TAXPAYERS RESEARCH INSTITUTE TRIM OF MISSOURI

Your Tax Money

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November/December 2005

Takin' Care of Business

The Revival of TRIM

By Ray McCarty
TRIM Executive Director

Who could have known that one of the first memories I have of lobbying in the Capitol 17 years ago would be related to a project I would undertake in 2005! In 1989, as a beginning lobbyist and fiscal analyst for the Missouri Department of Revenue, I had the pleasure of tagging along with Rick Moore, my mentor at the DOR, as he made his rounds at the Capitol. I remember hearing a deep booming voice coming from a distinguished-looking experienced lobbyist saying, "Don't tax you, don't tax me, tax the guy behind the tree!" The man had just come from a discussion where an increase in taxes was being debated and he seemed somewhat agitated. Nonetheless, when he saw I was an inexperienced lobbyist, he stopped, put forth his hand, shook mine, and welcomed me to the Capitol. It did not matter to him that I was hired to represent the tax agency and that the governor had proposed a tax increase he did not agree with. He treated me with respect and, in so doing, taught me how to lobby in the Missouri Capitol and still get along with lobbyists that may be hired to represent an opposing view.


Ray McCarty

The man I described in the previous paragraph was Bob Knuth, and to this day, in any given group of tax professionals when I ask, "Who remembers Bob Knuth?" many hands shoot enthusiastically into the air. I worked with Bob and quickly came to admire his intellect and thoroughness of his research and to value his friendship. We all knew that if there was a tax proposal that affected business, we would have to talk to Bob and his powerful lobbying and research organization, the Taxpayers Research Institute of Missouri (TRIM).

By the time I met Bob Knuth, he had served as the executive director of TRIM for 10 years, but he actually started with the organization in 1953, becoming its research director in 1956. When he retired to warmer temperatures (and also to a state that has no personal income tax) Bob passed the torch of leading the organization to another respected lobbyist that would become a good friend, Jay Wunderlich.

In recent years, the Taxpayers Research Institute of Missouri has been relatively quiet. But a look at its rich history will give you clues of the success we anticipate that is on the horizon in the very near future.

Originally incorporated as the Missouri Public Expenditure Survey in 1940, the organization was formed to encourage efficiency in government by providing quality research and putting that research in the hands of the taxpayers of Missouri, including business taxpayers that were often ignored in tax discussions. The Survey annually published its findings in annual studies of the cost of federal, state and local government. Groups were organized around the state using local chambers of commerce and other local organizations to distribute the message in a pre-Internet world. The result was that the Missouri Public Expenditure Survey was often cited as a reliable source of tax research. The name of the Missouri Public Expenditure Survey was eventually changed to the Taxpayers Research Institute of Missouri (TRIM), but the quality of the research and the important role of lobbying on behalf of taxpayers remained a focus of the organization.

TRIM is in the midst of a revival and we need your company's support. We intend to make TRIM better than ever before by providing quality research, gathering a database

TRIM —
Continued on Page 5

Update: Joint Interim Committee on Tax Policy

By Ray McCarty
TRIM Executive Director

The joint legislative committee charged with examining and recommending changes to Missouri's tax system met in Jefferson City on October 24, 2005. Rep. Mike Sutherland serves as the chairman of the committee and Senate President Pro Tem Michael Gibbons serves as the vice-chairman.

Streamlined Sales Tax Project

Sen. Joan Bray gave an update to the Committee regarding her claim at a previous hearing that Kansas had resolved their problems with the Streamlined Sales Tax Project. She stated she had talked to the Secretary of Revenue in Kansas, Joan Wagnon, regarding Kansas' experience with adoption of the Streamlined Sales Tax Agreement.

Kansas adopted the SSTP Agreement by legislation in 2003, but quickly recoiled and did not enforce the provisions of the legislation because of the harmful impact of changing the point of tax collection for delivery businesses, a main problem with adopting the Agreement in Missouri. Sen. Bray stated the point of delivery shift in tax collection affected about 25 percent of retailers in Kansas and that for the first two months there were many problems between retailers and the Kansas Department of Revenue (KDOR). She said these problems are being resolved now that Certified Service Provider software is in place.

You may recall I testified at a previous hearing that I was not aware Certified Service Provider software had been fully developed and tested that could help fix these problems, but that software vendors I had contacted promised the software would make the transactions seamless for brick and mortar retailers and online retailers alike. According to Sen. Bray, that has happened in the State of Kansas.

She also stated KDOR has relaxed enforcement of the provisions of the agreement and that Ms. Wagnon urged Missouri not to move too quickly and to learn from Kansas' mistakes. Ms. Wagnon offered to testify to the Committee at a future hearing.

As a follow-up I checked with representatives of the Kansas business community to see if they agree that the SSTP Agreement is now running without major difficulties. As you may expect, the business community does not view the process as running smoothly at all. In fact, the KDOR is not enforcing the point of delivery provision and retailers are not complying, meaning Kansas will probably not be found to be in compliance with the Agreement by the governing body of adopting states. This means the confusion and complication placed on retailers trying to comply with the new Kansas law will produce no benefit for the state. This is the same result we could expect in Missouri if we adopt the provisions of the Streamlined Sales Tax Agreement, at least prior to the development of software that will eliminate the extra burden on delivery businesses.

Members of the Joint Committee on Tax Policy during a recent public hearing at the State Capitol.

Chairman Sutherland noted that he will now be one of seven delegates to the Streamlined Sales Tax Project for Missouri but has not been able to attend any of the meetings yet. For more information on the Streamlined Sales Tax Project and a suggestion for improvement, see the separate article in this issue of Your Tax Money.

Local Sales Taxes

Tim Fischesser, Executive Director of the St. Louis County Municipal League, gave a history of local sales taxes in Missouri. He said people seem to like local sales taxes because they approved them more easily than property taxes for support of local government services. He discussed the decline of sales tax in recent years. St. Louis County has recently studied the reasons for the drop in sales tax and concluded that the bulk of sales tax is now collected from furniture stores, appliance stores, and other stores that are somewhat dependent on new home construction and other demographic factors.

They theorize since they have less new home construction in the County, their local sales taxes have decreased abnormally while St. Charles, Franklin and Jefferson counties have been experiencing normal fluctuations in sales taxes because they have more new home construction.

Sen. Victor Callahan asked if TIF projects may be to blame for shifting retail sales between jurisdictions, rather than actually creating new sales. Mr. Fischesser responded that the SLC Municipal League was working with St. Louis County to see if retail TIF projects have reached their maximum usefulness in the area.

Chairman Sutherland asked if property tax rollups that help counties defray the impact of shrinking sales tax revenues also help cities. Mr. Fischesser responded that they have very few property taxes that support city services so there is nothing to increase while counties continue to have a portion of their services supported by property taxes.

Mayor Swoboda of Kirkwood stated Kirkwood has no property taxes but a variety of utility and local sales taxes. He stated that cities' most prevalent use of the local sales tax is to support emergency services, followed by infrastructure improvements like roads and sidewalks.

He suggested the Committee consider authorizing a ½-percent local public safety tax for cities in St. Louis County to help support fire, police and other emergency services, similar to a tax authorized for Excelsior Springs and Gladstone. He also stated he has implemented efficiency measures in Kirkwood but needs additional funding.

Sen. Callahan warned against the tendency of some city and county leaders to use these special taxes as a way to "bait and switch" the funding sources. He explained voters may approve a tax for emergency services but city and county leaders, rather than increasing the budget for those services, may reallocate a portion of their existing general funding from the emergency services to other areas.

Mr. Fischesser expressed his belief some shifting of funding may be appropriate because the general funds are currently supporting emergency services under the current tax structure.

Real Property Taxes

Mr. Robert Kocer, president/CEO of Vanguard Appraisals, Inc. in Cedar Rapids, IA, testified next. Vanguard's manual is used as a mass appraisal tool by local tax officials in several states, including some counties in Missouri. He stated that there are at least four different manuals in use in Missouri at the present time. His testimony centered around the advantages that could be obtained by establishing a standardized manual similar to that developed by his company for the State of Iowa.

Sales Tax Exemptions

Deputy Director of Revenue, Lowell Pearson, presented a document to the Committee that had been prepared by the DOR showing the multitude of sales tax exemptions and their statutory authorizations. The table listed 123 exemptions.

He stated that the structure of the exemption statutes causes complexity in interpretation for DOR and the courts because some of the exemptions are combined with other unrelated exemptions in the same paragraph or even the same sentence. This can cause DOR and the courts to question the legislature's intent.

Mr. Pearson indicated that the sales tax exemptions are causing complexity for DOR and for taxpayers. This is substantiated by the fact that he estimates 90 percent of letter rulings and over half of the AHC cases and contacts from legislators regard sales tax issues.

He indicated DOR does not track individual exemptions so they are unable to determine the true impact of the exemptions. He pointed to data produced by the University of Missouri that estimates the impact of exemptions and other tax expenditures and indicated those are the best estimates of expenditures, but are based on old data.

NOTE: The DOR collected information on specific exemptions until the mid 1990's when budget considerations caused the DOR to stop keying the information reported by taxpayers on their sales tax returns. Later, DOR changed the form and eliminated the separate reporting requirement for each exemption. Because of this, the University of Missouri data is comprised of projections based on these old data. I agree with the Deputy Director that it is unrealistic to expect accuracy from projections based on outdated data.

Mr. Pearson explained DOR's perspective on tax policy, that a good tax system will be simple, fair and certain. He also stated that lack of clarity in tax statutes causes problems for DOR and taxpayers and is the source of many disputes.

Sales Tax on Services

Mr. Pearson then began to discuss how sales tax has not kept pace with the changing economy. Sales tax is assessed on tangible personal property and some specific services. While our economy has shifted from one based on tangible property to one based on services, the existing sales tax model does not reflect that change. He seemed to suggest the Committee should consider this shift toward information, services and intangible transfer mediums (online transactions) as they consider changes in tax policy. He stated the current sales tax base is very narrow and the combined state and local tax rates were relatively high. Rep. Bryan Stevenson asked if Mr. Pearson felt the sales tax would be fairer if the tax were broader based and the rates were lowered. Mr. Pearson seemed to agree the tax would be fairer if the burden were more equally shared between those selling tangible personal property and those providing services.

NOTE: This testimony regarding sales taxation of services echoes earlier comments and testimony that have been presented to the Committee. Application of sales taxes to services appears to be a focal point of the Committee's discussion and could be a point of concern in the near future. This author believes the experience of the State of Florida should be considered before Missouri adopts sales taxes on services. In Florida, everyone objected to the taxation of services – consumers and businesses – leading to a quick repeal.

Update —
Continued on Page 6

‘Simplified Use Tax System’ Suggestion for Federal Legislation

By Ray McCarty
TRIM Executive Director

About the Author:

Ray McCarty has served as a delegate from the State of Missouri to the Streamlined Sales Tax Project for many years. He has closely followed and participated in the debate surrounding the states’ ability to collect use taxes since his 16-year tenure at the Missouri Department of Revenue and has followed the work of the former Advisory Committee on Intergovernmental Relations and the Streamlined Sales Tax Project since its inception.

The major impetus behind the recent activities of the state tax administrators’ “Simplified Sales Tax Project”, or SSTP, is to develop a tax collection system that will encourage Congress to authorize mandatory collection of each state’s use tax by remote sellers.

Remote sellers include internet retailers, mail order operators, sellers whose only contact in a state consists of radio and television advertisements, catalog retailers with no physical locations in a state, and others that sell goods in a state without a physical location.

Recent U.S. Supreme Court decisions have affirmed that a company without a physical location in a particular state is not required to collect or pay tax in that state. One of those decisions, Quill v. North Dakota, made it clear that Congress had sole constitutional authority to regulate trade between the states.

State tax administrators reacted to these court cases by attempting a state solution to a federal issue. The administrators fear tax revenue loss on these remote sales as internet sales become more and more common. Retailers located within the states share those concerns because they operate at a competitive disadvantage when they must charge sales taxes and remote sellers are not required to collect any taxes. The state tax administrators have agreed on a system that would cause major sweeping changes in the sales tax collection system in many states that adopt the agreement, some of which will negatively impact consumers, businesses that pay sales taxes within a state, and local governments. In some cases, procedural changes may be made without negatively affecting the current sales tax system. But because these state officials must comply with a constitutional requirement that the same changes must be made for instate transactions (sales tax) that are made for interstate transactions (use tax), changes are required in the way existing retailers must collect sales taxes. Congress has the authority to regulate use tax without affecting the states’ sales taxes and existing retail procedures, but state legislatures must make any changes to both systems.

If the SSTP agreement becomes law in Missouri and the group achieves their stated goals, retailers within the state that usually deliver goods (appliance and furniture stores, for example) can look forward to more complicated returns because they will be asked to charge sales taxes based on each customer’s address. The “sourcing” rules under the SSTP agreement as it read on April 16, 2005, require local sales taxes to be assessed based on the point of delivery to the customer or the customer’s designee. Furniture stores, appliance stores, florists and other retailers that deliver goods to their customers would be forced to determine the customer’s proper taxing jurisdiction, charge the proper rate to the customer, and accurately track and report such sales on their sales tax returns.

This will greatly complicate the collection of sales taxes by retailers that deliver their goods to their customers and will lead to widespread compliance and enforcement problems, similar to those experienced in the State of Kansas. The Kansas legislature enacted the statutory framework necessary to comply with the SSTP agreement, then realized that this sourcing requirement was causing major problems for “delivery” retailers. As of October, 2005, the state is not uniformly enforcing the provisions of the agreement dealing with sourcing, Kansas state tax administrators are claiming there are no problems and retailers continue to have major problems with the sourcing rules.

Local governments may also lose revenue from local tourism sales taxes that are levied on special transactions such as restaurant food sales and hotel room rentals. These sales taxes are often used to fund the promotion of tourism by local convention and visitors bureaus. While some tax administrators do not believe the SSTP rules apply to these taxes, a reasonable challenge could be raised to these taxes if the SSTP agreement were implemented in Missouri.

There may be a better way. Congress could allow states to participate in a Streamlined Use Tax System (SUTS) if approved by the state’s legislature. A sales tax exemption in any participating state would apply in all participating states under this SUTS. In addition:

- Work of the SSTP would be used to design the new SUTS, but the new system would apply to use taxes only;
- More equitable tax treatment of in-state versus interstate sales would result;
- Sales tax improvements would continue, but not if they result in a tax increase;
- Use taxes would be standardized, providing interstate retailers with an easy way to comply with the new use tax law; and,
- State and local governments would benefit through increased collections on transactions that are not taxable or collectible today.

State tax administrators that have been presented with this plan have expressed concern. First, they (and their legislators) do not want to give up state autonomy in the development of the system. While the current SSTP provides state autonomy, it also negatively impacts existing retailers and local governments in many of the adopting states and would cause problems in Missouri. Second, this improved Streamlined Use Tax System would need to be adopted by Congress which may have difficulty passing a complex and sweeping change to state's taxing systems, especially when state tax administrators and state legislators prefer to develop their own systems regardless of the impact to local governments and their own retailers.

The debate surrounding SSTP will continue. Missouri taxpayers and lawmakers should pay attention to the developments, but not rush to adopt the SSTP agreement until the problems affecting retailers and local governments have been resolved to the satisfaction of those parties.

Business Personal Property Tax Issue

State Tax Commission hears comments

The State Tax Commission held a hearing on proposed minimum requirements for appraisals of business personal property. The guidelines (available on the TRIM website) are based on the principles that sufficient information regarding an appraisal of the value of business personal property is required to allow the Commission to determine the reliability of the appraisal, items that are the subject of the appraisals should be clearly identified, and enough information must be provided that allows county assessors to assess the appraisal and adequately challenge the appraised value.

The guidelines detail requirements for using the comparable sales and cost methods of appraising personal property value.

The comparable sales approach should identify:

- Comparable sales used to value the property under the market approach;
- Source of the comparable sales data; and
- Final opinion of value.

The cost approach should identify the:

- Replacement cost new
- Age of the item
- Depreciation applied; and,
- Final opinion of value.

The guidelines state that the income approach is not a reliable indicator of value for personal property in most instances. The guidelines are meant to inform parties of the State Tax Commission's minimum standards regarding appraisals.

Testimony from assessors generally complained that current appraisals did not allow them enough information to challenge the values arrived at in the appraisals. Taxpayer representatives argued that the proposal would require so much information that the tax commission would be overwhelmed with evidence when all parties have access to the information under the current rules. The American Society of Appraisers had a representative at the meeting and is expected to file formal comments soon.

If you have comments on the proposed requirements, please send them to Ray McCarty, Executive Director of TRIM, as soon as possible. The Commission will be finalizing the proposal in mid-December.

TRIM

Continued From Page 1

of expert research from Missouri and around the country, and reasserting our role as the only lobbying and research organization in Missouri dedicated to tax issues.

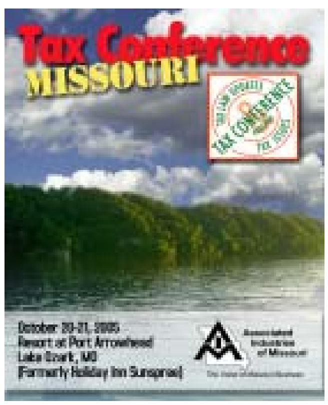
To find out more about how your company can help in this effort, please contact me at (573) 634-2246 and arrange an appointment with the appropriate person in your company to view a presentation on our vision for the revival of TRIM, the oldest and most respected tax lobbying and research organization in Missouri.

2005 Tax Conference

A Continued Source of Information

By Christine Cudney
Ameren Corporation
AIM Tax Committee Chairperson

The 2005 AIM Tax Conference was held October 20-21 at the Lake of the Ozarks. Attendance was up with information and networking flowing non-stop. This conference has been a success for years thanks to the dedicated speakers who continue to donate their time and knowledge. A special thanks also to the Missouri Department of Revenue and Missouri Treasurer's Office, whose participation provides an opportunity for taxpayers, their representatives, and State personnel to interact *one-on-one* in an open forum where any question is open to discussion.



This year's conference covered a variety of state and local tax topics, as well as some federal tax hot topics. Our goal is provide our attendees with a *one-stop-shop* for tax information and updates related to a variety of topics that impact their business operations. We find that many of our conference attendees wear a variety of hats in their day-to-day routine, making it difficult to remain current with all developments at all times.

The AIM Tax Conference strives to fill any information voids and provide participants with direct access to specialists in the various topic areas.

We are now planning for 2006. The 2006 AIM Tax Conference will be held October 19-20, at the Lodge of the Four Seasons, Lake Ozark.

We are considering enhancing the conference by adding a full track option of federal tax sessions for attendees seeking information beyond state & local tax topics. Reader feedback is appreciated. Please contact Ray McCarty at (573)634-2246, if you would like to submit comments for the 2006 AIM Tax Conference planning process.

Gary Marble, president of Associated Industries, served as emcee for the Tax Conference luncheon.

Trish Vincent, director of the Missouri Department of Revenue, provided the conference's keynote address.

TRIM Report: Distribution of Tax Burden

According to a new report by the Taxpayers Research Institute of Missouri on Missouri's tax distribution, for the last 20 years employers paid more than one-fourth of all major taxes in this state. The percentage of taxes paid by Missouri businesses has increased over the last four years to 27.2 percent in fiscal year 2004.

"Businesses in this state are often unfairly criticized for not carrying their fair share of the tax burden," said Ray McCarty, executive director of TRIM. "However, in this study we found quite the opposite – employers are actually responsible for a large portion of the taxes paid in Missouri."

> *"Businesses in this state are often unfairly criticized for not carrying their fair share of the tax burden. However, in this study we found quite the opposite – employers are actually responsible for a large portion of the taxes paid in Missouri."*
>
> ***- Ray McCarty***

According to the TRIM report, corporation income and individual income taxes produce the most tax revenue of any tax source, netting more than $4 billion of the total $7.6 billion paid in major state taxes in fiscal year 2004.

"Corporation income taxes accounted for the largest employer contribution to these taxes, but significant amounts were also paid by small and medium-sized businesses on individual income tax returns," said McCarty. "Employers are estimated to pay about 7 percent of the total collected from individual income taxes based on federal tax data."

For 2004, the total amount of net Missouri income tax (after refunds) paid by employers is estimated to be nearly $565 million, or 14 percent of the more than $4 billion total.

"Employers shoulder tax burden in less obvious ways too," said McCarty. "Missouri's death tax has ended but the federal death tax continues. The death tax is paid by individual heirs but the tax represents a burden on businesses as well."

The TRIM report finds that: "Family-owned businesses and farmers are subject to the tax on the death of the owner, when ownership is transferred to the heirs. For this reason, many small businesses must maintain costly insurance to pay the taxes in order to preserve ownership of the business beyond the owner's death."

Employers are responsible for taxes on liquor and beer, and insurance premiums and workers' compensation and a large portion of fuel taxes.

TRIM's report on "Missouri Tax Burden Distribution, Employer and Individual Taxpayers," can be found online at http://www.aimo.com/default.asp?link=TRIM.htm.

Update

Continued From Page 3

While Florida taxes a few more services than Missouri, including labor charges for repairs, Florida does not apply the sales tax to most services today.

Otto Fajen of the Missouri NEA testified next on the taxation of services. He stated the organization does not want to tax services that are used to provide other services or goods that are ultimately taxed. The data he presented compared the current sales tax taxable base amount to the amount that would be taxable if services were included (about double). He said the NEA believes the sales tax becomes less regressive if services are taxed and the rate is lowered because wealthier people can afford to use more services. He also expressed a reservation that if the rate is lowered, it could make it easier for a future legislature to raise the rates (a concern shared by this author)!

Affordable Housing Credits

Mr. John Cook from BKD, LLP testified on behalf of their clients that use the low-income housing credits in Missouri regarding changes suggested in an earlier hearing. He stated that Missouri's program is used as a model for other states, including Georgia.

He said they objected to a previous suggestion that the state remove the recapture provisions. These recapture provisions help ensure the credits are used properly and not used to build apartments that are rented to wealthier people. He cautioned against eliminating the recapture provisions and stated that the recapture has not hindered the proper use of the credits.

He also pointed out to the Committee that an earlier suggestion that the credits be made transferable would cause the amount obtained to be subject to federal and state income tax.

Spending Lobby Testifies

Barbara Ross from the Missourians for Tax Justice (MTJ) testified to the Committee:

1. Sales tax is regressive, affecting lower and middle income levels more than upper income earners;
2. MTJ supports taxing services and lowering the rate and generally lowering tax expenditures (including exemptions) because according to the University of Missouri data, billions of dollars could be generated;
3. MTJ suggests reform of the outdated income tax in Missouri because the graduated rate is only available up to $9,000. They would like to see the rates graduate to higher income levels.

She stated 60 percent of Missourians have income below $44,000. She said the purpose of her group was not to use the tax system to distribute wealth but to allow people to provide for their families. Then she said they believe a fairer income tax would raise an additional $1 billion from higher income earners and that those earners would not notice a 1 percent increase in their taxes!

She said MTJ also believes that income taxes should replace sales taxes as a source of local funding because the sales tax is regressive.

She also stated Missourians for Tax Justice is just a group of concerned citizens and a few organizational members.

NOTE: Here is a list of the membership of the Missourians for Tax Justice from their website at http://webpages.charter.net/motaxjustice/MTJmembers.html:

AFSCME, Missouri State Council 72; Adequate Housing for Missourians; Alliance for Democracy, St. Louis Chapter; American Federation of Government Employees, Local 3354; Americans for Democratic Action, Missouri Chapter Citizens for Tax Justice, St. Louis; Commission on Human Rights, Archdiocese of St. Louis; Ethical Action Committee, St. Louis Ethical Society;; Kansas City Federation of Teachers, Local 691; Hunger Committee, Presbytery of Giddings-Lovejoy; League of Women Voters of Missouri; Lutheran Family and Children's Services of Missouri; Missouri ACORN; Missouri Association for Social Welfare; Missouri Federation of Teachers; Missouri National Education Association; Neighborhood Enterprises, Inc.; New Life Evangelistic Center; Older Adult Community Action Program; Peace and Justice Office, Diocese of Kansas City-St. Joseph; Church and Society Committee, Presbytery of Giddings-Lovejoy; St. Louis Economic Conversion Project; St. Louis Teachers Union, Local 420; Social Concerns Office, Diocese of Jefferson City; Social Responsibility Committee, First Unitarian Church, St. Louis; Women's International League for Peace and Freedom, St. Louis Branch

Housekeeping

Chairman Sutherland discussed a report that was required by the new foundation formula bill (SB 287). The act requires the Committee to analyze local property tax assessment practices and submit a report regarding such to the general assembly and the state tax commission, the latter of which is charged with ensuring that all counties are assessed accurately. His target is to have a draft ready by the end of the year and a final report in June, 2006.

Chairman Sutherland wants to have two more meetings before the end of the year: one on corporate taxes and another to develop reports of the Committee.