

LEGISLATIVE
PRINCIPLES
SERIES

NUMBER 9

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Ten Principles *of* Federal Tax Policy

By Daniel J. Pilla



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Series Preface

Welcome to the latest installment in The Heartland Institute's *Legislative Principles* series. Each booklet in this series presents a set of principles central to the debate about a major public policy issue. Each principle, in turn, is carefully documented to enable readers to find the original sources, many of which are on The Heartland Institute's Web site (www.heartland.org). An electronic version of this booklet, also posted on Heartland's Web site, has links to the URLs of many of the sources cited.

By design, most of The Heartland Institute's publications focus on news and contain factual accounts about current events, policies, and legislation. The booklets in the *Legislative Principles* series, on the other hand, set forth enduring principles that are likely to remain valid and relevant to legislative policy in the next decade. They can help busy legislators rapidly prepare themselves to discuss and even propose new legislation in areas they may not ordinarily follow closely.

This particular booklet was written Daniel J. Pilla, a tax litigation consultant and executive director of the Tax Freedom Institute, a national association of tax professionals. His in-depth understanding of tax law gives this booklet real-world relevance sometimes missing from "think tank" publications. There is much to be learned here about how tax codes ought to be written and how far the current federal tax code is from that ideal.

We hope the *Legislative Principles* series forms a mini-library for elected officials, their staff, and concerned citizens. Kept on a desk or in a drawer, the booklets can form a ready reference on major legislative issues and policies. We also hope you will distribute copies to friends and colleagues who share your interest.

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Herbert J. Walberg
Series Editor and
Chairman, The Heartland Institute

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The Heartland Institute contacts more elected officials, more often, than any other think tank in the United States. According to a telephone survey of 500 randomly selected state and local officials conducted by Victory Enterprises in 2009, 85 percent of state legislators and 63 percent of local officials say they read and rely on Heartland publications.

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About the author

Daniel J. Pilla is a tax litigation consultant and executive director of the Tax Freedom Institute, a national association of tax professionals. He is admitted to practice before the United States Tax Court. He is the author of 11 books, hundreds of articles, and dozens of research reports on IRS problems resolution and taxpayers rights issues. One of his books, *The IRS Problem Solver*, was ranked by *The Wall Street Journal* as the number one tax book in America. His book *How to Fire the IRS* started the national debate on abolishing the IRS that took place throughout the 1990s. He was on the editorial board of the Institute for Policy Innovation's "Road Map to Tax Reform Project" in 2001 and a consultant to the National Commission on Restructuring the IRS. He has two Web sites, at www.taxhelponline.com and www.taxfreedominstitute.com. He speaks nationwide to tax professional associations, trade associations, and citizens' groups on taxpayers' rights and tax policy issues.

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Introduction

Do we need ten principles of federal tax policy?

“Of all the powers conferred upon government that of taxation is most liable to abuse.”

Supreme Court of the United States
Citizens’ Savings & Loan Ass’n v. City of Topeka
87 U.S. 655 (1874)

The power to tax is the most ubiquitous of all government powers. It reaches directly or indirectly to all classes of people, all industries, all elements of society. Taxes always place at least some burdens on business, individuals, and the economy. They are a necessary evil. However, citizens should tolerate only those taxes that are lawful and used to support legitimate functions of government.

For these reasons, policymakers and legislators have a responsibility to adhere to sound constitutional and economic principles when levying taxes, and citizens have a moral and legal duty to hold legislators accountable for violations of these principles. This trust is vital since abdication of these principles threatens liberty. The Supreme Court stated as much in *Citizens’ Savings & Loan*, saying:

It must be conceded that there are such [private] rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism.

Thankfully, there is a body of constitutional law and economic evidence to guide the design of a tax system consistent with constitutional limitations and economic principles. As the nation clamors for solutions to the challenges of ongoing annual deficits, local, state, and national debt, and stagnant or sluggish economic growth, a renewal of these fundamental principles is timely.

This booklet focuses on the federal income tax, since this tax collects by far the most revenue and affects the most people in the United States. However, the ten principles presented here apply to any tax system, whether national, state, county, or local. Because income taxes are more likely to violate these ten principles than taxes on other things, elected officials at every rung of the federalism ladder should consider replacing income taxes with other types of taxes.

1. Simplicity

Citizens have a fundamental right to know what tax laws require, and compliance should be easy and inexpensive.

The Supreme Court, in its 1926 decision *Connally v. General Construction Co.*, recognized a fundamental right to know what legislation means, especially legislation that creates an affirmative duty to act. The majority wrote, “[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law” (269 U.S. 385 (1926)).

The current tax code represents precisely the opposite of the constitutional standard for understandable legislation. The federal tax code is so complex that it is challenging just to count the words. The closest we are able to get is an estimate, produced by the National Taxpayer Advocate in her 2008 Annual Report to Congress, of 3.7 million words (NTA 2008, p. 4). The tax code has grown substantially since then.

A law this complicated is difficult to administer and impossible to obey. In every annual report presented to Congress since those reports were first required in 1999, the National Taxpayer Advocate identified “tax law complexity” as the biggest problem taxpayers face in dealing with the IRS. Former IRS Commissioner Shirley Peterson testified to Congress nearly 20 years ago:

A good part of what we call non-compliance with the tax laws is caused by taxpayers’ lack of understanding of what is required in the first place. ... Many taxpayers fail to comply because they are unaware of the requirements of the law or because they cannot easily understand what they are supposed to do (Peterson 1992).

When people do not know how to comply, they cannot be expected to comply. In 2001, the Treasury Inspector General for Tax Administration reported that IRS personnel in its taxpayer assistance centers answered taxpayers’ questions “inaccurately or incompletely” up to 73 percent of the time (Treasury Inspector General 2001). A year earlier, former IRS Commissioner Charles Rossotti remarked, “Fundamentally, we are attempting the

impossible. We are expecting employees and our managers to be trained in areas that are far too broad to ever succeed, and our manuals and training courses are, therefore, unmanageable in scope and complexity” (Rossotti 2000).

At the 2010 meeting of the New York State Bar Association’s Taxation Section, IRS Commissioner Doug Shulman summarized just how bad the issue of complexity has gotten. He stated, “we have gone from complexity to perplexity” (Shulman 2010).

Very simply, these commissioners are conceding that the job of providing accurate information cannot be done given the scope, breadth, and complexity of the current tax code. This complexity in turn undermines people’s willingness to comply with the law. Taxpayers are less willing to comply with a tax code they know to be rife with loopholes, exceptions, and ambiguities. Such complication breeds the not-unfounded idea that other taxpayers are paying less on the same or greater income. The President’s Advisory Panel on Federal Tax Reform reported in 2005:

[T]axpayers think that with the myriad of targeted exclusions, deductions, and credits, others may not be paying their fair share – so why should they? Some call this “the cheat or chump syndrome.” In addition, clever tax advisors mine the complexity of the tax code to develop and market tax shelters and other schemes clearly designed to manipulate the tax code’s hidden loopholes for their clients’ exclusive benefit. The perception that the tax code is unfair and easily manipulated undermines voluntary compliance – the foundation of our tax system (President’s Advisory Panel 2005, p. 4).

The IRS Oversight Board’s 2004 Taxpayer Attitude Survey showed that about one in five citizens believed that some amount of tax cheating is acceptable (IRS Oversight Board 2004). The board did not delve into why citizens feel this way. Certainly the perception that tax laws are unfair is a key factor driving this belief.

Lawmakers owe citizens and businesses a simple and understandable tax code. More than any other area of law, tax law touches and affects Americans with a growing list of affirmative duties. Given this, the constitutional guarantee of due process mandates a simple tax code that people can understand.

Recommended reading: President’s Advisory Panel on Federal Tax Reform, *Simple, Fair and Pro-Growth: Proposals to Fix America’s Tax System*, 2005, <http://govinfo.library.unt.edu/taxreformpanel/final-report/index.html>.

2. Noninvasiveness

A minimally invasive tax code encourages voluntary compliance and reduces the need for enforcement.

It is widely agreed that citizens have a duty to pay the taxes they owe in full and on time. However, government has a duty to collect the revenue in the least invasive manner. The current income tax system is the most invasive part of the entire body of federal law.

A 1999 report of the General Accounting Office (GAO) to the Senate Small Business Committee found “by our count, there are more than 200 requirements – which we grouped into four layers – that may apply to small businesses as well as large businesses and other taxpayers” (Wrightson 1999, p. 4). The list of requirements grows annually. The National Taxpayer Advocate reported in 2008 that businesses are burdened with “a bewildering array of laws” (NTA 2008, p. 10).

Businesses are required to file information returns with the IRS reporting payments made to third parties in the course of business. Any payment of \$600 or more to a “person” in a calendar year must be reported. In 2008 alone, businesses filed approximately 1.658 billion information returns with the IRS. That does not include income and employment tax returns (*Ibid.*). The 2010 Patient Protection and Affordable Care Act added a provision to the code that requires any person or corporation that pays another corporation more than \$600 in a year to file a report with the IRS. The law is effective for payments beginning January 2012.

The new rule will require billions more information returns to be filed annually, putting a substantial additional burden on businesses to comply with a tax code that is already choking them. Since the passage of this law, the IRS has been overwhelmed with questions about its implementation and complaints about the burdens it creates.

According to the National Taxpayer Advocate, businesses and individuals spent approximately 7.6 billion hours meeting just the tax code’s filing requirements in 2006. That is equivalent to 3.8 million full-time workers (NTA 2008). These numbers do not include the time and effort taxpayers spend each year dealing with IRS enforcement, which is no less staggering. In 2009 alone, more than 40 million citizens faced IRS collection actions, as shown in the table below (IRS 2009, pp. 41, 42).

<i>Type of Action</i>	<i>Number of Taxpayers Affected</i>
Penalty assessments	36,228,339
Wage and bank levies	3,478,181
Tax liens	965,618
Property seizures	581

Even these figures do not include time spent responding to millions of tax audits and tens of millions computer notices the IRS mails annually. Nor does it address the IRS's so-called "soft contacts." A soft contact is a letter the IRS mails to explain that you "might" have done something wrong and that you "should" examine your own tax return and records to make the correction before the IRS does.

All of this adds up to an incredibly invasive system that undermines the willingness of millions of Americans to comply voluntarily with tax laws.

A less invasive system also would benefit tax administrators. Administrators need fewer resources to manage a system that does not attempt to spy on every aspect of the financial lives of all taxpayers. Fewer reports mean less processing time and require fewer man-hours. Less enforcement action means fewer collectors spending fewer hours tracking down bank accounts, paychecks, and other assets to levy and seize.

The challenge for lawmakers is not to find new ways to squeeze more citizens, but to find a tax system that raises the revenue needed for legitimate government functions without placing a revenue officer in the home and office of every American.

Recommended reading: National Taxpayer Advocate, *Annual Report to Congress 2008*, Internal Revenue Service, www.irs.gov/advocate/article/0,,id=97404,00.html; Daniel J. Pilla, *How to Fire the IRS: A Plan to Eliminate the Income Tax and the IRS* (Stillwater, MN: Winning Publications, 1993).

3. Efficiency

The total cost of collecting taxes can be reduced by lowering the number of collection points.

The IRS regularly asserts that it is extremely efficient in collecting taxes. In 2009, the agency reported collecting gross tax revenue of more than \$2.3 trillion with a work force of 105,814 employees. Given the agency's budget of approximately \$11.7 billion, the average cost of collecting \$100 of tax was just 50 cents (IRS 2009, p. 63). However, these numbers are misleading.

The IRS's estimate does not take into account the cost *to the public* of complying with income tax laws. Only when we examine the compliance burden borne by the public do we see the true inefficiency of the system. Under the federal income tax withholding system, it is America's employers, not the government, who collect much of the tax.

Of the \$2.3 trillion in gross revenue collected by the IRS in 2009, approximately \$1.28 trillion, or about 56 percent, was collected by employers through taxes withheld from the paychecks of their workers (*Ibid.*, p. 3). Employers are responsible for paying the money to the IRS and reporting the withholding using various tax forms. The cost is borne by employers, not the government.

The cost to individuals and businesses to comply with the tax code is substantial. The National Taxpayer Advocate recently estimated that the out-of-pocket cost associated with tax return filing alone is approximately \$193 billion annually. As the Taxpayer Advocate stated, "this is a staggering 14 percent of aggregate income tax receipts" (NTA 2008, p. 4). Even the NTA did not address the whole picture. We also must consider the cost of responding to the tens of millions of annual notices and letters, challenging penalty assessments, millions of annual audits and appeals, tax litigation and enforced collection, economic disincentive costs, and the cost of tax evasion and avoidance (Pilla 1993, p. 204).

When all these factors are accounted for, the cost of compliance is close to 65 percent of the amount collected (*Ibid.*; Payne 1993). That is to say, for every dollar of tax paid to the Treasury, it costs citizens and businesses 65 cents to get it there. Given that \$2.3 trillion was paid to the IRS in 2009, society incurred a collection cost of nearly \$1.5 trillion.

Paying taxes to government is a necessary evil, but incurring expenses of up to 65 percent of the tax in the process of paying is an intolerable evil. Lawmakers have a duty to design a system that is mindful of the costs businesses and individuals must bear to comply. Lawmakers have a duty to keep these costs as low as possible.

How can taxes be made more efficient? One way is to reduce the number of collection points. The number of tax returns filed represents the collection points of a tax system. The more the collection points, the less efficient the system. Back in 1999, I calculated the savings to a single state – Minnesota – of moving from an income tax to a broad-based sales tax as the principal means of collecting the state’s revenue. The state could have expected to achieve:

- An 82 percent reduction in the number of collection points;
- Annual savings of at least \$4.96 million in return processing costs;
- An 88 percent reduction in the number of taxpayer questions;
- A reduction of 63 percent in the state tax return filing obligation of the average Minnesota business; and
- An overall reduction in the state’s administrative costs of about \$38 million (Pilla 2000).

Of course, there are other issues to consider when proposing a major change in the way taxes are collected. But at a time when both taxpayers and governments are straining to find ways to save money, ways to improve the efficiency of tax collection need to be on the table.

Recommended reading: James L. Payne, *Costly Returns: The Burdens of the U.S. Tax System* (Richmond, CA: Institute for Contemporary Studies, 1993); Daniel J. Pilla, “Freedom to Prosper: Analyzing the Merits of Replacing Minnesota’s Income Tax System with a Board-based Sales Tax,” Tax Freedom Institute, Inc., January 2000, www.taxhelponline.com/resources-and-publications/research-reports/freedom-to-prosper.html.

4. Stability

The tax code should be stable and reliable from year to year and generation to generation.

Tax laws directly affect what we do and how we do it. For example, the federal tax code contains provisions dealing with marriage, children, home ownership, personal investing, charitable giving, obtaining personal and professional education, changing employment, finding new employment, paying for medical care, purchasing and operating automobiles, making gifts to children and others, leaving an inheritance, and even death itself. These decisions comprise the most important and often the most personal elements of our lives.

No reasonable person would suggest that a person should make any of these decisions without some level of planning. And while we cannot plan the time or manner of our deaths, we certainly can plan what should happen before death and what happens to our assets after death. More than any other single factor, the tax code dictates the parameters of that planning. In order for any plan – whether business or personal – to be effective, the planning requirements must be stable. Yet the tax code requirements are constantly and unpredictably changing, making planning difficult.

Tax laws change frequently and the rate of change is rising. During the decade of the 1980s, Congress changed the tax code more than one hundred times. Those changes came through just a few major tax acts, such as the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1986 (Pilla 1997, p. 25). The 1986 act changed more than 2,000 code sections and was responsible for the creation of more than one hundred new tax forms (Pilla 1995, p. 3).

During the decade of the 1990s, Congress was even busier. Four major tax laws were passed between 1996 and 1998, culminating in the Internal Revenue Service Restructuring and Reform Act, which took effect in July 1998. During the 1990s, more than 750 tax law changes were made.

According to the National Taxpayer Advocate's 2008 *Annual Report to Congress*, "Since the beginning of 2001, there have been more than 3,250 changes to the tax code, an average of more than one a day, including 500 changes in 2008 alone" (NTA 2008, p. 4). Some of these changes resulted in retroactive tax increases. For example, the 1994 Supreme Court ruling in *United States v.*

Carlton (512 U.S. 26) approved a decision by Congress to repeal a tax deduction retroactively, thereby increasing an estate's tax liability by more than \$600,000. In 2009 and 2010, 24 tax laws expired, and six more will expire by 2012 (Joint Committee on Taxation 2008).

This vicissitude in the tax code clearly interferes with people's right to plan their personal and business affairs. Between 1986 and 2000, Congress changed the requirements for making estimated tax payments seven different times (IRS 2000, p. 34). Changing the law on estimated taxes every other year is one reason IRS assesses the penalty for failure to pay estimated taxes so often. In 2009, the IRS assessed that penalty against 7.565 million individuals and more than 243,000 businesses (IRS 2009, p. 42).

The 2005 President's Advisory Panel on Tax Reform observed that the expiring provisions and phase-ins and phase-outs of various provisions "are a nuisance at best, and a negative force at worst, in the daily economic lives of American families and businesses" (President's Advisory Panel 2005, p. 5). The panel concluded:

The tax system is both unstable and unpredictable. Frequent changes in the tax code, which often add to or undo previous policies, as well as the enactment of temporary provisions, result in uncertainty for businesses and families. This volatility is harmful to the economy and creates additional compliance costs (*Ibid.*, p. xiii).

A tax system that is sound fundamentally does not have to be changed often. A tax system that is firmly grounded in the principles discussed here will stand the test of time. Lawmakers must avoid frequent changes to tax laws and work instead to incorporate stability into the system. This would have a major positive impact on taxpayers' ability and willingness to comply.

Recommended reading: Daniel J. Pilla, "How the IRS Tries to Make You Die Poor," *Pilla Talks Taxes* (Stillwater, MN: Winning Publications, May 1997), www.taxhelponline.com/resources-and-publications/research-reports/die-poor.html; Daniel J. Pilla, "Why You Can't Trust the IRS," *Policy Analysis* No. 222, 1995, Cato Institute, www.cato.org.

5. Visibility

The cost of government should be readily apparent to taxpayers.

When asked how much money they paid in federal income taxes in the prior year, most people reply, “I didn’t pay anything. I got a refund.” They never saw, and therefore do not remember, the many thousands of dollars withheld from their paychecks by their employers.

About 85 percent of the income earners in America do not write a check to the government for their taxes. Since the tax is taken out of their paychecks by their employers, they do not even see the money. As a result, they generally have no idea how much they pay in taxes. The 1996 report of the National Commission on Economic Growth and Tax Reform called attention to the danger of this arrangement:

The history of hidden taxes, rapidly rising rates, and perpetual budget deficits proves that what you don’t know can hurt you. The current system hides the cost of government behind a chronic deficit and a maddening multiplicity of taxes – many of which are virtually invisible to the taxpayer who pays them. How much did we pay in payroll taxes last year? What excise taxes were hidden in the prices of the products we bought? What [is] the tax cost of exclusions, deductions, and corporate income taxes? Few of us know the answers (National Commission 1996, p. 21).

Social Security taxes are particularly invisible to taxpayers. The employee’s share of Social Security and hospital taxes is figured at a flat rate of 7.65 percent of gross income. The tax is deducted from workers’ paychecks as the income is earned. It then becomes the responsibility of the employers to pay the money to the IRS. Employees never file a Social Security tax return, never write a check to the IRS for the tax, and never do any recordkeeping to correctly figure the tax. They are never subject to an audit with regard to correctly reporting the tax. They are never subject to enforced collection if the tax is not paid by their employers. The money simply disappears from their paychecks.

(This is not true of self-employed persons. They must calculate their Social Security taxes on Schedule SE and include the tax on Form 1040. Since the tax is figured as a flat percentage of business profit, they are subject to audit as to the amount of tax and collection if the tax is not paid.)

As “easy” as all this sounds, it means most taxpayers never know the true cost of Social Security – or, for that matter, government in general. This allows politicians to increase taxes without people knowing what is happening. That in turn allows politicians to blame the rising cost of living on outside devils such as Big Oil, Big Tobacco, or Big Whatever.

Taxes that are highly visible are much more stable, tend to stay low, and are not generally subject to tinkering. The best example of this is retail sales taxes imposed by state governments. Just compare the number of changes to your state’s sales tax laws with the changes made in the Internal Revenue Code in the past ten years. The contrast is staggering. In Minnesota, one can practically count on one hand the number of sales tax law changes and increases that have occurred since the sales tax came into existence in 1963.

The National Commission on Economic Growth and Tax Reform concluded its discussion of the importance of tax visibility by noting, “A visible system gives taxpayers an honest accounting of government’s expense and will make it far more difficult for politicians to tinker with the tax code without the democratic consent of those taxed” (*Ibid.*)

Recommended reading: National Commission on Economic Growth and Tax Reform, “Unleashing America’s Potential: A Pro-growth, Pro-family Tax System for the 21st Century,” Final Report, January 1996, www.galen.org/component,8/action,how_content/id,7/news_id,3074/type,33/?_highlight=kemp.

6. Neutrality

Taxes should not fall more heavily on one industry or class of individuals than on others.

Chief Justice John Marshall, in the 1819 case *McCulloch v. The State of Maryland*, wrote that the power to tax is “the power to destroy” (17 U.S. 316 (1819)). The case dealt with the 10 percent excise tax Congress imposed on the circulation of all bank notes other than those issued by the national bank. Within two years of its passage, the tax drove out of existence every state bank note.

A contemporary example of the destructive power of taxes is the Revenue Reconciliation Act of 1990. This law imposed the 10 percent “luxury tax” on high-priced boats and aircraft (priced at more than \$100,000), autos (more than \$30,000), and jewelry and furs (more than \$10,000). The idea was to “tax the rich.”

The politicians did not anticipate that the rich would simply stop buying the items subject to the tax. During the period the tax was in effect, sales of those products fell precipitously. In 1993, Congress repealed the luxury tax. In support of the vote to repeal, the House Ways and Means Committee stated:

During the recent recession, the boat, aircraft, jewelry and fur industries have suffered job losses and increased unemployment. The committee believes that it is appropriate to eliminate the burden these taxes impose in the interests of fostering economic recovery in those and related industries (House Ways and Means Committee 1993, p. 188).

The Senate Finance Committee also acknowledged the negative effects of the taxes on the affected industries as the reason for repealing the tax hikes (Senate Finance Committee 1993, p. 213).

Selectively targeting industries for heavier tax burdens is an illegitimate use of the taxing power of government. The Supreme Court condemned the practice in *Citizens' Savings & Loan Ass'n v. Topeka*, an 1874 case involving the use of government bonds to finance railroads and the taxes imposed to pay for the bonds. Referring to government's power to impose selective taxes, the Court stated, “This power can as readily be employed against one class of individuals and in favor of another, so as to ruin the one class and give unlimited wealth and prosperity to the other, if there

is no implied limitation of the uses for which the power may be exercised” (87 U.S. 655 (1874)). The Court went on to say:

To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation (p. 664).

There also is a pragmatic reason to keep government from interfering with the ability of legitimate businesses to compete in the marketplace on equal footing with one another. Otherwise, the only businesses with a chance to succeed are those that can afford and are willing to pay the lobbyists and influence peddlers who infest Congress and state houses. When government gets into the business of picking winners and losers in the marketplace, tax benefits and penalties become auction items, bought and sold at the expense of, and to the detriment of, those who cannot or will not play the game.

The idea that tax law ought to be neutral is widely recognized as an essential element of sound tax policy. The National Commission on Economic Growth and Tax Reform described it this way:

The tax code should be used to raise revenue to run the government while doing the least possible damage to the economy. This means leaving individuals free to make decisions and to set priorities based on economic reality – not on the bureaucratic whims of Washington, D.C. . . . The result of the biases and distortions in the current system is to make the market less free, the system less fair, and families less financially secure (National Commission 1996, p. 20).

Recommended reading: Robert Carroll, John E. Chapoton, Maya MacGuineas, and Diane Lim Rogers, “Moving Forward with Bipartisan Tax Policy,” *Working Paper* No. 5, Tax Foundation, February 2009.

7. Economic Growth

Taxes should not impede the investment and consumption decisions that make economic growth possible.

Three presidential commissions on taxes in the past 15 years each insisted that a sound tax system must be mindful of the profoundly negative consequences taxes can have on the economy: the Bipartisan Commission on Entitlement and Tax Reform, 1995; National Commission on Economic Growth and Tax Reform, 1996; and the President's Advisory Panel on Federal Tax Reform, 2005.

The National Commission on Economic Growth and Tax Reform declared in 1996 that promoting economic growth was the number one principle that must drive tax policy. The commission's report states, "economic growth, the engine of opportunity and prosperity, can only be unleashed by a tax code that encourages initiative, hard work, and saving" (National Commission 1996, p. 17).

What you tax you get less of; what you subsidize you get more of. These economic facts of life should be kept at the forefront of all discussions regarding taxation.

Americans want an economy that is diverse, dynamic, and growing. Such an economy requires rising employment, savings, investment, and productivity. Today's tax system imposes heavy and unnecessary burdens on the economy. How can the economy grow and create diverse opportunities if the very engines of that growth are heavily taxed? The bottom line is this: Taxes make you poorer. For this reason, taxes must be kept low and directed away from the engines of economic growth.

For every dollar paid in taxes, businesses have at least one less dollar available for capital improvements, wages, research and development, or inventory. For every dollar paid in taxes, individuals have at least one less dollar available to purchase a home, pay tuition or medical expenses, or build retirement savings.

The cost of collecting taxes and the negative and distorting impacts taxes have on incentives make their economic damage far greater than the dollars actually collected. Economists Ernest S. Christian and Gary A. Robbins of the Center for Strategic Tax Reform used econometric analysis to find that "the cost to the private sector of providing the government an additional \$1 in tax revenue is about \$2.50 and in some circumstances much more"

(Christian and Robbins 2006). They say, “If taxes were both reduced and reformed (so that the drag on economic performance per \$1 of tax would be less), the economy would be larger, government would be smaller, and everyone would be better off.”

Economist Richard Vedder at Ohio University examined several dozen measures of taxes and spending in the years 1957, 1977, and 1997. In 2001 he reported, “In every single case, without exception, the results are consistent: High or rising taxes are associated with lower amounts of economic growth. The use of more sophisticated statistical models produces the same sort of result: higher taxes, lower growth” (Vedder 2001, p. 9).

Other researchers, including J. Scott Moody at the Maine Heritage Policy Center (Moody 2006) and Scott A. Hodge at the Tax Foundation (Stanek 2006) have found the same thing: High taxes lead to slower economic growth. According to Hodge, “Taxes are an important cost to business, as important as the cost of labor and raw materials. Nearly all of the best states raise sufficient revenue without imposing at least one of the three major state taxes: sales taxes, personal income taxes, and corporate income taxes” (*Ibid.*)

To minimize the negative effect of taxes on job creation, taxes on employment should be reduced. Our Founding Fathers had the wisdom and foresight to know that imposing direct taxes on the engines of economic growth would only inhibit growth. That is why the Founders expressly rejected the idea of imposing direct taxes on income, saving, and investment. Instead, they favored indirect (excise) taxes on consumption. The nation’s first Treasury Secretary, Alexander Hamilton, observed that taxing the “articles of our own growth and manufacture are more prejudicial” to economic growth than excise taxes (Morris 1957, p. 258).

Recommended reading: Chris Edwards, “Options for Tax Reform,” *Policy Analysis* No. 536, Cato Institute, 2005; Bipartisan Commission on Entitlement and Tax Reform, “Final Report to the President,” January 1995, www.ssa.gov/history/reports/KerreyDanforth/KerreyDanforth.htm.

8. Broad-based

Broad tax bases allow rates to be kept low, which in turn encourages voluntary compliance.

The tax base is the pool of economic activity from which tax revenue is generated. If the government operates on an income tax system, all items constituting accessions to wealth constitute the base. All other factors being equal, the broader the tax base, the more revenue a tax system will generate at a given tax rate.

Low tax rates are beneficial because they do not distort incentives as much as do high tax rates. A high tax rate on income, for example, discourages work and encourages tax evasion. High excise taxes lead to product substitutions and black markets.

Unfortunately, elected officials are shrinking the bases of existing federal and state income taxes. As state and federal lawmakers add more tax breaks for lower-income citizens and limit those for higher-income citizens, the tax burden is being disproportionately loaded onto an increasingly smaller segment of income earners. For example, drawing from Treasury data, the President's Advisory Panel reported in 2005:

Taxpayers in the top 20 percent of the [income] distribution pay 70.6 percent of all federal taxes, while taxpayers in the bottom 20 percent pay 0.4 percent. More than half of federal taxes are paid by taxpayers in the top 10 percent of the [income] distribution. ...

Taxpayers in the lowest two quintiles actually receive more in refunds from the federal government than they pay in income taxes and, as a result, have negative income tax burdens. Those taxpayers in the third and fourth quintile pay a relatively small share of the income taxes, 3.8 percent and 13.4 percent, respectively, while those in the top quintile pay over 84 percent of federal income taxes (President's Advisory Panel 2005, p. 31).

As more people are removed from the tax rolls through credits, deductions, exemptions, and the like, the burden on the remaining taxpayers must necessarily grow heavier. Tax rates have to increase to potentially confiscatory levels to continue raising the money to support government spending, which itself is growing.

Such a disproportionate distribution of the burden creates a host of problems, not the least of these being a growing share of the population who pay little or no taxes yet have the electoral power to dictate spending policy at the ballot box. The power of this electorate has led to the imposition of a growing list of entitlement programs for their benefit for which they do not have to pay. These entitlement programs now threaten the solvency of our federal, state, and local governments.

Before the passage of the massive new health care entitlement program, prior to the Medicare supplement program, and before any of the recent stimulus packages, student loan programs, and bailouts, our entitlement programs already were on a path to bankrupt America. In 1995, the Bipartisan Commission on Entitlement and Tax Reform stated in its final report,

The Commission's Interim Report graphically displays the need to address our future fiscal imbalance. The conclusion of the Report is clear and inescapable: If we do not plan for the future, entitlement spending promises will exceed financial resources in the next century. The current spending trend is unsustainable (Bipartisan Commission 1995, p. 8).

Rather than make the systemic changes needed to control the problem, Congress and every president since 1995 have allowed entitlement programs and spending to grow. Even worse, the number of taxpayers asked to pay for them is shrinking. For there to be any real hope of avoiding a crippling national debt crisis, those who benefit from the system must pay something for those benefits.

Most states attempt to raise taxes simultaneously from several bases. For example, the State of Minnesota raises revenue from taxes on personal income, retail sales, corporate income, and excise taxes on some specific products (e.g., gasoline and cigarettes). This requires administrative infrastructure to handle all four tax systems. This diversified tax base is often defended in the tax literature as being necessary to ensure stable revenues and compete with other states.

If states opted for one form of taxation, say a retail sales tax, then instituted a broad base so that all consumption goods and services were subject to the tax while repealing other taxes, the state could raise the revenue necessary to fund legitimate government functions simply and efficiently, with the least cost of collection and lowest burden on taxpayers. More importantly, every resident of the state would have a vested interest in keeping taxes low because they all would be taxpayers.

Recommended reading: National Taxpayer Advocate, “A Taxpayer-Centric Approach to Tax Reform,” in *2005 Annual Report to Congress*, Internal Revenue Service, 2005; National Commission on Restructuring the Internal Revenue Service, “A Vision for a New IRS,” June 25, 1997, www.house.gov/natcommirs/report1.pdf.

9. Equality

The tax system should treat people equally and fairly.

One of the biggest problems affecting the public’s willingness to comply with the tax law is that it is widely perceived as being unfair. We have known this for decades. It was reported as early as 1977 that as many as 60 percent of the public felt the federal tax system was either “somewhat unfair or quite unfair” (Pilla 2001, p. 12). Thirty years later, in a report titled “Reducing the Federal Tax Gap,” the Treasury Department stated, “Special rules, subtle distinctions in the tax law and complicated computations add to this complexity and foster a sense of unfairness in our tax system, which ultimately discourages compliance” (U.S. Treasury 2007, p. 50).

The public widely perceives the tax law as unfair because the tax law *is* unfair. The report of the President’s Advisory Panel on Tax Reform states:

Taxpayers with the same income, family situation, and other key characteristics often face different tax burdens. Such differing treatment creates a perception of unfairness in our tax code. For example, taxpayers in states with high state and local income and property taxes receive higher deductions than taxpayers who live in lower-tax states with fewer state-provided services. Taxpayers with substantial employer-provided health insurance benefits receive in-kind compensation that is not taxed, while taxpayers who buy the same health insurance on their own usually pay tax on the income used to purchase the insurance. And Social Security benefits are taxed at a higher rate for married seniors than for those not married. How much or little taxpayers pay in tax is sometimes dependent on

where they happen to live, the choices made by their employers, and whether they are married (President's Advisory Panel 2005).

The touchstone of American liberty is found in this clause in the Declaration of Independence: "all men are created equal." Our chief guiding principle of jurisprudence is that everyone stands equal before the law. This most fundamental precept of American liberty is undermined by the tax code with its quagmire of arbitrary rules.

The problem begins with graduated income tax rates, the foundation of the current system. Tax rates and brackets have been in a nearly constant state of flux since the income tax was imposed in 1913. At that time, the bottom tax bracket was 1 percent on incomes more than \$20,000 and the top bracket was just 6 percent on incomes more than \$500,000. While the first tax bill was debated in Congress, North Dakota Senator Porter J. McCumber declared:

Mr. President, it is quite evident that no two Senators will agree upon the number of steps [brackets] in the sliding scale of this bill, and it is equally clear that no two of them will agree upon the ratio of rate for each particular step (McCumber 1913, p. 3834).

The rates and brackets were then and are now arbitrary. They are not based upon economic principles or constitutional standards. The rates and brackets in today's tax code – indeed all of the phase-ins, phase-outs, exceptions, exclusions, and temporary provisions – are "invidiously discriminatory": it is "unfair" that some earn more than others and that the masses can "get even" with those better off by raising their taxes.

Such invidious discrimination is unacceptable in other areas of law. Who would suggest that groups of people – rich or poor – should be more or less liable under, say, the fraud statutes, merely because of their social standing? In tax law, not only is this tolerated, it is embraced. Politicians and policymakers present it as though it were a noble, high-minded pursuit. Think about this: We embrace the idea that the power of law can and should be used as a sword to attack the lawful and peaceful pursuits of entire segments of our population. No free nation can long countenance such thinking.

But such discrimination does not stop with tax brackets. The tax code is rife with examples of how similarly situated people are treated differently merely because of their social or economic standing. For example, the tax code:

- has five different filing status classifications based upon a person's marriage and family circumstances;
- contains eight different provisions where the definition of the term "child" depends upon a person's social status;
- expressly phases out otherwise legal and proper itemized deductions and dependent exemptions solely upon a person's economic standing; and
- through the Alternative Minimum Tax, deprives certain people based solely on their economic standing of their otherwise perfectly legal and valid dependent exemptions, itemized deductions, and tax credits, raising their taxes beyond what other similarly situated citizens pay.

These provisions are arbitrary acts of discrimination by a government founded on the idea that "all men are created equal." Americans know these things are fundamentally unfair.

The profound unfairness of income taxes is why the Founders generally rejected such tax schemes in favor of excise taxes on consumption. Hamilton stated that consumption taxes "have, upon the whole, better pretensions to equality than any other" (Morris 1957, pp. 259-260).

Recommended reading: Daniel J. Pilla, "A Monument of Deficient Wisdom: The Constitutional Conflict in the Federal Income Tax Law Enforcement," part of *Road Map to Tax Reform Project* (Lewisville, TX: Institute for Policy Innovation, December 2001), www.taxhelponline.com/resources-and-publications/research-reports/constitutional-conflict-fed-tax-law.html.

10. Constitutionality

Taxes must be imposed solely to fund clearly defined constitutional functions.

Since the 1930s, Congress has used the federal tax laws for purposes other than raising revenue. Specifically, taxes are used to implement social programs and spending. One way this is done is through tax credits. Some of the more prominent federal tax credits are the Earned Income Tax Credit, Child Tax Credit, and First-time Homebuyers Credit. These are just a few of the dozens of personal and business credits in the code, but they are especially important because they are *refundable* credits. This means even citizens who owe no taxes can get cash from the government.

Refundable credits are welfare programs. The Congressional Budget Office estimates that payment of refundable credits will increase by approximately \$500 billion by 2019 (Elmendorf 2009). Through these credits, the tax laws are not used to raise revenue, but to achieve social planning goals by enforcing transfer payments: Taking money from some citizens and giving it to others.

Such use of the government's taxing power is unconstitutional. Article I, Section 8 of the Constitution authorizes the federal government to collect taxes for just three narrow purposes: to pay the debts of the nation, to provide a national defense, and to ensure the "general welfare" of the nation. The Founders were adamant that the taxing authority granted in the Constitution be used only to benefit the nation as a whole, not its individual inhabitants or locales, and certainly not individual classes of citizens at the expense of others (Pilla 2001, pp. 8-12). And yet, a great portion of the budgets of government at all levels finances transfer payments imposed to achieve social planning goals.

The Bipartisan Commission on Entitlement and Tax Reform hit the issue head-on when it said, "Government does not create wealth by distributing entitlement benefits; rather, it is engaging in a willful choice to take dollars from one segment of the population and to distribute that money in the form of benefits for others" (Bipartisan Commission 1995, p. 37).

In the 1933 case *United States v. Butler*, the Supreme Court was called on to address the government's claim that redistribution is justifiable under the "general welfare" clause of the Constitution. This decision struck at the core of what today has become a

habitual legislative practice: using the power to tax as a means of imparting social benefits to certain classes of society at the expense of others. The Court ruled that “A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the government. The word has never been thought to connote the expropriation of money from one group for the benefit of another” (297 U.S. 1, 61 (1933)).

In *Citizens’ Savings & Loan Ass’n v. Topeka*, discussed earlier under the principle of neutrality, the Supreme Court ruled that using taxes to transfer wealth is a wholly illegitimate use of governments’ taxing authority. The Court correctly labeled the practice “robbery.” And Thomas Jefferson – lead author of the Declaration of Independence and third President of the United States – condemned the practice as an attack upon the ideal of liberty. He stated:

To take from one, because it is thought his own industry and that of his father has acquired too much, in order to spare to others who (or whose fathers) have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, “the *guarantee* to everyone a free exercise of his industry and the fruits acquired by it” (Ellis 1973, p. 94, emphasis in original).

There is simply no legal or moral authority in a free society that justifies using the power of government to take from some what they have legally and peacefully acquired and give it to others who have not earned it.

Frederick Bastiat (1801-1850), a French economist, statesman, and author, addressed the practice of using the power of taxation to take from producers and give to non-producers. He called this practice “legal plunder.” In the strongest terms, he called for the elimination of any such law because “it is not only an evil itself, but it is a fertile source for further evils because it invites reprisals. If such a law – which may be an isolated case – is not abolished immediately, it will spread, multiply, and develop into a system” (Bastiat 1850 (1977), p. 21).

So long as such laws permeate the tax culture in America, there will never be enough money to satisfy government. No tax system can ever produce sufficient revenue to provide for the social programs formulated by those seeking more ways to spend money they have not earned. Tax burdens for the producers grow to confiscatory levels while the non-producers have further incentive to remain non-producers. The only hope of controlling the burden is to hold government strictly accountable to the constitutional limitations on its taxing authority.

Recommended reading: Frederick Bastiat, *The Law* (Irvington-on-Hudson, NY: Foundation for Economic Education, 1850 (reprint 1977)).

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Additional Resources

Additional information about tax policy is available from The Heartland Institute.

- *PolicyBot*, The Heartland Institute's free online clearinghouse for the work of other free-market think tanks, contains thousands of documents on tax policy issues. It is on Heartland's Web site at www.heartland.org.
- www.budgetandtax-news.org, a Web site devoted to the latest news and commentary about budget and tax issues, often addresses local, state, and federal tax policy issues. Read headlines, watch videos, or browse the thousands of documents on tax policy available from PolicyBot.

- *Budget & Tax News*, a monthly publication from The Heartland Institute. Available for free online at the Web sites described above, or subscribe to the print edition for \$36 a year (ten issues).

Bruce Bartlett, a columnist for *Forbes.com*, the online side of *Forbes* magazine, blogs on a site called capitalgainsandgames.com. Under the title “Tax Reform Resources,” he has assembled a list of links to studies, reports, and papers on all matters relating to tax reform. Material is organized by date and title, allowing one to read reports and studies dating back several years. www.capitalgainsandgames.com/blog/bruce-bartlett/1273/tax-ref-orm-resources

Another excellent source is the Center for Strategic Tax Reform, an organization whose purpose is to study, evaluate, and develop options for fundamentally restructuring the American tax system. Visit its Web site at www.cstr.org.

Directory

The following national organizations support sound tax policies. For a longer list, go to www.heartland.org, click on “Taxes” to go to the Budget & Tax News Web site, and see the Links list on that page.

Americans for Tax Reform Foundation

www.atr.org

American Legislative Exchange Council (ALEC)

www.alec.org

Beacon Hill Institute

www.beaconhill.org

Cato Institute

www.cato.org

Center for Strategic Tax Reform

www.cstr.org

Council on State Taxation (COST)

www.cost.org

Heartland Institute

www.heartland.org

Heritage Foundation

www.heritage.org

John Locke Foundation

www.johnlocke.org

Pacific Research Institute

www.pacificresearch.org

Small Business & Entrepreneurship Council (SBEC)

www.sbecouncil.org/

Tax Foundation

www.taxfoundation.org

Tax Freedom Institute

www.taxhelponline.com/taxpayers-defense-institute/

Winning Publications, Inc.

www.taxhelponline.com