2022

Re-evaluating Turnover/Gross Receipts Taxes: Their Myths and Their Realities

Richard Pomp
University of Connecticut School of Law

Re-Evaluating Turnover/Gross Receipts Taxes: Their Myths and Their Realities

By Richard D. Pomp

I. Introduction

A gross receipts or turnover tax is levied every time a good or service "turns over"—that is, transferred from one entity to another for a consideration; the resulting gross receipt is subject to tax. The tax base is "turnover"; the measure of the tax is "gross receipts."

The tax applies to business-to-business sales of supplies, inventory, machinery, materials, and other business inputs. It applies to sales to end users. Both business and personal services are taxed, whether they are business inputs or provided to end users.

A turnover tax makes no pretense of taxing profits, income, consumption, wealth, or other bases that have come to be accepted as legitimate around the world.[1] Instead, it taxes business activity. The tax has no connection or relationship with a firm's benefits from government spending, or the costs it imposes on society.

In contrast to a turnover tax, a retail sales tax is intended to tax consumption. Consumption refers to the use of goods and services by individuals for their own personal satisfaction and not for investment or for further production or use in a trade or business. Examples of consumption are the purchases of clothing, shoes, jewelry, furniture, appliances, food, art, cars, boats, liquor, cigarettes, and the like—provided these do not constitute business inputs. A properly designed retail sales tax should apply *only* to the end user, that is, the last person in the chain of production and distribution. The end users are the consumers purchasing the goods for their own satisfaction. Such a retail sales tax would reach all purchases for consumption and exempt all business inputs and investments, such as purchases for resale, like inventory.[2]

A well-designed retail sales tax, regardless of whether its legal incidence is on the vendor or the consumer—see below—is intended to reach only consumption. The vendor is the tax collector and is not intended to be a taxpayer. The economic

RICHARD D. POMP is the Alva P. Loiselle Professor of Law at the University of Connecticut School of Law and an Adjunct Professor of Law in the NYU LL.M. Program in Taxation.

burden of the tax should be on the consumer, who, being the end user, cannot pass it along to anyone else.

Confusion about the meaning of a gross receipts tax sometimes arises because there are two major ways of levying a retail sales tax. The first is to impose the legal incidence of the tax on the purchaser, measured by the sales price of the transaction. This is known as a consumer-based sales tax. The second is to impose the legal incidence of the tax on the vendor, measured by its *gross receipts*.[3] This is known as a vendor-based sales tax. Because the base of the tax under this second approach is gross receipts, it can be confused with a gross receipts tax that is intended to be a turnover tax. (The base of the tax under the first approach is indirectly gross receipts because it is the aggregation of the sales prices of the sales transactions.) Both of these will be referred to as gross receipts sales taxes.

Confusion about the meaning of a gross receipts tax sometimes arises because there are two major ways of levying a retail sales tax. The first is to impose the legal incidence of the tax on the purchaser, measured by the sales price of the transaction. The second is to impose the legal incidence of the tax on the vendor, measured by its gross receipts.

A gross receipts sales tax and a turnover tax are fundamentally different. For this reason, this Article sometimes uses the term "turnover tax" to distinguish it from a "gross receipts sales tax." It uses the term "retail sales tax" to embrace both a vendor-based sales tax and a consumer-based sales tax. It also uses the terms "gross receipts taxes" and "turnover taxes" interchangeably where there is no risk of confusion.

A retail sales tax does have one thing in common with a turnover tax: the starting point of each is gross receipts, and in the case of a turnover tax, that should be the ending point as well (but as a practical matter it often is not).[4] In contrast, a retail sales tax, whether imposed on the vendor or the consumer, will embrace common exemptions for purchases for resale, for ingredients and components that will become part of another good or service, and for the purchase of goods or services used in manufacturing.[5] These exemptions are intended to eliminate the tax on a subset of business inputs, which do not constitute consumption because they are not sold to the end user. These are intermediate goods, known as business inputs because they are sold to other businesses for use by them in their further production and distribution. A turnover tax lacks these types of exemptions because it is not intended to be limited to consumption.

II. The Case Against Turnover Taxes: The Reality

A. Cascading[6]

A turnover tax is intended to tax each transaction in the chain of production and distribution. For example, the tax would be applied to the sale of seeds to a farmer who uses those to grow wheat, to the sale of that wheat by the farmer to the miller who produces flour, to the sale of that flour by the miller to the baker for producing bread, and to the sale by the baker of that bread to an end user, the customer. Similarly, the sale of raw materials to a manufacturer that incorporates it into a component, the sale by the manufacturer of that component to an assembler that incorporates it into a finished product, the sale by the assembler of the finished product to a distributor, the sale by the distributor of the finished product to the retailer, and the sale by the retailer of the finished product to the end user would all be taxable. The tax at each stage would be built into the price of the good that would be sold at the next stage and would be taxed again. This tax on a tax on a tax on a tax and so forth is known as "cascading" and increases the effective tax rate above, and often well-above the statutory rate.

To be sure, a sales tax that does not exempt all business inputs shares this cascading problem, but to a lesser extent than in a turnover tax. A well-designed sales tax would tax only the sale by the retailer to the ultimate end user, which would eliminate cascading. As a practical matter, sales taxes reach some business inputs, which creates a cascading problem.

As each turnover occurs, the tax is likely shifted to the purchaser. In theory, the turnover tax might not be fully passed forward to consumers; instead, wages and benefits might be decreased, the number of jobs might be reduced, there could be increased resistance to price increases by vendors, or dividends could be cut. But there is some empirical support for the forward shifting of the tax to consumers.[7]

If there are multiple turnovers as in the examples above, the tax is levied multiple times, and is built into the price of the good at each stage, assuming that it is passed forward. What starts off as a modest tax can easily cascade into a substantial one. A study of the Washington B&O turnover tax, for example, determined that because of cascading the effective tax rate was 1.5 to 6.5 times the statutory rate. A study of the now-repealed Indiana turnover tax, known (misleadingly) as a gross income tax, calculated that cascading generated effective tax rates as high as 32%.[8]

One of the ways a turnover tax tries to address cascading is through rates that are much lower than those found in typical retail sales taxes.[9] Moreover, to take into account the varying profit margins of different types of transactions, some turnover taxes have multiple rates, with low rates being imposed on high-volume, low-profit transactions or those that occur early in the production and distribution process.

B. A Turnover Tax Can Be a Heavy Burden on Loss Corporations

Even the common use of multiple rates in some turnover taxes cannot avoid the tax being paid by businesses operating at a loss, which describes many startups and small firms. During downturns in the economy when businesses might have losses, the turnover tax will continue to be exacted. Those who feel that all businesses should contribute to the costs or benefits of government might laud this, but certainly not those that have no profits but yet a tax burden that could be onerous and maybe confiscatory, especially for a new business.

C. The Tax Can Be Especially Harsh for High-Volume, Low-Margin Businesses

A turnover tax can be especially harsh, and perhaps confiscatory, for high-volume, low-margin businesses, despite the attempt to use multiple rates to deal with this consequence. For a high-volume, low-margin business that has razor-thin profits, a turnover tax can well exceed its profits. Are such businesses common? According to Jeff Bezos, "[t]here are two ways to build a successful company. One is to work very, very hard to convince customers to pay high margins. The other is to work very, very hard to be able to afford to offer customers low margins."[10] The latter, of course, is Amazon's business model, and presumably also of those that compete with it, such as Walmart.

D. Uneven Treatment of Competitors

A turnover tax creates an uneven playing field among competitors producing the "same" goods. The tax burden is a function of how the good was produced. The more business inputs that are purchased in the marketplace to produce the final good, the more the tax cascades and is buried in the price of each transaction. The tax becomes not only a levy on the sales price of the good to the end user but also an embedded invisible tax reflecting how the good was produced. Two competitors selling essentially fungible products can bear very different tax burdens.

E. Heavy Burden on Capital-Intensive Industries

A turnover tax falls heavily on capital-intensive industries and processes. The tax applies to the purchase of capital goods, such as land, buildings, machinery, equipment, construction vehicles, and the like, thereby discouraging investment. It falls heavily on high-volume, low-margin businesses, and loss corporations like startups. A leading economist puzzled over why a legislator would accept these features of a turnover tax: "[i]t is hard to understand why a state that is worried about investment and job creation would adopt such a perverse policy."[11]

> *A turnover tax can be especially harsh, and perhaps confiscatory, for high-volume, low-margin businesses, despite the attempt to use multiple rates to deal with this consequence.*

This feature of a turnover tax encourages the substitution of labor for capital, which might seem to be desirable. But if the *status quo ante* were the most desirable and efficient organization and structure, any tax-induced change would result in a less desirable allocation of resources and possibly reduce a state's growth. If a turnover tax attempts to minimize this problem by exempting business inputs, it becomes more like a retail sales tax and loses its simplicity and ease of administration, which are some of the alleged virtues of the tax.

One study about Canada's adoption of a value-added tax (VAT) estimated that annual investments in machinery and equipment rose 12% following the adoption of that tax, which removed the tax on business inputs previously imposed by the sales taxes that it replaced.[12] Although this study was done in the context of moving from a retail sales tax to a VAT, the conclusion should apply even more forcefully in the context of moving away from a turnover tax, which taxes even more business inputs than a sales tax.

F. Encourages Inefficient Economic Integration and Unfair Competition

To reduce the burden of a turnover tax, taxpayers are pressured to engage in strategies that are in their self-interests, but that undercut the economy. To start, taxpayers can minimize the cascading effect and gain an advantage over their competitors by purchasing their suppliers or merging with them. This tax-minimization strategy is known as "economic integration" and has been condemned by economists for more than a hundred years.[13]

From a taxpayer's perspective, one major advantage of economic integration is that it avoids the turnover tax that would otherwise have been paid on the purchase of business inputs from third parties. Integration avoids the turnover tax because the taxpayer would now produce the business inputs in-house, free of the turnover tax that previously would have applied. Consequently, the amount of tax that would have otherwise been embedded in the goods produced by the taxpayer is reduced, giving the taxpayer an advantage over its non-integrated competitors.

Economic integration is more available to large entities and thus discriminates against their smaller competitors. Businesses that integrate will have a lower effective tax rate over their non-integrated competitors. A firm that is not integrated will find it hard to shift a turnover tax to its customers because of the competition with its larger, integrated competitors. A small business that buys its inventory from a wholesaler will have difficulty competing against larger, integrated businesses that brought their wholesalers in-house by merging with them. These integrated businesses can purchase directly from the manufacturer and save the profit that otherwise would have accrued to the wholesaler.

From a broader economic perspective, however, integration imposes a severe problem that undercuts the economy. If businesses are integrating only to reduce their turnover taxes, the result is economic inefficiency. That is, if integration made good business sense independent of the turnover tax, it should have already occurred. That would have been the most efficient form of organization and structure and would thus have been in the interests of both the taxpayer and the state. In contrast, if integration is occurring solely because of the turnover tax, then the resulting organization is, by definition, less efficient and imposes what economists call a "dead weight loss" on the economy.[14]

G. Discourages Replacing Old Assets with New Assets

The sale of old equipment or machinery is subject to a turnover tax. The purchase of replacement equipment or machinery will also be taxed. Consequently, modernizing a plant would incur this double tax—once on the sale of the old equipment and again on the purchase of the new equipment. It is hard to imagine that a legislature would purposely endorse this multiple taxation at a time when states are using a panoply of tax incentives to encourage manufacturing and related activities.

H. Encourages Shifting Purchases to Out-of-State or Foreign Vendors

A turnover tax has other serious effects on the economy even if no economic integration occurs. A turnover tax provides an incentive to taxpayers to shift purchases from in-state vendors to out-of-state suppliers. Goods produced in other states (or abroad) will not have been subject to a turnover tax,[15] unlike competing goods produced locally. The out-of-state goods will have had no turnover tax embedded in their sales price, but locally produced goods will. The more highly processed the goods, the greater the difference in price.

Consequently, local businesses will have trouble competing with vendors abroad or those based in other states. Foreign countries, including China, and the rest of the Pacific Rim, have VATs, which are refunded on goods sold to purchasers in other countries, that is, on exports. No refund can occur for the turnover tax for the simple reason that the amount of the hidden, cascaded, embedded tax cannot be easily determined. One economist speculated that the inability to fully compete with out-of-state vendors can result in lower wages or lost jobs.[16]

I. Encourages Businesses to Convert from Wholesalers/Distributors to Commission Agents

Putting aside the question of integration, another strategy is for wholesalers or distributors that would otherwise have taken title to a good for resale to instead transform themselves into commission agents. The turnover tax that would otherwise have applied to the purchase of a good by a distributor would now be replaced by a smaller turnover tax on a commission. If the commission is equal to the amount of profit that would otherwise have occurred, a tax advantage is achieved for the former wholesaler/distributor.

J. Encourages Restructuring to Take Advantage of Lower Rates

Some turnover taxes incorporate multiple rates. Washington's B&O tax, for example, has more than 30 rates[17] in a quixotic attempt to reduce cascading and inject some equity into an inherently inequitable tax. Unfortunately, besides being pollyannaish,[18] multiple rates encourage yet another tax minimization strategy. Unless a state has measures anticipating and preventing this strategy, businesses are encouraged to re-organize themselves to ensure that most of their activities will occur at the lowest rate possible. For example, a hotel with a restaurant might put each business in a separate entity if taking advantage of a lower rate on one of those activities would reduce the total tax.

K. Violates Neutrality

All of these tax minimization strategies, especially economic integration, violate what economists call neutrality.[19] Unless a tax is purposely intended to influence behavior, such as an excise tax on smoking, a tax system should generate revenue without influencing the decision making of the market participants. Decisions to consume, invest, and work should be unaffected by the tax system to the extent possible.

Turnover taxes have long been recognized as violating the principle of neutrality.[20] These taxes interfere with the way businesses choose to organize or structure themselves or interfere with the relative prices of goods.[21] If a turnover tax results in a business engaging in conduct that would not otherwise have taken place, it will interfere with the efficient organization and production of goods and services. The result is that the otherwise efficient allocation of resources is distorted, imposing a dead-weight loss on the economy. "When taxes distort decisions, the result is a higher cost of getting goods and services to the public than would otherwise be necessary and lower potential living standards for the citizenry than would otherwise be attainable."[22]

Neutrality is also violated if two identical goods compete with each other but bear different amounts of turnover tax. They will bear different amounts of turnover tax depending on the number of stages of production and distribution that each went through, and the length of the supply chain.[23]

L. The Apportionment Requirement

It is now clear that gross receipts taxes must be apportioned. This mandate by the United State Supreme Court has generated much litigation.[24] Apportionment can be an especially challenging problem with digital services.

M. Inconsistent with the Policy of Market-Based Sourcing

Taxing business inputs is an indiscriminate feature of a turnover tax, which heavily impacts manufacturing in a state. This aspect works at cross purposes with many state corporate income taxes, which have moved to market-based sourcing and single-sales factor apportionment to encourage in-state manufacturing and other activities. In other words, corporate income taxes have moved away from being origin based (payroll and property factors and the use of costs of performance for situsing receipts from the sale or leasing of non-tangible personal property) to being destination based.[25] In sharp contrast, the turnover tax penalizes in-state manufacturing.[26] Why would a state worried about investment and job creation, which then adopts market-based sourcing and tax incentives as a response, undercut that goal with a turnover tax?[27]

N. Distributes the Burden of Taxation Regressively

To the extent the turnover tax is embedded in the price of a good or service, the result will be regressive, that is, the tax will take a smaller percentage of the income of a person as income increases, contrary to an income tax with graduated rates that is progressive in its effects. Consumption declines as a percentage of income as income increases. Jeff Bezos, Elon Musk, or Bill Gates, for example, cannot possibly consume all of their income. Low-income persons, by comparison, might not only consume all their income but might also consume even more than that by dissaving. Because consumption declines as income increases, lower-income persons will pay more turnover tax as a percentage of their income than will higher-income persons, which constitutes a regressive pattern.[28] But because of cascading, it is difficult to know exactly how the burden is distributed among individuals and households. This complicates any attempt to alleviate regressivity through the use of credits or exemptions in a state's personal income tax as is often done to reduce the regressivity of a sales tax.[29] (Some evidence exists suggesting that the VAT may not be as regressive as a sales tax.)[30]

But it is misleading to talk about the regressivity of a tax without taking into account the public goods and services that the tax supports. The regressivity of a tax can be fully offset by programs the tax finances.

III. The Case in Favor of Turnover Taxes: The Myths

A. Low Rates

One of the major arguments in favor of a turnover tax is its low rate.[31] The base of a turnover tax is larger than the base of a sales tax (or VAT). That allows the tax to raise a targeted revenue objective with a statutory rate lower than what would be needed by a retail sales tax (or VAT), making the turnover tax more politically palatable for those who focus only on the statutory rate.

As discussed above in the context of cascading, focusing on the statutory rate of a turnover tax is deceptive and misleading. Because of cascading, the real rate of a turnover tax—its effective rate—is higher than the illusory statutory rate. For example, the Washington B&O tax has effective tax rates that are 250% of the statutory rates.[32] Recall that the now-repealed Indiana turnover tax had effective tax rates as high as 32%.[33] But without sophisticated economic analysis, the effective tax rate is difficult to determine, and even if determined, it is invisible to voters. This cascading is an inherent feature of gross receipts taxes; attempts to mitigate it introduce complexity and undercut the alleged simplicity of the tax.

B. The Tax Is Hidden from Voters

Because the actual burden of the tax is hidden, the cost of government is also hidden. Those who prefer opaqueness in government rather than transparency see this as a virtue of a turnover tax. "Some politicians might prefer the freedom to distort made possible by an ill-informed public, but it is hard to see how that would lead to better public choices."[34]

Those who value honesty and truth in taxation favor transparency—not opaqueness. "People paying for government services, *i.e.*, taxpayers, ought to have some idea of what they are paying to inform the political choices they make as to whether they are receiving value for their payments."[35]

Essentially, a turnover tax is a stealth tax. It is well-nigh impossible to determine (or compare) the tax burden on various goods because it is a function of the number of stages that went into their production. Consumers cannot determine the amount of tax they are paying if it is embedded in the cost of a purchased good. Democracy requires informed voters—gross receipts taxes fail miserably at furthering openness in government.

C. Simplicity and Ease of Administration

Another alleged benefit of a turnover tax is that it is easy to administer.[36] True, before a country's development would allow for the administration of more complicated, albeit fairer, levies, a turnover tax might have been the only option available.[37] And how could it not be easy to administer when a tax administrator only needs to determine a firm's gross receipts—or so it would seem.

By comparison, a retail sales tax also starts with gross receipts, but then confronts the need to determine and administer the exemptions whose goal is to eliminate business inputs from the scope of the tax, as well as on many items of consumption. Similarly, a corporate income tax also starts with gross receipts, but then has the additional complexity of determining applicable exemptions, deductions, accounting periods, depreciation, attribution rules, apportionment formulas, and so forth. Does this not underscore the alleged simplicity of the turnover tax?

No, because the seeming simplicity of the turnover tax is misleading. The purported simplicity rapidly evaporates with attempts to reduce or eliminate the inherent defects in the structure of the tax. One example is the use of multiple rates and classifications to minimize the cascading of the tax. Moreover, legislators seem to have difficulty resisting the lobbying of high-volume, low-profit margin taxpayers, startups, small businesses, or manufacturers for whom a turnover tax can impose an undue, and perhaps confiscatory, burden.[38] Further, these taxpayers may complain about their competitive disadvantage compared to their larger, more established competitors. These taxpayers demand—and often receive—preferential rates, deductions, exemptions, or credits, all intended to reduce the damage caused by cascading or economic integration. Washington's B&O tax,[39] or Nevada's commercial activities tax,[40] each having around 30 classifications, demonstrates how a state can succumb to these pressures.

As a tax lawyer might appreciate perhaps more than others, each concession adds complexity (and tax planning), undercutting the alleged virtues of simplicity and administrability. The need to apportion a turnover tax adds an additional set of complications. And every provision that attempts to burnish the defects and rough edges of a turnover tax complicates it further.

The lack of harmonization dooms attempts at uniformity among the turnover states. The Streamlined Sales Tax Project deals with uniformity, but only imperfectly for sales taxes and not at all for turnover taxes. Moreover, the turnover taxes that have existed for a while abound with litigation, providing graphic evidence that the putative virtues of simplicity and administrability are naive and ephemeral.

D. Stability

Some view the base of a turnover tax as more stable than that of other major taxes. In theory, the broad base of a gross receipts taxes should help insulate it from the business cycle. By comparison, during downturns and recessions, businesses may experience losses and pay no income taxes. Even worse, they may have loss carryovers, impacting future budgets. Corporate income taxes can be volatile, wreaking havoc on budget estimates. Sales tax revenue can also drop off in business downturns. In contrast, gross receipts taxes are not immediately affected by business profits, although receipts may decline if demand drops off during a downturn.

For such an important issue, it is surprising that hardly any rigorous studies exist. Professor Mikesell is the one exception. He studied the Washington B&O tax and the Washington sales tax and compared them with the corporate and personal income taxes in neighboring Oregon, which does not have a sales tax and at the time of his study did not have a turnover tax.[41] He concluded that the B&O tax was slightly *less* stable than Washington's sales tax, but *more stable* than Oregon's personal and corporate income taxes. Professor Mikesell concluded that the fluctuations in the Washington B&O generally tracked that of other major taxes.[42]

IV. Conclusion

The purported advantages of low rates, simplicity of administration, and stability of the tax base are illusionary but, in any event, are dwarfed by the panoply of defects identified above. Professor Mikesell, a long-time student of the field, concluded that the turnover tax "lacks any link either to capacity to bear the cost of government services or to the amount of government services used—the normal standards for assigning tax burdens."[43] "There is no sensible case for gross receipts taxation. The old turnover taxes—typically adopted as desperation measures in fiscal crisis—were replaced with taxes that created fewer economic problems. They do not belong in any program of tax reform."[44]

His conclusions have been endorsed by many others. For example, Professor John Due, who studied turnover taxes and sales taxes for most of his professional life, concluded that "[i]n the Latin American countries, and to some extent even in Europe, the measures taken to provide a more acceptable pattern of income distribution and to lessen distorting effects have resulted in almost hopeless complications in rate structures that have aggravated the problems of operation."[45] In commenting more broadly, he concluded that "these defects are so serious and lead to so many complaints that the tax is completely unacceptable as a revenue source for any country."[46]

Ohio in 2005 started the modern round of turnover taxes, followed by Texas (2008), Nevada (2015), and Oregon (2019). Hopefully, policymakers who learn of the abject history of gross receipts/turnover taxes and their structural defects will be able to resist the myths that constitute a false siren call.[47]

ENDNOTES

1 Some economists argue that as a matter of economic efficiency, a business that uses services provided by the public sector should pay for them. That payment could take the form of a tax. *See, e.g.*, Thomas F. Pogue, *Principles of Business Taxation: How and Why Should Businesses Be Taxed?*, *Handbook on Taxation* (W. Bartley Hildreth & James A. Richardson eds., 1959), p. 192. Turnover taxes are poorly calibrated to achieve this goal.

2 Richard D. Pomp, *State and Local Taxation* (9th ed. 2019), pp. 6–8. *See also*, Karl A. Frieden & Douglas L. Lindholm, *U.S. State Sales Tax Systems: Inefficient, Ineffective, and Obsolete*, TAX NOTES STATE, 932 (Nov. 30, 2020) ("If properly structured, a [retail sales tax] would conform to all three principles of an optimal consumption tax with a harmonized and broad-based tax on household goods and services, an exemption or credit for business inputs, and centralized and simplified tax administration.").

3 Pomp, *supra* note 2, at pp. 7-1–7-2. New Mexico's vendor-based gross receipts sales tax is often confused with a turnover tax. The advantage of the New Mexico vendor-based gross receipts sales tax is that it can be imposed on vendors selling to government labs like Los Alamos, or to Indian tribes. *See id.*

4 *See infra* Part II, to appreciate how complex turnover taxes can be and why they are hardly simple to administer as their supporters sometimes misleadingly claim.

5 Pomp, *supra* note 2, at Chapter Seven.

6 Most of the literature refers to this cascading problem as "pyramiding." But pyramids are constructed from their bottom to their top, so they decrease in width and become narrower as you move through their production. In contrast, the cascading problem gets broader as you move through the chain of production and distribution.

7 Economists often assume that in the long-term the turnover tax will be passed forward to customers, just like other costs that are passed forward. That assumption is borne out

by limited empirical work. Two economists, for example, studying the Canadian experience with its VAT estimate that each 1% increase in tax led to approximately a 1% increase in consumer prices. *See* Michael Smart & Richard M. Bird, *The Impact on Investment of Replacing a Retail Sales Tax with a Value-Added Tax: Evidence from Canadian Experience*, 62 Nat'l Tax J. 591, at p. 593 (2009). Accord, Garrett Watson, *Resisting the Allure of Gross Receipts Taxes: An Assessment of Their Costs and Consequences*, Tax Found., 10–11 (Feb. 2019). Professor Mikesell concludes that the final price of a product "is likely to reflect the gross receipts tax added at each point that the product and the inputs used to make the product changed hands in the distribution flow." John L. Mikesell, *Gross Receipts Taxes in State Government Finances: A Review of Their History and Performance*, *Council St. Tax'n*, Jan. 2017, at p. 3, *www.cost.org/link/69673ca9cb46480d87d58456b76baed9.aspx*. Nicole Kaeding, *Oregon's Gross Receipts Tax Proposal Would Increase Consumer Prices*, Tax Found. (July 18, 2016), *taxfoundation.org/oregons-gross-receipts-tax-proposal-would-increase-consumer-prices*. If prices increase, and profits decline, jobs might be reduced. Nicole Kaeding, *Oregon's Gross Receipts Tax Proposal Would Hurt Job Creation*, Tax Found. (July 19, 2016), *taxfoundation.org/oregon-s-gross-receipts-tax-proposal-would-hurt-job-creation*.

8 For the Washington Study, *see* Carl Gipson, *Policy Note, Business & Occupation Tax Reform, Part II*, Wash. Pol'y Ctr., 4 (Aug. 2008). The Indiana study is cited in Nicole Kaeding & Erica Wilt, *Gross Receipts Taxes: Lessons from Previous State Experiences*, Tax Found. (Aug. 9, 2016). E&Y determined effective tax rates for Ohio's CAT, vary from 0.4% for holding companies to 8.3% for wholesalers with less than $10 million in taxable receipts, compared to the statutory rate of 0.26%. Daniel R. Mullins, Andrew D. Phillips, and Daniel J. Sufranski, Analysis of Proposed Changes to Select Ohio Taxes Included in the Ohio Executive Budget and Ohio House Bill Number 64, State Tax Research Institute and EY Quantitative Economics and Statistics Practice, March 2015, 20, *cost.org/globalassets/cost/stri/studies-and-reports/analysis-of-proposed-changes-to-select-ohio-taxes-included-in-the-ohio-executive-budget.pdf*.

9 See the rates described below in Part II (J); Walter Hellerstein, Michael J. McIntyre, & Richard D. Pomp, *Commerce Clause Restraints on State Taxation after Jefferson Lines*, 51 Tax L. Rev. 47, 77 (1995).

10 David Hornik, The Wisdom of Jeff Bezos, Part 3, VentureBlog, Feb. 7, 2012, *www.ventureblog.com/2012/02/the-wisdom-of-jeff-bezos-part-3.html*.

11 Charles E. McLure, *Why Ohio Should Not Introduce a Gross Receipts Tax–Testimony on the Proposed Commercial Activity Tax*, Tax Notes, 2 (Apr. 18, 2005).

12 Smart & Bird, *supra* note 7, at p. 592. For a general exploration at how Canada and most of its provinces shifted to VAT-like consumption taxes, and the effects that had, *see*, Frieden & Lindholm, *supra* note 2, at pp. 930–932.

13 *See* Alfred D. Buehler, *General Sales Taxation: Its History and Development* (1932), p. 5. Clinton V. Oster, *State Retail Sales Taxation* (1957) at p. 13. John F. Due, *Sales Taxation* (1957), pp. 73–74. Austria's first turnover tax was to become effective in 1923. Fears of the tax's encouragement of economic integration led the government to modify it in ways that would reduce that incentive. *Id*. at p. 74.

14 William Fox & Matthew Murray, *Economic Aspects of Taxing Services*, 41 Nat'l Tax J. 19, 28 (1988).

15 The exception would be goods made in Washington, Delaware, Ohio, Texas, Nevada, or Oregon, which have turnover taxes.

16 McLure, *supra* note 11, at p. 4.

17 Wash. Dept. of Revenue, Business & Occupation Tax Classifications, *dor.wa.gov/taxes-rates/business-occupation-tax/business-occupation-tax-classifications*.

18 As one report in the context of the Washington B&O tax has described it, "this becomes a game of 'who has the more powerful lobbyist in Olympia.'" Gipson, *supra* note 8, at p. 4.

19 Nicholas Kaldor, *An Expenditure Tax* (George Allen & Unwin, 1958), p. 81 ("An Ideal tax ... is one which succeeds in reducing a person's spending power but without leading him to behave any differently from the way in which he should have behaved if he had not been taxed at all, but his spending power had been correspondingly smaller..."); Richard Musgrave, *The Theory Of Public Finance: A Study in Public Economy* (Tata McGraw Hill, 1954), p. 141 ("Taxes should accomplish their assigned objective, but beyond that, they should not interfere with the functioning of the market system. This is the principle of neutrality in taxation."). *See also* Pomp, *supra* note 2, at p. 6-18–6-19. The Gates Commission, which studied the Washington B&O tax, described it as follows: "Neutrality requires that a tax system minimize the opportunities and incentives for taxpayers to alter their decisions in order to take advantage of differential tax treatment of economic activity." The Commission concluded that the B&O tax violated this principle. Wash. State Tax Structure Study Comm., Wash. Dept. of Revenue, *Tax Alternatives for Washington State: A Report to the Legislature* (Nov. 2002), at p. 110.

20 *See* Buehler, *supra* note 13, at pp. 5–6.

21 *See* Musgrave, *supra* note 20, at p. 141.

22 Mikesell, *supra* note 7, at pp. 9–10.

23 In the case of so-called sin taxes, for example taxes on the purchase of cigarettes or alcohol, neutrality may be purposely violated in order to discourage the use of these products.

24 Hellerstein, McIntyre, & Pomp, *supra* note 9; *Okla. Tax Comm'n v. Jefferson Lines*, SCt, 514 US 175, 115 SCt 1331 (1995). For a sampling of cases dealing with the apportionment of a turnover tax, *see*, *e.g.*, *Northwest Energetic Services, LLC v. California Franchise Tax Bd.*, 159 Cal. App. 4th 841 (Cal. App. 1st Dist. 2008) (unapportioned tax on LLCs); *Northwood Construction v. Township of Upper Moreland*, 856 A2d 789 (2004), *Cert. Denied* 125 SCt 1736 (2005) (municipal business privilege tax); *Ford Motor Co. v. City of Hazelwood*, 155 SW3d 795 (Mo. Ct. App. 2005) (city gross receipts tax); *Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A2d 108 (2003) (Philadelphia business privilege tax); *Southern Pac. Transp. Co. v. Ariz.*, 44 P3d 1006 (Ct. App. 2002) (Arizona business privilege tax); *M & Associates, Inc. v. City of Irondale*, 723 So2d 592 (Ala. 1998) (city license tax); *City of Winchester v. American Woodmark Corp.*, 471 SE2d 495 (Va. 1996) (city business professional and occupational license tax). But *see General Motors v. Seattle*, 25 P3d 1022 (2001), *rev'g. denied*, 35 P3d 381 (2002), *Cert. Denied*, 535 US 1056 (2002); *Ford v. Seattle and Tacoma*, 156 P3d 185 (2007), *Cert. Denied*, 128 SCt 1224 (2008); *Ford v. Delaware*, 963 A2d 115 (2008), *Cert. Denied* 558 US 819 (2009).

25 *See* Richard Pomp, Report of The Hearing Officer: Multistate Tax Compact Article IV [UDITPA] Proposed Amendments (2013), *www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Pomp%20final%20final3.pdf*, pp. 54–95.

26 *See supra* Sections II(E), (G), and (H).

27 McLure, *supra* note 11, at p. 2.

28 Any attempt at measuring the regressivity or progressivity of a tax requires first determining the economic incidence of that tax. The assumption with sales taxes and the turnover tax is that they are passed forward into the price of the good sold to the end user. *See supra* note 7 and accompanying text. Moreover, almost always the regressivity calculation uses some measure of income in the denominator of the fraction, tax/income. If the issue is the regressivity of a consumption tax, a more logical choice for the denominator would be consumption, in which case the sales tax may be progressive over some ranges of the denominator. *See* Pomp, *supra* note 2, at pp. 6-20–6-21.

29 Pomp, *supra* note 2, pp. 6-26–6-28. Nicole Kaeding, *Oregon's Gross Receipts Tax Would Be Regressive*, Tax Found. July 19, 2016, *taxfoundation.org/oregon-s-gross-receipts-tax-would-be-regressive*.

30 A recent OECD study concluded that the VAT is generally either roughly proportional or slightly progressive. Alastair Thomas, Reassessing the Regressivity of the VAT, OECD Taxation Working Papers No. 49 (2020), at p. 37. *See also*, Frieden & Lindholm, *supra* note 2, at pp. 902–903. As mentioned in the text, the regressivity of any tax can be offset through spending programs. *See* Richard D. Pomp, *Never Let a Good Crisis Go to Waste*, Tax Notes State (Dec. 21, 2020); Frieden & Lindholm, *supra* note 2, at pp. 902–903. Frieden and Lindholm suggest that OECD nations that rely more heavily on consumption taxes than does the United States still have less income inequality than the United States because their spending programs disproportionately benefit the poor and middle class. Karl A. Frieden and Douglas L. Lindholm, *A Global Perspective on U.S. State Sales Tax Systems as a Revenue Source:*

Inefficient, Ineffective, and Obsolete (STRI, 2021), at p. 21.

31 Mikesell, *supra* note 7, at pp. 3–5.

32 *Id*. at p. 10.

33 Kaeding & Wilt, *supra* note 8.

34 John L. Mikesell, *Changing the Federal Tax Philosophy: A National Value-Added Tax or Retail Sales Tax?*, Pub. Budgeting FIN (Summer 1998), p. 61.

35 *Id*. at pp. 60–61. The Gates Commission which studied the Washington B&O tax stated: Transparency requires that tax burdens be apparent to the households that ultimately bear the tax. In other words, households should be able to determine their overall annual state tax burden, including any taxes embodied in the prices of goods and services that they buy. Wash. State Tax Structure Study Comm., Wash. Dept. of Revenue, *Tax Alternatives for Washington State: A Report to the Legislature* (Nov. 2002), at p. 134. Turnover taxes may be the most opaque of all state and local taxes. Justin M. Ross, "A Primer on State and Local Tax Policy: Trade-Offs Among Tax Instruments," Mercatus Center Research Paper, Feb. 25, 2014, at p. 19, *www.mercatus.org/publication/primer-state-and-local-tax-policy-trade-offs-among-tax-instruments*.

36 "The tax form for a relatively pure [gross receipts tax] is extremely simple and can fit on one page." Robert D. Ebel, LeAnn Luna, & Matthew N. Murray, *State General Business Taxation One More Time: CIT, GRT, or VAT?*, 69 Nat'l Tax J. 739, 742 (2016). "Relatively pure," is the operative term, and does not describe any of the existing state turnover taxes. The authors of that statement are economists. Tax lawyers would never make such a statement, nor would accountants involved in the compliance function.

Proponents of turnover taxes often compare their simplicity to the complexity of a corporate income tax. "For example, Missouri's Governor's Committee on Simple, Fair, and Low Taxes argued that 'the inherent difficulties, volatility, complexity in implementation and narrow tax base all make the corporate tax unpalatable.' The committee recommended replacing it with a gross receipts tax. This argument has become more popular as the corporate income tax base has eroded from tax expenditures and revenue collection has declined." Missouri Governor's Committee on Simple, Fair, and Low Taxes, Tax Policy and Tax Credit Reform: Recommendations to Make Missouri "Best-In-Class State," June 30, 2017, p. 23, *themissouritimes.com/wp-content/uploads/2017/06/TC-Report-Working-Draft-06192.pdf*.

37 European countries made the abandonment of turnover taxes a price for joining the Economic Union. First Council Directive of 11 April 1967 on the Harmonisation of Legislation of Member States Concerning Turnover Taxes, Art. I (67/227/EEC), J. O Comm. Eur. (No. 71).

38 *See supra* Part II(B).

39 Wash. Rev. Code Ann. § 82.04.220 *et seq*.

40 Nev. Rev. Stat. § 363C.200 (2020) *et seq*.

41 The Oregon turnover tax was adopted in 2019. See Patrick Gleason, Oregon Democrats Impose a New Tax, One That Voters Recently Rejected, Forbes, May 14, 2019, *www.forbes.com/sites/patrickgleason/2019/05/14/or-grt/?sh=526c90752cb9*.

42 Mikesell, *supra* note 7, at p. 14.

43 *Id*. at p. 1.

44 *Id*. at p. 2.

45 John F. Due, *Indirect Taxation in Developing Economies* (1970), p. 122.

46 *Id*. at p. 123.

47 This article is part of a forthcoming monograph to be published by the State Tax Research Institute, tentatively titled "Resisting the Siren Call of Gross Receipts Taxes: From the Middle Ages to Maryland's Tax on Digital Advertising." As part of that project, I benefitted greatly from conversations with Doug Lindholm, President and Executive Director of the Council On State Taxation (COST), and Karl Frieden, Vice President and General Counsel of COST, and their comments on various drafts.