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TAXING WEALTH: STRATEGIC METHODS TO ADDRESS GROWING INEQUALITIES

*Phyllis C. Taite**

INTRODUCTION

The richer you are, the richer you get, and the poorer you are, the poorer you get, unless something reverses that engine. That engine is not driven by fate or by untouchable phenomena such as demographics but most importantly by policy decisions.¹

Wealth inequality has become even more concentrated in the United States of America over the past thirty years as the wealthiest 10% gained even more wealth.² Such inequality should not be tolerated by a society focused on democracy and equal justice.³ A few state legislators, in different states, have introduced legislation to address such inequities by imposing a

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¹ Allan Sloan & Cezary Podkul, *How the Federal Reserve Is Increasing Wealth Inequality*, PROPUBLICA (Apr. 27, 2021, 6:00 AM), <https://www.propublica.org/article/how-the-federal-reserve-is-increasing-wealth-inequality> (quoting Karen Petrou).

² MARK P. KEIGHTLEY & DONALD J. MARPLES, AN ECONOMIC PERSPECTIVE ON WEALTH TAXES (2022), <https://crsreports.congress.gov/product/pdf/IF/IF11823>.

³ See generally GANESH SITARAMAN, THE CRISIS OF THE MIDDLE-CLASS CONSTITUTION: WHY ECONOMIC INEQUALITY THREATENS OUR REPUBLIC 223–73 (2017).

wealth tax.⁴ Wealth is measured by the value of a taxpayer's assets, reduced by debt.⁵

Currently, wealth is taxed—if at all—through the estate and gift taxes.⁶ Capital assets and taxable estates are heavily concentrated in the wealthiest taxpayers, and tax policies for capital assets and the estate tax offer opportunities to minimize or avoid taxation.⁷ Wealth generation is a determining factor in whether a family breaks generational poverty. The ability to accumulate wealth is more than an individual decision. For example, tax policies are designed to tax traditional forms of savings at ordinary rates while taxing capital gains at preferential rates.⁸

This Essay is a brief analysis of proposed methods to tax wealth. Taxing wealth may be the best opportunity to reverse the economic engine that drives inequality, and instead, promotes wealth mobility in middle- and lower-income households. Based on my previous research, this Essay presumes taxing wealth is justified given the long history of favorable tax policies that benefitted the wealthiest taxpayers.⁹ Taxing wealth will provide an opportunity to capture taxes avoided or delayed by current policies and provide a new revenue source.¹⁰ This Essay identifies key provisions of wealth tax proposals and proposes key components to build an ideal wealth tax.

⁴ *New State Wealth Taxes in the Cards for 2023?*, BNY MELLON, <https://www.bnymellonwealth.com/insights/new-state-wealth-taxes-in-the-cards-for-2023.html#:~:text=January%202023%20Proposals,of%20wealth%20in%20the%20U.S.> (last visited Nov. 30, 2023, 4:37 PM) (indicating California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New York, Oregon, and Washington have wealth tax proposals in motion).

⁵ KEIGHTLEY & MARPLES, *supra* note 2.

⁶ Edward N. Wolff, *Wealth Taxation in the United States 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26544, 2019), https://www.nber.org/system/files/working_papers/w26544/w26544.pdf.

⁷ Lily Batchelder & David Kamin, *Taxing the Rich: Issues and Options*, SSRN 8 (2019), <https://ssrn.com/abstract=3452274>.

⁸ Andreas Fagereng et al., *Saving Behavior Across the Wealth Distribution: The Importance of Capital Gains* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26588, 2019).

⁹ See Phyllis C. Taite, *Tax Code Bias and Its Starring Role in Perpetuating Inequalities*, 72 S.C. L. REV. 735, 756 (2021); see also Phyllis C. Taite, *Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice or Social Injustice*, 36 W. NEW. ENG. L. REV. 201, 202 (2014).

¹⁰ Wolff, *supra* note 6.

I. PROPOSALS FOR TAXING WEALTH

Discussions of a wealth tax are not new.¹¹ What may be new is growing public support for a new tax that adds potential political viability for a wealth tax.¹² Several politicians have proposed a wealth tax. Senator Elizabeth Warren (D-MA) proposed the “Ultra-Millionaire Tax” in her presidential campaign.¹³ This version would impose a 2% wealth tax on the top 0.1% of people with a net worth of \$50 million or more and a 3% tax on amounts above \$1 billion.¹⁴ Economists Emmanuel Saez and Gabriel Zucman projected that this wealth tax would generate \$3.75 trillion over ten years.¹⁵ The Ultra-Millionaire Tax purposes include raising revenue, bridging the racial wealth gap, and investing in childcare and K-12 education.¹⁶

Senator Bernie Sanders (D-VT) proposed a wealth tax to address income inequality and finance programs for affordable housing, universal childcare, and Medicare (“Sanders Wealth Tax”).¹⁷ This version was a tiered tax approach imposed on wealth in increments starting with 1% on net worth above \$32 million and capped at 8% on net worth above \$10 billion for married taxpayers.¹⁸ While Americans generally support a wealth tax, there

¹¹ *Id.* See also Eric Rakowski, *Transferring Wealth Liberally*, 51 TAX L. REV. 419, 421 (1996); Ari Glogower, *Taxing Capital Appreciation*, 70 TAX L. REV. 111 (2016); Joseph M. Dodge, *The Fair Tax: The Personal Realization Income Tax*, 19 FLA. TAX REV. 522, 558 (2016).

¹² BNY MELLON, *supra* note 4 (indicating that 52% of Massachusetts voters passed a millionaires’ tax and that Los Angeles County voters passed a mansion tax).

¹³ Elizabeth Warren, *Ultra Millionaire Tax*, WARREN FOR SENATE, <https://elizabethwarren.com/plans/ultra-millionaire-tax> (last visited Oct. 27, 2023).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Press Release, Elizabeth Warren, Warren, Jayapal, Boyle Introduce Ultra-Millionaire Tax on Fortunes Over \$50 Million (Mar. 1, 2021), <https://www.warren.senate.gov/newsroom/press-releases/warren-jayapal-boyle-introduce-ultra-millionaire-tax-on-fortunes-over-50-million>.

¹⁷ Jacob Pramuk, “Billionaires Should Not Exist”: Bernie Sanders Tries to Outdo Elizabeth Warren with Tougher Wealth Tax Proposal, CNBC (Sept. 24, 2019, 8:00 AM), <https://www.cnn.com/2019/09/24/bernie-sanders-proposes-wealth-tax-after-plan-from-elizabeth-warren.html> (indicating that the tax would raise an estimated \$4.35 trillion over a ten-year period).

¹⁸ *Id.*

was not much political movement.¹⁹ This may change now that some states have moved forward, with voter support, in passing a variety of wealth taxes.²⁰

Most recently, President Joe Biden proposed the Billionaire Minimum Income Tax (BMIT) for taxpayers with more than \$100 million in earned income and unrealized gains.²¹ The BMIT would require a 20% minimum tax on all income.²² As proposed, the BMIT is projected to generate approximately \$360 billion in revenue over ten years.²³ The press release indicated a clear motive to address income and wealth inequalities by taxing the wealthiest taxpayers.²⁴ This formal recognition of the impact of tax code bias and its contributions to economic inequalities is a significant step in the right direction.

Under the current system, reports indicate millionaires and billionaires already have a lower effective marginal tax rate than middle- and low-income taxpayers.²⁵ A 20% minimum tax on all income, including unrealized income, will still leave millionaires and billionaires at a lower effective tax rate than most middle-income taxpayers. At the same time, it will provide new revenue sources and become a more progressive tax system. The additional revenue could fund targeted initiatives designed to facilitate wealth mobility for low- and middle-income households.²⁶

¹⁹ Kare Dore, *There's a Growing Interest in Wealth Taxes on the Super-Rich. Here's Why it Hasn't Happened.*, CNBC (Apr. 9, 2022, 9:00 AM), <https://www.cnbc.com/2022/04/09/theres-a-growing-interest-in-wealth-taxes-on-the-super-rich.html>.

²⁰ BNY MELLON, *supra* note 4 (indicating that the Massachusetts tax, “Fair Share Amendment,” imposed a 4% tax on annual income for taxpayers with annual income over \$1 million, and that the Los Angeles-passed “Measure ULA” imposed a 4% tax on the sale or transfer of property valued between \$5 and \$10 million and an additional 5.5% on properties valued over \$10 million).

²¹ Press Release, White House, President’s Budget Rewards Work, Not Wealth with New Billionaire Minimum Income Tax (Mar. 28, 2022), <https://www.whitehouse.gov/omb/briefing-room/2022/03/28/presidents-budget-rewards-work-not-wealth-with-new-billionaire-minimum-income->.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ See KEIGHTLEY & MARPLES, *supra* note 2.

²⁶ For specific strategies, see Phyllis C. Taite, *Welfare v. Wealthfare: The Illusion of Equality in Tax Policy*, 20 PITT. L. REV. 363, 388–89 (2023).

While the BMIT is intended as the prepayment, it will be ineffective if the unrealized gains escape taxation altogether. To be effective, the § 1014 step-up-in-basis provision must be concurrently abolished. The BMIT plan includes income tax collection on unrealized gains at death for estates valued at more than \$1 million per taxpayer and exempts up to \$500,000 for a principal residence. This two-step process eliminates the tax advantages for retaining capital gains property until death.

The challenges to implementing a wealth tax are also not new. The first, that a wealth tax is not administratively feasible,²⁷ is recycled from years past in justifying other tax preferences.²⁸ Despite the logical flaws, the argument remains politically feasible; the wealthiest would be subject to the tax, and technology has made it easier to track basis and value assets. The current deferred tax method has not been effective at generating revenue or making the taxing system more progressive. To continue with these flawed methods will exacerbate wealth inequalities.

The opposition's strongest argument against a wealth tax is that a direct tax is unconstitutional unless properly apportioned.²⁹ Debate over the constitutionality of a wealth tax is already underway by scholars and economists.³⁰ Professor Bruce Ackerman argues for a narrower interpretation of a direct tax and less constraint on congressional power to tax.³¹ Professor Ari Glogower analyzed arguments for and against constitutionality and concluded a wealth tax is workable while acknowledging the

²⁷ David Shakow & Reed Shuldiner, *A Comprehensive Wealth Tax*, 53 TAX L. REV. 499, 526 (2000).

²⁸ Laura Davison, *How Biden's Billionaire Minimum Income Tax Would Hit the Wealthy*, BLOOMBERG (Mar. 31, 2022), <https://www.bloomberg.com/news/articles/2022-03-31/how-biden-s-billionaire-minimum-income-tax-would-hit-wealthy-americans-stocks>.

²⁹ U.S. CONST. art. I, § 2.

³⁰ Wolff, *supra* note 6. See generally Joseph M. Dodge, *What Federal Taxes Are Subject to the Rule of Apportionment Under the Constitution?*, 11 U. PA. J. CONST. L. 839 (2009) (evaluating the scope of the apportionment requirement); see also Ari Glogower, *Comparing Capital Income and Wealth Taxes*, 48 PEPP. L. REV. 875 (2021); see also Ari Glogower et al., *Why a Federal Wealth Tax Is Constitutional*, MAURER SCH. L.: IND. UNIV. (Feb. 2021), <https://www.repository.law.indiana.edu/facpub/2959>.

³¹ Bruce Ackerman, *Taxation and the Constitution*, 99 COLUM. L. REV. 1, 5 (1999).

vulnerabilities.³² When reasonable minds contradict regarding constitutionality, this means a more strategic approach is necessary.

II. KEY COMPONENTS TO SUCCESSFULLY TAX WEALTH

Voters may be persuaded by labels, especially in tax policy. Perhaps the key to public support at the state level was the specificity on whom the tax burden was imposed. A simple label such as a wealth tax is ambiguous and could lead to similar confusion as the death tax. By referring to the estate tax as a “death tax,” political leaders generated widespread support for repeal, even among people who would not be subjected to the tax.³³ Conversely, a mansion, millionaire, ultra-millionaire, and billionaire tax all make it clear which taxpayers would be subjected to the new tax.

Even more, a familiar title and eliminating the word tax may make it even easier to gain public support. If at least one purpose of the tax is to make tax policy fairer, the title must reflect that. A Federal Excessive Wealth Surcharge (FEWS) or Federal Excessive Wealth Contributions Act (FEWCA) should also be considered among working titles because they strategically imply a responsibility. A main Republican platform is tax reduction or elimination; therefore, eliminating the word tax may make it easier to gain Republican support. Further, the title makes it clear who bears the tax burden.

Next, taxing wealth should include the right balance of tax base, methodology, rate structure, exemption amount, and purpose. Deductions and credits should be minimized because both contribute to current inequalities in tax policy. The tax base should include property with easy valuation methods. The rate structure should be progressive but not onerous, and the exemption amount should be high enough not to capture middle-income taxpayers who live in expensive areas like New York, Boston, and Los Angeles. The exemption should also be low enough to generate enough revenue to fund wealth mobility initiatives.

³² Ari Glogower, *A Constitutional Wealth Tax*, 118 MICH. L. REV. 717, 717 (2020).

³³ See generally MICHAEL J. GRAETZ & IAN SHAPIRO, *DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH* (2006) (surveying various groups and support for estate tax repeal and explaining their findings).

Valuation is also a key component because the tax base will likely have a variety of assets that owners will claim are difficult to value.³⁴ Central to any discussion of taxing wealth are capital gains property and transfer taxes.³⁵ In both cases, the taxpayer is best positioned to determine when or if a tax will be imposed based on their actions or inactions. To address the valuation issue, Professors Brian Galle, David Gamage, and Darien Shanske proposed taxing the value of the unliquidated tax reserve account (“ULTRA”), thereby giving the government an equity interest in the assets.³⁶ Because the tax would increase over time, deferral would become less profitable and, therefore, less attractive.³⁷

Any wealth tax proposal must include reform for preferential tax treatment and a stepped-up basis for capital gains property because they are central to creating and maintaining wealth disparities.³⁸ The ULTRA method would negate some of the benefits currently given to capital gains property without excessive government involvement in the property.

Once the valuation process is established, the next key feature is determining the method of taxation. Mark-to-market is an anti-deferral accounting method that would require annual tax payments or loss deductions on unrealized gains or losses.³⁹ Senator Ron Wyden, Ranking Member of the Senate Finance Committee, proposed the mark-to-market method for taxing wealth and indicated that treating wealth like wages would eliminate a tax advantage and increase the effective tax rate for wealthy

³⁴ Brian Galle et al., *Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE L.J. 1257, 1257 (2023).

³⁵ Wolff, *supra* note 6.

³⁶ Galle et al., *supra* note 34, at 1257–58.

³⁷ *Id.*

³⁸ See generally Phyllis C. Taite, *Saving the Farm or Giving Away the Farm: A Critical Analysis of the Capital Gains Tax Preferences*, 53 SAN DIEGO L. REV. 1017 (2016) [hereinafter *Saving the Farm*]; see also Phyllis C. Taite, *Change We Can’t Believe in . . . or Afford: Why the Timing Is Wrong to Reduce the Estate Tax on the Wealthiest Americans*, 42 U. MEM. L. REV. 493 (2012).

³⁹ See generally Edward D. Kleinbard & Thomas L. Evans, *The Role of Mark-to-Market Accounting in a Realization-Based Tax System*, 75 TAXES 788 (1997).

taxpayers.⁴⁰ Senator Wyden indicated the current tax structure encourages tax avoidance by the wealthiest households and capital income is concentrated in the wealthiest 1% of households.⁴¹ The Wyden proposal targets the wealthiest 1% with the main goal of raising revenue to secure Social Security.⁴² The Wyden plan would not impose an annual tax on certain non-tradable assets. Instead, it would impose a lookback charge to minimize the benefits of holding capital property for long periods.⁴³

Professor Glogower proposes a three-part flexible Wealth Integration model that incorporates a wealth tax into the income tax rather than creating a new separate tax.⁴⁴ First, the Base Method disallows deductions after the taxpayer exceeds a determined amount of wealth.⁴⁵ Second, the Rate Method determines the final income tax rate based on the level of wealth.⁴⁶ The flexibility in this method allows rate increases based on wealth or disallows capital gains preferential rates based on wealth level. Finally, the Credit Method phases out tax credits based on wealth level.⁴⁷ While not modeled as a traditional wealth tax, it has the strongest defense against constitutional challenges because it follows the existing income tax structure and restricts or eliminates certain preferences.

The final components to successfully tax wealth are the exemption amounts and rates. To gain the highest level of support, it must be clear that only the highest-wealth households would be responsible. Comparing the

⁴⁰ RON WYDEN, TREAT WEALTH LIKE WAGES 4, 10 (2019), <https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf>.

⁴¹ *Id.* at 4.

⁴² *Id.* at 5, 17–18 (indicating that the plan would only apply to taxpayers exceeding \$1 million in annual income or \$10 million in assets for three consecutive years excluding the value of retirement savings under \$3 million, family farms, and the first \$2 million of the combined value of two personal residences).

⁴³ *Id.* at 4 (“To calculate the tax due on gains from nontradable assets like investment real estate, closely-held businesses, and valuable collectibles, antiferral accounting would use a lookback rule upon realization.”).

⁴⁴ Glogower, *supra* note 32, at 717.

⁴⁵ *Id.* at 753–54.

⁴⁶ *Id.* at 754–56.

⁴⁷ *Id.* at 756–57.

Ultra-Millionaire Tax, Sanders Wealth Tax, and BMIT, they each have favorable rate structures, exemption amounts, and purposes for the taxes.

The Ultra-Millionaire Tax would impose a 2% wealth tax on the top 0.1%, people with a net worth of \$50 million or more, and 3% on amounts above \$1 billion.⁴⁸ The Sanders Wealth Tax starts at a lower rate and lower net worth and progressively increases up to an 8% maximum rate.⁴⁹ While this expanded base and progressive structure will likely generate more revenue, an eight-point spread is not ideal. The BMIT imposes a 20% minimum tax on taxpayers with \$100 million in earned income and unrealized gains.⁵⁰ In this case, the exemption and rate are likely too high.

By comparison, the Ultra-Millionaire tax has the best balance of rate and exemption and is easiest to explain as a dual rate structure for wealthier and wealthiest taxpayers. Together, these components provide a powerful tool for addressing past and current inequalities in tax policy. The additional revenue gives Congress room to reduce income tax liability for the majority of taxpayers, invest in income security programs, and/or provide additional services to facilitate wealth mobility.⁵¹

CONCLUSION

Taxing wealth requires strategic planning starting with the initial naming and should build a framework with the right balance of tax base, methodology, rate structure, exemption amount, and purpose. Economist Edward Wolff has compared wealth tax provisions from other countries and concluded a combined income and wealth tax scheme would work best for the United States.⁵² It is long past due for Congress to start taxing wealth and address the vast wealth disparities.

To build wealth and pass on generational wealth, the system must be redesigned to facilitate wealth instruments for middle- and lower-income

⁴⁸ Warren, *supra* note 13.

⁴⁹ Pramuk, *supra* note 17.

⁵⁰ White House, *supra* note 21.

⁵¹ For a detailed discussion of other strategies for wealth mobility, see Phyllis C. Taite, *Inequality by Unnatural Selection: The Impact of Tax Code Bias on the Racial Wealth Gap*, 110 KY. L.J. 639 (2022).

⁵² Wolff, *supra* note 6.

households. A wealth tax is likely the last opportunity to add progressivity to tax policy and mitigate some of the tax benefits currently serving the wealthiest households.