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A Critical Exegesis of Maine's Creaky Tax Code

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A critical exegesis of Maine's creaky tax code

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by Peter Mills

In this provocative and thorough examination of Maine's tax code, Peter Mills provides a candid assessment of what is wrong with our current system. Focusing on the revenue side of state government, Mills begins by pointing out that Maine does not have a cohesive tax code, per se, but a hodgepodge of provisions and exemptions that in totality place the primary burden for supporting state government on the labor and consumption of Maine's individual citizens.

Mills offers his own perspective on fixing our troubled tax code. He suggests some solutions like reducing the sales tax rate and eliminating the BETR/TIF "double dip." In proposing such changes, Mills challenges legislators and other state leaders to transcend political expediency in fixing the many problems he raises for discussion. For related commentaries, click here.

Prior to the 1997 legislative session, I embarked on a self-guided expedition through the meanderings of Maine's tax code. Liberally provisioned with caffeine and armed with a lap-top, I journeyed alone into this heart of darkness to read the whole text in several sittings, to map out what I found, and to form fresh impressions directly from the muddy source.

Conventional wisdom advises us to examine policy first before focusing on the specific topography. My approach was just the reverse. I wanted to explore what was there on the ground before drawing any broad conclusions. This article is a summary of my findings as modified and expanded by our failed efforts at tax reform during the 1997 session.

Let me begin with one general observation that seems all-pervasive. A common plank found in every politician's platform is support for business stimulation and creation of jobs. Many legislators in Maine and elsewhere, often deluded by their own rhetoric, naively assume that they are elected primarily to create jobs and that they have enormous power to influence business development, to affect economic behavior, to attract industry, and to stimulate growth.

Legislators come to Augusta as little Keynesians or little supply-siders -- in either case, falsely imbued with a sense that their votes on tax and expenditure policies will make all the difference to the economic destiny of our citizens. These assumptions are heavily reinforced by the fawning importunities of lobbyists who assure each member that the granting of an exemption, the forbearance of a tax, the easing of a regulation, or the expenditure of funds in a certain direction will catalyze an economic response from the private sector that will mobilize our citizens toward perpetual prosperity.

Most of this is hogwash. We are all slaves to the same economy Maine government is a business -- just one business among many in this state -- and the only one governed by an unwieldy board of directors with little or no management experience.

The Legislature too easily forgets that its primary job is to raise money in simple and orderly ways and then to spend it by doing well and efficiently those few things only government can do. Taxes exist to supply necessary revenue to a well-ordered government. If government does its own job -- if we educate kids, imprison criminals, build sound bridges, maintain roads, recycle the garbage, treat the mentally ill, rescue the poor, and do it all with reasonable efficiency -- then citizens should be content.

We need to tend to our knitting. The purpose of this article is to critique the revenue side of the government's business. There is no better place to start than with our sales tax.

THE SALES TAX

Since its inception forty-five years ago, the sales and use tax rate has grown from 2 percent to 6 percent, not just because state government hungers for this major source of revenue but also because we have so riddled the tax with exemptions. There are seventy-seven numbered paragraphs of past and current exemptions, and this list does not include the definitional exception for most services.

As a result, the tax has become both narrow and steep, exacerbating the "bungee cord" effect so appropriately publicized by Professor Josephine LaPlante. A growth of only 2 or 3 percent in the Maine economy may enlarge our tax revenue by 10 percent; an economic downturn yields and equally amplified effect in the other direction.

While some fluctuation in the sales tax is unavoidable, the inherent volatility of the tax is now greatly exacerbated as the ground under it has been eroded by constant constituent pressure for exceptions. We have lost still further ground as our economic base continues to shift from the sale and use of tangible goods to the delivery of untaxed goods.

As a result, the sales tax is too narrow, too high, and too accelerative. We tax Volvos, snowmobiles, and motor homes, things bought when the economy is flush and the need for government services is diminished. We don't tax food, heating fuel, or domestic electricity. When times are tough and government is most in need of additional support, revenue from the tax falls away rapidly. This is largely because we fail to tax so few basic needs, and those transactions that fall within the narrow band of sales subject to the tax are hit at comparatively high rates of 6, 7, and 10 percent.

As a result, the sales take swings, flutters, and fibrillates and seems often on the verge of congestive failure. We tinker with its symptoms, but no cure is apparent. It needs a transplant. Consider this series of remedies.

- Drop the rate to only 3 or 4 percent.
- Cut most exemptions. Tax food, fuel and electricity. Tax nearly all buyers and most products. Make it simple and universal.
- Expand the tax to additional services.
- Leave food and lodging at 7 percent (New Hampshire is at 8 percent) and car rentals at 10 percent.
- Make the adjustments net out to revenue neutrality.

VOLATILITY VERSUS REGRESSIVITY

A major argument against the prescription above is that the tax may be rendered more regressive than it is at present, that the changes may fall harder on the poor than on the rich. It is difficult to reduce volatility without being regressive. To reduce volatility the state must tax fundamental necessities, like groceries and electricity. Even taxing services may or may not reduce volatility, depending on which are chosen to be taxed.

The problem is how to address or repair the regressivity of a less volatile tax. Here are some answers:

- First, taxing food is no more regressive than taxing clothing, used cars, appliances, and other things on which the poor presently pay a 6 percent tax. Rich people pay much more for all of these things, including groceries, than do the poor. So what difference does it make to tax food if we already tax clothing and basic transportation?
- If the sales tax drops to 3 or 4 percent, even the poor will benefit by paying less for their other purchases. This will make up for much of what they lose by paying tax on food and electric power.
- Extending the sales tax to discretionary services is another partial cure. Rich people spend much more on services than do the poor.
- Purchases made with food stamps and general assistance vouchers should be retained as narrow exemptions targeted to benefit the very poor.
- The poor may be assisted in other ways through adoption of an earned income tax credit or liberalization of circuit-breaker refunds. In any case, problems of the poor ought to be addressed directly and not used as camouflage to justify blanket exemptions that suit the economic interests of organizations like the Maine Grocers Association.

SALES TAX EXEMPTION POLICIES

We must develop a firm and consistent statutory policy for defining exceptions to the sales tax. If we fail to determine up front the legitimate reasons for granting exemptions, we will continue to see holes eaten into the fabric of the tax by the numerous moths who nest in the State House.

It is a standing joke, no longer funny, that the Taxation Committee should be relabeled the "Tax Exemption Committee." Most of the public-hearing time each year is devoted to complaints from those who seek relief from the taxes they are obligated to pay.

Historically, exemptions have been granted for the following reasons:

The Special nature of the goods being sold

Food, heating fuel, and medicine come quickly to mind, as well as the first 750 kilowatts of electric power sold monthly to each Maine household. These exemptions are granted to every customer without regard for the ability to pay. It is difficult to see how these categories are any more special than winter clothing for the poor or a used car for someone who must drive to work in rural Maine. Wouldn't fairness be enhanced if the tax were imposed on all products, across the board, but at a greatly reduced rate?

The special character of the buyer
Governments, hospitals, churches, schools, pollution control facilities, and a few selected charities are among those exempt from sales tax for all purchases. Every year, other groups come to the Legislature seeking a blanket exemption because their good works are just as worthy as those for whom an exception has already been granted. Perhaps we should grant a generic exemption, as we have done with property and income taxes, to all charitable organizations that meet certain criteria. We should either do this or else eliminate such exemptions altogether and make everyone pay this simple tax at a reduced level. My bias is toward the latter solution.

Pyramiding
The sales tax is designed to be imposed only once, at the end point in the life of each product when it is delivered by retail sale to the ultimate consumer. We avoid taxing the product or its components at intermediate steps. In this respect, a sales tax differs from the system employed by many other countries, the value-added tax that is incrementally imposed at each stage of processing from raw material to final sale.

This effort to avoid pyramiding generates exemptions of substantial value. For example, we exempt raw materials, energy, and machinery used in manufacturing. We justify these exemptions on the theory that the manufacturer's products eventually may be subject to a retail sales tax, if not in Maine, then somewhere else.

But this is often not the case. Take the paper industry as an example. Trees are not taxed when they are sold to the mill because they are the raw materials from which paper is made. Neither is China clay used as coatings. The machinery and electricity used in the plant are not taxed because they are part of the manufacturing process.

But is the paper taxed when it is finally sold? Not by Maine. Most paper is shipped out of state. And even if the paper is used here in Maine, we exempt newspapers and periodicals from the sales tax on the general principle that these products are good for us. Thus it is safe to say that the paper industry, Maine's largest economic activity, is exempt from our major state tax.

Trade-in credits for automobiles and other products are exempt on the theory that the used article given in trade already has been taxed once and will be taxed again when the dealer resells it. Pyramiding also makes us reluctant to tax services like ski-lift tickets when we have already taxed the purchase price of the machinery, the electricity that operates the lifts, and the wages of those who work on the mountain.

Pyramiding is a legitimate basis on which to grant exemptions, and a certain amount of pyramiding is unavoidable, particularly when the sales tax is extended to services. However, exemptions should be granted sparingly and only when the end product is actually taxed. In the final analysis, the significance of the problem is greatly diminished if the rate of tax is dropped dramatically from 6 percent to only 3 or 4 percent.

Exportation and migration: ease of evasion

Appliance stores in Maine towns near New Hampshire have a hard time turning a profit when they must sell goods at a 6 percent disadvantage to competitors across the line. It goes without saying that broadening and lowering the tax to only 3 or 4 percent would reduce significantly the intensity of this perennial border war.

Unfortunately extending the tax to services creates a new problem that has led to defeat of service taxes in other states. Many services in today's economy are highly mobile and thus importable, not only from neighboring states but from all other states and foreign countries as well. Accounting and tax advice, computer software development, engineering and design consulting, advertising services, and many other products of the human brain are shipped across state and international lines freely by fax, Internet, and mail without notice to local taxing authorities.

Thus, the state that imposes a tax on such services may not be able to collect it. The service providers who can be forced to pay are the local professionals, those who already are paying state income taxes based on the same fees the state seeks to tax as a sale. Because out-of-state providers get off scot-free, they are able to exploit an unfair market advantage.

Not all services are quite so exportable; and not all suffer from such collectibility impediments. But when a state does extend its sales tax to services, it must do so selectively, picking well-defined, nonmobile service functions that can be taxed directly and efficiently without giving an unfair advantage to nonresident providers.

We already tax hotel rooms, restaurant meals, auto rentals, telephone service, cable TV, and videos. Other services can be added to broaden the tax base without an exportation of the underlying business revenue.

POLITICS OF THE SALES TAX

Anyone who thinks the sales tax should be left well-enough alone should be forced to read the statute. It is no longer a tax code. It is a chaotic, deconstructed flimflam, with no discernible thread of coherent policy to tie the text together. The rich pay no tax at all for caviar and smoked salmon, while everyone, rich and poor alike, pays 6 percent on potato chips and coke.

Does it make any political sense to suggest incremental reform? Should we proceed one step at a time -- perhaps by adding a few new services? Should we remove the exemption for food or electricity? Do we dare tax funeral services or ski-lift tickets? Should we continue the snack tax? Do we have the steel to again confront the tax committee's nemesis, the Girl Scouts of America with their cookies to sell? Of course not.

The only answer is to start over. Begin by adopting a new and dramatically lower rate -- no higher that 4 percent, and perhaps low as 3 percent. Both rates should be considered. It is the lower rate that demonstrates the value of the overall reform and makes it politically viable. Five percent won't do. We were there just a few years ago and now have broken our promise to return in each of the past six successive sessions.

Having adopted a target rate, we should reconstitute the tax on the rigorous assumption that every sale will be included, no matter what the product and no matter who the buyer. Exemptions, when granted, should be based on practical considerations of collectibility and enforceability. Pyramiding should be avoided but not shunned.

When the package is complete, it should be adopted as an organic whole; a self-contained, free-standing, revenue-neutral reformation of the sales tax itself isolated from other issues. While it may irritate many constituencies to find themselves taxed by the new code, my guess is that fairness alone will carry the day if the resulting rate is low enough to demonstrate the benefits of a truly comprehensive, consistent, broad-based source of revenue.

THE PERSONAL INCOME TAX

The income tax is the twin of the sales tax -- equally as large, equally as volatile, and equally fundamental to the support of state government, but simpler in structure because it is piggy-backed to the federal return. We have only just begun to riddle this tax with our own local credits and exemptions.

Maine prides itself on the progessivity of its income tax rates. They range from 2 percent to 8.5 percent, with intermediate brackets at 4 and 6.5 percent. Yet, the highest rate kicks in so early (at only $16,500 for a single person) that for many taxpayers, the rate may as well be flat -- and relatively high in comparison with other states.

As for the lowest brackets, a tax of only 2 percent on incremental income above the standard deduction and exemptions is hardly worth collecting. The lowest rate of 2 percent exists to collect a tax that peaks at eighty-three dollars for the top end of the bracket. Many taxpayers file returns to pay only twenty or thirty dollars in tax, less than the cost of processing the forms.

In 1997 the Legislature addressed this latter issue by creating a credit to eliminate many low-income filers. It would be just as effective simply to condense the rates and increase the standard deduction to achieve a similar result in a more direct and rational fashion. Two brackets of 4 and 8 percent, respectively, ought to be sufficient to collect the revenue we need while preserving a simple progressive structure.

THE CORPORATE INCOME TAX

The corporate income tax produces less than twice as much as the lottery and only 10 percent of what is generated by either the personal income or the sales tax. It is no major engine of state finance.

We, the public, have no idea from where corporate income taxes come. Each corporate taxpayer is entitled to the same financial privacy that you and I have in the payment of our personal taxes. This is true even if the company is traded on a national stock exchange. While the aggregate performance of a public company is freely known, its activity within any given state is proprietary information.

It is difficult, time-consuming, and expensive for a state like Maine to collect income taxes from a national or international conglomerate whose business activity in Maine comprises only a fraction of its worldwide enterprise. It is too easy for the company to shift costs and revenue from one jurisdiction or subsidiary to another. The corporate income tax is our least efficient to collect. Avoidability is its distinctive feature. A single case history will illustrate the point.

When tax credits for Bath Iron Works came under discussion during May 1997, the company's managers gave us a sketch of BIW's tax history. For many years prior to 1995, BIW was owned as a highly leveraged subsidiary, first by a flooring firm and then by an insurance company.

During these years BIW carried a huge debt load. Interest on the debt eliminated profits. Because of debt service, BIW paid no corporate income taxes to the state even though it was Maine's largest private employer with a commensurately large volume of business activity.

When the company was acquired by cash-rich General Dynamics in 1995, the debt was paid off. Overnight, BIW became profitable. It paid $6 million in state income taxes in 1996, representing nearly 10 percent of Maine's corporate income taxes collected that year.

If just one company can account for 10 percent of the total, how many other major corporations pay us nothing at all, year in and year out, while doing significant business in this state? We can only speculate. If we all agree that industry ought to provide its fair share of support for state government, how can we better collect from business sources the revenue Maine needs to subsist? Let me offer some suggestions:

Franchise taxes

When business taxes first were invented, they came in the form of franchise taxes levied as a fixed percentage of revenues generated from business activity. These were commonly imposed without regard to profit ability although it is possible to temper the tax by adjusting the rate for profits or losses encountered. New Hampshire continues to rely heavily on this form of business taxation, and Maine has a number of such taxes left over from the days before corporate income taxes were adopted.

The best example is the insurance tax, which we collect at the rate of 2 percent of the premiums paid on policies written in this state. Insurance companies are exempt from income taxation, but they must pay 2 percent on premiums regardless of whether they show a profit. The state has little need to double check the internal bookkeeping.

A tax in this form may fluctuate a little with variations in the economy, but revenue to the state is more consistent and reliable than a tax based solely on profit. The state takes its small share and then gets on with its own business of providing necessary services.

Consider the following a hypothetical exercise. Begin by aggregating all the revenue generated by the paper industry in this state. Compare this with the total of all corporate income taxes we obtain from the same source. Then determine at what level a franchise tax might be substituted to produce a comparable flow of annual taxes.

The virtue of such a plan is that every company would have to pay the tax in proportion to its production and not in inverse proportion to its accounting ingenuity. The state could collect the tax with less effort and count on getting it every year in a more regular flow.

Credits and inducements

If the corporate income tax fails to function as a steady and efficient source of public revenue, perhaps we should create stronger inducements for it to be paid or else sacrifice part of it for something else we want. Consider an idea that combines both approaches.

We frequently extol the virtues of job creation, the employment of one person by another that is the gestation of business development, but we certainly do little to make the process rewarding. When a business elects to hire a new person, we bury that business with new forms, taxes, and administrative requirements as though we were punishing the entrepreneur for doing something right.

The new employer must arrange for Social Security and Medicare taxes, both state and federal withholding taxes, both state and federal unemployment insurance, and mandatory workers' compensation coverage. The employer must be familiar with and abide by anti-discrimination laws, OSHA directives, minimum wage rules, overtime requirements, child labor laws, the Family Leave Act, and VDT and polygraph protection laws. Every layer of government has its say. Even the European Union insists that Maine employers fulfill certain conditions for selling our products abroad.

We have made the employment of one person by another one of the most burdensome relationships known to the law. Yet we ask the employer to do more than just comply with the law. We want the employer to offer health and dental insurance for individual workers and their families, retirement plans to supplement Social Security benefits, day care accommodations for children, worker disability protection, life insurance, education options, and other valuable fringes. There is no end to the things we would like employers to do for their workers, but does the government offer any inducement or reward for all of this? Nothing but deductibility for some of the expense.

In order to make the employment relationship into something of greater value in this state, why not grant a general credit to the employer for some small portion of the state withholding taxes and fringe benefits afforded to its employees, and let the credit be applied against the state income taxes otherwise owed by the employer. If the aggregate credit is capped at a fixed percentage of the employer's own tax, then the employer will be "on commission" to report and pay its income tax liability. The credit would not otherwise be available.

A credit of this sort would induce payment of corporate income taxes here in Maine and would reward all Maine employers -- not only corporations, but also sole proprietors and partnerships -- for doing what we most want them to do -- put more people to work and with decent benefits.

The BETR/TIF "double dip"
Businesses in many states are demanding and receiving special concessions on the taxes they owe to local communities. In some states, business personal property is wholly exempt from taxation as a matter of state law. Our Maine Constitution prohibits us from creating new exemptions to the property tax unless the state reimburses each affected community for at least half the resulting loss.

In an effort to keep up with other states, Maine has empowered it's municipalities to create Tax Increment Financing Districts (TIFs) to induce industrial development. Under TIF, a community may voluntarily reimburse to an expanding company new property taxes the town otherwise would collect and keep. When a community enters into a TIF agreement, a business that creates new development within the TIF district may have all of its annual property taxes for the expansion refunded for a negotiated term spanning many years.

Although the community gives up its tax revenue from the expansion, it suffers no other collateral loss. Its revenue sharing reimbursement, its school funding distributions and its county tax obligations remain the same -- as though no new value had been added to its tax rolls.

Thus, other communities in the state and within the same county indirectly subsidize the town's loss of tax revenues from the TIF district.

In addition to TIF, we now have the Business Equipment Tax Reimbursement (BETR) program under which most businesses are entitled to reimbursement from the state for property taxes paid on business personal property purchased after April 1, 1995. The entitlement is virtually unconditional and continues for up to twelve years after the property is acquired.

The most remarkable feature of BETR is that it rides on top of TIF. If new equipment is installed within a TIF district, the same tax bill that entitles the owner to a refund from the town is again used for a rebate from the state. The owner's taxes are repaid twice.

Although many forms of personal property have an expected lifespan shorter than twelve years, the business owner has no inducement to limit or reduce its tax liability as long as the BETR subsidy lasts. The owner in a TIF district is actually paid to keep the tax value high. The state must reimburse the owner for all property taxes billed on the equipment unless the state tax assessor makes an effort to prove a lower value. The owner has no incentive to diminish the valuation for the first twelve years of the property's life, assuming the equipment lasts that long.

As new equipment is added to the BETR program each year, costs to the state are accelerating dramatically. Each major new piece of equipment carries a twelve-year tail. The program is metastasizing. Within a few years, the aggregate cost of reimbursements will exceed everything the state collects from corporate income taxes. In other words, the state soon will be doling out to industry more money than it takes in.

What do we get back for these investments of precious revenue? Is there any requirement that jobs be created in exchange for the new investment? The answer is no. If a company buys new machinery that puts 200 Maine people out of work, the state will subsidize the investment without giving it a second look. How astute we Yankees are!

The BETR/TIF "double dip" is an infamous scandal that deserves greater ignominy than it has so far received. Although it has been accurately described by a number of news organizations, the issue is complex and poorly comprehended by the public at large. The program is staunchly supported by the popular current administration, and the Legislature suffers under heavy lobbying from business interests to retain both overlapping programs in their present forms. In the meantime, the citizen taxpayer is getting nailed.

BETR might well be "bettered" by any of the following changes:

- Eliminate the BETR/TIF double dip.
- Reduce the state's reimbursement to less than 100 percent. A business that still owes part of the tax will retain an inducement to limit the valuation of its property.
- Constrain the program to manufacturing and research equipment.
- Tie the credit to the job creation or job preservation criteria.
- Adopt a period of reimbursement shorter than twelve years.

TRENDS AND CONCLUSIONS

Maine's current tax code produces annually about $1.9 billion of undedicated revenue. Less than 5 percent of this amount comes from corporate income taxes. Another few percent comes from business franchise and the other special taxes.

About 85 percent is generated from two fundamental sources:

1. Taxes on the personal income of Maine citizens: $733 million	
2. Taxes on things bought by Maine consumers:	
General sales	$690 million
Tobacco	$48 million
Alcohol	$21 million
The lottery	$41 million

Thus, state government is supported almost entirely by the labor and consumption of its individual citizens. Even some of the business taxes are really consumption taxes that are passed on in the price of each product. Insurance premium taxes and utility taxes are good examples.

While business investment is part of what makes it possible for our citizens to be employed, to generate earnings, and to consume services and products, it is strange that we impose the burdens of taxation so completely on labor and consumption and hardly at all on things like resource extraction, pollution, the value of capital, and profits from investment.

Owners of capital respond by pointing to the substantial taxes they pay on tangible property within each of our local communities. More than half the taxes in some of our mill towns are paid by the foreign shareholders of the world's largest paper companies. But our policies on property taxation are now running in the opposite direction. Real estate in the unorganized territories, owned by some of the world's wealthiest corporations, produces only a dollar an acre in taxes to the state. Half the land area of Maine generates a paltry $8.3 million in support of state government, about half of 1 percent of what is raised by personal income and consumption taxes.

With the advent of TIF and BETR, major industries are paying less and less on their municipal property taxes. Homeowners, rent payers, and small businesses are left to make up the loss in each community. At the state level, citizens who pay sales and income taxes are shouldering the burden of BETR subsidies for industry.

Should our state and local governments be supported entirely by taxes on the personal income of our citizens, their purchases for personal consumption, and the value of the homes they live in? If public servants are elected to office by consumers, workers, and homeowners, how does the Legislature get away with adopting tax policies so contrary to the interests of those who do the voting?

There are many answers. For one thing, there is no organization with political power that represents in a general way citizen taxpayers as consumers of products, as payers of income taxes, or as owners of residential property. These interests are diffuse and unfocused. They cannot compete against a sharp-shooting lobbyist whose single mission is to assassinate the tax on a certain product, a class of property, or a particular source of corporate income. Taxes are assessed against those who put up the least resistance.

Political popularity does not arise from looking at the big picture or from thinking idealistically about how the state should raise the revenue it needs to do its job. There is no reward for protecting the interests of the state as a discrete business entity or for guarding the broader interests of average citizens who are shareholders in the enterprise of government.

How many politicians knock on your door to announce better ideas for raising revenue that will enable the government to do a better job? Few that I know. And how many come to talk about a clever new credit, an exemption, or deduction that will stimulate business, create new jobs, and make us all rich? They are legion.

It is just such a gambler's mentality that controls our tax policy. If the state will keep tossing more nickel-and-dime concessions into the economy's slot machine, we hope someday to hit the development jackpot and retire from the revenue fray. We are caged in these illusory dreams by those who have the power and money to create them.

But real life and real government do not work that way. It is a plodding, difficult process that requires courage, persistence, and day-to-day diligence, just as with other businesses and professions.

People in public service should be skeptical of easy answers and should scrutinize Maine's tax policies with the same care that astute managers in the private sector guard and curry the revenue that sustains each business enterprise. Politicians are fiduciaries for the workers and consumers who elected them. This public trust should transcend political expediencies.

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