

THE GREAT CELLULAR CAPER

THEY MAY NOT KNOW IT YET. BUT THOSE HIGH-stepping executives with cellular phones cupped to their ears, racing through Chicago's O'Hare International Airport, stalled on the freeways of Los Angeles, or lifting off from New York's 34th Street Heliport, were badly burned last July. The unlikely perpetrator was an old-line mining company located in a remote part of Newfoundland. Behind closed doors, the House Ways and Means Committee, with virtually no debate and by voice vote, cut the taxes of the Iron Ore Company of Canada by as much as \$15 million over five years and hit the cellular-telephone owners with a whopping \$68 million bill to pay for it.

This is the story of how an obscure mining company, desperate for tax relief, hired a high-priced and well-wired Washington lobbyist who got the job done virtually sub rosa. In the process, he gored a generally savvy and high-powered industry, which did not know what was going on until it was all over.

It all goes back to the sweeping 1986 tax-reform measure, which included a corporate minimum tax. The new levy was designed to prevent multinational companies from juggling their books so that the taxes they pay foreign governments wipe out their U.S. tax liability. A key part of the minimum tax was slated to go into effect this year. Iron Ore Company of Canada (whose owners include M.A. Hanna Co., Bethlehem

In the lobbyist-eat-lobbyist world of special-interest legislation, one company's gain is often another's loss. Therein lies a cautionary tale.

BY JEFFREY H. BIRNBAUM



The Newfoundland mine (above) got a \$15 million tax break thanks to the slick moves of lobbyist Kenneth Kies (right).

Steel, National Intergroup, and Dofasco Steel, Canada's largest producer) is incorporated in Delaware, and all of its income comes from the Canadian mine. Canada taxes the income at a rate higher than the U.S. corporate tax. Yet the corporate minimum tax would require the company to fork over still more money to Uncle Sam.

The job of trying to change the law fell to Wilfred J. Tremblay, the vice president for taxes of M.A. Hanna Co., a major owner and managing agent of IOC. His chances looked bleak from the start. Before the act was passed, Tremblay tried to persuade the legislators that the corporate minimum tax they were writing would unfairly whack IOC. But he was rebuffed when senators told him that, unless he could make his case with the staff, the lawmakers could hardly bother themselves with so small and technical a complaint. He tried again in 1987, after the tax was enacted, and got nowhere.

With 1989 fast approaching, Tremblay knew that he had to try something else. So he went to John Stinson, a lobbyist for National Intergroup (another of IOC's owners) who is a friend of Kenneth Kies, a former House Ways and Means Committee staffer who helped write the tax provision that was causing IOC such grief. "He was very familiar with the problem," Tremblay says in his cautious and understated way.

In addition to his substantive expertise, the 37-year-old Kies, who had now become a \$210-an-hour hired gun for companies with tax problems, also had the advantage of being a member in good standing of the Washington tax community. As a recent former staffer, Kies knew personally the players involved in the relatively small and inbred world of tax writing. He could provide the entrée that IOC needed. "If you want appointments with staff people or members, you need someone who knows these folks and deals with them on a day-to-day basis," Tremblay says. "You have to get someone who knows the process and the people. It's very difficult to do from Cleveland."

On IOC's behalf, Kies met with several Ways and Means members and senior committee staffers before winning over Representative Guy Vander Jagt of Michigan, the committee's second-ranking Republican, and persuading him to be IOC's champion. It was a big win—Vander Jagt is also the senior Republican on the Ways and Means Select Revenues Subcommittee, which specializes in little provisions like this one and the minimum tax.

The case was an easy one for Kies to make. The minimum tax that he helped devise was meant to penalize mul-



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tinational cheaters. But there was no way that IOC could be cheating, because all of its income is produced and taxed in Canada. After Kies explained the problem to him, Vander Jagt agreed. "It makes absolutely no sense," Vander Jagt says. "I don't think there's a soul on the face of this earth who can argue with that." But, he adds ominously, "the question then comes, Can you come up with a way to pay for it?"

So Kies met quietly with James Clark, whom he had hired as one of his assistants when on the Ways and Means staff and who now has Kies's old job. Together, and in consultation with other staffers—many of whom were old pals of Kies's—they dreamed up the cellular-telephone provision as a revenue raiser to offset the loss from the IOC amendment. The anticipated revenue from the telephone amendment is more than four times what is needed to cover the IOC amendment, but the staff was pleased to have some

extra revenue to use just in case another congressman had a pet revenue loser he wanted to introduce. "In today's world, it doesn't matter if Mother Teresa thinks it's a good idea," Kies says. "If your amendment costs money, you better have some way to pay for it." Vander Jagt bought the idea of whacking cellular-telephone users, and with little fanfare the Ways and Means Committee passed the two-part amendment on July 27.

The cellular-phone industry was caught flat-footed. That afternoon, Robert Maher, president of the Cellular Telecommunications Industry Association, received a surprise telephone call from a friend who was one of dozens of lobbyists standing in a hallway in the Rayburn House Office Building, where the committee was meeting next to a barber shop and a carryout restaurant. Maher's lobbyist buddy told him that the panel had cut someone's taxes under the minimum tax but then paid for it by raising even more taxes on cellular telephones, placing them in the same write-off category as cars and home computers.

Cellular-phone owners will now have to prove that they use the phone more than 50 percent of the time for business

purposes before they can depreciate any part of the device on their taxes. Currently, they can begin to write off the portable phones if they use them for business at all. "It came out of nowhere," Maher says of the Vander Jagt amendment.

Maher should have been shocked only at the timing. In recent years he had appeared before the Ways and Means Committee to defend the cellular-phone industry against a suggested tax hike. And among the brotherhood of Washington tax attorneys and lobbyists, it was considered only a matter of time until cellular phones were treated like other property that can be used for both business and personal purposes and therefore had the potential for abuse. Ken Kies, not surprisingly, was keenly aware of the cellular-phone industry's difficult position.

The result left Bob Maher fuming. A 51-year-old veteran of many Washington wars, Maher disliked being blindsided. He also insists that the change is fundamentally unfair and will place an unnecessary, and potentially expensive, paperwork burden on cellular-telephone owners. "We sincerely believe our people are using this for business," he says. The change would place an inappropriate "presumption of guilt" on them.

Until 1987 baby-faced Ken Kies was one of the quiet powers on Capitol Hill. As chief tax counsel to the minor-

ity members of the Ways and Means Committee, he was the House Republicans' top staff man on taxes. When the members wanted an explanation of pending tax proposals, Kies was often their teacher. When they wanted their own tax proposals written, as they did in 1985 during the big fight over tax reform, Kies was the one they turned to.

In a subject as arcane as taxation, the importance of staff cannot be overstated. And the importance of Ken Kies, in particular, was inestimable to House Republicans. The venerable Barber Conable of New York, longtime senior Republican on Ways and Means, considered him one of the best tax aides he had ever encountered in his 20 years on Capitol Hill. "His greatest talent," Vander Jagt says, "was taking something complicated and explaining it in a way that we can understand." Kies, in fact, became famous during press briefings for being able to reduce otherwise mind-numbing tax changes into diagram form so that they became nearly comprehensible.

Kies combined this facility for explanation with an addiction to hard work. He was forever staying late and working weekends—even when many of his colleagues were out on the golf course with their lobbyist friends. "I don't know anybody who works harder than he does," Representative Vander Jagt says. In his younger days, Kies ran marathons, finishing the one in Boston in under three



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hours. Back then he worked all day, went home to run in the evening, and returned to work at night. When he worked on Capitol Hill, however, he almost never found time to go home.

Kies was not very popular with Democratic staffers. In their view, he was more of a tenacious, and sometimes arrogant, nuisance than a paragon of clear thinking and hard work. His occasional run-ins with the majority revealed a highly competitive streak in the usually soft-spoken Kies. During one memorable encounter in 1985, Kies and the Democrats' chief counsel, Joseph Dowley, had to be restrained so that they wouldn't come to blows over a disagreement about a roll-call vote.

Still, when Kies became a partner in the law firm of Baker and Hostetler after six years on the Ways and Means staff, he was a well-known and respected figure—at least among the Republicans. After George Bush was elected President, Kies waged his own campaign to be appointed assistant treasury secretary for tax policy, a heavyweight job in Washington's tax community. One piece of ammunition he had was the unanimous support of the Republicans on the Ways and Means Committee—an extraordinary, though in this case unsuccessful, compliment.

One of Kies's closest ties on the committee is with Representative Vander Jagt, for whom he worked as a summer

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intern during his college days in 1975. After law school and four years of private practice in Ohio, Kies returned to Washington to help Vander Jagt again in 1981, as the assistant minority counsel on the Ways and Means Committee. Kies was elevated to the top spot the next year.

Vander Jagt may be a senior member of the committee, but he is also a distracted member. He chairs the House Republicans' fund-raising committee—the National Republican Congressional Committee—and spends much of his time away from Ways and Means deliberations, traveling the country to deliver speeches on behalf of GOP candidates. It was Kies's job to keep Vander Jagt informed while he was on the run.

Even though Kies is no longer on the Congressional payroll—indeed, even though his job as a lobbyist is to influence those who are—he continues to serve Vander Jagt as if he were still a staffer. "I never saw that he was trying to take advantage of his relationship with me," Vander Jagt



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says of their ongoing association. "If anything, I am taking advantage of him. I am forever calling him and saying, 'Ken, can you explain this to me?'" Says Kies, "What I do now is not all that dissimilar to what I did on the Hill."

Such an arrangement isn't unusual in Washington, where former staffers form a close-knit network and support system for the lawmakers who were once their bosses. That support system is financial as well as informational. On the very weekend of his big score in Washington, Kies traveled to the banks of Lake Michigan to toast his legislative patron with bratwurst and beer. Fulfilling a commitment he has kept every summer for the past 14 years or so, Kies attended the "Fry for Guy" in rural Muskegon, Michigan, an annual fund-raiser and pep rally in honor of the veteran congressman.

To old Washington-hand Maher, the loss on cellular telephones is embarrassing. At the minimum, the one thing a lobbyist is supposed to have is a good intelligence network that will head off surprises. A former newspaperman, Maher served as a lobbyist back in the 1970s for Jimmy Carter's White House, where he helped steer the huge Superfund toxic-waste cleanup bill through Congress. He later went on to serve as a gray eminence to then representative and now senator Timothy Wirth of Colorado.

A realist, Maher knows that the Vander Jagt amend-

ment will be tough to beat back. A major reason is that the IOC part was drafted so that it would benefit any U.S. corporation that gets all of its income from abroad. Even though there may be only two other companies that meet this description, drafting the amendment generically will surely save it from being axed on the grounds that it is a special-interest provision. What's more, Congressional tax experts firmly believe that cellular-telephone write-offs should be subjected to a tougher standard than they now face. More important, the tax-writing panels are in need of relatively inconspicuous tax increases, and the cellular-telephone change fits the bill.

Ironically, the amendment could have a positive short-term effect on the cellular-phone industry, because it isn't effective until 1990. That means there is actually an incentive to buy cellular telephones now. "In reality," Kies says with a laugh, "I've given them a great marketing tool." But when the cellular-phone owners suddenly ask next year why their taxes have gone up, they will hardly believe that it is because a well-connected lobbyist convinced a powerful congressman that a mining company in Canada was paying too much in taxes. ■

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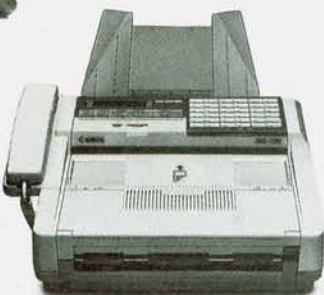
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