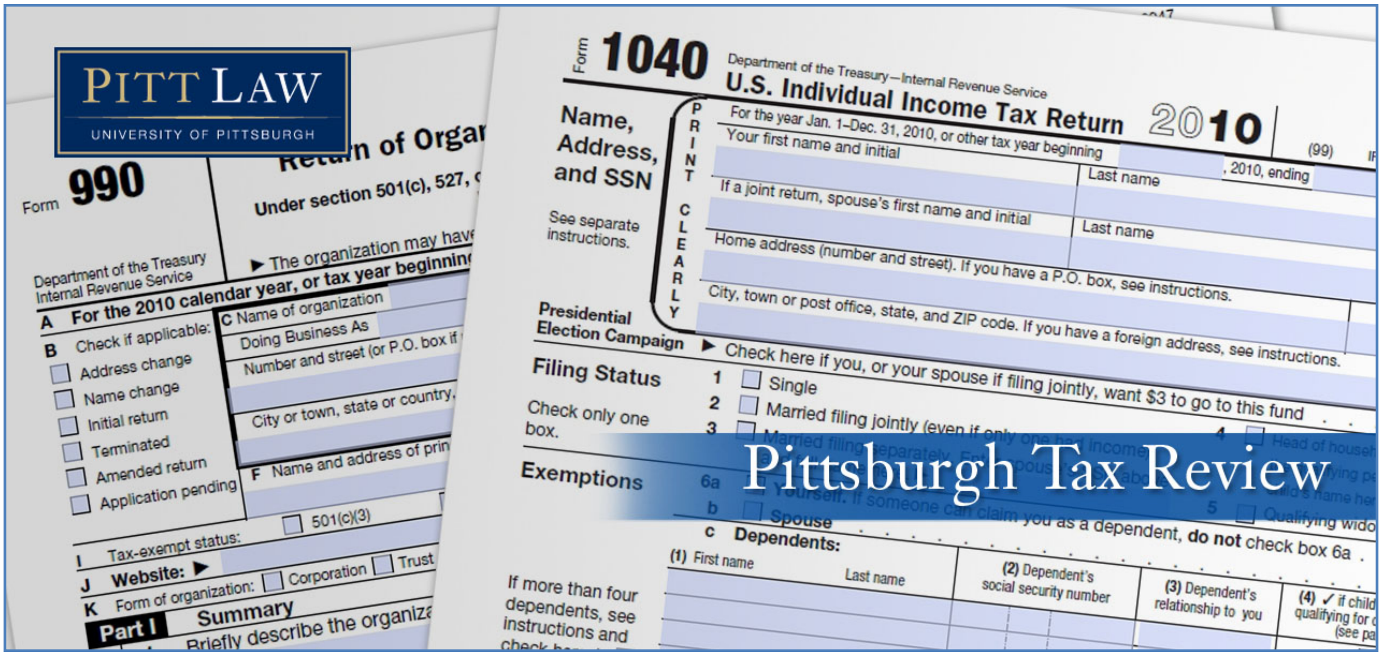

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THE DIMENSIONS OF STATE ANTIPOVERTY TAX

Adam B. Thimmesch[*]

Poverty in the United States is widespread and attributable to many different factors.[1] Limited employment opportunities, wages that have not kept up with the rising costs of living, poor educational opportunities, uncertain and unstable housing, and a lack of access to critical health care exacerbate and contribute to the financial strain felt by millions of Americans. These challenges make it difficult for those born without financial advantage to rise out of poverty, and even those individuals who have economic security can find themselves facing financial ruin when confronted with challenges like job loss, unexpected health struggles, or addiction.

This condition is not new, nor is America blind to these issues. The War on Poverty of the 1960s gave rise to many interventions intended to fight the negative effects of poverty and to provide individuals with ways out of intergenerational financial strain. Poverty rates have fallen in the last sixty years, but more than one in nine Americans—roughly forty million individuals—are still impoverished.[2] Over a quarter of that number is comprised of children, a number reflecting that fifteen percent of children currently live in poverty in the United States.[3] From Michael Harrington's

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[1] "Poverty" is difficult to define, but two measures predominate for purposes of U.S. law and policy making—the official poverty measure (OPM) and the supplemental poverty measure (SPM). *See* EMILY A. SHRIDER, U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2023, at 1–2 (2023), https://www2.census.gov/library/publications/2024/demo/p60-283.pdf (showing that under the OPM, nearly forty million individuals lived in poverty in the United States in 2023); Francine J. Lipman, *(Anti)Poverty Measures Exposed*, 21 FLA. TAX REV. 389, 398–403 (2017) (illustrating that many individuals living in poverty are missed by these metrics as well); *Measuring America: How the U.S. Census Bureau Measures Poverty*, U.S. CENSUS BUREAU (June 2022), https://www.census.gov/library/visualizations/2021/demo/poverty_measure-how.html.

[2] SHRIDER, *supra* note 1, at 3 fig.1.

[3] *Id.* at 1, 11.

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The Other America: Poverty in the United States in 1962 to Michael Desmond's *Poverty, by America* in 2023, we see a view of American poverty that in many ways has not significantly changed in decades.[4]

The roots of poverty in America are multiple and heavily debated, as are the potential solutions. One consistent aspect of our national approach to poverty reduction, though, has been the extensive use of federal tax laws to aid our most needy.[5] Congress uses the federal tax code (the "Tax Code") to fight poverty and its effects in many ways, from the use of payroll taxes to fund social insurance programs—like Social Security and Medicare—to tax credits—like the Earned Income Tax Credit, Low Income Housing Tax Credits, and Premium Tax Credits.

State and local tax systems also play a large role in the fight against poverty.[6] Unfortunately, that role is often negative. State and local tax systems are largely regressive and can push people into poverty by taking critical financial resources from them.[7] Yet, state and local taxes and spending can also play a critical role in helping individuals *out of* poverty and provide the foundation needed for individuals to attain or maintain financial security. This Essay looks at both sides of this relationship and provides an overview of the positive and negative impacts of state and local taxes on poverty. Its goal is to encourage those in the tax policy world, and those who think more broadly about poverty outside of tax, to consider how state and local tax systems can better join our national antipoverty efforts.

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[4] MICHAEL HARRINGTON, THE OTHER AMERICA: POVERTY IN THE UNITED STATES (1962); MICHAEL DESMOND, POVERTY, BY AMERICA (2023).

[5] *See generally* Susannah Camic Tahk, *The Tax War on Poverty*, 56 ARIZ. L. REV. 791 (2014).

[6] There is a literature evaluating the baseline question of the appropriateness of subnational approaches to poverty reduction and other forms of "redistribution" given the mobility of individuals within the United States. *See generally* Kirk J. Stark, *Fiscal Federalism and Tax Progressivity: Should the Federal Income Tax Encourage Local Redistribution?*, 51 UCLA L. REV. 1389 (2004). This question is not addressed in this Essay, both because of its complexity and because some level of state and local attention to poverty is certainly warranted and justifiable even within the constraints of our federal system of government.

[7] *See generally* Ariel Jurow Kleiman, *Impoverishment by Taxation*, 170 U. PA. L. REV. 1451 (2022); CARL DAVIS ET AL., INST. ON TAX'N & ECON. POL'Y, WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES (7th ed. 2024), https://sfo2.digitaloceanspaces.com/itep/ITEP-Who-Pays-7th-edition.pdf.

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I. Tax and Poverty

The U.S. tax system impacts individuals at the margins of poverty in a variety of ways—both pulling some people from poverty and pushing others into it. At the federal level, those with poverty-level wages are largely excluded from the income tax through a meaningful standard deduction,[8] and many individuals also receive a form of wage subsidy through the refundable Earned Income Tax Credit,[9] discussed more fully below. Of course, federal payroll taxes work to offset those benefits and are regressive in effect in their current form.[10] The federal tax system is therefore far from unassailable from an antipoverty perspective despite its significant reliance on a progressive income tax.

The Tax Code contains many provisions that fall within the antipoverty ambit.[11] Perhaps the two most critical are provisions that many states also replicate within their own tax codes—the Earned Income Tax Credit (EITC) and the Child Tax Credit. Each is responsible for poverty reduction throughout the country.

A. Refundable Credits and Antipoverty Taxation

The concept of an "antipoverty tax" may seem foreign at first blush, but those working in tax or in poverty law understand that the Tax Code is used to direct significant amounts of aid to those in need. The nation's most extensive antipoverty tax credit, the EITC, for example, is a refundable tax

[8] The standard deduction in 2024 ranged from $14,600 for unmarried individuals to $29,200 for married individuals filing joint returns and for surviving spouses. Rev. Proc. 2023-34, § 3.15, 2023-48 I.R.B. 1287 (2023).

[9] I.R.C. § 32.

[10] Ctr. on Budget & Pol'y Priorities, Policy Basics: Federal Payroll Taxes 2 (2022), https://www.cbpp.org/research/policy-basics-federal-payroll-taxes; Robert Bellafiore, *New Report Shows the Burdens of Payroll and Income Taxes*, Tax Found. (Mar. 26, 2019), https://taxfoundation.org/data/all/federal/payroll-income-tax-burden/; Linda Sugin, *Payroll Taxes, Mythology, and Fairness*, 51 Harv. J. on Legis. 113, 118–21 (2014) (describing that federal payroll taxes are regressive even though they are imposed at a flat rate because the Social Security portion of the payroll tax is capped, so higher income earners end up paying less of that tax as a percentage of their income).

[11] *See* Tahk, *supra* note 5.

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credit that is responsible for pulling approximately four million individuals out of poverty each year.[12]

The EITC provides individuals at lower income levels with a tax credit based on their "earned income" within a certain range.[13] For a single individual with no kids in 2024, the credit was available to those who earned less than $18,591.[14] Single taxpayers with one child were eligible only with income under $49,084, and married taxpayers with three or more children were eligible until they made $66,819.[15] The credit ranges from 7.65% of a taxpayer's earned income for those without "qualifying children" to 45% for those with three or more qualifying children.[16] The credit is also a fully refundable credit, which means that qualifying individuals can actually receive a check from the government as assistance.[17] This feature makes the credit an especially effective antipoverty device.

The EITC is limited in effectiveness in many ways despite the positive features just noted. For example, the credit is not universally available to those with great need because it requires that individuals have "earned income" to qualify. "Earned income" generally means wage income,[18] which means that many Americans who have barriers to working—perhaps health impediments, lack of access to transportation, or issues with childcare—are simply ineligible, often leaving them in "deep poverty."[19] Eligibility for the credit also phases out at relatively low levels of income. The income levels noted in the prior paragraph represent the maximum incomes eligible for any credit, but higher credits are earned by those with lower amounts of income

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[12] SHRIDER, *supra* note 1, at 13–14.

[13] CTR. ON BUDGET & POL'Y PRIORITIES, POLICY BASICS: THE EARNED INCOME TAX CREDIT 1 (2023), https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf [hereinafter POLICY BASICS: EITC].

[14] *Earned Income and Earned Income Tax Credit (EITC) Tables*, IRS (Jan. 27, 2025), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables [hereinafter *EITC Tables*].

[15] *Id.*

[16] I.R.C. § 32(b).

[17] POLICY BASICS: EITC, *supra* note 13.

[18] I.R.C. § 32(c)(2)(A).

[19] Tahk, *supra* note 5, at 839–40.

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because those limits represent the end of a phaseout range where each dollar of additional income results in a loss of some credit amount. This structure means that the EITC is truly limited to those at lower income levels and fails to reach all who are in poverty. The numbers referenced above also show that the credit is highly focused on those with children—another factor that limits its antipoverty effect for many of the individuals who are most in need of assistance throughout the country.

The amount of the EITC is also relatively modest overall. The largest credit that a single individual could receive in 2024 was $632, and the most that a married couple filing jointly with three or more kids could receive was $7,830.[20] These sums are surely of immense benefit to those who receive them, but they also do not alleviate the harsh conditions that can afflict eligible taxpayers. Altogether, though, the payments made under that program are significant, totaling roughly $60 billion each year.[21] By contrast, the Temporary Assistance to Needy Families program—the federal program that replaced historic "welfare" payments—provides block grants to states that total approximately $16 billion per year.[22] The EITC has also seen strong bipartisan support since its adoption in 1975, largely due to its work requirement, consistent with the country's disparate approaches to the "deserving" and "undeserving" poor.[23]

This discussion is important in the context of state taxation because over thirty states piggyback on the federal EITC and offer their own versions of that credit.[24] Those states generally copy the federal eligibility requirements and simply provide a lower credit amount.[25] Most of those credits are also

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[20] *EITC Tables*, *supra* note 14.

[21] *Earned Income Tax Credit Statistics*, IRS (Dec. 5, 2024), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-tax-credit-statistics.

[22] *Mission & Priorities*, U.S. DEP'T OF HEALTH & HUM. SERVS.: OFF. OF FAM. ASSISTANCE (Jan. 30, 2025), https://www.acf.hhs.gov/ofa/about/mission-priorities.

[23] Khiara M. Bridges, *The Deserving Poor, the Undeserving Poor, and Class-Based Affirmative Action*, 66 EMORY L.J. 1049, 1075 n.88 (2017) (referencing a literature on this distinction). *See generally* Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991).

[24] *Earned Income Tax Credit Overview*, NAT'L CONF. STATE LEGIS. (May 13, 2024), https://www.ncsl.org/human-services/earned-income-tax-credit-overview.

[25] *Id.*

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refundable, again ensuring that assistance reaches populations with great need.[26]

Some states also modify their credits in ways that fill gaps left by the federal credit. For example, one of the federal requirements for eligibility for the EITC is that taxpayers claiming the credit, and all children claimed for credit purposes, must have a valid Social Security Number.[27] This requirement reduces the cost of assistance of the federal government, but it also excludes from the credit many individuals living in poverty in the United States, with attendant consequences on their families and communities. In response to this gap, some states have enacted their version of the EITC without the Social Security Number requirement, allowing tax credits to otherwise eligible individuals who have individual taxpayer identification numbers ("ITINs") instead.[28] Some states have also recognized that the federal credit's focus on individuals with children leaves childless workers with need, and those states have expanded the credit for that group as well.[29]

These state modifications demonstrate how intentional adjustments to the federal credit can work to better serve state needs and fill gaps in the federal credit. Those working on state tax reform should identify special needs within their own jurisdictions with this in mind. For example, if childless workers face particular challenges within a state, expanding the state credit for those individuals may be appropriate. Conversely, if a state has a high population of families in poverty, expanding the credit amount for larger families may be appropriate. Or states may want to eliminate some of the administrative burdens or requirements with respect to the federal credit to make it more accessible.

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[26] *Id.* at tbl.2.

[27] I.R.C. § 32(c)(1)(M).

[28] *How Do State Earned Income Tax Credits Work?*, TAX POL'Y CTR. (Jan. 2024), https://taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work; Aravind Boddupalli & Luisa Godinez-Puig, *A Social Safety Net Repair: Delivering State Tax Benefits to Immigrant Families*, 21 PITT. TAX REV. 225, 228–35 (2024).

[29] *See, e.g.*, ME. REV. STAT. ANN. tit. 36, § 5219-S(1) (Westlaw through 2023 second reg. sess., 131st Legis.) (providing a higher credit amount for childless individuals); MD. CODE ANN., TAX–GEN. § 10-704(c)(3) (Westlaw through 2024 reg. sess.) (expanding credit eligibility for childless taxpayers who otherwise qualify).

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Another key antipoverty tax provision in the Tax Code is the federal Child Tax Credit (CTC).[30] That credit is an example of a benefit that is not directly targeted at poverty but that has a large antipoverty effect, much like Social Security. The credit is under- and overinclusive of poverty because it is only partially refundable,[31] limiting its effect for our most needy, and because it is available to taxpayers with incomes that reach well into six figures.[32] For those who qualify, the credit provides $2,000 per child under the age of seventeen.[33] That benefit is immense—for those who can use it.

Changes in the CTC in recent years have demonstrated both its potential to reduce or eliminate poverty for those with children and its limitations. For example, the Tax Cuts and Jobs Act of 2017 doubled the credit to $2,000 from its prior amount of $1,000 and added a partial credit for certain individuals who do not qualify for the full credit.[34] The American Rescue Plan Act of 2021 raised the credit amount again—for 2021 only—to $3,000 per child and to $3,600 for children under six.[35] The credit was also made fully refundable and was payable partially in advance of the end of the year.[36] Those changes resulted in a historic drop in the child poverty rate, a 46% reduction from 9.7% of children in 2020 to 5.2% of children in 2021.[37] Unfortunately, though, the credit expansions that made that drop possible expired in 2022 and have not been readopted by Congress. Child poverty

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[30] I.R.C. § 24.

[31] *Id.* § 24(h)(5); *see* Jacob Goldin & Katherine Michelmore, *Who Benefits from the Child Tax Credit?*, 75 NAT'L TAX J. 123 (2022) (analyzing the limited reach of the CTC).

[32] I.R.C. § 24(b)(2), (h)(3).

[33] *Id.* § 24(a), (c), (h)(2).

[34] *Id.* § 24(a), (h)(2), (h)(4).

[35] I.R.C. § 24(i)(3).

[36] *Id.* § 24(i)(1).

[37] JOHN CREAMER ET AL., U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2021, at 1 (2022), https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-277.pdf.

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rates have subsequently rebounded to an amount higher than their prior levels.[38]

Turning our attention again at the states, we see that sixteen currently offer their own versions of the CTC and that most of those credits have been enacted in the last five years, reflecting a positive change in states' fights against poverty.[39] Most of those state credits also loosely follow federal eligibility, but states do deviate from the federal credit in meaningful ways. For example, some states do not make their child tax credits refundable, which limits those credits' antipoverty effects.[40] States' credits also vary on the ages of qualifying children and on the amount of assistance provided.[41] Some states expand eligibility for taxpayers with ITINs,[42] and other states limit the credit to families with lower income levels than are eligible at the federal level. Until recently, New York took the counterintuitive approach of making its credit available only for children four and older, leaving those with younger children without that assistance despite the critical importance of early childhood interventions.[43] New York has since extended the credit, and a recent proposal would increase the credit even more for the state's youngest children.[44]

The CTC is particularly important for those thinking about poverty reduction because the long-term positive impacts of financial assistance for

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[38] *See* EMILY A. SHRIDER & JOHN CREAMER, U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2022 (2023), https://www.census.gov/content/dam/Census/library/publications/2023/demo/p60-280.pdf.

[39] *Child Tax Credit Overview*, NAT'L CONF. OF STATE LEGIS. (Nov. 22, 2024), https://www.ncsl.org/human-services/child-tax-credit-overview.

[40] *Id.* (listing Arizona, Idaho, Oklahoma, and Utah as providing nonrefundable child tax credits).

[41] *Id.*

[42] Boddupalli & Godinez-Puig, *supra* note 28.

[43] *See infra* notes 64–65; Daniel Hemel, *New York's Child Tax Credit Choice*, GOTHAM GAZETTE, https://www.gothamgazette.com/authors/130-opinion/11904-new-york-child-tax-credit-state-budget (last visited Feb. 17, 2025).

[44] Press Release, N.Y. Governor Kathy Hochul, Money in Your Pockets: Governor Hochul Proposes Middle-Class Tax Cuts, Inflation Refunds and Child Tax Credits to Make New York More Affordable (Jan. 14, 2025), https://www.governor.ny.gov/news/money-your-pockets-governor-hochul-proposes-middle-class-tax-cuts-inflation-refunds-and-child.

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those with young children has been shown repeatedly,[45] and the immediate poverty-fighting power of the CTC was fully displayed during the pandemic. As a first step, then, states that do not currently provide a child tax credit should enact one. That state action can help to fill some of the void left by Congress's inaction on the lapsed CTC expansions. States should also think about how to design their new and existing credits to fill other gaps in the federal credit with a focus on the needs of their own residents. States might want to provide credits with greater refundability than the federal credit or that offer more assistance for certain groups of children, for example. Again, the key is to make modifications to the federal credit to account for the needs of a state's own residents.

To conclude this section, it should be noted that states of course provide antipoverty tax assistance in ways other than through their EITCs and CTCs. Some states provide tax credits for child care expenses, and some states have property tax circuit breakers or homestead exemptions that help to alleviate the burden of property taxes on those with lower income levels.[46] Other states provide sales tax exemptions for necessities with a similar goal.[47] This discussion is not meant to overlook the wide variety of assistance that states provide through their tax codes. Instead, it is intended to attune readers to the fact that state tax systems can and do provide antipoverty funding to taxpayers. Further, it is important to recognize that states have opportunities to help fill gaps in the federal credits by adjusting their own credits to account for local needs.

B. Regressive State Tax Choices

State-level credits certainly help in the fight against poverty, but many other features of states' taxing systems are regressive and counteract those

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[45] *See, e.g.*, Anna Aizer et al., *The Effects of the 2021 Child Tax Credit on Child Developmental Outcomes*, 710 ANNALS AM. ACAD. POL. & SOC. SCI. 172 (2023); Elizabeth Anant & Irwin Garfinkel, *The Potential Long-Run Impact of a Permanently Expanded Child Tax Credit*, 710 ANNALS OF AM. ACAD. POL. & SOC. SCI. 192 (2023); Andrew C. Barr et al., *Investing in Infants: The Lasting Effects of Cash Transfers to New Families*, 137 Q.J. ECON. 2539 (2022).

[46] DAVIS ET AL., *supra* note 7, at 37–38 (describing the regressive features of states' tax systems).

[47] HELLERSTEIN & HELLERSTEIN, STATE TAXATION ¶ 12.03 (3d ed. 1998).

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benefits.[48] Chief among the regressive design choices made by states is the failure to impose an income tax or the imposition of flat or nominally progressive income taxes. Nine states do not impose a broad income tax at all, and twelve states with broad personal income taxes impose completely flat rate structures.[49] Among those states that impose progressive rate structures, many of them have brackets that are practically flat. For example, in Alabama, the top rate of four percent applies to taxable incomes over $3,000 for an individual or $6,000 for married persons filing a joint return.[50] In Oklahoma, the top tax bracket applies to individuals with taxable income just over $7,000 and to married individuals filing jointly with taxable income just over $12,000.[51] In contrast, the top tax rate in California applies only to individuals with taxable income near $700,000 and to married individuals filing jointly with taxable income of nearly $1.4 million.[52]

The imposition of flat or functionally flat income tax brackets may seem "fair" to some, but it fails to reflect the much greater needs of those at lower income levels and the attendant costs to them of paying tax. Regardless of how one feels about the utility of money for those at higher income levels,[53] it is difficult to contend that those living below, at, or near the poverty level do not derive high utility from every dollar. Imposing a five percent tax on someone with $30,000 of taxable income means requiring them to pay $1,500 to the government. That amount could equal a month's rent or several months

[48] DAVIS ET AL., *supra* note 7, at 5–9.

[49] Andrey Yushkov, *State Individual Income Tax Rates and Brackets, 2024*, TAX FOUND. (Feb. 20, 2024), https://taxfoundation.org/data/all/state/state-income-tax-rates-2024/.

[50] *What Is Alabama's Individual Income Tax Rate?*, ALA. DEP'T OF REVENUE, https://www.revenue.alabama.gov/faqs/what-is-alabamas-individual-income-tax-rate/ (last visited Feb. 17, 2025).

[51] *Individuals*, OKLA. TAX COMM'N, https://oklahoma.gov/tax/individuals/pay-taxes.html#RATES (last visited Feb. 17, 2025).

[52] To put this in better context, under the OPM, the poverty level for a family of three was $25,820 in 2024. *Poverty Guidelines*, OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines (last visited Feb. 17, 2025).

[53] The marginal utility of money is complicated at the individual level because people's subjective values and preferences are far from uniform. *See generally* Sarah B. Lawsky, *On the Edge: Declining Marginal Utility and Tax Policy*, 95 MINN. L. REV. 904 (2011). From a societal perspective, though, we can more easily argue that the marginal value of the dollar falls as an individual's income level rises.

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of food. The consequences of taxation are generally much less severe for someone making $100,000 or certainly $1,000,000.

Completely aside from a discussion about flat state tax brackets, it is also the case that state income-tax bases have regressive effects. States piggyback on the federal tax code for purposes of defining their own tax codes.[54] That practice means that states import into their own laws federal tax choices like the realization rule, the step-up in basis at death, and the nontaxability of borrowed funds, for example. The combination of those provisions allows high-income individuals to avoid state taxation just like they avoid federal taxation.[55] States also piggyback on provisions like § 1031, tax exclusions for retirement savings, the home mortgage interest deduction, and opportunity zone provisions. Those in poverty, of course, cannot meaningfully take advantage of these benefits.

States' reliance on sales taxes also impacts those at the poverty level a great deal.[56] For most Americans in poverty, all income is spent, and that spending is not discretionary. Income goes to pay rent, utilities, transportation costs, grocery bills, clothing, and childcare costs. Exemptions from tax for certain necessities, like food, can appear to lower the tax burden for low-income families, but the ultimate effect of those exemptions is not clear. It may be that states respond by increasing the rate of their sales tax to make up the lost revenue.[57] When thinking about food, specifically, states are also already prohibited by federal law from imposing sales tax on purchases made using SNAP (Supplemental Nutrition Assistance Program) or WIC (the Special Supplemental Nutrition Program for Women, Infants, and Children) benefits.[58] As a result, a tax exemption for food may function primarily to add a tax exemption for purchases made by those at higher income levels and

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[54] *See generally* Ruth Mason, *Delegating Up: State Conformity with the Federal Tax Base*, 62 DUKE L.J. 1267 (2013).

[55] Edward J. McCaffery, *Taxing Wealth Seriously*, 70 TAX L. REV. 305, 306, 362 (2017).

[56] For an introduction to a welfarist analysis of consumption taxes, see Brian Galle & Manuel Utset, *Is Cap-and-Trade Fair to the Poor? Shortsighted Households and the Timing of Consumption Taxes*, 79 GEO. WASH. L. REV. 33, 39–46 (2010).

[57] Jared Walczak, *The Surprising Regressivity of Grocery Tax Exemptions*, TAX FOUND. (Apr. 13, 2022), https://taxfoundation.org/research/all/state/sales-tax-grocery-tax-exemptions/.

[58] 7 U.S.C. § 2013(a); 42 *id.* § 1786(c)(4).

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result in higher tax rates on other items to compensate for those tax-revenue losses.

The academic literature on the normative desirability of consumption taxes over income taxes often addresses regressivity through some form of transfer payment to low-income individuals.[59] In practice, though, those transfers are not made by states. And even if they were, it is not clear that low-income households could effectively utilize them to fully offset the costs of a consumption tax in any event.[60] The result is that states' reliance on sales taxes greatly impacts those in poverty, notwithstanding the best version of those taxes offered in the tax and economic literatures.

Like the prior discussion about antipoverty tax provisions, this section is incomplete in its discussion of the regressive revenue choices made by states. States' implementation of so-called "sin taxes" on cigarettes and alcohol and the use of state lotteries to raise money can also have regressive effects. Additionally, the choice by state and local jurisdictions to shift from imposing broadly applicable taxes to imposing targeted fees instead can hurt those at lower income levels, especially if those populations are disproportionately monitored or their actions disproportionately covered by such fees. Work to better fight poverty in America needs to be done across many dimensions, and regressive state-tax design provides low-hanging fruit for those efforts. This is not to say that changes in these areas will be easy. Shifting the tax burden away from the poor means shifting it to those with greater means, which brings clear political opposition. But these negative aspects of states' systems are often easy to identify and clear in effect, and they should be addressed.

II. Progressive State Spending and Poverty Reduction

The story above is in many ways inconsistent with the notion that state taxes are tools of antipoverty. Despite a few tax credits that help low-income individuals, states' systems are largely regressive and fail to implement features that could best help those at low income levels. Taxation has always been only half of the story of the state experience with poverty, though. State

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[59] Galle & Utset, *supra* note 56, at 43–44; Jeffrey H. Kahn & Gregg D. Polsky, *The End of Cash, the Income Tax, and the Next 100 Years*, 41 FLA. ST. U. L. REV. 159, 167–68 (2013).

[60] Galle & Utset, *supra* note 56, at 47–62.

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spending is highly focused on programs that assist those currently in poverty and on programs that help others to stay out of poverty.

A. Progressive State Spending

In 2024, roughly sixty percent of state spending was on education, Medicaid, and other health expenditures.[61] States also spent significant amounts on transportation, police, sanitation, and fire protection.[62] That spending is vital for individual well-being and for enabling people to pursue their goals and contribute to society. If viewed through the lens of Maslow's hierarchy of needs, we can see that state spending supports the "base" of individuals' needs. Physical security, food, shelter, education, and health are vital for one to move beyond mere survival in daily pursuits and to eventually pursue self-actualization, which often means fully participating in our market economy.[63] Whether from an individualist or societal perspective, then, state spending is critical.

State spending to ensure income, food, housing, and health security for those with young children is especially important in this regard because early childhood financial strain has been linked to reduced long-term outcomes for children.[64] Modern neuroscience even shows that childhood poverty can lead to measurable impacts on brain development, including observably reduced grey matter density.[65] Early interventions to help families—like accessible childcare, job opportunities accessible by public transportation, and preventative health care—are thus critical tools for reducing

[61] NAT'L ASS'N STATE BUDGET OFFICERS, 2024 STATE EXPENDITURE REPORT 7 (2024), https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/SER%20Archive/2024_SER/2024_State_Expenditure_Report_S.pdf.

[62] *State and Local Backgrounders: State and Local Expenditures*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-expenditures (last visited Feb. 17, 2025).

[63] A.H. Maslow, *A Theory of Human Motivation*, 50 PSYCH. REV. 370, 372–85, 394–96 (1943).

[64] GREG J. DUNCAN & SUZANNE LE MENESTREL, A ROADMAP TO REDUCING CHILD POVERTY 67–70 (2019) (discussing the literature showing impact of poverty on development in children).

[65] Jack P. Shonkof et al., *Connecting the Brain to the Rest of the Body: Early Childhood Development and Lifelong Health Are Deeply Intertwined* 6–7 (Nat'l Sci. Council on Developing Child, Working Paper No. 15, 2020), https://harvardcenter.wpenginepowered.com/wp-content/uploads/2020/06/wp15_health_FINALv2.pdf.

intergenerational poverty and for promoting long-term community economic health.

The importance of state spending on public education—states' biggest expenditure from their general funds—cannot be understated in this discussion. Public schools provide children with the basic knowledge, skills, and training that they need to ultimately provide for themselves as adults. Schools also provide a range of other benefits, including meals, afterschool supervision, and basic health care.[66] The availability of public schooling also helps parents by allowing them to obtain work without incurring childcare costs, and an educated workforce benefits the public a great deal as well.[67] State spending on schools to provide these programs is thus critical in the fight against poverty and will be even more important if threats to the federal Department of Education materialize in reduced federal funding for states, including for Title I schools.[68]

Another critical link between state spending and poverty reduction is state spending on health and human services. The biggest expenditure in that category is the state portion of Medicaid, which provides medical care services to low-income populations.[69] States spend roughly $200 billion in the aggregate on Medicaid from their general funds, an amount that is second only to state spending on K-12 education.[70] The Medicaid program is not

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[66] Schools could of course be more fully utilized to equalize access to health care and, in doing so, increase education outcomes. *See generally* Keng-Yen Huang et al., *School Contexts as Social Determinants of Child Health: Current Practices and Implications for Future Public Health Practice*, 128 PUB. HEALTH REP. 21 (2013); Mario Ramirez & Andrew Buher, *The Biden Administration Must Dramatically Expand School-Based Health Care*, THE HILL (Dec. 18, 2020), https://thehill.com/opinion/education/530781-the-biden-administration-must-dramatically-expand-school-based-health-care.
Expanded eligibility for free and reduced lunches could also help to reduce food security concerns for many children. Pandemic-era interventions showed great promise in this regard, but they lapsed like the Child Tax Credit expansions noted above. CLARISSA HAYES & CRYSTAL FITZSIMONS, FOOD RSCH. & ACTION CTR., THE REACH OF SCHOOL BREAKFAST AND LUNCH: DURING THE 2022–2023 SCHOOL YEAR (2024), https://frac.org/wp-content/uploads/Reach-Report-2024.pdf.

[67] *See* Lee Anne Fennell, *Beyond Exit and Voice: User Participation in the Production of Local Public Goods*, 80 TEX. L. REV. 1, 6–12 (2001) (evaluating school and security spending as public goods).

[68] Title I schools receive funding from the federal government based on the income characteristics of their service areas and student bodies. *Fast Facts*, NAT'L CTR. FOR EDUC. STATS., https://nces.ed.gov/fastfacts/display.asp?id=158 (last visited Feb. 17, 2025).

[69] ALISON MITCHELL, CONG. RSCH. SERV., IF10322, MEDICAID PRIMER (2023).

[70] NATL' ASS'N STATE BUDGET OFFICERS, *supra* note 61, at 51–53.

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only a large poverty-reduction program, it is a prime example of the federal government leveraging the states to administer and partially fund antipoverty programming at its direction. Under Medicaid, the federal government provides states with funding ranging from fifty percent to nearly eighty percent of total expenditures, but the federal government also requires states to provide certain care to needy populations to receive that assistance.[71]

The experience with this form of government intervention is complicated, to put it mildly, and there are significant critiques of how states have handled their roles under the Medicaid program.[72] Not only do states administer their programs differently, with many failing to provide funding to those who are eligible and needy, but states also fund their portion of the expense through largely regressive systems, as noted above. Those working on federal-level design must contend with those aspects of this type of programmatic and funding delegation to the states.[73] Notwithstanding the imperfections with this program, states' Medicaid spending is critical in poverty reduction given the immense importance of health care, including mental health care, in preventing and reducing poverty.

This discussion is again far from exhaustive; it merely highlights the role of state spending in the nation's antipoverty efforts. State *tax* systems appropriately get critiqued for their regressive effects, but state spending

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[71] MITCHELL, *supra* note 69.

[72] *See generally*, *e.g.*, Medha D. Makhlouf, *Laboratories of Exclusion: Medicaid, Federalism & Immigrants*, 95 N.Y.U. L. REV. 1680 (2020); Daniel L. Hatcher, *Medicaid Maximization and Diversion: Illusory State Practices That Convert Federal Aid into General State Revenue*, 39 SEATTLE U. L. REV. 1225 (2016); Nicole Huberfeld, *Federalizing Medicaid*, 14 U. PA. J. CONST. L. 431 (2011); Dayna Bowen Matthew, *The "New Federalism" Approach to Medicaid: Empirical Evidence That Ceding Inherently Federal Authority to the States Harms Public Health*, 90 KY. L.J. 973 (2002).

[73] The cooperative structure of Medicaid is also replicated with a variety of other antipoverty programs. The Children's Health Insurance Program (CHIP), for example, provides health insurance for low-income children through a joint state and federal funding mechanism. *Financing*, CTRS. FOR MEDICARE & MEDICAID SERVS., https://www.medicaid.gov/chip/financing/index.html (last visited Feb. 17, 2025). TANF payments, as noted above, are funded by the federal government but the program is administered by the states. *Office of Family Assistance Fact Sheet*, ADMIN. FOR CHILD. & FAMS., https://www.acf.hhs.gov/ofa/comms-fact-sheet/office-family-assistance (last visited Feb. 17, 2025).

should not be forgotten as we think about how states work to alleviate and prevent the burdens of poverty.[74]

B. The Link Between Tax Choices and Spending Choices

The foregoing materials show that states' tax and spending choices have both positive and negative impacts on poverty in America. State and local tax burdens push many Americans into poverty, and state spending programs may not reach those in poverty, even when that funding is intended to assist them. At the same time, state tax credits and state spending on critical programs and infrastructure can also provide the route out of poverty for many. These counteracting features of state tax law, of course, are no different in the abstract than what exists at the federal level, where regressive payroll taxes hurt those at lower income levels, but where the EITC and CTC also pull millions out of poverty. Federal spending also differentially impacts individuals, with some being able to take advantage of federal housing assistance, while others are forced from their communities through ill-conceived programs like the Opportunity Zone program.[75]

One meaningful difference between states and the federal government that has an enormous effect on the capacity of states to provide antipoverty programming is that states are nearly universally bound by balanced-budget requirements to some degree.[76] Those requirements generally prevent states from borrowing, which prevents them from keeping spending stable after tax

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[74] Subnational experiments on versions of universal basic income show that state spending on that type of program could be highly beneficial as well. *See* JULIANA BIDADANURE ET AL., NAT'L LEAGUE OF CITIES, BASIC INCOME IN CITIES (2018), https://www.nlc.org/resource/universal-basic-income-whos-piloting-it/ (exploring UBI possibilities at the sub-national level). *See generally* STANFORD BASIC INCOME LAB, https://basicincome.stanford.edu/ (last visited Feb. 17, 2025) (compiling research on universal basic income experiments); *Unconditional Cash Study*, OPENRESEARCH, https://www.openresearchlab.org/studies/unconditional-cash-study/study (last visited Feb. 17, 2025).

[75] *See generally* Michelle D. Layser, *Subsidizing Gentrification: A Spatial Analysis of Place-Based Tax Incentives*, 12 U.C. IRVINE L. REV. 163, 177–79 (2021) (introducing the Opportunity Zone program and its flaws); Brandon M. Weiss, *Opportunity Zones, 1031 Exchanges, and Universal Housing Vouchers*, 110 CALIF. L. REV. 179 (2022).

[76] NAT'L ASS'N STATE BUDGET OFFICERS, BUDGET PROCESSES IN THE STATES 48 (2021), https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf.

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cuts or during economic downturns.[77] This constraint puts states in a very different situation than that of the federal government, where deficit spending is rampant.

One secondary effect of this balanced-budget restriction is that states' tax choices necessarily become spending choices—this year's tax reduction is next year's budget cut. This reality makes it imperative that those who are focused on antipoverty programming pay attention to tax matters in their state legislatures. Tax bills can seem technical and unrelated to poverty, but those bills often translate into poverty-increasing funding cuts in the future.

Another important element of this discussion is that state tax cuts are often the result of *federal* legislation rather than state legislation. States, of course, make their own legislative choices, but every state with an income tax has also chosen to "piggyback" on the Tax Code to a significant degree for purposes of defining its tax base.[78] That practice brings efficiency benefits, but it also means that federal tax choices can become state tax choices even in the absence of state deliberation or action. For example, during the pandemic, Congress lifted certain loss limitation rules that applied to high-income earners and allowed increased utilization of net operating losses for businesses.[79] Both of those changes were also made retroactive to prior years, and many states immediately provided those same benefits even though their legislatures were not even in session.[80] The result was that many states were providing the same stimulus funding as Congress, but without their legislatures evaluating those expenditures and without the same ability to deficit-spend to fund those payments. The consequences were felt largely by teachers and others involved in education as their funding was cut.[81]

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[77] *See* David Gamage, *Preventing State Budget Crises: Managing the Fiscal Volatility Problem*, 98 CALIF. L. REV. 749, 760–61 (2010).

[78] *See* Mason, *supra* note 54, at 1275–79; Adam B. Thimmesch, *Tax, Incorporated: Dynamic Incorporation and the Modern Fiscal State*, 54 ARIZ. ST. L.J. 179, 185–89 (2022).

[79] Adam B. Thimmesch, *State Tax Conformity: The CARES Act and Beyond*, 96 TAX NOTES STATE 987, 988–90 (2020).

[80] *Id.*

[81] Adam B. Thimmesch, *A Future for the State Corporate Income Tax*, 77 TAX LAW. 761, 798–99 (2024).

States certainly can, and do, deviate from federal tax law from time to time in ways that better reflect local preferences or that protect state budgets, but those deviations are the exception rather than the rule. In this context, it is also helpful to be aware that states' determinations of whether to accept or reject federal tax changes may also be highly influenced by *how* states have chosen to piggyback on the Tax Code. Some states have adopted what is called rolling conformity or dynamic conformity, which means that states automatically adopt any federal changes to the measure on which states piggyback.[82] So, if a state follows the federal government's definition of "adjusted gross income," any federal change that impacts that measure will automatically be incorporated into state law unless the state affirmatively passes a law to "decouple" from that change. This practice is obviously not very protective of states' budgets.

An alternative to dynamic conformity is what is termed "static conformity," which is where states piggyback on the Tax Code as it exists on a specified date.[83] Legislatures in those states do not automatically adopt federal tax changes as they occur; those states must either update their date of conformity or specifically identify federal changes that they would like to incorporate into state law. This practice protects states from federal changes made when their own legislatures are not in session and gives states more time to evaluate the impact of federal tax changes on their own residents (and budgets). Static conformity can be costly though, because state legislatures must dedicate time to updating their conformity dates and taxpayers in those states might face uncertainty in the interim.

It is also important to recognize that the inertial power of the status quo appears to be powerful in this context. My own analysis of state responses to several recent major federal tax changes shows that states generally follow their default positions.[84] That is, states that incorporate the Tax Code on a dynamic basis tended to deviate from federal tax choices to a lesser degree than states that incorporate on a static basis. A legislature's choice of a conformity position can therefore have a meaningful effect on states' antipoverty efforts, and states should be aware of this result. States that want

[82] Mason, *supra* note 54, at 1276–77.

[83] *Id.*

[84] Thimmesch, *supra* note 79, at 223–28.

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to protect their revenue streams should adopt either static conformity or what has been termed "lagged conformity," where federal changes are incorporated into state law only after some time.[85] Those options allow a state legislature time to consider the potential impact of federal tax changes before they have an impact on state budgets.

A final aspect that should be considered when thinking about state expenditures and their link with spending is that some advocates will push states to cut taxes in the name of growth—the idea being that tax cuts might "pay for themselves" as the economy grows and as tax collections rebound. Without getting into the merit and soundness of that approach, it is worth recognizing that even if that theory works, and even if a state does not later cut taxes again, there will be revenue reductions for some period of time after a tax cut. During that period, reduced state spending will have a very real effect on those who rely on state services, especially those in poverty. And given the immense importance of early childhood interventions on long-term outcomes, those caught in this "tax recovery period" may never recover personally. Children who grow up during the "tax cut" phase of a plan for economic growth may be permanently left behind their peers. The cost of cutting taxes to spur future growth, then, happens to be those young lives. States embarking on tax cuts as a means to fuel economic growth must therefore be cognizant that spending reductions in the short term may exacerbate cycles of poverty and impact those most desperately in need of assistance, even if things "even out" on a macro level in the long term.

III. Conclusion

The story of poverty is complex and multifaceted. In many ways, the American experience with this issue over the last sixty years can leave one feeling perplexed. Despite a range of interventions over time, poverty still afflicts millions of individuals across the country. It is not clear what can be done, especially within current political constraints, to meaningfully help our most needy. What is clear, though, is that state tax systems both help and hurt at the margins. States provide critical support for those in need, and state spending on education and health care are instrumental in helping individuals attain and retain some measure of financial security. But states also raise funds in regressive ways, fail to direct federal funds to those who need

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[85] *Id.* at 229–31 (discussing this method and suggesting its adoption by the states).

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assistance, and make tax choices that seem contrary to their best interests. More can be done.

Those interested in state antipoverty approaches should carefully consider state tax interventions as important tools in the fight against poverty. Recognizing the impact of flat income tax structures is important, as is considering the regressive impact of a heavy reliance on consumption taxes. States should also recognize the benefits of expanding tax credits for those at low income levels and of directing state-level credits at those who might be left out by the federal government. States should thus work to identify their populations at need and do more than simply piggyback on federal eligibility criteria for important tax credits. States should also think carefully about their general approach to piggybacking on federal tax choices. The federal government uses the Tax Code for a variety of goals that may not be relevant at the state level, so states should not blindly accept federal tax changes or put themselves in positions to be unable to respond to those changes.

Finally, the use by the federal government of matching funds or the delegation of responsibility to states for antipoverty programming should also be carefully rethought with the actual state experience in mind. The benefits of a progressive federal tax structure can be offset when the federal government shifts the burden of funding important programs to states if those states provide their "share" through taxes that disproportionately impact those in need or when those states adopt practices that fail to direct funds to those individuals. Cooperative approaches can be highly beneficial, but unless states are held to better account for their uses of funds and their own revenue structures, well-intentioned programming can have its effects be subdued.

In the end, we know that state taxes and state spending impact those in poverty in many ways. This Essay has provided a broad look at those different dimensions of state antipoverty taxation. Individual lives can be heavily impacted for the better by intentional, informed state choices despite the ongoing struggles of this country with poverty. Those involved in state tax policy should therefore work to understand the poverty dimension of their choices just as those involved with poverty-reduction efforts should work to understand and involve themselves with state tax policy.

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