New Taxes—What and Why?

TEI-SJSU Tax Policy Conference
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AGENDA

- Gross Receipts Taxes Policy Consideration
- Gross Receipts/Alternative Business Activity Taxes Legislation and Initiatives
- Expanding Unchecked

Gross Receipts Taxes Policy Considerations

Gross Receipts Taxes as a Policy Choice

Gross Receipts Taxes in State Government Finances: A Review of Their History and Performance

By John L. Mikesell, Indiana University — January 2007

Executive Summary

Gross receipts taxes had largely disappeared as an important revenue source for state governments by the later years of the twentieth century, usually after considerable effort by state business groups to eliminate them. Analysts and scholars presumed that these taxes—also known as "turnover taxes"—had forever been replaced with options that made more sense as ways of distributing the cost of government and had less undesirable impact on the taxpaying used—the normal standards for assigning tax burdens.

Low rate: Whether a gross receipts tax has a low rate depends on how much revenue the government intends to raise from it. Unlike most taxes, the effective rate of a gross receipts tax is higher than the statutory (or advertised) rate. A broad-base, low-rate gross receipts tax is unlikely to contribute a major share of tax revenue to a modern state government.

COST/Tax Foundation: "Gross Receipts Taxes in State Government Finances: A Review of Their History and Performance," John Mikesell, Indiana University, January, 2007. *(www.cost.org)*

Gross Receipts Taxes as a Policy Choice

- Uneven Stealth Tax: Violates principles of economic competitiveness and transparency
- Unfair Tax: Imposes Significant Tax Burden on Start-Up, Low Margin and Unprofitable Enterprises
- Tax Pyramiding: Imposed at Every Level of Production
- Least Economically Neutral Tax
- "There is no sensible case for gross receipts taxation…. [Gross receipts taxes] do not belong in any program of tax reform."

COST/Tax Foundation: "Gross Receipts Taxes in State Government Finances: A Review of Their History and Performance," John Mikesell, Indiana University, Published January, 2007

Gross Receipts/Alternative Business Activity Taxes
Legislation and Initiatives

Nevada Commerce Tax

- Nevada Senate Bill 483 (signed June 9, 2015)
  - Included new Commerce Tax and extension of other tax programs
  - The measure passed despite reservations regarding the package's structure, particularly the gross receipts-based Commerce Tax, which failed to obtain voter approval in 2014
  - Commerce Tax is effective July 1, 2015
    - Estimated to raise $243 million over the biennium
    - Imposed on all business entities engaged in a business in Nevada, including pass-through entities, corporations, persons engaging in business with limited exception
    - Tax based on Nevada situsedgross receipts; $4 million exclusion from tax, but not from filing requirement

Nevada Commerce Tax

- Overview of Nevada Commerce Tax
  - **Imposition**: Imposed on each business entity whose Nevada gross revenue exceeds $4,000,000 for "the privilege of engaging in a business in [Nevada]."
  - **Rate**: Rate of tax depends on the industry in which the taxpayer is engaged.
  - **Basis**: Imposed on gross revenue
  - **Sourcing**: Sources gross revenue to Nevada pursuant to a market-based methodology.
  - **Credit against payroll taxes**: Taxpayers subject to both the commerce tax and Nevada payroll taxes are permitted to subtract as a credit 50% of commerce tax paid to offset payroll taxes.

Nevada Commerce Tax (cont.)

- Commerce Tax is here to stay—Initiative to repeal the Commerce Tax is officially dead
  - On May 11, 2016, the Nevada Supreme Court invalidated approximately 22,000 signatures, finding the ballot summary was insufficient
  - Proponents abandoned efforts to gather the 55,000 signatures required to qualify the ballot based on timing (required to submit by June 21, 2016)
- Final regulations adopted on April 11, 2016
  - Based on the Ohio CAT regulations
  - See Department's website for final draft
- Forms and instructions are finalized and can be found on the Department's website

Oregon Gross Receipts Tax on 2016 ballot

- **GRT Initiative Qualified for Ballot** – On June 7, 2016, proponents qualified IP28
  - November 2016, Oregon voters will decide whether to approve IP 28. If passed, IP 28 would modify the annual minimum tax (capped at $100k) to impose a 2.5 percent gross receipts tax on Oregon C corporations with sales exceeding $25 million – with no cap
- **"Maximum Tax"** - If passed, the tax would turn Oregon's current minimum tax into a "maximum tax"
  - Although this tax will not replace the Oregon Corporate Excise Tax (Oregon's corporate income tax), most corporations with Oregon sales in excess of $25 million will pay the gross receipts tax as opposed to the excise tax

Oregon Gross Receipts Tax on 2016 ballot

- **Legislature Declines to Derail IP 28** – An attempt by Senate Revenue Chairman Mark Has, D-Beaverton, to implement an alterative (*i.e.*, Ohio-style CAT) was not successful during Oregon's short 2016 legislative session
- **LRO Report Shows Negative Economic Impact** – On May 23, 2016, Legislative Revenue Office released analysis showing a $6.1 billion fiscal impact for 2017-19 biennium
  - Analysis also showed significant negative consumer impacts and job loss in the private sector
- **Campaign in Opposition –** A unified employer and consumer coalition is opposing IP 28

DEFEAT THE TAX ON OREGON SALES

Defeat The Tax On Oregon Sales – information can be found at http://www.defeatthetaxonoregonsales.com/

San Francisco Gross Receipts Tax

- Beginning in 2014, the Gross Receipts Tax ("GRT") is imposed on a broad array of persons doing business in the City, including:
  - Sole proprietorships
  - Limited liability companies ("LLCs")
    - Entities that are disregarded for federal income tax purposes (e.g., single-member LLCs) will not be treated as separate taxable entities for GRT purposes. (Tax Collector Regulation 2014-2.)
  - Corporations
  - S-corporations
- GRT is being phased-in, and the existing Payroll Expense Tax phased-out over a 5-year period.

San Francisco Gross Receipts Tax

- "Doing Business" in the City includes:
  - Presence in the City for more than 7 days
  - Owners of businesses that are partnership (more than 2 owners) "pass through" entities are protected
- "Gross receipts" subject to the GRT are broadly defined
- Receipts are apportioned for taxpayers conducting business within and outside of the City
- Combined filing required
- Due date is the last business day of February
- Three year SOL for assessments, but only one year for refund claims

San Francisco Proposed Payroll Tax on Tech

- Three members of San Francisco's Board of Supervisors have proposed a measure that would impose a 1.5 percent payroll tax on technology companies be added to the ballot in November
  - Current proposal exempts tech companies with gross receipts of less than $1 million
- Estimated fiscal impact is $115 million annually
- Revenue to be used for homeless services and affordable housing

Expanding Unchecked

Examples

- Impose sales taxes on services
  - California proposed legislation in 2015
  - Hawaii
  - New Mexico
  - South Dakota
- Chicago lease transaction tax
- Expanding nexus
  - *Quill* challenges—remote sellers collection and use tax reporting
    - Alabama, Colorado, South Dakota
  - Assertion of economic nexus against foreign affiliates/entities
    - California, Oregon and Washington

Examples

- Aggressive use of alternative apportionment
  - California, Michigan, Mississippi, South Carolina, Tennessee
- Imposition of market sourcing in COP states
  - Oregon, South Carolina, Tennesse
- Forcing combination
  - Maryland, Indiana, South Carolina

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QUESTIONS?

THANK YOU!

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