

NOMINATION OF RENATO BEGHE

HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

RENATO BEGHE TO BE A JUDGE OF THE U.S. TAX COURT

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MARCH 21, 1991
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NOMINATION OF RENATO BEGHE TO BE A JUDGE OF THE U.S. TAX COURT

THURSDAY, MARCH 21, 1991

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:06 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the subcommittee) presiding.

Also present: Senators Boren, Pryor, Rockefeller, Daschle, Breaux, Packwood, Danforth, Chafee, Heinz, Durenberger, Symms, and Grassley.

[The press release announcing the hearing follows:]

[Press Release No H-9, March 13, 1991]

SENATOR BENTSEN ANNOUNCES HEARING, MARKUP ON TAX COURT NOMINATION;
COMMITTEE TO CONSIDER APPOINTMENT OF RENATO BEGHE AS JUDGE

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman of the Senate Finance Committee, Wednesday, announced a hearing and markup on the nomination of Renato Beghe to be a judge of the United States Tax Court.

The hearing, followed immediately by executive session, is at 10 a.m. on Thursday, March 21, 1991, in Room SD-215 of the Dirksen Senate Office Building.

Beghe was a partner with the New York law firm of Morgan, Lewis & Bockius.

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order.

Mr. Beghe, if you would take a seat at the witness stand.

Mr. Renato Beghe has been nominated to the U.S. Tax Court. The Tax Court tries and adjudicates cases between the Internal Revenue Service and taxpayers. As a tax judge, your task will be to decide how the tax laws apply to individual circumstances when the government and the taxpayer are unable to agree, and that is often.

As the tax laws have become more complex the difficulty of that task has really grown. I looked over your resume; and you are certainly no stranger to the tax laws or to the tax legal profession. From every report we have heard, you are held in very high regard.

My understanding is that you have practiced tax law for 36 years, most recently as a partner with the New York firm of Morgan, Lewis & Bockius. You have also played a leadership role in professional legal organizations including the New York, American, and International Bar Associations.

You have lectured at major academic conferences on Federal taxes and your writings, of course, appear regularly in professional tax journals.

Frankly, Mr. Beghe, I am delighted to see somebody of your stature go on the Tax Court, and I will be looking forward to hearing your comments. But, but for the moment, I would like to defer to the ranking minority member, Senator Packwood.

OPENING STATEMENT OF HON. BOB PACKWOOD, A U.S. SENATOR FROM OREGON

Senator **PACKWOOD**. Mr. Chairman, I was going to say the same thing. I am ready to vote him out now. [Laughter.]

We seldom have somebody of this extraordinary record who is willing to leave obviously a very successful practice and undertake this. I am just delighted to have you with us.

Mr. **BEGHE**. Thank you.

The **CHAIRMAN**. Well, with that in mind, Senator Heinz, you understand how we already feel. Would you like to comment? [Laughter.]

OPENING STATEMENT OF HON. JOHN HEINZ, A U.S. SENATOR FROM PENNSYLVANIA

Senator **HEINZ**. Mr. Chairman, I understand that the disposition of the chair and ranking member can only go down hill from here. [Laughter.]

Mr. Beghe seems to be willing to take the chance on having me say a few words on his behalf, but in any event, I am here to introduce Mr. Renato Beghe to the committee on behalf of one member of this committee, Senator Moynihan, who cannot be with us today—he is chairing another hearing—and Senator Alphonse D'Amato who similarly is engaged, and if it had not been for the conflicts in their schedule, they both would be here. And they asked me to express their regrets and apologies both to you, Mr. Chairman, and to Mr. Beghe.

Mr. Chairman, Mr. Beghe has concentrated, as you noted, his professional efforts in the tax field for more than 30 years. He has developed a wealth of experience in a broad variety of areas of tax practice, first, as an associate, tax partner and chairman of the tax department of the New York City law firm of Carter, Ledyard & Milburn—that was beginning in 1954 through 1983—and then as a senior partner in the tax section of the New York City office of Morgan, Lewis Bockius; I might add, actually a Philadelphia firm.

He is a fellow of the American College of Tax Counsel, a member of the Tax Advisory Group of the American Law Institute, a former chairman of the tax section of the New York State Bar Association, and has lectured and written extensively on tax matters.

As I am sure—Senator D'Amato and Senator Moynihan can testify to even more directly than myself—he is, indeed, as you suggested, Mr. Chairman, very highly regarded in the community of tax practitioners, and, in my view, would be a clearly outstanding addition to the U.S. Tax Court.

So on behalf of my colleagues that I mentioned, I want to welcome Renato Beghe who is accompanied here by his wife, Bina, and his daughter, Eliza, to this hearing today.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much, Senator Heinz. We appreciate that.

Mr. BEGHE. Thank you, Senator Heinz.

Senator HEINZ. Mr. Beghe, you are on your own. [Laughter.]

The CHAIRMAN. Mr. Beghe, I want to reiterate, in part, what Senator Heinz has said. Senator Moynihan very much wanted to be here, but he is chairing a subcommittee on an environmental question this morning, and if it wasn't for that important committee hearing, he would certainly be here. And he is very much in support of your nomination. But if you would proceed, please.

STATEMENT OF RENATO BEGHE, NOMINEE TO BE A JUDGE OF THE U.S. TAX COURT

Mr. BEGHE. Thank you, Mr. Chairman.

I have no prepared statement, but I would be happy to try to answer any questions you or any members of the committee may have.

The CHAIRMAN. I was interested in noting—if this is correct, please advise me, and if not, correct me that your background really is in tax planning and that you have not participated in tax litigation in the courts. Is that correct?

Mr. BEGHE. Certainly the primary emphasis of my practice has been on advising clients, but I have had experience in tax controversy work, both in handling audits before the Internal Revenue Service, and there have been a few cases in which I have represented taxpayers in the Tax Court and have carried the matter to a conclusion.

The CHAIRMAN. Do you think that will give you any problem in sitting as a judge?

Mr. BEGHE. I do plan to do some on the job training and to familiarize myself, as I have already stated to do, with the court's rules of procedure. I have, in the last few weeks, attended a number of trial calendars and cases that were being tried in court, and I am confident that I will be able to get up to speed on the procedural aspects of this new job.

The CHAIRMAN. I must say, Mr. Beghe, that I think private practice experience, dealing with the taxpayer and all of his concerns and problems in dealing with bureaucracy, is extremely helpful. And I don't question that you will come on fast on the procedures.

Currently, we have some 50,000 tax cases pending.

Do you have any thoughts on how clearing out that backlog can be expedited, other than by adding more judges?

Mr. BEGHE. Actually the court has been quite successful, I think, in reducing the backlog of its cases over the last 5 years. In 1986, which I think was the high point, there were in excess of 80,000 cases. And so the figure that you mentioned does represent a reduction over that period of time.

Of course, cases are coming in and they are being disposed of, so the 50,000 cases that are on the docket now are for the most part,

not the same cases that were there in 1986 when we had the substantially higher number of cases.

So I think the court is working quite successfully to reduce that backlog. And with the advent of the Tax Reform Act of 1986 and the reduction in the number of tax shelter cases, I hope that the court will be able to be quite successful in moving the inventory of cases along.

The CHAIRMAN. The Congress set up a Federal Courts Study Committee to make recommendations about the judicial system. One of their recommendations, as I recall, was to establish an appellate court that had exclusive jurisdiction over tax case appeals. Have you given any thought to the feasibility of that proposal?

Mr. BEGHE. Yes.

I did participate in the revision of the report that the New York State Bar Association Tax Section prepared and filed on that subject in which it took the view that the present system seemed to be working well. And they did not support the proposal for the creation of the National Court of Tax Appeals.

And in so doing, they were taking a position that was the same as that espoused by the American Bar Association Tax Section, the Commissioner of Internal Revenue, and the Chief Judge of the Tax Court, all of whom have come to the conclusion that the present system is working well, and that the reasons advanced to support that change really did not justify the change.

The CHAIRMAN. Did not?

Mr. BEGHE. That the reasons that had been advanced to support the proposal for a National Court of Tax Appeals are not justified in view of the way that the present system is working.

The CHAIRMAN. Let me get a feel for your philosophy as a judge. Suppose you had a case before you and, from your point of view, the literal interpretation of the law would provide for a glaring loophole in the payment of taxes. Let's say it looked like an unjustified tax shelter. How would you interpret it?

Would you use a literal interpretation or would you try to close the loophole?

Mr. BEGHE. Well, certainly where there is an apparent loophole, it is necessary first to consider the facts of the case and the apparent intention of the statute, as evidenced not only by the literal language but the legislative history and the other materials that are available, to indicate the purpose of Congress in enacting the law.

And it is very difficult to speculate without a particular case in hand, but there are circumstances in which the court has held—and the courts have held—that, indeed, a “loophole” did exist, and in others that it was possible by reviewing the facts and the language of the statute that it did not exist.

So without a particular case before me, I can't really answer that question.

The CHAIRMAN. Now don't fudge that answer on me.

Mr. BEGHE. Excuse me?

The CHAIRMAN. Don't fudge that answer on me now.

Is it our job or is it the judge's job to close that loophole if the literal interpretation is such that you deemed it to be a real loophole, but apparently it was intended by Congress?

Mr. BEGHE. If the language is clear and unambiguous as applied to the facts of the particular case, the conclusion may very well be that what some people call a loophole actually does exist, and it would be necessary to so hold and bring the matter to the attention of Congress to enable it to decide whether it wanted to remedy the situation.

The CHAIRMAN. All right. Senator Packwood.

Senator PACKWOOD. I think I agree with his answer.

The CHAIRMAN. Well, I think I do too. [Laughter.]

Senator PACKWOOD. It is not the court's job to be closing loopholes that we have left open if we have clearly left them open.

The CHAIRMAN. That is right.

Senator PACKWOOD. As long as we are on philosophy, let me ask you a little more. You mentioned—you said you hoped that with the Tax Reform Act, and it is somewhat simpler—the caseload would shrink. Should we continue to move in the direction that we did in the Tax Reform Act, i.e., getting rid of deductions, lowering the rates, and realizing that every deduction is somebody's incentive, which direction should we be going with the Code?

Mr. BEGHE. What you are touching on is, of course, the problem of complexity in the tax law.

Senator PACKWOOD. Well, now it is not so much complexity as incentives. And I have never found anybody yet who complained about complexity if it favored them. Somehow they managed to live with it and didn't what it simplified.

I am really talking about incentives. Should we get rid of the tax incentives, which by and large the deductions are, i.e., homeownership or whatever it might be, and keep a progressive tax so that the rich paid more than the poor, but you could still lower the rates if you got rid of the deductions?

Mr. BEGHE. The question of incentives, I think, is really a matter of policy that is within the province of Congress. I think it is the job of the courts to interpret and apply a statute as it is given to them.

Senator PACKWOOD. Oh, I agree.

I am just curious about your personal philosophy.

Mr. BEGHE. Personally, I think I would be inclined to favor an approach with more neutrality in it and to have incentives created by other more direct means.

Senator PACKWOOD. Thank you. I have no other questions, Mr. Chairman.

The CHAIRMAN. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman.

I did not plan on asking any questions but maybe one or two might be appropriate.

Tell me if you would, sir—and the Chairman and Senator Packwood may have already asked this—the type of practice that you have had for the last several years? Who did you represent? I am not talking about giving us names, but was this corporate, individual, both, or—

Mr. BEGHE. It is both corporations and individuals, but primarily in the business context rather than personal planning for individuals, although I did have some experience in the personal area in

my prior practice as an associate and partner at Carter, Ledyard & Milburn.

But I think I have been blessed in having the opportunity to deal with a broad variety of tax problems but primarily in the business context.

Senator PRYOR. You may be aware that there is a perception in any country and especially in ours, that the so-called tax collector—and in this case, the IRS—is that omnipresent overpowering monster out there where if they once ever get to you they have gotten you.

For example, on the burden-of-proof issue where the feeling is that the burden-of-proof issue is going to rest with the defendant in a tax case. Do you have any feeling on burden of proof? Should it be changed? Should we address that change in the Congress?

Mr. BEGHE. I know that there have been statutory proposals from time to time to shift the burden of proof to the Internal Revenue Service, but my personal view is that those proposals should not be enacted.

Under our voluntary self-assessment system, the facts with regard to the positions that are taken on the income tax return are really within the knowledge of the taxpayer, and I don't believe that it is unfair to put the burden of coming forward and the burden of persuasion on the taxpayer.

To hold otherwise would, I think, put the Internal Revenue Service at a disadvantage, would perhaps in the long run lead to a more intrusive situation in which it would be necessary to have more information returns, and more searching investigation into the affairs of taxpayers to make up for that disadvantage.

Senator PRYOR. Thank you, sir.

The CHAIRMAN. Mr. Beghe, as stated earlier, I think we are fortunate to have a man of your intellect and experience going into public service. We are appreciative of that. I wish you a long successful career here and happiness to your family living here.

Mr. BEGHE. Thank you very much, Mr. Chairman and Senators.
[Whereupon, at 10:25 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR D'AMATO

Mr. Chairman, I am happy to take these few moments to introduce and commend for your consideration, Renato Beghe, who has been nominated by the President as Judge of the United States Tax Court.

Renato's combined attributes of academic and practical experience have earned him the reputation as one of the finest tax law attorney's in the nation. Indeed the American Bar Association Committee on Appointments to the Tax Court have given him its highest rating as "highly qualified."

Having graduated at the top 10% of his class at the college and law school at the University of Chicago, he has continued his interest in academic aspects of the law through both collegiate and professional forums.

He is known, too, as an enthusiastic mentor of younger tax lawyers who benefit from his more than 30 years of experience in all aspects of tax law.

I am pleased that his wife, Bina, and his daughter, Eliza, are present today for this most auspicious event as they share an excitement for his confirmation by this Committee and by the whole Senate. Thank you, Mr. Chairman, for your courtesy.

BIOGRAPHICAL OF RENATO BEGHE

1. Name: Renato Beghe (I have not used the middle name "William" since graduating from law school in 1954).
2. Address: 2745 29th Street, N.W., Washington, D.C. 20008.
3. Date and place of birth: 3/12/33, Chicago, Illinois.
4. Marital status: Married 7/10/54 to Bina Beghe (nee Bina Loulie House)
5. Children:
 - Names and Ages*
 - Eliza Beghe Trask, 35
 - Adam House Beghe, 33
 - Francesca Forbes Beghe, 33
 - Jason Deneen Beghe, 30
6. Education:
 - Grammar school: Manierre School, Chicago, IL 9/38-6/39
 - Grammar school: St. Angela School, Chicago, IL 9/39-6/46
 - High school: Austin High School, Chicago, IL 9/46-6/48
 - College: University of Chicago, B.A. 9/48-6/51
 - Law school: University of Chicago, J.D. 9/51-6/54
7. Employment record:
 - 6/51-9/51 Stock clerk—Wilcox & Follet Book Company, Chicago, IL (summer job)
 - 7/53-9/53 Summer research assistant, Prof. Roscoe Steffen, Chicago, IL
 - 9/54-6/65 Associate, Carter, Ledyard & Milburn, New York, NY
 - 7/65-3/83 Partner, Carter, Ledyard & Milburn, New York, NY
 - 4/83-9/89 Partner, Morgan, Lewis & Bockius, New York, NY
 - 10/89-12/90 Consultant, Morgan, Lewis & Bockius, New York, NY
8. Government experience: None.
9. Memberships:
 - New York Bar
 - Phi Gamma Delta—Chi Upsilon Chapter

The America-Italy Society, Inc.—Director (Resigned as Treasurer and Executive Committee member 1/6/91)

Honorable Order of Kentucky Colonels

Emeritus member, New York City Tax Discussion Groups:

The Tax Forum; The Tax Club; The Uptown Tax Discussion Group

The Association of the Bar of the City of New York

Taxation Committee (1962-65)

Art Law Committee (1979-83)

Art Law Committee Chairman (1980-83)

Special Committee on Lawyer's Role in Tax Practice (1981-83)

Committee on Taxation of International Transactions (1990)

New York State Bar Association, Tax Section Chairman (1977-78)

Tax Section Executive Committee (1970-)

Joint Practice Committee of Lawyers and Accountants Co-Chairman (1989-90)

American Bar Association, Tax Section

(Various committees related to income taxation of shareholders and corporations)

International Bar Association Business Section Committee N (Taxation)

International Fiscal Association

American Law Institute, Federal Income Tax Advisory Group (1981-)

10. Political affiliations and activities:

Previously registered as a Republican in New York County

Registered as a Republican in the District of Columbia

Morrison Parker West Side Republican Club, New York, NY

(member 11/89-)

Political contributions:

NY Republican County Committee	\$500	1/30/91
Arnell Willis for State Representative Campaign	250	10/23/90
Citizens for Pierre Rinfret	500	8/30/90
Committee for Roy Goodman	500	8/30/90
Republican National Committee	500	3/14/90
Cmte to Re-elect Assemblyman Prescott	100	3/7/90
NY State Republican Committee	500	2/27/90
Friends of Senator D'Amato	1000	2/7/90
Republican Senatorial Inner Circle	350	1/23/90
NY Republican County Committee	1000	1/23/90
Friends of Senator D'Amato	1000	12/6/89
Friends of Giuliani	1000	10/9/89
Republican National Committee	500	9/14/89
Republican Senatorial Inner Circle	1000	9/14/89
Republican Senatorial Inner Circle(S)	1000	9/14/89
Citizens Committee for Ravitch	100	9/5/89
Bill Bradley for U.S. Senate	200	1/17/89
NY Republican County Committee	1000	1/23/88
* * * * *		
Ronald Reagan Presidential Campaign ¹	1000	84
Ronald Reagan Presidential Campaign ¹	1000	80
Jim Courter for Congress ¹	200	?

¹ Based on recollection, rather than currently available records.

11. Honors and Awards:

I was the recipient of a half-tuition scholarship during the entire time of my attendance at the College and Law School of the University of Chicago. I was informed many years later that the balance of my tuition was paid or reimbursed to my family through the scholarship fund of an Italian-American fraternal benefit society of which my father was a member.

Phi Beta Kappa

Order of the Coif

American College of Tax Counsel

Listed in *Who's Who and Who's Who in American Law*; Naifeh and Smith, *The Best Lawyers in America* (1987); *The National Law Journal*, *A Sampling of Prominent Tax Lawyers* (4/20/81); *New York Law Journal* article on prominent tax counsel in New York City (6/20/83).

12. Published writings:

Consideration in Tax-Free Asset Acquisitions, 26 N.Y.U. Inst. on Fed. Tax. 881 (1968).

The Artist, the Art Market and the Income Tax, 29 Tax L. Rev. 491 (1974).

Tax Planning for the Financially Troubled Corporation, 52 TAXES 795 (1974).

Income Tax Treatment of Covenants Not to Compete, Consulting Agreements and Transfers of Goodwill, 30 TAX LAWYER 587 (1977) (also a chapter in treatise, "Business Acquisitions" (PLI 1981; 1986 Supp.)).

Current Techniques in Planning for the Death or Retirement of a Shareholder: A Panel Discussion, 37 N.Y.U. Inst. on Fed. Tax. 7-1 (1979).

The American Law Institute Subchapter C Study: Acquisitions and Distributions, 33 TAX LAWYER 743 (1980).

Redrawing the Lines Between Corporate Debt and Equity Interests: The Proposed Regulations Under Section 385, 58 TAXES 931 (1986)

An Interim Report on the Debt-Equity Regulations Under Code Section 385, 59 TAXES 203 (1981).

Definitions of Debt and Equity for Subchapter S Corporations, Tax Forum Paper (2/7/83).

Outline on Tax Effective Investing in the U.S. for PLI Forum on International Taxation (10/85).

Income Bonds Revisited, Tax Forum Paper (10/5/87).

13. Speeches during past three years:

Remarks by Renato Beghe at Remembrance of the Life of George Kaufmann (10/13/90) (two copies attached).

Remarks on New York State Bar Association Tax Section's Report on Simplification of the Section 752 Regulations delivered to Business Related Taxes Committee, Taxation Section, The District of Columbia Bar (4/17/90) (Reprinted in Committee on Ways and Means, U.S. House of Representatives, 101st Cong. 2d Sess. Written Proposals on Tax Simplification (5/25/90)) (two copies attached).

In May 1989, I was a member of a panel at the ABA Tax Section meeting in Washington, D.C. with Professor Bernard Wolfman of the Harvard Law School and Howard Krane, Esq. of Kirkland & Ellis. We described and discussed the then current corporate acquisitions proposals of the American Law Institute Corporate Income Tax Project. There was no prepared text of my talk and my outline is in storage and currently inaccessible.

14. Qualifications:

My record of academic, professional and public service accomplishment seems to be confirmed by what I believe is the high regard in which I'm held by my colleagues at the tax bar in academe, private practice and government service. Although these indications provide no assurance of future performance, I've reached such a stage in my career life that I'd like to continue and complete it with a substantial sustained effort of public service as a Tax Court judge. Using a word coined by the late Walter Kaufmann, I have the "humbition" to do the job, a consciousness of my limitations that will only intensify my efforts to excel in fulfilling the commitment I've made to the public and to myself in seeking the office.