coverage, see *Tax Notes*, Apr. 16, 2012, p. 248, *Doc 2012-7768*, or *2012 TNT 73-9*.)

Still, past commissioners lamented both personal and institutional hurdles that may have delayed the benefits of automation.

"I wish I had found a fundamentally different way of getting input on technology issues," said Goldberg. "I think it's all worked out; I think that technology is now in good shape, but I think it probably could have been done less expensively and more quickly if I had been a more experienced guy and had found a way to surround myself with folks who knew better what they were doing."

Charles O. Rossotti, IRS commissioner from 1997 to 2002, said, "If that had been a private business with the same circumstances, you'd have been at least five years ahead of where we were — and that's almost entirely due to resources."

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Congress's apparent resistance to funding major projects within the government's least popular agency played a large part. "The old stereotype that 'We can't give [the IRS] any resources because they'll just waste it' — that story got a little old after awhile, because it just wasn't true anymore. And it hasn't been true for 10 years," said Rossotti, now a senior adviser at the Carlyle Group in Washington.

Joseph J. Thorndike, director of Tax Analysts' Tax History Project and a *Tax Notes* contributing editor, said the growing volume of returns and increasing complexity of the code almost require the IRS to have ongoing technological innovation. "It doesn't strike me that [technology] has gone too far," Thorndike said. "It depends on what we want. Do we want more people filling out tax returns by hand and more agents checking them over by hand? I don't think so. We probably want better information matching, better information reporting, that sort of thing. And all that's technological."

Turning Point: 1998

While many of the IRS's operational and administrative challenges are long running, the eight former commissioners agreed that there have been important turning points, the most recent of which was the IRS Restructuring and Reform Act of 1998 (RRA 1998).

Pressure for reform built throughout the 1980s, when some lawmakers complained that the IRS had wasted billions of dollars on failed technology upgrades, and into the 1990s, when Congress held hearings highlighting horror stories about IRS enforcement practices against allegedly delinquent taxpayers. (For prior coverage, see *Doc 97-31984* or *97 TNT 227-4*.)

Benson S. Goldstein, senior technical manager at the American Institute of Certified Public Accountants, said what "seemed to come out of the '98 act was a feeling that the agency needed to go in a different direction in terms of how they were managed, and to create certain efficiencies in their managerial structure — whether that's setting up an IRS oversight board or giving the commissioner a five-year term so he has more time to . . . carry out the needs of an important agency without being too constricted by the ebbs and flows" of the normal political process.

IRS reforms that resulted from RRA 1998 included replacing regional geographic divisions with units aligned according to categories of taxpayers — that is, tax-exempt and government entities, small businesses and the self-employed, and so on. RRA 1998 established a national taxpayer advocate, appointed by the Treasury secretary and reporting to the IRS commissioner. The law also created a limited privilege for communications between taxpayers and federally authorized tax practitioners in noncriminal cases.

Perhaps pivotal, "there has been a move away from tax lawyers as commissioners," Thorndike said. "I've heard people mention half-facetiously that being a tax lawyer was a disqualification." The 1997 nomination of Rossotti — a management and technology consultant with no prior tax experience — affirmed the government's desire to prioritize private sector managerial experience over tax expertise, Thorndike said.

Many hailed Rossotti's appointment and five-year term for demonstrating that the IRS under RRA 1998 could pursue longer-term goals despite the government's partisan divides. Timothy J. McCormally, executive director at the Tax Executives Institute, said, "The mind-set of what has happened since the RRA '98 act is important because the system we have in place now, while far from perfect and the subject of many hiccups, has some aspects to it that make the wild swings of the pendulum less likely" from service to enforcement and in the start-and-stop efforts at technology modernization.

From Enforcement to Service and Back Again

The debate over and subsequent passage of RRA 1998 created a shift in the continuing struggle between emphasizing taxpayer service or tax code enforcement.

Witnesses at congressional hearings in the late 1990s claimed IRS employees were overly aggressive — even abusive — toward allegedly delinquent taxpayers, which "may have led to a period of years after RRA 98 when customer service was very strongly emphasized," Goldstein said.

Others agreed that immediately after passage of RRA 1998, the IRS swung toward the service end of the service-enforcement pendulum. ''I think it's been a very erratic'' process, said Caplin. ''The whole enforcement program went to pieces, and very few returns were being examined,'' but the pendulum swung back toward enforcement under Mark W. Everson, IRS commissioner from 2003 to 2007, he said.

Caplin said he thinks the IRS's constant shifting between service and enforcement has 'been very erratic.'

McCormally said efforts of IRS commissioners to balance service and enforcement are ''a very squishy topic.'' On the service side, ''if you try to take the uncertainty out of the system and therefore enable people to comply [through new rules and regulations], there is no offsetting monetary benefit that you can point to,'' he said. On the enforcement side, ''it's much more expensive to focus on enforcement, if by enforcement you mean going to court and litigating and trying to smack down the bad guys,'' he said.

Goldberg said, ''Part of our job, those of us who have been there [as former commissioners], is to get out of the way and let the new man or woman figure out where he or she thinks the institution should go, given the climate they're functioning in.''

Past commissioners agreed that current IRS Commissioner Douglas Shulman has tried to strike the right balance. ''It's an inevitable tension, and not one that's likely to ever be resolved,'' said Thorndike. ''The process of collecting money in the form of taxes from the population is inherently contentious. And so there's always going be an element of unhappiness that goes with that.''

Generating Certainty for Businesses

Despite the complaints from lawmakers and witnesses leading up to RRA 1998, some inside the IRS thought complaints simply came with the territory and that as long as the Service was collecting revenue, it was doing its job, Rossotti said.

But Rossotti said that when he arrived in 1997, the IRS had not even tried to measure its compliance effectiveness since the 1980s. He recalled that ''from a management standpoint, [the IRS] was an organization that had evolved over 50 years, but it was set up 50 years ago when there were few offices and no modern technology. They had since added call centers, service centers, and technology, but what you ended up with was such a complicated mess of an organization that nobody could have managed it.''

The agency wasn't tackling festering problems such as corporate tax shelters or offshore accounts and wasn't adjusting itself to the changing financial structure of the nation, as more income came from flow-through corporations like partnerships, he said. Corporate tax auditing had fallen as far as 10 years behind, he added. ''This isn't auditing; this is archaeology,'' Rossotti said. ''The most fundamental rule of collections is the older it gets, the less you're going to collect.''

Dolan, now with KPMG LLP's Washington National Tax practice, said, ''You're never going to audit [or information report] your way to compliance, so you have to create various techniques that . . . allow people to handle in a sane way the disputes that come as a result of the IRS making an inquiry into something.''

Restructuring IRS service and enforcement units along business and income lines, rather than geographical location, advanced that goal. ''The things that work for the largest *Fortune* 500 companies are not the techniques that apply to small business and individuals,'' Dolan said. ''And while we never thought they did in my era, the fact that we had one examination division, one collection division, one functional component that dealt with the entry-level wage earner all the way up to the *Fortune* 100s didn't really allow the sort of meaningful differentiation that goes on in today's IRS.''

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Brown said that he and Linda E. Stiff, who succeeded him as acting commissioner, ''both think many of the changes made in the Large Business & International Division made a great deal of sense.'' The division, reorganized in 2010, removed geographical barriers so that IRS experts could pursue international issues without hindrance, consolidated oversight of international information reporting, implemented the Foreign Account Tax Compliance Act, and strengthened and centralized transfer pricing efforts. The realigned LB&I ''will let us focus on high-risk international compliance issues and handle these cases with greater consistency and efficiency as we continue to increase our work in this area,'' Shulman said in 2010.

Part of Everson's focus on enforcement included fighting corporate tax shelters. ''We worked hard to confront abusive shelters, and an erosion of standards on the part of some . . . private practitioners, who really were seeking to do these shelters, trying to eliminate income tax for the wealthy when they were selling businesses, things like that, things like son-of-BOSS,'' he said.

Corporate taxpayers seeking certainty, if not relief, from the IRS got a more receptive ear from commissioners in the new millennium, said Brown and Stiff, both of whom were acting commissioners after Everson. The industry issue resolution program, created in 2000, links business taxpayers and IRS officials to reduce time and resources spent trying to resolve complicated tax questions, said Stiff, now a managing director in the tax controversy and dispute resolution group at PwC. The compliance assurance process helps taxpayers resolve controversies before returns are filed, thus potentially focusing and shortening post-filing IRS examinations.

Today's 'conscious and aggressive outreach to the constituencies is something I wish we'd done more of,' Dolan said.

''One of the things that current leadership has done better than we did in my era was the quality and volume of outreach to the various taxpayer constituencies,'' Dolan said. IRS leadership is better informed and has more insight into the consequences of its tax administration and enforcement decisions, he said, adding, ''That sort of conscious and aggressive outreach to the constituencies is something I wish we'd done more of.''

Tax Reform Dos and Don'ts

The former commissioners have strong opinions on many tax administration and policy issues, and their experiences at the nation's tax agency give weight to their views.

For instance, Cohen said he thinks tax deductions and credits are a bigger problem for tax reform efforts than multiple rates. ''Anything you can design as an expenditure program, I can design as a tax program and pass constitutional muster,'' he said. The proliferation of tax expenditures, loopholes, and patches could be scrapped in favor of direct subsidies to producers like the ones the government gave to defense contractors during World War II, Cohen said. ''We can't use the IRS as an alternate way of appropriating money,'' he said. ''The IRS doesn't have the expertise, and that's what makes the complications both on the taxpayers' side and on the administrative side.''

Rossotti said a critical element is missing from tax reform efforts: political leadership. Rossotti suggested drastic simplification and removing virtually all the goodies that complicate the code so that rates can be lowered to a predesignated revenue baseline. ''But you have to do it comprehensively,'' he said. ''You can't do it piecemeal [or] it doesn't work. That takes leadership. Which has been lacking. Completely.''

Everson agreed on the need for a comprehensive, simplified approach, though he said, ''It's also entirely appropriate to make choices from a public policy point of view about incentives in certain areas.'' Those could include research and development incentives, and inducements for small businesses and manufacturing, he said. ''So while I'm for simplification, that doesn't mean you walk away from all incentives,'' Everson said. ''That does require a difficult set of conversations about what stays and what goes.''

The former commissioners said that at its roots, the job is not so much about customer satisfaction surveys or tax collections as it is about human relationships, both inside the agency and out.

''I believe the tax system is the most direct and all-encompassing relationship between our government and the American people, and in a democratic system that relationship has to work right,'' Goldberg said.

''To me, policies that define success in terms of marginal revenue collected through audits and through collection are completely wrongheaded,'' Goldberg said. ''You have to do that, but the goal is that you put the system in a place where the American people can get it right most of the time.'' As important as battling noncompliance is, ''if that defines the sum and substance of your perspective on tax administration, my personal view is that you're going to be a terrible commissioner,'' he said.

Behind the Curtain

All eight former IRS commissioners expressed their affection for the Service's workers.

''I don't think [taxpayers] understand the deep commitment that individuals at the IRS have toward, if you will, the ethics of their institution,'' Goldberg said. Cardinal sins at the IRS include corruption and failure to respect taxpayer privacy, he said. ''I think the IRS is a crown jewel in that regard,'' he added. ''The image of an insensate, immovable bureaucracy is just flat wrong.''

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Heading the IRS ''was like capturing lightning in a bottle,'' said Stiff, who was acting commissioner through the burgeoning financial crisis in late 2007 and early 2008. ''Everybody was firing on all cylinders, everybody was giving you their best, everybody was all in,'' said Stiff. ''You can work a whole career and never have an experience like that.''

Over the past decade, the IRS has been called on to do more than ever. Yet it has 20,000 fewer employees today than it did in 1995, even as the number of returns processed and the complexity of the tax code have grown dramatically, according to Colleen Kelley, president of the National Treasury Employees Union. And alongside its regular tax duties, the IRS has been tasked several times in recent years with distribution of economic stimulus funds, and it is now gearing up for a major supporting role in implementation of the Patient Protection and Affordable Care Act. (For prior coverage, see *Tax Notes*, July 2, 2012, p. 40, *Doc 2012-13748*, or *2012 TNT 125-2*.)

''The Service does a good job, and so it's constantly being assigned new duties by Congress,'' said Everson. ''The question you really have is whether it's getting to a point that a combination of those very significant new duties — particularly in healthcare, and the pressure associated with slow action by Congress on [tax issues] — converge in a way that puts next year's filing season at risk.''

Adequate funding for the IRS's additional duties is only part of the answer, said Everson, now vice chair of specialty tax services provider Alliantgroup LP. ''I think it's equally important that Congress think carefully about what duties should or should not be housed within the Service. . . . That clearly complicates and to some degree jeopardizes regular tax administration.''

Heading the IRS 'was like capturing lightning in a bottle,' said Stiff. 'You can work a whole career and never have an experience like that.'

Stiff recalled sleepless nights spent worrying about what would arrive in the IRS's congressional budget and in various late tax bills, and how the IRS would mobilize resources to meet the challenges. ''It's become the norm here, but the fact that you don't have budgets on October 1 and you don't get them until later and later in the fiscal year makes it very difficult to plan and execute,'' she said.

''We found that by bringing the team together and drawing on the strengths of everyone, we were able to do more than Congress or the executive [branch] actually believed could happen,'' Stiff said. ''And that experience is why you continue to see more and more things being asked of the IRS — they proved their ability to deliver.''

Brown said the agency may be a victim of its own success. ''The danger is that despite all the obstacles that are thrown their way each year — and seemingly there are more and more obstacles — the IRS has managed to deliver the filing season without any serious problems year after year. I think there becomes a sense of complacency that we do this every year, or that we can add more obstacles each year. And [politicians are] not doing it intentionally, obviously, but because of the political climate they cannot come to agreement until very, very late.''

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None of those feats would be possible without a dedicated workforce, the former commissioners agreed. ''Workers in an institution always get it right in terms of what their leaders expect, and are very responsive to those expectations,'' Goldberg said. ''The IRS, at least in my experience, was an extraordinarily responsive institution.''