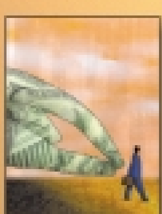
IPI Insights
MARCH/APRIL 2001

"We're from the government, and we're here to help you."

People say this tongue-in-cheek because we all know that when government attempts to help us (however well-intentioned the efforts) by imposing more regulations on our property and our lives, it often does more harm than good.

We as citizens have little or no recourse because it is unelected bureaucrats, rather than elected politicians, who are imposing these new and onerous regulations. Indeed, unelected bureaucrats govern us through regulation. To draw increased public scrutiny to the problem of regulation, the Institute for Policy Innovation publishes an annual policy report highlighting particularly troubling regulations. This year's report is entitled *When the Unelected Rule: Ten Case Studies in Regulatory Abuse.* Here is a sampling of four of the abuses that are discussed in that report.



INSIDE:
Feeling the Pinch from Hidden Taxes

ALSO:
Scoring the Bush Plan

“We’re from the government, and we’re here to help you.”

Dead Man Driving. Few regulations reflect the government’s good intentions as dramatically—and disastrously—as the misguided program to put more fuel-efficient automobiles on our roads and highways. The program, known as CAFE, for Corporate Average Fuel Economy, has not only *failed to* achieved any of its goals, but it has had the deadliest of unintended consequences.

It seemed clear in the 1960s that Americans liked to drive really big cars. If the current popularity of large S.U.V.s is any indication, they still like big vehicles. Why don’t consumers buy big cars today? They can’t because the federal government limits car size.

Reeling from the shock of the OPEC oil embargoes of the mid-1970s, Congress and the Ford administration teamed up to enact the Energy Policy and Conservation Act of 1975. The law established a new federal scheme for regulating the average fleet fuel economy of cars and light trucks sold in the U.S. Current CAFE standards mandate the rates of 27.5 mpg for cars and 20.7 mpg for light trucks, which includes pickups, minivans and S.U.V.s.

The only way auto makers could comply with the new federal mandate was to downsize their models. Out went the big, roomy, “dream boats” and in came the compacts, subcompacts and econo-boxes. Even today’s full-size cars are noticeably smaller than their pre-CAFE counterparts. It is only a slight exaggeration to say that drivers have been forced to trade in their larger, heavier, safer vehicles for a “light” version of transportation. Therein lies the safety problem CAFE has created.

The National Highway Traffic Safety Administration (NHTSA) estimates that the downsizing of cars from the mid-1970s to 1982 cost 2,000 lives and 20,000 serious injuries annually. A 1999 *USA Today* analysis of data from NHTSA and the Institute for Highway Safety came to a similar conclusion, saying that 46,000 people have died in crashes they would have survived in bigger, heavier cars since the law mandating CAFE went into effect.

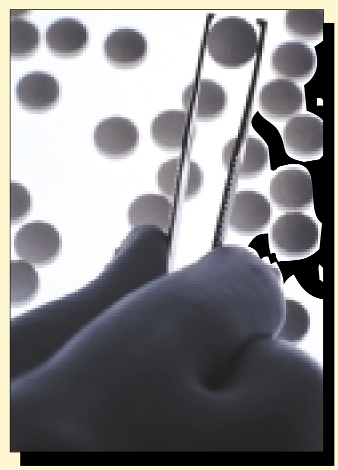
Safety is not the only problem with CAFE. The CAFE standard measures sales-weighted fleet fuel economy so the result depends on what the consumer purchases. This means the manufacturers’ ability to achieve the standards is dependent on consumer choice. The automakers cannot meet the arbitrary standards on their own. Currently, American consumers are voting (with their checkbooks) for larger, safer vehicles which also offer comfort and convenience unavailable in smaller cars. SUVs, minivans and pickup trucks — which are subject to higher mileage restrictions than cars —now account for about 50 percent of U.S. auto sales.

To its credit, Congress slapped a freeze on CAFE standards in 1995. But every year since, lawmakers have had to withstand efforts to lift the ban and impose even stricter CAFE standards.

Did CAFE help make the energy crisis of the 1970s go away? No, we now know there was no energy crisis, only a temporary shortage resulting from OPEC’s decision to reduce production. Unfortunately, CAFE imposes real dangers and yet we just can’t seem to make it go away.

Have They Got a Pill for That? At the forefront of public policy issues today is the cost of prescription drugs. While everyone is glad we have more prescription drugs available than ever before, many critics believe the federal government ought to step in and ensure that drug prices are low. Truth is, the federal government is largely responsible for the prices being so high.

Conceiving and creating a new drug or medical device is only the beginning. Then comes the testing process that takes years of human trials to see whether the drug is safe and efficacious.



According to Dixie Farley of the federal Food and Drug Administration (FDA):

“[T]he FDA’s decision whether to approve a new drug for marketing boils down to two questions: (1) do the results of well-controlled studies provide substantial evidence of effectiveness, and (2) do the results show the product is safe under the conditions of use in the proposed labeling? Safe, in this context, means that the benefits of the drug appear to outweigh its risks.”

Over the years the federal government has imposed numerous restrictions on access to many drugs used for medical purposes. Congress took a huge regulatory step with the Kefauver-Harris Drug Amendments of 1962, which were meant to ensure not just the safety of new drugs—which had been the FDA’s traditional role—but their efficacy as well.

Kefauver-Harris may have been the most costly piece of regulatory legislation ever passed. Currently, moving a new drug from inception through the approval process takes eight to 10 years and costs $500 million to $600 million. If safety were the only thing the FDA monitored, it could take only $50 million and perhaps one or two years to get a new drug to patients.

As a result of this FDA-required process, patients who could benefit from a new drug may wait for years before it becomes available. And when it finally does reach the market, they will pay a lot more for it than they should—and for many, a lot more than they can afford.

To be sure, the FDA has sped up some elements of the approval process and implemented procedures to help get "rescue" drugs to sick patients quickly. But that still leaves the question of whether the FDA should be trying to determine effectiveness.

Were the FDA to drop its demand for efficacy but require strict physician oversight and the informed consent of patients, the approval process would move more quickly. As a result, more patients would have greater access to more new drugs, and drugs would cost less because the approval process would be so much shorter.

The High Cost of Saving.

America is undergoing an economic evolution that also happens to be a revolution: the rise of the investor class. Stock ownership has expanded from 15 percent of the American population in 1980 to 50 percent today. Although there has been great progress, one group has been left behind—the more than 50 percent of all Americans employed by small businesses. And the reason for the disparity is government regulation. Federally enacted barriers limit the ability of small businesses to offer their employees meaningful retirement programs.

When Congress passed legislation that established 401(k) retirement plans that enabled workers to make pre-tax contributions to a tax-deferred account, it wanted to give company owners and highly compensated employees an incentive to encourage participation by the less-compensated employees. To reach this end, the legislation instituted a complicated testing procedure to detect inadequate participation by low-wage employees, which in turn limits the amount high-wage employees can tax defer. This intentionwas eventually codified into the Safe Harbor Act.

Today it is abundantly clear that while 401(k)s have been an unqualified success, the testing procedure required by the law has been a costly failure. In most cases, the plan sponsor (the employer) must retain a record keeper and a third-party administrator to ensure the retirement plan is in compliance with testing requirements. The cost of these services can range from $3,500 to $30,000 annually, depending on the size and complexity of the plan. As a result, retirement plans are out of reach for most small businesses — a real problem since 52 percent of Americans work for companies with 50 or fewer employees.

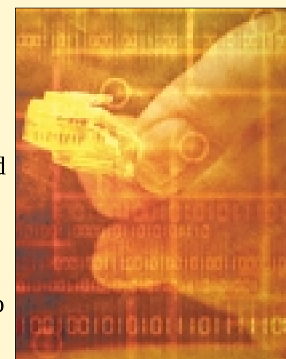
While Congress has tried to make some corrections, even these have had a negative impact. In the name of fairness, Congress has placed a burden on small firms that not all can bear and in so doing has denied many the chance to save for retirement.

To resolve the problem, Congress should exempt companies with 50 or fewer employees from these regulations. This solution would ensure that every small company in America would be able to supply its employees with some sort of salary deferral program, which would give us a good start toward helping ALL Americans become members of the investor class.

Does FBI Stand for Federal Bureau of Intrusion?

There is no doubt that the growth in information technology has created new challenges for those charged with protecting us from scurrilous forces both without and within U.S. borders. Unable to keep pace with emerging technology, the FBI has been trying, through regulation, to turn back the clock to a time before its traditional surveillance techniques became obsolete. As a result the FBI has positioned itself as a primary economic regulator of the information economy.

In 1968 Congress passed legislation meant to lay the boundaries of our Fourth Amendment protection against unreasonable searches and seizures. The legislation established specific guidelines for law enforcement officers obtaining phone records—differentiating between origin and content of the call. Twenty-six years later Congress revisited the issue, largely at the FBI's insistence that digitization of switched-circuit telephony threatened investigative efforts. In 1994 Congress passed the Communication Assistance for Law Enforcement Act (CALEA) which required telephone companies to engineer their networks so as to provide certain capabilities and capacities for court-ordered surveillance.



Congress and the FBI immediately clashed over limitations imposed on the agency by that new legislation. Congress had specifically established that the FBI should have no role in dictating telecommunications design, technology requirements, or the precise method by which it was to get the limited surveillance

Ultimately, the FBI resorted to litigation to obtain much in the way of enhanced surveillance capabilities that Congress did not grant. The cost of implementing the act rose from the authorized $500 million, to tens of billions of dollars, much of this borne by the cellular telecommunications industry.

Privacy advocates believe that it's not just the economics but the civil liberties implications of the FBI's activities that need oversight. Take, for example, CARNIVORE, an FBI-developed packet-sniffing program that scans reams of electronic information such as e-mails, regardless of constitutional protections. The organization defends this invasion on the theory that it may legally do so without a warrant as long as it retains only the IP address information.

The public seldom associates the FBI with economic regulation at all, but the agency nonetheless makes decisions with enormous cost implications for technology providers and equally grave civil liberties implications for the society that relies on them.

So is CARNIVORE a reasonable use of surveillance technology to ensure national security or another invasion of privacy? By the time we finally get an answer, the FBI may already know what we all are thinking. IPI

A complete version of the report, When the Unelected Rule: Ten Case Studies in Regulatory Abuse, *is available upon request and also available on our website at www.ipi.org.*

What We Don't See Can't Hurt Us

The Deception of Hidden Taxes

By Eric V. Schlecht

Each year, Americans of all walks of life sit down and complete their annual federal tax returns (some at their kitchen table, all too many more at their accountants' offices). Upon completion they may be relieved or distressed—depending on whether they'll be receiving, or writing, a check—but most believe they know how much they pay each year in taxes. Unfortunately, this couldn't be further from the truth.

Americans pay billions of dollars each year in so-called hidden taxes. These hidden taxes take various forms and occur at the local, state, and federal level, amounting to a shocking $2,462 per American, per year.

The visibility of taxes is paramount to a fundamentally fair tax system. If people don't accurately perceive how much government policies cost them they cannot make informed decisions in our democratic process. As Steve Entin, president of the Institute for Research on the Economics of Taxation points out, "Visibility requires that the tax system reveal clearly to the citizen/taxpayer what he or she must pay for government goods, services, and activities. Taxes are the 'price' we pay for government; taxes 'cost out' government for the taxpayer."

For the purposes of this discussion, a hidden tax is one that is not explicitly clear to the taxpayer. For example, sales taxes generally are not considered to be hidden taxes because the costs are clearly indicated on cash register receipts. Many regulations, mandates, and other government policies have been described as hidden taxes because of the costs they impose on Americans. However, this article focuses primarily on tax policy, not a broader definition of hidden taxes. The accompanying table depicts the impact of some hidden taxes.

Let's examine a few of them more closely.

Double Duty: Corporate Income Taxes

While many Americans associate a lack of visibility in the tax code with excise and value-added taxes, the visibility of some taxes is impaired by the fundamental public misunderstanding of who actually pays taxes.

On the surface, taxing corporations instead of people may sound appealing. But it's not that simple, since corporations are people

HIDDEN TAXES IN THE UNITED STATES

HIDDEN TAX	COST (BILLIONS)	COST PER PERSON
CORPORATE INCOME TAX	$215.3	$806
FUEL TAXES	$58.9	$220
OTHER EXCISE TAXES AND "SIN" TAXES	$29.0	$109
EMPLOYER SHARE OF PAYROLL TAXES	$230.2	$862
WORKERS COMPENSATION TAXES	$13.2	$49
UNEMPLOYMENT TAXES	$28.2	$106
IMPORT TAXES	$18.7	$70
HOTEL ROOM TAXES	$6.7	$25
AIRLINE TAXES	$4.0	$15
STATE/LOCAL UTILITY TAXES	$16.0	$60
IMPLICIT TELECOMMUNICATIONS AND ELECTRICITY TAXES	$11.0	$41
SEVERANCE TAXES	$4.6	$17
INSURANCE PREMIUM TAXES	$9.0	$34
LICENSES (OCCUPATION, CORPORATE, UTILITY, ALCOHOL,& AMUSEMENT)	$12.6	$47
TOTAL	**$657.5**	**$2,462**

Source: NTU Calculations from Census Bureau and other Governmental Data.

working as legal entities. In addition, when the government imposes corporate income taxes, the corporations respond by, for example, *raising prices, lowering payments to stockholders, and/or reducing employee compensation or capital investment*

Under any of the three options, Americans end up paying the tax either through lower wages if they work for a corporation, poorer performance if they own a mutual fund, or higher prices when they buy a product. But this tax burden doesn't show up on any pay slip or price tag.

Hidden corporate taxes impose an even greater burden because they represent double taxation. When a company earns a profit, it pays taxes on that money. When it pays its stockholders a dividend, that same money is taxed again. This double taxation discourages much-needed investment. Harvard economist Dale Jorgensen calculates that double taxation reduces our national wealth by about a *trillion* dollars.

Everyone who owns a mutual fund or IRA, or who participates in a 401(k) or typical pension plan, is penalized by this double taxation. Even relatively low-income Americans increasingly rely on stocks for a portion of their savings. According to the Federal Reserve Bank, from 1989 to 1995 the share of stocks as a percent of total assets doubled for families with incomes under $25,000.

Producers Pay: Excise Taxes

Unlike retail sales taxes, which are clear to consumers, excise taxes are imposed on producers. As a result, the final cost of excise taxes is often hidden from consumers. These taxes lower consumption of the taxed product and increase consumption of other products. Because they distort people's spending decisions, excise taxes can be a particularly costly way for governments to raise money. Examples of federal excise taxes include vaccination taxes, gas taxes, beer and liquor taxes, and phone taxes to name just a few.

Withholding the Obvious: Income Tax Withholding

When tax day comes around each year, many Americans are happy to get a check from the federal government, even though they're just getting back their own money—without interest. This is an instance where visibility concerns may not be immediately recognized—a warped case of the exception proving the rule. Most Americans wouldn't consider income tax withholdings as a "hidden tax," and yet—for that very reason—they are one of the most insidious of the hidden taxes. Clearly, we would be more conscious of what one pays in income taxes if we were required to write a check to the U.S. Government once a year. Instead, since 1942 Washington has cleverly maintained a system that takes small amounts of our income every pay period so the loss is not as apparent. This hidden tax is hiding right under our noses.

Sharing the Burden: Employer Share of Payroll Taxes

Another classic example of a hidden tax of which the majority of Americans are completely unaware is the share of payroll taxes supposedly "paid for" by the employer. Again, to have visibility the taxpayer must be aware of how much he or she is paying in taxes. If the average taxpayer assumes the employer's share of payroll taxes is actually paid by the employer and the opposite is true, visibility is hardly achieved.

According to the government, payroll taxes for Social Security and Medicare are "paid equally by both employees and employers," with each paying 7.65 percent. While that may be true for accounting purposes, economist Walter Williams explains how it really works:

> [Y]ou probably already believe . . . that your employer pays half your Social Security. This lie may be demonstrated by pretending that you're my boss. We agree to a wage of $7.00 an hour. You deduct 50 cents an hour as my Social Security contribution and add 50 cents as the "employer contribution," making your cost to hire me $7.50 an hour. My question is: If it costs you $7.50 to hire me, what is my minimum hourly output for you to keep me on the job and stay in business? If you said $7.50 an hour, go to the head of the class, because you also know who pays all of the Social Security tax. The worker does.

Williams observes that the government maintains the myth that employers pay half of Social Security and Medicare taxes because Americans would "go ape" if they knew the true tax burden these programs impose.

Buried Alive: Phase-Outs of Deductions

Similar to bracket creep, deduction phase-outs have a visibility of nearly zero. While other hidden taxes have been described in dollar terms, there are many policies buried in the federal tax code that serve as hidden taxes by forcing people to pay higher-than-normal marginal tax rates — the rate paid on an additional dollar of income. The U.S. Joint Committee on Taxation (JCT) recently reported on 22 provisions that can make a taxpayer's marginal tax rate differ from the statutory rates of 15, 28, 31, 36, and 39.6 percent. All told, the JCT found that 33.2 million taxpayers face effective marginal tax rates that differ from the statutory rate.

The Social Security benefits tax provides an example of how effective marginal tax rates can differ from statutory marginal tax rates. Up to half of Social Security retirement benefits are taxable for taxpayers with modified adjusted gross income thresholds between $25,000 and $34,000 ($32,000 - 44,000 if married filing jointly). In other words, once a taxpayer's income reaches $25,000, an additional dollar of income adds 50 cents of Social Security benefits to taxable income. This provision makes the effective tax rate 50 percent higher than the statutory rate.

Conclusion:

So, come April 15th, as you evaluate your personal tax burden, think of it as only the partial payment of what the federal government has charged you for its goods and services. If you "saw" the whole price tag, it might be more than you are willing to pay! IPI

Eric V. Schlecht is Director of Congressional Relations for the National Taxpayers Union (www.ntu.org). He has written for National Review Online, The Washington Times, Investor's Business Daily, *and other publications.*

Will The Bush Education Plan Make The Grade?

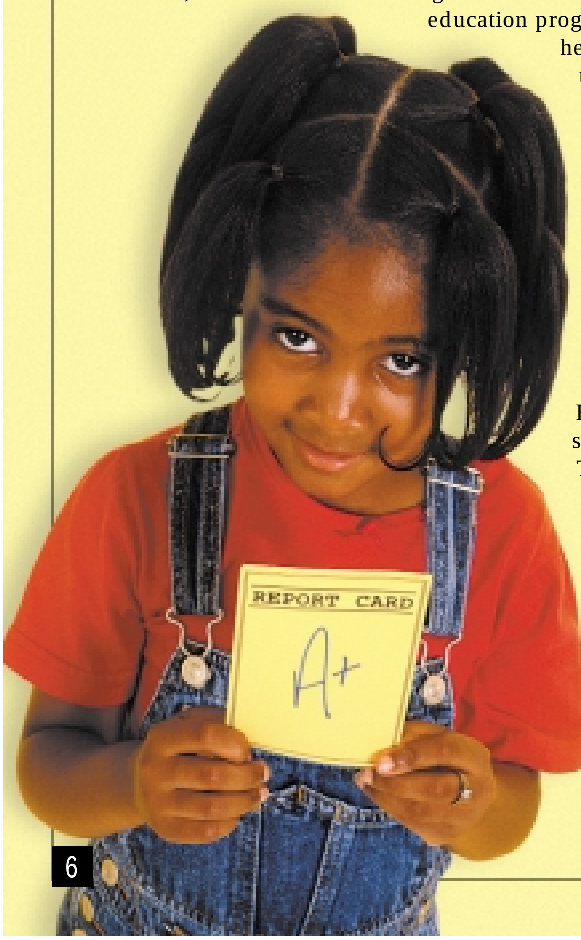
By George Pieler

President George W. Bush is basking in the warm glow of bipartisan support for his framework for education reform. The President has taken the unusual approach of outlining his education program in detail, but not committing it to legislative language—that part he will leave to Congress.

One result is that both Democrats and Republicans can agree on the broad reform principles Bush has put forth, fight over the details, and still produce a bill the President can both sign into law and embrace as a victory for his reform agenda. This will help the White House build the political capital to advance the rest of the Bush reform agenda.

The President is surely right in seizing on the popular topic of educational improvement to strengthen his relationship with a divided Congress. More importantly, his framework for reform contains many good things, including stronger federal support for charter schools, advancing the ideas of parental choice and producing reliable measures of educational success, and demanding better performance from schools that serve the poorest of the poor.

Even so, President Bush is taking some serious risks with his education program. First of all, he has embraced the idea that local schools should be more accountable to the federal government, and that in return they should get more federal funds. As the President said during a February 21 school visit in Tennessee, “An increase in spending, coupled with education reform that holds people accountable, is the right path for America to take.”



Indeed, the Bush budget for fiscal year 2002 suggests a $4.6 billion, 11.5 percent increase in funding for the U.S. Department of Education. This would add to the Department’s current budget of $40 billion, over 30 percent higher than in 1990.

Such a large hike in federal education spending may be part of the price President Bush believes he needs to pay to buy more of that political capital. Unfortunately, there is no credible research evidence that more spending on education improves results in the classroom. As Dr. Robert Franciosi of the Goldwater Institute points out in a forthcoming paper for the IPI Center for Education Freedom, two-thirds of all recent studies that sought a link between higher spending and educational achievement showed no statistically significant correlation (and in some case, a negative correlation!).

Since President Bush is both seriously committed to education reform and a skilled political leader, we can assume he knows perfectly well that spending more doesn’t really make a difference in the classroom. Instead, the President is trying to put in place accountability mechanisms, incentives for greater parental involvement, and a federal system of reward and punishment to leverage local school improvements.

That is a conceptually sound idea, and it builds on the experiences in states that have used this approach with good initial results: most conspicuously, Bush’s own record in Texas, and his brother Jeb’s record as a reformer in Florida. In fact, the boldest parts of the President’s plan draw on Jeb Bush’s A+ Plan, which requires testing and imposes accountability standards on schools to force improvement.

The most famous part of the A+ Plan is giving children in failing schools the right to transfer out, including to a private school. George W. Bush has a similar provision in his education reform framework, and the education establishment has denounced this as a voucher program that would undermine public education. But this voucher feature of the Bush plan already seems D.O.A. in Congress. The Senate Education Committee conspicuously omitted that provision in drafting its version of Bush’s reform plan, although it may be raised in Senate floor debate.

That’s not good news for advocates of education freedom, since the exit option for children in failing schools is the strongest parental empowerment feature of the Bush reform package. In fact, the President emphasizes that his goal is to improve public schools, and empowering the parents of children in failing schools is just a means toward that end. Similarly, Florida Education Commissioner Charlie Crist boasts that under the A+ Plan “only 73 Florida students out of 2.5 million eligible voted to make use of the state’s last-resort opportunity scholarship.”

That may be a success for the school system. Whether it’s good for the children is less clear. In any event, President Bush clearly deserves an “A” for good intentions in putting forth his reform framework. Americans of good will should hope the President will succeed in his reform objectives. Even so, Bush’s emphasis on more money, stronger federal oversight, and incremental improvements in the area of school choice is more mainstream than bold. It may help him to build political capital, but it bypasses the opportunity for educational reform that is bold, forthright, and freedom-enhancing IPI

George Pieler is the Director of the IPI Center for Education Freedom.

IPI Hosts Capitol Hill Briefing on Prescription Drugs

The White House recently proposed its prescription drug benefit plan, and Congress expects to pass its own version during this session. But there has been much controversy regarding how the legislation should be crafted. How can it garner support not only from both political parties, but also from the pharmaceutical industry and other interest groups…plus gain a presidential signature?

House Majority Leader Dick Armey addresses the audience at the briefing.

That's exactly what the Institute for Policy Innovation (IPI) set out to discover when it hosted a Capitol Hill policy briefing in February—"Where Is the Common Ground on a Prescription Drug Benefit?".

IPI's briefing, held in the Capitol Building, Washington, D.C., brought together more than 100 key legislators, stakeholders, congressional staff and national media. Participants were eager to discuss the issue with House Majority Leader Dick Armey and Representative Phil Crane, who is a member of the Health Subcommittee of the House Committee on Ways and Means.

Two panels of stakeholders and think tank experts representing a broad spectrum of thought and interests followed the congressmen. Speakers included: Dean Rosen, Health Insurance Association of America; Richard A. Deem, American Medical Association; Judith Bello, PhRMA; Richard Bagger, Chairman of the New Jersey Assembly Appropriations Committee; Dr. Merrill Matthews, IPI; Dr. Len Nichols, Urban Institute; and John S. Hoff, Trustee of the Galen Institute. The briefing was well attended and resulted in extensive media coverage both before and afterwards in major national publications, as well as in medical trade magazines and newsletters.

Rep. Phil Crane addressing the audience while IPI's Merrill Matthews and Congressman Dick Armey look on.


Merrill Matthews introducing IPI's newest publication, IPI Ideas.

IPI's Gary Robbins Defends Tax Cuts on *CNN Saturday Morning…*

On February 10, 2001, *CNN Saturday Morning*, a news program that features the most prominent news of the week, invited IPI's Senior Fellow Gary Robbins to discuss the Bush tax cuts.

Taking advantage of this timely opportunity, Mr. Robbins pointed out why tax cuts are needed and explained the differences between the economies of the Reagan years and the present.

He mentioned, "The only way we can hope to get a balanced growth out of the current situation is to cut the marginal tax rates we have now and to allow the Fed to do its magic in terms of expanding the economy."

CNN Saturday Morning is hosted by Miles O'Brien and Kyra Phillips and airs weekly from 8:00 a.m. to 10:00 a.m. ET.


Panel speakers Judy Belo, Richard Deem, Richard Bagger, Merrill Matthews, and Dean Rosen.


IPI panel speakers Bartlett Cleland and Merrill Matthews are joined with Len Nichols of the Urban Institute and John Hoff of the Galen Institute.

Are Federal Taxes Taking You to The Cleaners?

	BUSINESS COSTS	FEDERAL TAXES
LABOR	43¢	13¢
PAYROLL TAXES	4¢	4¢
RENT	12¢	4¢
SUPPLIES	9¢	3¢
DEPRECIATION	9¢	3¢
UTILITIES	7¢	2¢
INSURANCE	4¢	1¢
OFFICE & ADMINISTRATION	4¢	1¢
REPAIR, MAINTENANCE	3¢	1¢
ADVERTISING	3¢	1¢
INTEREST/ BANK CHARGES	3¢	1¢
CLAIMS & MISCELLANEOUS	3¢	1¢
PROFIT	6¢	2¢
FEDERAL RETAIL SALES TAXES	0	0
TOTAL	$1.10	37¢ 33.6%

Sources: Business costs provided by the International Fabricare Institute. Analysis involving federal taxes provided by Gary and Aldona Robbins, Fiscal Associates.

If you think laundering a shirt is only about soap and water, think again. Nearly 34 percent of the cost of cleaning that garment is attributed to federal taxes. When you add in state and local taxes that percentage goes even higher. So who pays these taxes? The dry cleaners? Of course not. You do! The business passes these expenses directly to the consumer in what is commonly referred to as "hidden" taxation—or maybe in this case we should call it "money laundering"?

New Ideas

IPI is excited to announce a new addition to its publication lineup. IPI Ideas.

This new one-pager allows IPI to address and respond quickly to hot policy debates, in a reader-friendly format. Just enough information in just enough time—for busy people on the go—but with in-depth data and facts that make the case.

Watch for the newest IPI Ideas to hit soon. Visit www.ipi.org to check it out.

IPI Insights

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