

ROBERT H. JACKSON AND THE ENFORCEMENT OF THE FEDERAL TAX LAWS

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“He is blind to coming events, who fails to see ahead a heavy and growing tax burden.”¹ So said Robert H. Jackson in 1934, while serving as Assistant General Counsel for the Treasury Department’s Bureau of Internal Revenue. Jackson recognized the tendency of government to indulge in “a constant expansion of functions and a tax rate that, whatever the promises, shows a steady upward curve.”² The steps that he took to ensure fairness and uniformity in the enforcement of federal tax laws established an enduring legacy.

Rather than “awaiting more perfect tax laws,”³ Justice Jackson spent much of his six years in the Executive Branch—as Assistant General Counsel for the Bureau of Internal Revenue; Assistant Attorney General, first for the Justice Department’s Tax Division and then for its Antitrust Division; Solicitor General; and then Attorney General of the United States—advocating and implementing the consolidation, in the Justice Department’s Tax Division, of responsibility for the enforcement of the internal revenue laws.

Although he served as the government’s chief tax lawyer, Justice Jackson “neither began nor ended his government service with any special degree of technical tax expertise.”⁴ His commitment to tax administration arose not from a deep and abiding interest in the philosophical underpinnings of tax policy, but rather to his

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¹ Robert H. Jackson, *Changes in Treasury Tax Policy*, Address Delivered Before the Ninth Annual Meeting of the Federation of Bar Associations of Western New York (Niagara Falls, N.Y., June 30, 1934), in 12 *TAX MAG.* 342, 342 (July 1934) [hereinafter *Changes in Treasury Tax Policy*].

² *Id.*

³ *Id.*

⁴ Kirk J. Stark, *The Unfulfilled Tax Legacy of Justice Robert H. Jackson*, 54 *TAX L. REV.* 171, 179 (2001).

determination to see that the tax laws were enforced uniformly and fairly.

Justice Jackson's quest for fairness and uniformity in tax administration is evident in several themes that recur in his remarks about tax and other areas of law enforcement: the duty "to stop the holes poked in the law by clever lawyers in aid of powerful clients"; the need "to guard against favoritism or advantage"; and the recognition that "the income tax law is citizen-administered in its first instance" insofar as it depends upon citizens' voluntary compliance with "a technical law which few have read, and voluminous regulations known to fewer," as a result of which "errors will be made, differences of opinion will arise."⁵

"TO STOP HOLES POKED IN THE LAW"

In accepting an appointment to the Bureau of Revenue in 1934, Jackson took a more than 66% pay cut.⁶ But he did not hesitate, because the position gave him the opportunity to remedy "practices [that] had become in some respects lax during the preceding administration."⁷ The complexity of the tax code, Jackson recognized, tempts "dishonest or tricky" tax professionals to encourage taxpayers to take positions that lead them "into trouble and controversy."⁸ He called upon the bar to "protect honorable lawyers who give faithful advice to their clients against the unfair competition of slickers whose stock in trade is fraudulent practice or false claims of influence."⁹ The honest lawyers "who give conservative and upright advice," Jackson warned, "have seen their clients weaned away by soliciting lawyers who claimed to have safe schemes to outwit the Treasury"¹⁰

Jackson was not reluctant to use strong language in condemning schemes to manipulate the tax code. Addressing sham transactions, for example, he commented that "any sale that is a trick to present the appearance of a sale, without its substance, is a fraud."¹¹

⁵ *Changes in Treasury Tax Policy*, *supra* note 1, at 343.

⁶ Stark, *supra* note 4, at 177 n.46.

⁷ *Id.* at 178 (citation omitted).

⁸ Robert H. Jackson, Problems of the Federal Tax Bar, Address Before the Tax Conference Held at the American Bar Association Meeting in Milwaukee, Wisconsin (Aug. 28, 1934), in 12 TAX MAG. 466, 502 (Sept. 1934) [hereinafter *Problems of the Federal Tax Bar*].

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Changes in Treasury Tax Policy*, *supra* note 1, at 345.

"TO GUARD AGAINST FAVORITISM OR ADVANTAGE"

Regulating the conduct of professional advisors is a central challenge in ensuring uniformity in the administration of a complex tax system. One of the issues Justice Jackson faced at the Bureau of Internal Revenue was the enrollment and regulation of professionals who practiced before the government.¹² Jackson abhorred the use of political influence or favoritism, particularly by former government officials who made "efforts to 'cash in' on their friendships or political connections."¹³ He called upon the organized bar to "aid in suppressing" influence peddlers who represented "unfair competition."¹⁴ Beyond simply restraining unfair influence peddling, Jackson believed that it was the primary responsibility of the bar rather than the government to discipline unethical lawyers.¹⁵

"ERRORS WILL BE MADE"

Fraud "does not include good faith differences of opinion as to facts, or as to their legal effect. It does include all deliberate and intentional acts or omissions, and every trick, artifice, and pretense which results in a deception or material concealment."¹⁶ But Jackson feared that a vast bureaucracy could be overzealous and arbitrary in enforcing the law. "The fact is that no one can be always on the same side of a controversy and preserve his neutrality."¹⁷ Then, as now, Tax Division attorneys had as their goal not the collection of taxes, but the fair and uniform enforcement of the system of tax laws upon which our government depends for its funding.

Jackson noted, "We are getting too much law, and too many kinds of law, from too many sources, for tax administration to be simple, or the law clear."¹⁸ Jackson distinguished his work at the Justice Department's Tax Division from his work at the Treasury Department's Bureau of Internal Revenue: the Justice Department involved a "clean law practice" with "straight legal questions."¹⁹

¹² See *Problems of the Federal Tax Bar*, *supra* note 8, at 466.

¹³ *Id.* at 468.

¹⁴ *Id.*

¹⁵ See *id.*

¹⁶ *Changes in Treasury Tax Policy*, *supra* note 1, at 345.

¹⁷ Robert H. Jackson, *Equity in the Administration of Federal Taxes*, 2 INS. COUNS. J. 94, 96 (Oct. 1935).

¹⁸ *Id.* at 99.

¹⁹ Stark, *supra* note 4, at 197 (citation omitted).

Shifting litigation responsibility from the administrative practice of the Treasury Department to the clean legal practice of the Justice Department advanced Jackson's goals of promoting uniformity and fairness in administration of the tax laws. The transfer was not without cost, however, because transferring litigation authority from Treasury tax lawyers to Department of Justice litigators inevitably created "ruffled feelings" and "[f]riction" as a result of the rivalry between the agencies.²⁰

As Attorney General, Jackson consistently defended the consolidation of law enforcement responsibility in the Justice Department as essential to preserving the reality and appearance of fairness in federal law enforcement. In explaining the reasons for consolidating law enforcement power in Washington to the United States Attorneys who were required to cede that power, Jackson commented that the immense discretion vested in individual United States Attorneys inevitably resulted in different enforcement priorities and differing legal interpretations.

Before centralization, Jackson noted, "different district attorneys were striving for different interpretations or applications of an act, or were pursuing different conceptions of policy."²¹ He believed that "the prestige of federal law" was dependent upon "uniformity of policy" across the nation.²² He therefore supported consolidation, although he recognized that it risked a "lessening of the prestige and influence of the district attorneys in their districts."²³

CONCLUSION

Justice Jackson was not a "tax lawyer" in the conventional sense, and he "repeatedly disclaimed any specialized knowledge of tax law."²⁴ Nonetheless, his demonstrated commitment to enforcing the federal tax laws in a manner that is fair—because it is unfettered by the potential for favoritism—and uniform—because it is unhindered by the constraints of local resources—is as important and relevant today as it was seven decades ago.

²⁰ EUGENE C. GERHART, *AMERICA'S ADVOCATE: ROBERT H. JACKSON* 83 (1958).

²¹ Robert H. Jackson, *The Federal Prosecutor*, Address Delivered at the Second Annual Conference of United States Attorneys (Washington, D.C., Apr. 1, 1940), in 24 *J. AM. JUDICATURE SOC'Y* 18, 18 (1940).

²² *Id.*

²³ *Id.*

²⁴ Stark, *supra* note 4, at 179.