most recent set of temporary regs made even more improvements, he had a few recommendations.

The use of the nonaccrual-experience method of accounting should be added to the list on nonreportable transactions, Grubbs urged, to make clear that it does not have to be reported as a tax shelter.

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Like Ernst & Young, Grubbs would like the final regs to permit taxpayers to self-test alternative methodologies reflecting their own experience. And if the traditional *Black Motor* formula is not adopted as a safe harbor, he said, the government should include some version of it that is less burdensome than the one in the proposed and temporary regs. According to the IRS, in *Black Motor Co. v. Commissioner,* the nonaccrual-experience amount is computed by first determining the ratio of total bad debts charged off (adjusted for recoveries) for the current tax year and the five preceding tax years as compared with the total accounts receivable at the end of the current tax year and the five preceding tax years. This ratio is applied against the accounts receivable balance at the end of the current tax year, and the resulting amount is then reduced by the credit charges (accounts receivable) generated and written off during the current tax year, which results in the nonaccrual-experience amount for the current tax year. ■

Kucinich Launches Tax Plan for Capitol Hill and Campaign Trail

By Timothy Catts — tcatts@tax.org

To Rep. Dennis J. Kucinich, D-Ohio, the Bush administration's tax cuts are nothing less than the tools of economic stratification. Kucinich, the chairman of the House Progressive Caucus and an underdog candidate for his party's presidential nomination, told the audience at a September candidates' forum that he believed too much of the benefit from the cuts was going to too few taxpayers. "I think that what's happening in this society is, there is a maldistribution of the wealth," he said.

Fast forward to December. Kucinich, a four-term congressman from Cleveland, is still thought of by many political observers as a longshot. But last week, in the waning days of the congressional session, he introduced a tax bill he hopes will make a difference on the campaign trail and help shape Democratic alternatives to Republican tax cuts on Capitol Hill.

The bill, the Progressive Tax Act of 2003 (H.R. 3655), is possibly the most detailed tax platform proposed thus far by any of the Democratic hopefuls. Kucinich hopes it will not only set him apart from his competitors in the race to the nominating convention, but also help set the agenda for Democrats in Washington when Congress returns in January.

The bill grabs a handful of ideas that have become key Democratic talking points and runs with them.

Built around a pair of refundable tax credits aimed at middle-class taxpayers and paid for largely by reversing income tax rate cuts for high earners, the bill grabs a handful of ideas that have become key Democratic talking points and runs with them. The credits, one to offset payroll taxes and another to replace a number of credits for families with children, are steeped in the rhetoric of "making work pay." The rate hikes, like the bill's antishelter and loophole-closing provisions, are designed to reverse "giveaways" granted by the Bush administration. The bill even pays for itself — balanced budgets are perhaps the Democrats' hottest touchstone — and then some.

The payroll tax credit would be worth as much as $1,530 to a taxpayer earning up to $15,000, phasing out to zero after $30,030 in income. The "simplified family credit," which would be worth $2,000 per child with a 50 percent phase-in, would replace the earned income tax credit, the child tax credit, and the dependent exemption. It would begin to phase out at $150,000, according to a spokesman in Kucinich's congressional office. "We just wanted to keep it simple," the spokesman said. "Everyone, no matter what their income, would be in the same system." The total cost: $87.8 billion.

At the other end of the income spectrum, Kucinich would abandon some of the marginal rate cuts passed in 2001 and accelerated this year. The top two brackets would revert to rates of 36 percent and 39.6 percent from 33 percent and 35 percent, respectively. Kucinich's plan would also preserve the partial itemized deduction and personal exemption phaseout and would tax dividends and capital gains as ordinary income — raising $73 billion in the process. Combined with estate tax reform, anti-tax-shelter measures, and a handful of loophole closers, the bill would bring in a total of $106.6 billion.

> ***Kucinich would repeal the expensing and bonus depreciation provisions signed into law since Bush took office, moves that would hardly endear him to the corporate community.***

Some of Kucinich's proposals to raise revenue are sure to sound alarms throughout the business community. To combat tax shelters, Kucinich borrowed language from a bill he cosponsored with Rep. Lloyd Doggett, D-Texas, that would require corporations to prove all of their business transactions have "economic purpose," a legal doctrine that if enshrined in law, would end much sheltering activity. But it would stop many legitimate transactions as well, business leaders argue. He would also repeal the expensing and bonus depreciation provisions signed into law since President Bush took office, moves that would hardly endear him to the corporate community. His response? Stop whining. "Just because they'd have to pay fair taxes doesn't mean it'd be bad for the economy," Kucinich's congressional spokesman said.

According to Kucinich's congressional aides, 54 percent of taxpayers would get a tax cut averaging $1,215 under the Progressive Tax Act (17 percent, mostly with incomes of more than $100,000, would pay more). That should help convince voters that Kucinich, a liberal who supports universal health care and a higher minimum wage, is not out to raise everyone's taxes, said David Swanson, press secretary for Kucinich's presidential campaign.

That could be an advantage in a field in which two early contenders, former Vermont Gov. Howard Dean and Rep. Richard A. Gephardt, D-Mo., would repeal all of Bush's tax cuts, even those that benefit the middle class. Although Kucinich is seen by most political observers as a long shot for the Democratic nomination, let alone the presidency, he shares with another long shot, Sen. Joseph I. Lieberman, D-Conn., the distinction of having one of the most concrete tax agendas in the early stages of the race.

Kucinich's campaign pushes his proposals as "unique," but as bold as some of them are, he did not conjure them out of thin air. The payroll tax credit — one of the pillars of Kucinich's program — is, for example, a favorite of liberal pundits and lawmakers. Senate Democrats included a somewhat similar proposal in their ill-fated alternative to last spring's big Republican tax bill, the Jobs and Growth and Tax Relief Reconciliation Act of 2003. And Robert Reich, former labor secretary and founder of the liberal monthly *The American Prospect*, proposed a payroll tax holiday in his magazine in late 2002.

Kucinich's congressional spokesman told Tax Analysts the Progressive Tax Act is close to a pure distillation of the representative's tax policy views. But it is also a rough draft, the spokesman said, a starting point for a broader effort to reform the system. "This is not something that we're going to pass next year," he admitted. "It's something that we'd like to influence what does get passed." Or, he added, at least what the Democrats offer.

> ***'This is not something that we're going to pass next year,' the spokesman admitted. 'It's something that we'd like to influence what does get passed.'***

That hope influenced the timing of the bill's introduction, aides said. Introducing the bill at the end of the congressional session allows the Capitol Hill staff time to persuade other members to support it next year (Reps. Barbara Lee, D-Calif., and Bernard Sanders, I-Vt., have already signed on as cosponsors). And slipping it in before Congress left the Capitol for the better part of two months allows Kucinich the presidential candidate to campaign on a bill he's already introduced, a somewhat more substantial thing than a mere proposal. If the result is politically helpful, it was not planned: The campaign and the congressional office are completely separate.

If the bill is in fact a rough draft, Kucinich has left hints about the composition of the final draft. In the just-concluded congressional session, Kucinich lent his name to a number of tax bills. Since January, he has sponsored or cosponsored bills that would expand the refundable health insurance credit, hasten the increase in the refundability of the child tax credit, and convert the college tuition deduction to a credit.

But notwithstanding his recently launched tax agenda, one bill looms large in Kucinich's portfolio this year. His universal health care proposal, introduced with Rep. John Conyers Jr., D-Mich., calls for a "modest" payroll tax, a tax on stock and bond transactions, and a new tax bracket for the top 5 percent of taxpayers. In a sense, it represents two planks of his platform.

Kucinich's aides on Capitol Hill and in his campaign said his new tax bill is about fairness. "People are tired of finding out that they're paying higher taxes than Enron, and they're tired of finding out they're paying higher taxes for working all day than people who earn all their income from investments," Swanson said.

Because it protects low-income and middle-class taxpayers while striving for fiscal balance, the bill is an ideal antidote to the Republican-sponsored tax cuts enacted since Bush took office.

"This goes beyond the cries that the Bush administration's tax cuts are bad," Swanson said. ■

Full Text Citations

- Kucinich **news release**. *Doc 2003-25998 (1 original page); 2003 TNT 236-20*
- **Summary** of Progressive Tax Act. *Doc 2003-25997 (6 original pages); 2003 TNT 236-19*
- **Legislative text** of Kucinich bill. *Doc 2003-26033 (104 original pages); 2003 TNT 236-29*

Ownership Critical for Disregarded Entities, IRS Officials Say

By Kenneth A. Gary — kgary@tax.org

IRS officials explained the tax treatment of disregarded entities last week at a BNA-sponsored luncheon at the Washington office of Silverstein and Mullens. Jeanne Sullivan, a senior technician with the Office of Associate Chief Counsel (Passthroughs and Special Industries), and Joe Calianno, special counsel to the deputy associate chief counsel (international), clarified various issues stemming from the classification of disregarded entities.

According to Sullivan, there are three kinds of disregarded entities: (1) single-member eligible entities created by the check-the-box rules; (2) qualified subchapter S subsidiaries (Qsubs), domestic corporations wholly owned by an S corporation that has made an election to treat the entity as disregarded; and (3) qualified real estate investment trust subsidiaries (QRSs), which are default treatment for the wholly owned subsidiaries of a real estate investment trust. There are different definitions for what constitutes a disregarded entity, depending on the classification, Sullivan said.

Ownership Is Key

"The first issue is whether there is an entity at all," Sullivan said. According to Sullivan, Rev. Proc. 2002-22, 2002-1 C.B. 733, describes guidelines for multiple owners who would like to treat real estate as if it were held directly by the owners and not through an entity.

> ***'If you have more than one owner, you don't have a disregarded entity . . . you are going to have to have a partnership or a corporation,' Sullivan said.***

"If you have more than one owner, you don't have a disregarded entity," she said. "If there's more than one owner, you are going to have to have a partnership or a corporation — there is a 'tax something' there." Sullivan advised practitioners to look to the tax owners when attempting to determine the ownership of an entity. "While we don't have any ruling guidelines on this, people have come in for private letter rulings," she said. Sullivan stressed that determining who is the tax owner is critical and encouraged practitioners to request guidance on the issue if they believe it is needed.