End the Bracket Racket (EBR) Act

America's tax code is, on the surface, somewhat progressive. The income tax code taxes people who make, for example, $500,000 considerably more than people who make $50,000. But that progressive income taxation is offset by a regressive employment tax system, which subjects $50,000 of wage income to a higher percentage tax than $500,000 of wage income. Further, the progressivity in the federal income tax stops at $648,000. We tax annual income in excess of $648,000 no differently than we tax annual income in excess of $100 million, two incomes that exist in entirely different universes. Yet remarkably, in America, they're in the same tax bracket. Finally, the modest progressivity in the federal tax law is offset at the state level. In most states, undue reliance on regressive sales and property taxes causes overall taxation to be regressive.

There are proposals outstanding to address the regressive nature of America's employment tax.[1] Our proposal seeks to address the loss of progressivity at high income levels in America's tax system attributable to the federal income tax rate structure and the regressive nature of state tax systems.

Background: The History of Tax Brackets in the US

When the federal income tax was instituted in 1913, there were seven tax brackets, and the top bracket taxed all income over $500,000, which equates to $11 million in today's dollars. That quickly ballooned to over 50 brackets by 1920. From that point until the 1970s, there were always at least 20 federal tax brackets, and at least 15 brackets until 1986. The Tax Reform Act of 1986, signed into law by President Ronald Reagan, reduced the number of brackets from 16 to two. That number has slowly climbed back up to the seven brackets we have now.

The top tax rate has fluctuated as well. In 1944, to finance an increasingly expensive World War II, the top tax rate was raised to 94% on all income over $200,000, which equates to $2.5 million in today's dollars. That is the highest income tax rate the United States has ever seen, and it coincided with one of the longest periods of economic growth in US history. The top tax rate remained high over the next three decades, never dipping below 70%. President Ronald Reagen then lowered the rate to 50% in 1981 and eventually all the way to 28%. Since then, it has fluctuated between 28% and 39.6%, currently standing at 37%.

While an income tax rate higher than 37% has faced resistance from lobbyists and politicians from both parties, it should not be treated as a foreign or outrageous concept. As shown above, a steeply progressive rate structure is firmly within the norm in modern American history, and has been closely tied to booming economies that supported a strong middle class.

[1] *See*, for example, the Social Security Expansion Act, introduced by Sen. Sanders and Rep. DeFazio.

Current Proposals to Increase the Top Tax Rate

President Biden has proposed in his FY2023 federal budget to raise the top individual tax rate to 39.6% for tax years beginning in 2023 and after. This would apply to individuals with income exceeding $400,000 and married couples filing jointly with income exceeding $450,000. While the President's effort to raise the top rate is a small step in the right direction, his proposal does not remotely go far enough to restore the necessary progressivity to the income tax code. It fails to make any distinction between those with high incomes and those with astronomical incomes. To restore true progressivity to the income tax code, more tax brackets for those above $1 million in annual income should be added, with a top rate far higher than 37%.

Our Proposal: End the Bracket Racket Act

The federal income tax code must become significantly more progressive to create a more fair and equitable system. An ideal reform proposal would satisfy three important requirements:

1. The proposal must include additional tax brackets to restore progressivity between the affluent, the very rich, and the uber rich. It is an outrage that a trauma surgeon who makes $700,000 per year to save gunshot victims pays the same marginal tax rate as a billionaire real estate tycoon raking in $100 million or more in rental income.

2. To serve as a meaningful brake on the accumulation of wealth at the very top, the proposal must increase the top marginal income tax rate substantially from 37%. While a rate over 90% like the country had in the 1950s may seem like a high percentage, keep in mind that it was a marginal rate applicable only to income exceeding the equivalent of $2.5 million today. It is also important to note that a top tax rate beginning at, say, $100 million per year of income, would in practice only have an impact on a very narrow group of Americans, about 0.0005% of all US adults, or around 650 households.

3. The proposal should allow a credit against tax for state and local income tax payments according to a schedule tied to taxable income. As discussed below, this will encourage states to move to more progressive tax systems.

To satisfy those basic requirements we propose slight increases in the tax rates applicable to the existing federal income tax brackets (offset by credits for state income tax payments) and the addition of five new federal income tax brackets, beginning at $1 million per year and going up to $100 million per year, resulting in the following schedule (for married couples filing jointly):

- 12% of taxable income between $0 and $20,550;
- 14.4% of taxable income between $20,551 to $83,550;
- 26.4% of taxable income between $83,551 to $178,150;

- 28.8% of taxable income between $178,151 to $340,100;
- 38.4% of taxable income between $340,101 to $431,900;
- 42% of taxable income between $431,901 to $647,850;
- 44.4% of taxable income between $647,851 and $1 million;
- 50% for taxable income between $1 million and $5 million;
- 55% for taxable income between $5 million and $10 million;
- 60% for taxable income between $10 million and $50 million;
- 75% for taxable income between $50 million and $100 million; and
- 90% for taxable income over $100 million.

It is worth noting that any person subject to a marginal rate greater than 50% will have received in just one year income greater than most Americans receive in an entire lifetime.

Again, the top tax rate of 90% will apply to precious few individuals in the US, and only to the portion of their income over and above the amount that conceivably could be needed to fund even the most absurd level of personal consumption. There are very few people in this country who make more than $100 million per year. According to ProPublica's recent report, an income of $110 million per year would place a person in the top 400 taxpayers in the US.

We further propose a credit be allowed for state and local income tax payments, according to the following schedule (note that these rates apply to married couples filing jointly):

- 2% of taxable income between $0 and $20,550;
- 2.4% of taxable income between $$20,551 to $83,550;
- 4.4% of taxable income between $83,551 to $178,150;
- 4.8% of taxable income between $178,151 to $340,100;
- 6.4% of taxable income between $340,101 to $431,900;
- 7% of taxable income between $431,901 to $647,850;
- 7.4% of taxable income between $647,851 and $1 million;
- 8.5% of taxable income between $1 million and $5 million;
- 9.5% of taxable income between $5 million and $10 million;
- 10% of taxable income between $10 million and $50 million;
- 12.5% of taxable income between $50 million and $10 million; and
- 15% of taxable income over $100 million.

Under our proposal, no deduction would be allowed for state and local sales and property taxes.

Rationale for More Brackets

Why more brackets? History has shown us that having a lot of tax brackets is a good thing. Take 1960 for example, when there were 26 tax brackets, which represents a median amount between the extremes of more than 50 in the 1920s and 30s and as few as two in the 1980s. 1960 also happens to sit in the middle of the period when income inequality in this country was at its lowest. Due to the high number of brackets, the income tax rate operated along a slope, remaining low for the incomes of ordinary Americans and increasing significantly for higher incomes. That is a progressive tax code.

The right wing routinely complains that higher tax rates stifle economic growth, based on the purely conjectural theory that rich people won't work as hard if their tax rates are higher. However, GDP growth and job growth both occurred at considerably faster paces before tax brackets and rates were cut in the 1980s. By all appearances, the more brackets, the better.[2]

Those on the right also argue that fewer tax brackets are needed to "simplify" the tax code. That's utter nonsense. No matter how many brackets there are, the IRS produces a table for taxpayers to use to figure out their tax liability, which has a line for each bracket that reads "If your income is equal to or greater than x and less than y, your tax is …." And, get this, they make it super easy to find the line applicable to your bracket by having the lines appear in ascending order of income. If adding more lines to the IRS tables is too complex for those on the right, they perhaps should not be pontificating on tax policy.

Rationale for Credit for State and Local Income Tax Payments

Why allow a credit for state and local tax income tax payments? To restore progressivity to state and local taxation and disrupt what has become a vicious race to the bottom among the states.

Prior to 1980, taxpayers in the top federal income tax brackets could deduct virtually all state and local tax payments. That deduction minimized the real cost of state tax payments, particularly payments made by those in the highest federal income tax brackets. Over the past four decades, however, the federal tax benefit of state and local tax benefits was whittled away. Currently, the federal tax deduction for state and local tax payments, capped at $10,000, is meaningless to high-income taxpayers.

While sharply limiting the deduction for property tax and other state and local tax payments tied to discretionary purchases is sound policy, the devaluation of state and local income tax payments for federal tax purposes is not. In addition to constituting double taxation, it has spawned a race to the bottom among states. Described euphemistically as "tax competition," states lower tax rates applicable to high-income taxpayers in hopes of attracting out-of-state businesses and wealthy individuals (or inducing those that might otherwise leave to stay). This "competition" has placed undue pressure on state revenue bases, with multiple harmful impacts to state and local policy.

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[2] Jeff Spross, "The Case for More Tax Brackets" (Oct. 2015)

First, it has caused states to depend more on regressive sales and property taxes, rather than progressive income taxes. In its most recent study of state and local tax policy in 2018, the Institute on Taxation and Economic Policy found that the average effective state and local tax rate for the lowest 20%, by income, was 11.4%, and for the top 1%, only 7.4%. In those states that have chosen to "compete" by imposing no state income tax, effective tax rates are far more regressive. In Florida, for example, the poorest 20% pay an effective rate of 12.7%, while the top 1% pay an effective rate of just 2.3%.

Second, states have cut back on public education and other vital services as a result of limited state tax revenue. A major factor in the skyrocketing cost of tuition at public colleges and universities is a reduction in the state funding of those schools.

Third, cities and towns feel the squeeze as well, since they depend on revenue sharing by the state for a substantial portion of their revenue. Often, cities and towns turn to over-enforcement of traffic and petty crime ordinances, which disproportionately impact lower-income residents. For example, when the U.S. Department of Justice investigated the police department of Ferguson, Missouri in the aftermath of Michael Brown's death, it found that law enforcement efforts were focused on raising revenue, not protecting the public.

Our proposal for a credit for state and local income tax payments based on a schedule is intended to encourage states to move to greater progressivity in their tax systems. Under our proposal, if a state imposes state income tax according to the schedule for federal credits, the net cost to its citizens will be zero. They will save in federal tax exactly what they pay in state income tax. Most states will take advantage of this opportunity.[3] The revenue they generate through this income tax will be substantial and will reduce or eliminate any pressure to raise additional revenue through regressive sales or property taxes. That additional revenue should also increase the revenue shared with cities and towns, which should decrease substantially the need for those cities and towns to resort to over-enforcement of fines and penalties to meet their revenue needs.

Conclusion

This specific proposal does not offer a cure-all for economic injustice. There are other tax proposals, including ones to tax unrealized capital gains and close the stepped-up basis and other loopholes, that are needed as well, along with non-tax reform measures such as an increase in the minimum wage. Ideally, this proposal would be pursued as part of a wider tax reform agenda, with the overall goal of reducing wealth and income inequality in America to an acceptable level. This proposal would return our federal and state income tax system to a level of progressivity and fairness that is glaringly absent at the present moment.

[3] Prior to 2001, a credit was allowed for state level estate tax against federal estate tax, according to a schedule, The great majority of states imposed estate tax according to that schedule, resulting in a progressive source of tax revenue in those states.