Recent polling data show that two-thirds of voters believe that states should close tax loopholes first before considering any cuts in public education.
NEA created and presented this toolkit at the first Close Tax Loopholes First workshop that took place on June 6, 2011, at the ISTA offices in Indianapolis. Ten NEA state affiliates (AL, AZ, IN, NE, GA, LA, NJ, VA, MN, and MS) participated. From NEA’s TEF team, they learned a strategy for defending against attacks on public education as well as raising additional revenues to fund public education. The tools in this toolkit include instruments to gather initial data, model legislation to close loopholes, PowerPoint presentations, and examples of real-life success stories.

INSTRUCTIONS: Go to specific points of interest using PDF bookmark links or mouse over the table of contents and click on any item you wish to view. You can find the "bookmarks" tab on your left screen. Please note that this document is work in progress. The TEF team would appreciate hearing your feedback to improve this toolkit. If you have any questions or need additional information, please email us at TEF@nea.org or call (202) 822-7431.

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1. Introduction and Overview
Close Tax Loopholes First Toolkit

Advocates of public education can use The Close Tax Loopholes First Toolkit for two purposes. First, use the close tax loopholes first argument as a defensive/offensive strategy to ward off attacks on our members’ pensions, healthcare, jobs, and collective bargaining rights. In other words, we need to argue that we must close tax loopholes first before we cut back on services for students and the pensions and jobs of educators. Second, as a matter of good tax policy we need to close tax loopholes first to modernize our tax systems and fund public education appropriately. The kit contains various tools, including instruments to gather initial data, model legislation to close loopholes, PowerPoint presentations, and examples of real-life success stories.

What is a tax loophole? Tax loopholes are provisions in the tax law — or lack thereof — that allow corporations to avoid their responsibility of paying their fair share for the privilege of doing business in a given jurisdiction and for the use of public services. For example, General Electric paid no taxes in 2010, despite U.S. profits of over $5 billion. How could that be? The answer is a tax loophole.

General Electric works all over the world, and under the law its profits are not taxed as long GE says that they are reinvested abroad. GE is one of the top 10 worst corporate tax avoiders on Senator Bernie Sanders (I-VT) list. The remaining nine are: Exxon Mobile, Bank of America, Chevron, Boeing, Goldman Sachs, Citigroup, Sonoco Phillips, Valero Energy, and Carnival Cruise Lines. A 2008 study by the Government Accounting Office shows that two out of three U.S. corporations paid no federal income taxes in the last decade or so.

How many types of tax loopholes are there? Tax loopholes fall into four categories:

1. Federal loopholes that allow U.S. multinational corporations to use the law to avoid paying taxes. These include perpetual deferral of profits in tax havens and transfer pricing.
2. Federal tax expenditures and subsidies to corporations. These include subsidies to specific industries, such as oil and gas and drug companies.
3. State tax loopholes that allow multistate and multinational companies to avoid their tax responsibility. These include lack of combined reporting, single sales factor formula, etc.
4. State and local tax subsidies given in the name of so-called economic development.

Due to lack of corporate accountability and disclosure, no one really knows how much revenue is lost due to these tax loopholes, tax subsidies, and tax expenditures. But estimates are in the hundreds of billions of dollars, if not trillions.

What’s most important for advocates of public education? Since more than 90% of funding for public education comes from state and local sources, the most important things for us to focus on are loopholes and subsidies at the state and local level. Even if the total amount of revenue raised by closing
a loophole is not significant, it has political value. Polling data show that two-thirds of voters believe that we should *close tax loopholes first* to properly fund public education.

**Is there any success story?** Yes. Closing tax loopholes efforts began in Alabama by asking a few questions about revenue from the state department. One question was, how many of the 150 largest companies in Alabama paid no taxes in the last three years? The finding was astonishing. About 50% of the largest for-profit companies in Alabama had paid zilch. Zero. Nada. This allowed the Alabama Education Association to build momentum to close certain tax loopholes, loopholes these companies were using to avoid paying their fair share. Similar questions were used in Mississippi a few months ago. The findings were even more astonishing. One hundred three of the 130 largest corporations in Mississippi had paid zero taxes in the last three years. The media coverage, engagement of members and communities, and reaction from key legislators has been very encouraging. The legislation is still pending, but the state has already hired two additional auditors and has sued a few corporations for back taxes. Work with Missouri is underway.

The toolkit contains a lot more information on this subject, as well as on tax subsidies that provide little or no economic benefit to the state. In fact, subsidies like film credits simply take money away from vital public services such as education. We are hopeful that you will make a commitment to use the *close tax loopholes first* strategy to defend against attacks on public education as well as raise additional revenues to fund public education. We stand ready to work with you.

NEA TEF Team

**TEF@nea.org**

April 21, 2011
2. Close Tax Loopholes First

Talking Points
Selected talking points to help support the rationale for closing corporate tax loopholes.

Close Tax Loopholes First – TEF Series 24
The NEA TEF team periodically produces short papers in the TEF Series. This particular volume tells you who caused our economic woes and how closing tax loopholes are the first step in righting the ship and leveling the playing field for all businesses.

Letter to the Editor
Three different versions of a letter to the editor are included - you can choose the one of the right length and scope for your needs to use as a template for submitting a letter to your local newspaper.

Frequently Asked Questions (FAQ)
The TEF team may have already addressed some or all of your questions. Browse through a list of possible questions and answers relating to tax loopholes.
Close Corporate Tax Loopholes First:
Talking Points
(Draft of April 25, 2011)

- In Wisconsin, Governor Walker began with a budget surplus. He gave it away in tax breaks to corporations, created an artificial budget crisis, and then cut the programs and rights of those who are most vulnerable.

- Wisconsin is not alone. In state after state, vital public service programs are being cut while huge tax breaks and subsidies are provided to corporations. For example, Utah had to close a billion dollar budget gap. The governor’s solution was for educators to take furlough days. Yet, he had no trouble giving Goldman Sachs $50 million just to stay in Salt Lake City. Similarly, while the school board in Fayette County, Georgia was asking educators to take two furlough days to address a budget shortfall, the state was giving Kia motor company $250 million in tax subsidies.

- The story is no different at the national level. Policy makers in Congress are giving tax breaks to corporations and the wealthy, and at the same time cutting programs for the most vulnerable citizens – all this in the name of deficit reduction and economy.

- The politicians named the deficit as the #1 problem our country faces – but the people who actually study the economy have been clear all along, and they’ve been in full agreement with the American people. The problem is not and has not been the deficit – it’s been the lack of jobs. One out of six people can’t find a full time job -- the jobs aren’t there.

- In times of deep recession, consumers aren’t willing or able to demand goods and services at the level that is necessary to pull the economy out of its current slowdown. When the private sector pulls back, good government must step in. Without government intervention, the economy would be in danger of slipping into a downward-spiraling deflationary cycle.

- To the extent that the current deficit is a problem, it’s due to a lack of revenues. According to Nobel Prize winning economist Joseph Stiglitz, there are at least three key reasons for the current deficit situation:
  - The three rounds of tax cuts first enacted in the Bush administration;
  - Deregulation of Wall Street that resulted in a financial and housing crisis and economic downturn; and the
  - Two wars and other military expenditures

- Professor Stiglitz argues that it is premature to make deficit reduction our first priority at this time. We must make economic recovery our first priority. We need to put people back to work and address the issues of income stagnation and rising income inequality at the same time. This requires that we invest in people and in the infrastructure that connects them and enables them to be ever more productive and innovative. Prematurely shutting off investment now in the name of “deficit reduction” will doom us to, at best, a very long, drawn-out and slow recovery.

- The current austerity approach being pushed by some in Congress and in some State Houses will certainly lead to further economic slowdown, higher poverty, and increased income inequality.

- Policy makers must close corporate tax loopholes first before they cut programs. These loopholes allow corporations to hide profits in overseas tax havens and result in hundreds of billions of dollars in lost revenues for the U.S. Treasury.
• State and local governments, responsible for providing 90% of public education funding, are hurting now due to the Great Recession. Budgets are tight – and schools are being asked to take severe cuts. Yet these states lose hundreds of billions of dollars every year, money that could and should be available for investing in education and other needed services. It is estimated that state and local governments give away upwards of $70 billion every year in the name of economic development, through various forms of tax subsidies intended to lure and keep businesses in their communities. Moreover, due to a combination of lower corporate tax rates coupled with an ever-increasing array of tax loopholes, state and local governments collect far less in revenues from corporations than was the case thirty years ago. If they were to collect revenues from corporations today at the same rate as they did in 1979 they would have an additional $78 billion per year in revenues to fund critical public services such as education.

• It’s easy to get lost in all the numbers. As a society, we suffer from ‘Big Number Fatigue’, stemming from the Wall Street bailouts of 2008-09, which marked the first occasion in our nation’s history when trillions of dollars became an everyday part of our language. Sometimes it’s helpful to consider the human cost.

• In Pulaski, Virginia, a small town in the rural Southwest part of the state, increasingly desperate people line up in increasing numbers everyday outside of the Pulaski Community Action Center. The Center is one of thousands of nonprofit agencies all over the country that receive funding from various sources, mostly governmental, and distribute that to needy families based on need. Now, however, the needs are rising rapidly while at the same time, the funding sources are drying up, and the Center has less than ever before to give. While the talk in Washington and on Wall Street is about the deficit and economic recovery, people here in southwest Virginia come to the Center seeking the basics for survival: Food. Shelter. Work. Formula for a newborn. Medication for a failing heart. There are about 2,900 people on the waiting list, in a county of 35,000. Only a year ago, the Center could provide about $1,000 per week in emergency aid to the needy. Now that the community block grant has been cut, the Center can pay only $35 per week. The Center only has all of $1,000 in its account right now – and the federal Community Services Block Grant program that funds the largest share of the Center is currently on the chopping block in Washington. All of this leaves the four employees of the Center wondering if they’ll have a job at the end of the year. And we’re not talking about high-level salaries here. One staffer who has a college degree and has been with the agency for 15 years earns just $26,000 a year. Threats to agencies such as this can push people who are struggling, but managing to just get by, into a much more desperate situation where many are left helpless, and homeless.

• Pulaski is not alone. This is happening in many other communities across the country, and is likely to get worse if the austerity agenda becomes the reality.

• We must close loopholes first.

For more information, please contact TEF@nea.org
Close Tax Loopholes First

Recent events can leave little doubt that the actions of governors and legislators in states like Wisconsin, Ohio, and Indiana are making the American workplace unfair. Their assault on educators and public service workers is about politics, not economics. By enacting policies that so clearly favor big corporations, these politicians are ignoring the economic consequences for the rest of us of their actions. Intentionally or not, their policies will only prolong the recession and exacerbate job losses. Why? Historical data show clearly that the income gap between rich and poor grows as workers’ rights to organize and seek workplace fairness are compromised. An increasing income gap, in turn, puts a drag on the economy and slows down both economic recovery and job growth. Instead of attacking the rights of educators, firefighters, and nurses, politicians must understand the causes of our economic and fiscal troubles. We must ask these governors and legislators to close tax loopholes first before cutting health care, pensions, and jobs of the people who provide vital public services to our local communities.

Who Caused Our Economic and Fiscal Woes?

Politicians ignore the fact that our current economic and fiscal woes are a direct result of the lack of Wall Street oversight. Imagine a financial Super Bowl without either referee or time limit. That’s what caused our economic troubles. State budget shortfalls are not only the result of the economic downturn, but also of the way state and local tax systems are structured. Tax systems in almost all states are unfair and out of sync with the new economic reality. Unfortunately, some policy makers continue to act as if our budget gaps are caused by public employees instead of Wall Street and outdated state and local tax systems.

What Should We Do about It?

A lot must be done to put our fiscal house in order and maintain the quality of life and economic opportunity we are so used to as Americans. For example, we need to reform the rules of the game so our free market economy can thrive and benefit everyone, not just some. We need to make taxes fair, reform them to address the structural deficits built into our state and local tax systems, and bring them into sync with the new, global economy. And we need to invest in people and the infrastructure that connects them. But, if there were just one thing we could do today, what would that be? Close tax loopholes first!

Close Tax Loopholes First

Closing tax loopholes first will not only go a long way toward closing budget gaps, but it will also level the playing field for all businesses. Policy makers must close tax loopholes first before they cut pensions, salaries, and the jobs of educators and other public servants.

We have done extensive research on this subject and have developed tools that can help you take the first step toward promoting a prosperity agenda (unlike the austerity agenda promoted by governors and legislators in Wisconsin, Ohio, and Indiana). This first step consists of asking your state’s department of taxation a few simple questions. One is: of the 150 largest for-profit employers in your state, how many paid zero taxes in the last three years? You’ll be surprised at the answer. Here is a real-life answer from Mississippi’s department of taxation. Of the state’s 130 largest employers (the department didn’t have data for 150), 103 paid zilch. Zero. The chair of the Mississippi appropriations committee was quoted in the local newspaper — “If small businesses find out we are making them pay taxes and letting these people off the hook, they will stone us to death,” House Appropriations Chair Johnny Stringer, D-Montrose.

Other tools we have developed include model legislation you can use to close tax loopholes. We’ve also co-sponsored a Web site known as Accountable USA that provides state-by-state information on tax subsidies and loopholes. Finally, we’ve developed a network of experts who can provide testimony and technical assistance.

We hope you’ll take action to close tax loopholes first, before allowing any cuts in member pensions, salaries, and jobs. The “Close Tax Loopholes First” strategy is a great defensive and offensive strategy against those who consciously or unconsciously are undermining our nation’s future economic prosperity. For more information, contact TEF@nea.org.
Sample Letter to the Editor

Corporate Tax Loopholes

Dear Editor – There has been a lot of press coverage recently – in this newspaper, but also across the whole spectrum of news and information outlets – about corporate loopholes and taxpayers funding subsidies to large corporations. In many states, legislators have asked their Department of Revenue questions like “How many of the largest 150 corporations in the state paid zero in taxes in any of the last three years?” Citizens in those states have been shocked to learn that a majority of those large corporations paid absolutely no taxes at all for one, two, even three years running. No taxes at all!

Not only is that not fair, it’s very unhealthy for a state’s economy.

It’s not easy to find out which corporations paid how much in taxes. But asking questions in the right way can uncover some revealing facts. Taxpayers in Alabama, Mississippi, and Missouri did just that. Mississippi taxpayers, for instance, learned that 103 of the largest 130 corporations based in their state paid exactly zero taxes in the last three years! When the press reported this fact, one Mississippi legislator said, “If small businesses find out we’re making them pay taxes and letting these [large corporations] off the hook, they will stone us to death.”

Everyone should pay their fair share of taxes, including large corporations. They use public services too, just like all other state residents and small businesses. Could one of our brave legislators step up and ask these questions of our Department of Revenue?
Sample Letter to the Editor

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Is the same thing true here in our state? We don’t know – but we need to know, and we need to know now. In these times, when we face such dramatic challenges trying to balance our state and local budgets, are our largest corporate citizens paying their fair share?

It’s not easy to get this information – which corporations pay how much in taxes – because it is hidden from public view. This is because corporations are largely treated as if they were people, with the same rights of privacy as you and me. Yet asking questions in the right way can often elicit some very revealing responses, as taxpayers in states such as Alabama and Mississippi have discovered in recent years.

Which brave legislator will step up and ask these questions of our Department of Revenue. Of our state’s 150 largest for-profit employers, how many paid zero state corporate income tax in 2006, 2007, 2008 or 2009? Of the 150 companies that reported over $5, $10, and $25 million in total income to the IRS, how many paid zero state corporate income tax for these years?

When well-known political “think-tanks” as divergent as the liberal Citizens for Tax Justice and the conservative Cato Institute are united in opposing corporate tax give-aways, we the citizens should be on full alert! This is corporate welfare, and it ultimately serves only to make our economy less, not more, efficient, while tilting the playing field against our state’s tax-paying citizens and small business. As one Mississippi legislator said when asked about the extent of his state’s corporate welfare, “If small businesses find out we are making them pay taxes and letting the largest corporations off the hook, they will stone us to death.”

[signed, etc]
Sample Letter to the Editor

Dear Editor:

As individuals, we work hard to pay taxes and play by the rules, while small businesses struggle to grow and pay taxes on their profits. Wouldn’t it be a surprise to learn that large corporations here in [insert name of state] pay less in taxes than individuals and small businesses?

Taxpaying citizens in Mississippi, Alabama, and Missouri recently learned that large corporations in their states were receiving generous tax breaks. In Mississippi, for example, 103 of the largest 130 corporations paid zero dollars in state corporate income taxes over the last three years.

I call on brave and fair-minded elected officials in [insert state] to ask the Department of Revenue [insert relevant state agency for your state], “Of the 150 largest for-profit employers in our state, how many paid zero in state corporate income tax in the past three tax years? And for companies that reported over $5 million in total income to the IRS, how many paid zero in state corporate income tax?

We all need to pay our taxes, including large multi-state, multi-national corporations—not only is this fair, it’s also essential for the health of our economy.

[signed, etc]
Closing Corporate Tax Loopholes First

Frequently Asked Questions
(May 11, 2011)

1. **What does corporate tax loophole mean?**
   Corporate tax loophole means loophole in the law, or lack thereof, which allows corporations to avoid paying their fair share of taxes to support public services that they use. For example, lack of proper definition of income in state law allows companies to move money to their subsidiaries in tax havens without paying taxes.

2. **What does corporate tax subsidies, abatement, and incentives (sometimes known as tax expenditures) mean?**
   Governments provide tax credits, subsidies, abatements, and incentives to certain corporations in the name of economic development. These are also known as tax expenditures (foregone tax revenues).

3. **Do corporate tax loopholes and subsidies have positive impact on economy?**
   There is no evidence that corporate tax loopholes and subsidies have a positive impact on the economy. Both conservative (Cato) and progressive (Citizens for Tax Justice/ITEP) think tanks agree that they are harmful to the economy. In fact, they make the playing field uneven for small and large businesses.

4. **How much money do loopholes and subsidies cost in foregone revenues?**
   No one really knows because of lack of corporate accountability and disclosure laws. However, if corporations paid their share of taxes at the same level that they did in 1979, before the Reagan Revolution, state and local government will have $78 billion in additional revenues. Revenue loss due to tax subsidies is estimated to be $70 billion. Revenue losses due to loopholes and tax expenditures at federal level are estimated to be over a trillion dollars.

5. **What are some examples of loopholes at state level?**
   - **Combined Reporting:** When the law does not require corporations to report income, including income of their subsidiaries, corporations shift their income to subsidiaries in no-income tax states or overseas tax havens.
   - **Single Sales Factor:** Amount of tax a multistate corporation must pay to a state depends on three factors – share of payroll, property, and sales in the state. With a strong lobby from large corporations, many states are now moving to a single sales factor formula. This reduces the share of taxes a corporation must pay significantly (almost by 30%).
   - **Nowhere Income/Throwback Rule:** For multistate corporations, corporation must pay tax to each state based on the sales in the state. But sometime the sales are made to federal government, etc. This is known as “no where income.” Tax on non where income should be paid (thrown back) to the state in which corporation is located. But many states have not enacted throwback rule for nowhere income.
   - **Qualified Production Activities Income (QPAI):** In 2004 Federal government enacted QPAI deduction to promote export by American manufacturers. But the law is vague on what is manufacturing that film makers are allowed to use QPAI. QPAI allows companies to take 9% deduction from their federal taxable income. Almost all states tie
their corporate income tax to federal laws. States can de-couple from federal QPAI to avoid loss of revenues.

6. **What are some of the common subsidies given in the name of economic development?**
The subsidies given in the name of economic development include **Tax Increment Financing (TIF)** that dedicates projected increase in property taxes to cover the development costs, **Business Relocation Subsidies** such as property tax abatements for many years and provision of public services such building access roads, etc., for a company to relocate in a certain locality, **Tax Credits** for certain industry such as oil and film, etc., and the list goes on. These subsidies hardly meet their economic goals.

7. **We read that the U.S. has the highest corporate taxes in the world, and that that is one reason why we are having such a hard time competing in the new global economy. Is that true?**
United States may have the highest marginal tax rate (about 35 %), but none of the companies pay at that level. The average rate at which U.S. companies pay taxes is about 5%, one of the lowest in the developed world. In fact, many of the largest U.S. companies pay absolutely nothing in income tax.

8. **How can we find out about corporations that are avoiding paying Corporate Income Tax in our state?**
We cannot easily find out the amount of taxes paid by a specific company by name due to privacy laws, but we can obtain summary statistics on say the top 150 companies from state department of revenue through a friendly legislator. In fact, we have developed a sample letter that your state legislator can use to obtain such information. In states, where this approach has been tried, the findings have been shocking. For example in Mississippi, 103 or the 130 largest for-profit companies in Mississippi paid zero taxes in the last three years. If a company challenges it tax assessment, then it is easy to find the rest of their tax records.

9. **The business lobby argues for cutting the Corporate Income Tax rates – they say it will make businesses more competitive and ultimately result in the state getting more in CIT revenues. Is that true?**
There is no evidence that tax cuts grow the economy, especially in a balanced budget scenario. Every state has to balance its budget, except Vermont. Taxes must equal spending to balance state budgets. When we cut taxes, we must cut spending. The net effect of such action on jobs and economy is always negative. On the other hand raising taxes and investing in public services and infrastructure is always positive.

10. **Does NEA have any tools available to help my state close these loopholes?**
Yes, NEA has developed a tool kit that includes information on tax loopholes and subsidies, messaging research, model legislation, etc. This toolkit can be obtained by contacting TEF@nea.org.

11. **Are there any success stories among NEA state affiliates in closing corporate tax loopholes?**
Yes. NEA has been working with state affiliates in Mississippi, Alabama, Missouri, etc., to address the issue related to tax loopholes with great success.
3. Facts About Loopholes

Corporate Taxes: Key Facts

This article from DEMOS/OurFiscalSecurity.org by David Callahan boils down the massive shift away from corporate tax revenues to personal tax revenues that has taken place over the last half century to a few good graphics, and a short essay. See to what extent federal taxes have shifted from corporations to individuals since 1955, and understand why it is important for reformers to seek to reverse years of decline in corporate tax revenues as a way to meet the country’s fiscal challenges.

The Difference in Corporate Taxes Between 1979 & 2008

A chart showing the huge revenue gap that results from the change in how corporations were taxed in 2008 versus how they were taxed in 1979.

Corporate Income Taxes – ITEP

Read a chapter from The ITEP Guide to Fair State and Local Taxes on Corporate Income Taxes. It reveals that a robust corporate income tax is an important tool for realizing tax fairness. It ensures that the large and profitable corporations that benefit from public services pay their fair share towards the maintenance of those services, just as working people do. The corporate tax is also one of the few progressive taxes available to state policymakers.
Loophole Land: Time to Reform Corporate Taxes

Tuesday, April 12, 2011 at 11:16AM
Many Americans were appalled when it was revealed recently that General Electric would pay no taxes for 2010, despite U.S. profits of over $5 billion.

But I doubt that there is a single top tax attorney or chief financial officer in the country who was all that surprised. You see, these people are denizens of Loophole Land – a very different place than W-2ville where most Americans live.

In Loophole Land, nothing is quite as it seems. Yes, there is a top corporate tax rate of 35 percent, but it is well understood that nobody actually pays that. On the contrary, many companies pay nothing at all.

How can this be?

For starters, Loophole Land has no national borders and so it is easy to shift money around in ways that avoid taxes. General Electric works all over the world, and under tax law, it isn’t taxed on its foreign profits as long as it says that it is reinvesting those profits abroad. Many companies become expert at shifting profits abroad to foreign subsidiaries in low-tax or no-tax nations. In 2008, Goldman Sachs, had 29 subsidiaries located in offshore tax havens and reported profits of over $2 billion. It paid federal taxes of just $14 million on those profits.

Loophole Land is also a place where past business losses are never, ever forgotten. So, for instance, if you run a giant conglomerate with a profit-hungry credit division that makes a lot of stupid loans to people who can’t pay them back, fear not: you’ll be able to write off those losses – in effect getting ordinary taxpayers to subsidize your gambling debts. General Electric is widely seen as a manufacturing company. But up to half of its profits during the Bush years came from its large consumer lending business, GE Capital, and that business suffered huge losses during the crash – reportedly $32 billion. Now we are all helping GE foot the bill for that unlucky streak.

Another thing about Loophole Land is that it is replete with generous tax breaks and subsidies. That’s because over time, different industries have convinced the rulers of Loophole Land that they
are so important that they need a break. The National Commission on Fiscal Responsibility and Reform identified 75 different tax breaks and 30 different tax credits offered to business, calling this system “a patchwork of overly complex and inefficient provisions that creates perverse incentives for investment.”

One final point about Loophole Land: It is place where corporations find it easy to keep creating new loopholes and have enough clout to defend existing ones. General Electric spends millions every year to lobby Congress on arcane provisions of the tax code and is famous for hiring former IRS officials and former congressional staffers to help with this work. Meanwhile, at the local level, corporations have been masters at playing states and cities against each other to secure huge tax breaks, threatening to go elsewhere if they don’t get the perks they demand.

As I said, things are different in Loophole Land than W-2ville. And when you pile up all these accounting tricks and tax breaks, it is no surprise that many companies barely pay corporate income taxes. Indeed, the General Accounting Office reported in 2008 that two out of every three United States corporations paid no federal income taxes from 1998 through 2005.

Loophole Land has been good to its fortunate inhabitants, but not everyone wants the fat times to continue. President Obama’s deficit commission argued that all corporate tax loopholes be closed, and the President has said pretty much the same thing. The flap over GE’s 2010 tax bill has enraged many residents of W-2ville, even though GE finally pledged that it would pay some taxes for that year after all.

Still, corporations have many defenders, including House Budget Chairman Paul Ryan who wants to do away with the corporate income tax altogether and replace it with a Business Consumption Tax. Ryan and others argue that high corporate taxes are hurting U.S. competitiveness.

Is this true? No. Thanks to the laws of Loophole Land, the effective corporate tax rate is actually lower than in the U.S. than many other countries. A recent study by the World Bank showed that the U.S. effective tax rate was below that of many of our top competitors, including Germany, Canada,
India, China, Brazil, and Japan. As well, corporate taxes make up a lower percent of GDP in the U.S. than in many other industrialized countries.

In 2009, corporations made about $1.5 trillion in profits and paid $225 billion in taxes, an overall rate of 15 percent.

It is widely expected that reforms of the corporate income tax will be revenue neutral – closing loopholes while lowering rates, as the deficit commission proposed. But why not ask corporations to make a bigger contribution in this hour of fiscal need?

Back in the 1950s, corporate income taxes made up 23 percent of federal revenues. Now that figure is under 8 percent. Put another way, corporate taxes were between 5 to 6 percent of GDP when Eisenhower was in office, but have since fallen to 2 percent today.

Yes, it is time to say goodbye to Loophole Land. But reformers should also seek to reverse years of decline in corporate tax revenues as a way to meet the country’s fiscal challenges.

If Corporations Were Taxed in 2008 at the Same Rate They Were Taxed in 1979...

State & Local Tax Revenues

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2008 Actual: $58 B

Gap: $78 B

2008 @1979 rate: $136 B

Would fund about 1.25 million teachers
robust corporate income tax is an important tax fairness tool. It ensures that the large and profitable corporations that benefit from public services pay their fair share towards the maintenance of those services, just as working people do. The corporate tax is also one of the few progressive taxes available to state policymakers.

More than forty states currently levy a corporate income tax, but a variety of forces have combined to weaken the tax over the past quarter century. This decline is troubling for at least two reasons. First, rather than arising solely from the conscious design of elected officials, it appears to be at least partially the result of tax avoidance strategies by multi-state corporations. Second, the less that profitable corporations pay in taxes, the more working people must pay to shore up their states’ tax systems.

This chapter discusses the rationale for taxing corporations; explains the basic workings of the corporate tax; details the downward trend in the tax over the last thirty years; explores some of the factors that have contributed to that decline; and reviews some of the reforms—at both the federal and the state level—necessary for revitalizing this important revenue source.

Why Tax Corporations?
Corporations are legally considered “persons,” eligible for many of the same rights and protections as ordinary men and women. Corporations are also granted certain privileges—such as limited liability and perpetual life—that everyday people do not enjoy. And just as working families and individuals benefit from the services that state and local governments provide, so too do corporations. Corporations rely on a state’s education system to provide a trained workforce, use a state’s transportation system to move their products from one place to another, and depend on the state’s court system and police to protect their property and business transactions. Consequently, corporations should contribute to funding these services just as working people do. While corporations—like individuals—may pay taxes on the purchases they make or on the property they own, they should also pay taxes on the profits they realize, much in the way that people earning a living in the state pay taxes on their income.

Just as working families and individuals benefit from the services that state and local governments provide, so too do corporations.

Of course, while a corporation may be treated as a single legal person, it exists in reality as a collection of individuals—the shareholders that own it; the executives and staff that work for it; and the consumers that buy its products. As a result, any tax levied on a corporation ultimately falls on one of these groups. Economic research generally indicates that for the most part, it tends to be borne by corporate shareholders.

From a fairness perspective, the corporate tax has three important attributes:
The corporate income tax is one of the most progressive taxes a state can levy. Since stock ownership is concentrated among the very wealthiest taxpayers, the corporate income tax falls primarily on the most affluent residents of a state. As the chart on this page shows, the wealthiest one percent of Americans held just over half of all corporate stock in 2007, while the poorest ninety percent of Americans owned just 10 percent of the total.

The corporate income tax is, in part, exported to other states. Because most multi-state corporations have shareholders around the country and around the world, the bulk of a state’s corporate income tax will ultimately fall on residents of other states and countries. The ability to export some portion of the corporate income tax may hold great appeal for state policymakers, since it may be their only option for taxing those out-of-state shareholders who benefit indirectly from the services provided to in-state corporations.

The corporate income tax serves as an essential backstop to the personal income tax. Without the corporate tax, much of the income of wealthier Americans would go entirely untaxed, as individuals could easily shelter their personal income by putting it in a corporate form.

How Corporate Income Taxes Work
In its simplest form, the corporate income tax is a tax on corporate profits—that is, receipts minus expenses. Like the personal income tax, the corporate tax is based on the “ability to pay” principle: just as someone who does not have any income in a given year usually does not owe any personal income tax, a corporation that does not realize a profit in any one year generally does not owe any corporate income tax that year.

Here’s an overview of how the state corporate income tax is calculated:

Determining who can be taxed. A given company must determine whether it has nexus in a given state—that is, the company must determine whether it engages in a sufficient level of activity in the state to be subject to tax. The amount of in-state activity in which a company must engage before achieving nexus with a state for corporate income tax purposes is defined by a little-known federal law known as Public Law 86-272, which says that a state cannot apply its corporate income tax to companies whose only connection to the state is the solicitation of orders from, or the shipment of goods to, the residents of the state. In recent years, an increasing number of states have determined that physical presence is not necessary to establish substantial nexus. They have successfully argued in court that out of state businesses selling services to state residents (such as banking or accounting) should be subject to the corporate income tax because they have an “economic presence” in the state and are benefitting from state provided public services to conduct their business activities. As will be discussed later in this chapter, companies are well aware of nexus requirements and may structure their operations so that they avoid “crossing the nexus threshold”—and, by extension, the corporate income tax—in some of the states in which they do business.

Measuring profits. Potentially taxable companies must calculate the net income, or profit, that it earned over the course of the year. To do this, most states “piggyback” on the federal corporate income tax, using the federal definition of taxable income as a starting point. While this dependence on federal tax law leaves states vulnerable to potential revenue losses in the event the law changes—as has been the case with accelerated depreciation rules or the deduction for “qualified production activities income” (QPAI) enacted in recent years—it makes tax administration easier both for states and for taxpayers.

Splitting income into “business” and “non-business” components. The next step is to divide a company’s taxable income into a “business income” component and a “non-business income” component. Business income is typically considered to be the profits a company earns from its day-to-day business operations (and therefore must be distributed among the states in which it operates). Non-business income arises from certain irregular
transactions such as the sale of an asset no longer used in
day to day operations and is allocated in full to the state
in which such a sale occurs or to the state in which the
part of the company generating such income is situated
(usually the state in which a company is headquartered).

■ Apportionment, or determining each state’s share
of corporate “business” income. For obvious reasons,
a given state is not allowed to simply tax all of the profits
of any company that has nexus in the state. If states could
do this, the profits of companies that operate in multiple
states might be taxed many times over.

Instead, states are required to levy their corporate
income taxes in such a way that the whole of a company’s
profits are subject to tax just once.1

States conform with this requirement by dividing their
business income into an “in-state” portion (which is taxable in
a given state) and an “out-of-state” portion (which is not). Each
state uses what is known as an apportionment formula to
accomplish this step.

In the 1950s, legal reformers worked to set up a fair, uniform
way of distributing profits among states, so that the profits
of companies operating in multiple states were taxed exactly
once. The result was a model piece of legislation—the Uniform
Division of Income for Tax Purposes Act or UDITPA—that is today
part of about twenty states’ tax codes. UDITPA recommends
relying on three factors to determine the share of a company’s
profits that can be taxed by a state. These factors are:

■ The percentage of a corporation’s nationwide property
that is located in a state.
■ The percentage of a corporation’s nationwide sales made
to residents of a state.
■ The percentage of a corporation’s nationwide payroll paid
to residents of a state.

The main rationale for using these three factors is that
it is impossible to determine with any accuracy the specific
parts of a company that generate a given dollar of profit, let
alone the states in which those parts may be located. These
three factors are viewed as reasonable approximations of the
share of a company’s profit that arises from doing business in
a state, based on both the demand for company output in the
state (the sales factor) and the production activity in which it
engages in that state (the property and payroll factors), since
profits are a function of both demand and supply.

UDITPA’s recommendation was to assign each of these
three factors an equal weight in distributing a company’s
business income among the states in which it operates. In
other words, the percentage of a company’s business income
that can be considered “in-state” is the average of these three
percentages. If one supposes that the Acme Corporation
operates in three states—each of which uses an equally-
weighted three factor apportionment formula, as UDITPA
recommends—40 percent of its business income will be
apportioned to State A, 25 percent to State B, and 35 percent
to State C. In each case, these percentages are the averages
of Acme’s sales, property, and payroll factors in each state. For
instance, Acme has 50 percent of its total sales, 20 percent of its
property, and 50 percent of its payroll in State A. The average
of these factors is 40 percent; accordingly, 40 percent of Acme’s
business income will be apportioned to State A.

■ Calculating tax: Having determined the share of its
total taxable income that is attributable to a given state
(including the amount of business income that can be
apportioned to the state and the amount of non-business
income that is allocated to the state), the resulting sum is
multiplied by the state’s corporate tax rates to yield a tax
amount.

■ Subtracting credits. Many states now allow targeted
tax credits (for example, credits for research or investment
activities) that companies can subtract directly from their
pre-credit liability.

■ Pay the Minimum. Most states now require that even
technically unprofitable corporations must pay some
minimal amount of income tax. As is discussed at greater
length later in this chapter, states’ minimum taxes vary
from very modest flat dollar amounts to more substantial
sums based on a company’s net worth.

Federal Deductibility
In considering how corporate income taxes are determined,
it is worth noting one final similarity between personal
and corporate state income taxes – both are deductible in
determining federal income tax liability. Thus, since the federal
corporate income tax rate is 35 percent, as much as 35 percent
of a state’s corporate income tax ultimately will be paid, not
by the businesses operating in that state, but by the federal
government in the form of reduced federal corporate income
tax collections. This interaction also means that any state
corporate income tax increase is subsidized by the federal
government—and that part of any state corporate income tax cut will never be received by in-state businesses, but will flow instead into the federal treasury. For a more detailed discussion of this “federal offset” effect, see page 9.

Revenue and Stability
Few state tax trends are as striking as the rapid decline of state corporate income tax revenues. As recently as 1986, state corporate income taxes equaled almost 9 percent of nationwide corporate profits, and 0.5 percent of nationwide Gross State Product (a measure of nationwide economic activity). But by each of these measures, the state corporate tax has declined noticeably in the past two decades.

Corporate Income Tax Reform: Issues and Options
The decline of the state corporate income tax has been so dramatic in recent years that a few anti-tax advocates have suggested repealing the tax entirely, arguing that the limited yield of the corporate tax makes it not worth the trouble of collecting. A robust corporate income tax can—and should—be part of each state’s tax system. State policymakers only need understand the sources of this problem and the solutions that are available to them. Indeed, a number of easily administrable, economically sound reforms could help to revitalize this important revenue source.

An Eroding Federal Tax Base
One of the factors that has contributed to the decline of state corporate income taxes is the erosion of the federal corporate income tax. As noted earlier in this chapter, for many companies, the starting point in determining their state corporate income tax liabilities is the income they report for federal tax purposes. Consequently, changes in law that shrink the size of the federal corporate income tax base, in many instances, result in smaller state bases as well. Similarly, both federal corporate income taxes, relative to gross domestic product, and state corporate income taxes, relative to gross state product, have both grown over the last several years, principally because corporate profits have come to comprise a larger share of the economy. Again, whatever affects the federal base—whether due to policy or from fundamental changes in the economy—affects the state base as well.

Two changes in federal tax law are illustrative. In 2002, Congress and the Bush Administration enacted a federal corporate tax break known as “bonus depreciation” that enabled companies to write off capital investments much more rapidly than they had been able to do previously. At the time the change was made, it was expected to lead to a federal revenue loss of $97 billion; since that break affected federal taxable income, it was also expected to suppress state corporate income tax revenue by as much as $14 billion².

In 2004, Congress and the President extended another giveaway to profitable multinational corporations. Known as the “qualified production activities income” (QPAI) deduction, this tax cut was originally envisioned as a means to
compensate manufacturers for the loss of an export subsidy that violated World Trade Organization rules, but grew well beyond that purpose on its way to enactment. At the time that it became law, this new deduction was projected to reduce federal tax revenue by $77 billion over 10 years. States were also expected to sustain significant revenue losses from the change.

States are not powerless in the face of such changes, however. They do not have to stand idly by and accept such unwelcome inheritances from the federal government. They can—and have—selectively severed the connections between the federal tax code and their own tax laws that convey such tax cuts from one level of government. This process, known as “decoupling,” allows states to preserve most of the administrative ease of linking to federal rules while also preserving their revenue stream. Indeed, at least twenty states have decoupled from the “bonus depreciation” tax break, while just under half have chosen to decouple from the QPAI deduction.

Manipulating Apportionment Rules in the Name of Economic Development?

In determining what portion of a multistate company’s profit is taxable in a given state, most states use the three-factor, payroll-property-sales apportionment formula method described on page 46. In recent years, however, many states have deviated from this basic three-factor approach by increasing the importance of the “sales factor.” For example, Florida allows companies to count the sales factor twice. (In the example on page 46, this means that instead of taxing 70 percent of a company’s business income (the average of 90, 30 and 90), Florida can only tax 60 percent of that income (the average of 90, 30, 30 and 90). This “double weighting” approach reduces the tax paid by corporations that sell most of their products in other states—for example, manufacturing corporations. Nine states still use the unweighted UDITPA formula.

Many states have gone even further, increasing the weight of the sales factor to one hundred percent—eliminating the payroll and property factors entirely. This is known as the “single sales factor,” or SSF. Under SSF, the sole determinant of a corporation’s state tax is how much of its sales are made to in-state customers. Advocates of increasing the sales factor claim that it encourages exporting businesses to locate in a state, since it favors companies with greater payroll and assets in a state than sales. But claims that an increased sales factor attracts corporate investment are dubious. Indeed, in some cases, it might actually discourage investment in a state. If a company, for instance, only ships products into a state, it may not have nexus with the state. But in a state with an increased sales factor, if such a company makes even a small investment in a state, it will immediately have much of its income apportioned to the state because the sales factor counts so heavily. And a company with only a small amount of property or payroll in a sales factor state can reduce its in-state corporate taxes to zero by moving this property and payroll out of the state. Thus, increasing the sales factor can actually have exactly the opposite effect of what its proponents intend: discouraging in-state investment.

In addition, increasing the sales factor discriminates between companies in a way that is hard to defend. Increasing the sales factor will reduce taxes for some companies, but will increase taxes for others. For each corporation that benefits from SSF because most of its sales take place in other states, there are also corporations that will be punished by SSF rules because their sales are mostly in-state. Smaller corporations that tend to make most or all of their sales within the state in which they are located generally get little if any tax savings.
under the SSF approach. In short, adoption of the single sales factor ultimately benefits some corporations while punishing others in an arbitrary way.

These arbitrary distinctions reduce the confidence of the public—and of corporations—in the fairness of state tax administration. When profitable companies benefit from a state’s services—as the manufacturing companies that typically benefit from the single sales factor clearly do—they should pay their fair share of the corporate tax. When these corporations are allowed to reduce or eliminate their tax liability, that lost revenue must be made up by other competing companies—and by individual taxpayers.

**Separate Accounting & Transfer Pricing**

A further inconsistency in state corporate taxes stems from the fact that some states permit companies to determine their in-state taxable income using separate accounting for each of their related subsidiaries. Separate accounting is a bookkeeping procedure that determines each company’s taxable income by having companies keep separate accounts for their in-state and out-of-state business segments. Every transaction between the legally distinct subsidiaries of a company is supposed to have a transfer price (that is, the “sales price” at which these companies are essentially selling products to themselves) attached to it, which is supposed to be carefully scrutinized by auditors.

Not surprisingly, separate accounting is subject to abuse by large, multistate companies. In fact, it’s an open highway for corporate tax avoidance. A large multistate company can use separate accounting to shift taxable profits to low-tax jurisdictions. Here’s how it works:

Consider a multistate company that has two subsidiaries, one in State A that permits separate accounting and one in State B, which has no corporate income tax. To reduce its taxable profits, the subsidiary in State A might say that it “pays” high transfer prices for the items it “buys” from the State B subsidiary. This shifts income out of State A (where it would be taxed) and into State B (where it’s not).

For example, a furniture company might machine the metal parts for its furniture (handles, knobs, etc.) in State B, but assemble the furniture in State A. The company will, on paper, charge very high prices to its State A subsidiary for the metal parts. This makes the State B subsidiary look like it has very high profits (which are not taxed) and the State A subsidiary look like it has very low (taxable) profits.

Of course, except for tax considerations it doesn’t matter to the parent company if its State B subsidiary has 80 percent of the total profits and its State A subsidiary has only 20 percent. Either way, the parent company gets 100 percent of the profits.

Another example of transfer pricing that has gotten more attention in recent years is the passive investment company (PIC) approach. In this variation on the transfer pricing scheme, a multi-state company will set up a subsidiary in a state that does not tax certain types of intangible income like royalties and interest—and make sure that this subsidiary receives all of the company’s royalty income. The most infamous example of this practice is the Toys R Us corporation, which created a subsidiary in Delaware called Geoffrey, Inc. The subsidiary owns the Toys R Us trademark, and Toys R Us stores around the nation pay royalty fees to the Delaware subsidiary for their use of the trademark. This reduces the taxable profit of Toys R Us in two ways: stores based in other states get to deduct their royalty payments as a cost of doing business, which reduces their taxable profit, and the Delaware subsidiary pays no tax on their royalty income because Delaware does not tax such income.

Trying to assure accurate transfer pricing under separate accounting creates huge enforcement problems. It is a time-consuming, complicated and often impossible job for state auditors to determine whether separate accounting methods accurately reflect a company’s net business income in the state. The federal government, which tries to apply the same approach to multinational corporations, has had the same kinds of difficulties.

States seeking to prevent these income-shifting strategies have two options. They can close down these loopholes one at a time—as some states have done in response to the PIC problem by enacting legislation that prevents the use of PICs—or they can adopt a comprehensive solution known as combined reporting. Combined reporting requires a multi-

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**ExxonMobil to Maine: Sayonara**

Maine is among the states that have recently enacted a “single sales factor” with the hope of improving the state’s business climate. But the hit-or-miss nature of SSF became immediately apparent when ExxonMobil announced in July of 2008 that they planned to stop doing business with Maine airports—and cited likely tax hikes from the new single sales factor as one reason for their decision.
Separate accounting is an open highway for corporate tax avoidance by big multi-state companies—but “combined reporting” can help clamp down on tax-avoidance schemes.

state corporation to determine its apportionable income by adding together the profits of all its subsidiaries into one total. Since the income of subsidiaries in the various states is added together in one sum, there is no tax advantage to income shifting between these subsidiaries under a combined reporting regime. While anti-PIC legislation can close down one particular path to tax avoidance, combined reporting is a better, more comprehensive approach to loophole-closing because it simply removes the incentive to shift income from high-tax to low-tax jurisdictions.

**Combined reporting** is intuitively more fair than separate accounting because it ensures that a company’s tax should not change just because its organizational structure changes. It also creates a level playing field between smaller and larger companies: small companies doing business in only one state can’t use separate accounting to reduce their tax because they have no business units in other states to shift their income to. Large, multi-state corporations will find it easier to avoid paying taxes using separate accounting because they have business units in multiple states. The fact that small businesses can benefit from combined reporting may help explain the growing popularity of this needed reform: seven states and DC have enacted combined reporting since 2004.

**“Nowhere Income” and the Throwback Rule**

Every state with a corporate income tax uses the location of the corporation’s sales as a factor in apportioning business income between states. The “sales factor” for a given corporation in a given state is calculated by assigning each individual sale a company makes to exactly one state, and then calculating what percentage of total nationwide sales are in each state. In general, the rule states use to decide which states a given sale should be assigned to is the “destination rule,” which says that a sale should be assigned to the state to which the product sold is being sent.

Sometimes, however, sales allocated to other states using the destination rule end up not being taxed at all because the destination state lacks the authority to tax the seller. When this happens, it’s because the seller doesn’t have nexus in the destination state.

Unless states take action, this “nowhere income” will not be taxed anywhere at the state level. The best remedy for the problem of nowhere income is enacting a **throwback rule**, which simply says that any sales to other states that are not taxable will be thrown back into the state in which the sale originated for tax purposes. The throwback rule was among the tax rules adopted by the UDITPA in the 1950s, but many states still have not enacted it. The lack of throwback rules poses a major threat to state corporate income tax revenues in almost twenty states.

**Splitting Hairs? Exploiting the Business/Nonbusiness Income Distinction**

As previously noted, every company must divide its potentially taxable income into two categories: a “business income” component and a “nonbusiness income” component. Business income is apportioned (divided) between the states in which a company does business, while non-business income generally is taxed entirely by the one state in which the asset generating that income is managed. But each state must set its own legal dividing line between business- and non-business income—and the way in which states do this has important implications for corporate tax fairness.

The appropriate dividing line between these two types of income has been the topic of frequent litigation in the states. In many states, business income is defined as any income that arises from the regular transactions that a company typically engages in—which means that any income that can be characterized as “irregular” may be considered non-business (and therefore non-apportionable) income. Businesses sometimes try to take advantage of this poorly defined distinction between business and non-business income by misleadingly classifying some business income as irregular non-business income, then allocating this non-business income entirely to a low-tax state in which they are nominally headquartered. A 1992 U.S. Supreme Court case, *Allied-Signal v. Director, Division of Taxation, New Jersey*, made it clear that many states currently falling prey to these tax-minimization strategies are not taxing all the corporate income they could legally tax.

States with corporate income taxes have responded to these corporate tax-minimization efforts using two strategies:

- Seven states define business income as everything they can legally apportion under the U.S. Constitution—which
means that non-business income is whatever is left over. This approach is recommended by corporate tax experts as the best way of fairly taxing multi-state corporations’ income.¹

Eleven states define all income as business income. This approach allows states to tax some of the “irregular” income that companies seek to classify as non-business income, but prevents states from taxing some non-business income that they are entitled to tax. For example, if a company is based in state A, and generates $100 million of non-business income in state A, the state should be entitled to tax the entire amount as non-business income (since non-business income is not apportioned between states). But when states make no distinction between business and non-business income, all of a company’s income is apportioned—which means that state A can only tax a percentage of this income.

Every state with a corporate income tax (except for the six states that currently define business income in accordance with the U.S. Constitution’s limits), could enact statutory changes that would allow them to prevent the nonbusiness income loophole from eroding their tax base.

Corporate Minimum Taxes

All states with corporate income taxes use corporate profits to define the tax base. This ensures that the corporate tax reflects a business’ ability to pay the tax: if a corporation loses money in any year, they don’t pay the tax. But the growing use of tax avoidance strategies means that many profitable corporations are now able to report artificially low (or negative) profits for tax purposes even when they’ve done quite well financially. These tax avoidance strategies have created the specter of profitable “zero-tax corporations.” Federal tax reform legislation in 1986 created an “alternative minimum tax” (AMT) to ensure that all profitable corporations would pay some tax no matter how many tax breaks they might otherwise claim.

States seeking to follow the federal government’s lead have taken one of three strategies: imposing an AMT based on the federal tax, imposing a flat-dollar minimum tax, or using a non-profit-based measure of business activity as a backstop to the corporate profits tax.

A few states use an AMT based on the federal tax. Like the regular corporate income tax, the AMT usually is defined as a percentage of corporate profits—but the AMT typically applies a lower tax rate to a much broader definition of corporate taxable income. This approach has become much less useful because the federal AMT has been seriously watered-down over time by Congress—but a state AMT based on the older federal AMT rules could still help prevent the excessive use of tax loopholes.

A growing number of states rely on a simpler, lower form of minimum tax: a flat-dollar amount that all corporations must pay. This amount ranges widely, from $50 in Ohio to a maximum of $1,500 in New York. As more and more corporations rely on tax avoidance strategies, the fixed-dollar minimum tax has become more important in these states: in New York, for example, more than sixty percent of all C-corporations paid only the fixed-dollar minimum tax in tax year 2006.² More than 70 percent of Utah C-corporations paid only the minimum in tax 2008 including 27 percent of profitable corporations.³

About half of the states now levy a “corporate franchise tax” in addition to a corporate income tax. In general, these taxes are based on a company’s net worth. Some states also use a tax on gross receipts. Gross receipts taxes are described in Chapter Three.

There is a growing consensus among many tax experts that state and local tax breaks for business are being used in a way that is actually unconstitutional, by subverting the regular flow of interstate commerce. Congress can take steps to stop the bleeding.

Should States Repeal Their Corporate Taxes?

A few states, including Ohio and Texas, have recently enacted alternative businesses taxes that are designed not as a backstop to the profits tax, but as a replacement. Learn more about the shortcomings of this approach to “tax reform” in Chapter Three.
Each of these options can help eliminate the “zero-tax corporation” problem—and (in some cases) can also help states to get around the problem of corporate nexus described above. Some nexus rules only apply to taxes that are based on profit. So a company that does business in a state, but doesn’t have enough physical presence in the state to satisfy the nexus rule, cannot be reached by a profits-based taxed, but can be reached by a fixed-dollar minimum tax.

Corporate Disclosure: An Important Tool for Tax Fairness

Tax fairness is important. The perception that state and local taxes treat individuals and corporations fairly is a cornerstone of public support for the tax system. The fairness of corporate taxes at the federal level can be evaluated on a company-by-company basis, with some difficulty: publicly available Securities and Exchange Commission (SEC) filings allow analysts to determine how much the nation’s largest corporations have paid in federal taxes and compare this to their profits. In a series of reports, ITEP has shown that many profitable corporations pay little or no federal income tax. A September 2004 ITEP report surveyed 275 of the most profitable corporations, and found that almost a third of these companies paid zero (or less) in federal taxes in at least one year between 2001 and 2003.8

Unfortunately, the fairness of each state’s corporate tax cannot be evaluated in the same way, because neither the SEC nor most state governments require corporations to release detailed information on their state corporate tax payments. A few states have now implemented some form of corporate tax disclosure. For example, Massachusetts now requires very limited anonymous disclosure of basic information about profits, taxes paid and tax credits received. But nearly all states still have no such requirements. Greater state corporate tax disclosure is the best means available to ensure that each corporation is treated fairly—and that corporations as a group pay their fair share of taxes.

Corporate disclosure can also help states to prevent the accounting hijinks described above. For example, some companies will report certain income as “non-business income” in one state and “business income” in another to minimize their tax liability. More open reporting of this information could allow states to check for consistency in income reporting between states.

Conclusion

State corporate profits taxes have been a mainstay of state tax systems for almost a century. And despite the worrisome recent drop in the yield of these taxes, virtually every state now has available a straightforward set of tax reform policies that could not only end the erosion of their corporate tax base, but could help these taxes regain their former health.
4. Messaging Around Loopholes

NEA Findings Report and Recommendations on Messaging

In 2010-2011, NEA working with Lake Research Partners conducted a survey around TEF messaging, and then collaborated with Metropolitan Group in analyzing the findings and distilling useful messages on taxation and fairness. The project revealed that voters strongly support changing the way public education is funded by increasing funding for public schools by closing corporate tax loopholes. A summary of the final recommendation is included here.

The recommended message to build on is **Strong Schools, Strong Communities, Strong Economy.**
NEA Findings Report and Recommendations
Revised 1/19/2011:

Laura K. Lee Dellinger
Eric Friedenwald-Fishman
Beth Strachan
Nikki Carter

Revised 1/19/2011
Basic Message Framework

Note: Factoids that tested well should be used as supporting information but not primary messages. They are referenced specifically in the findings section of this report.

What?

A good education is the key to every child’s future and to our economic strength as a nation.

Our system for funding it is broken and not every child gets the same quality of education or the same opportunities for achievement.

In a recent survey voters and NEA members alike strongly support restructuring the way public education is funded and increasing funding to improve student achievement.

So What?

We are living in a time of global knowledge and in an increasingly competitive world economy focused on information.

– To keep up with rapid changes in technology and in our global economy, schools must be able to help students adapt in every aspect of their lives and to be productive citizens. If we want our children to compete in the 21st Century we must give them the quality education they need to be competitive in a global community.

– When we invest in public education, we grow our economy–creating more jobs, higher incomes and greater opportunity for all everyone.

Now what?

We must adequately fund our education system to ensure that all young people have equal access to a quality public education. This means we must restructure our broken tax system so we can invest in education and ensure student learning.

Creating a tax structure where everyone (including the wealthiest individuals and corporations) pays their fair share is the best way to ensure the future of our children and the future of our country’s economy for the long term.

Specific tangible options that tested well:

The first step is to restructure funding for education by

– closing loopholes

– increasing taxes on the wealthiest individuals by 1%
Key Findings: Specific Proposals

Framing specific tax proposals that make the wealthy and corporations pay their fair share within the goal of generating more funding in order to increase student achievement and performance garners more support from voters across the board.

- **Majorities** of voters and NEA members strongly support restructuring the way public education is funded by increasing funding dedicated to public schools through
  - closing tax loopholes for corporations and
  - raising taxes on families making over $250,000.

- Focus groups and executive interviewee express concern about removing incentives, but favor closing loopholes.
- Establishing a **corporate minimum tax is less popular**. Though it garners six in ten in favor, it does not earn a majority strongly in support as do the other two proposals.

- Larger majorities of voters support these proposals when they are framed as “increasing funding for public schools to increase student achievement and performance” rather than when it is framed as “changing the way public education is funded by increasing funding dedicated to public schools.”

Across most of the NEA operational regions, strong support for each of the proposals is equal, or higher, when described as increasing student achievement and performance, and is especially stronger for Pacific region voters.
A majority of voters support raising taxes on the rich and corporations so that funding for public schools is adequate and equitable. Strong support reaches a majority when the proposal includes the phrase that raising taxes "would make corporations and the rich pay their fair share." Intensity of support among NEA members, however, is slightly lower when the "pay their fair share" language is included. In focus groups and interviews participants question the timing of an increase on anyone in the current economy.

Now let me read you a proposal around changing the way public education is funded. [This proposal would raise taxes on corporations and the rich.] [This proposal would make corporations and the rich pay their fair share by raising their taxes]. This money would be dedicated to public schools so that funding for public schools is adequate and equitable. Do you favor or oppose this proposal?

*Split-sampled question
Larger majorities of voters support these specific proposals when they are framed not as “changing the way public education is funded by increasing funding dedicated to public schools,” but as “increasing funding for public schools to increase student achievement and performance.” Using this framing, support is nine points higher for closing corporate tax loopholes, although opposition also increases.

Now I am going to read you some different ways to increase funding for public schools in order to increase student achievement and performance. For each, please tell me if you favor or oppose the proposal.

---

**Increasing Funding for Public Schools to Increase Student Achievement & Performance By***

- **Raising taxes on families making over $250,000 a year by 1% on income over $250,000**
  - Strongly oppose: 26%
  - Not so strongly oppose: 19%
  - Strongly favor: 58%
  - Not so strongly favor: 72%

- **Closing tax loopholes for corporations**
  - Strongly oppose: 19%
  - Not so strongly oppose: 13%
  - Strongly favor: 58%
  - Not so strongly favor: 74%

- **Establishing a corporate minimum tax**
  - Strongly oppose: 24%
  - Not so strongly oppose: 17%
  - Strongly favor: 47%
  - Not so strongly favor: 66%

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*Split-sampled questions*
A majority of voters strongly support changing the way public education is funded by increasing funding dedicated to public schools through closing tax loopholes for corporations and by raising taxes on families making over $250,000. Establishing a corporate minimum tax is less popular. Though it garners six in ten in favor, it does not earn a majority in strong support.

Now I am going to read you some different ways to change the way public education is funded by increasing the funding for public schools that would be dedicated to public schools. For each, please tell me if you favor or oppose the proposal.

### Increasing Funding for Public Schools that would be Dedicated to Public Schools By...

- **Closing tax loopholes for corporations**
  - Strongly favor: 58%
  - Not so strongly favor: 17%
  - Strongly oppose: 22%
  - Total: 71%

- **Raising taxes on families making over $250,000 a year by 1% on income over $250,000**
  - Strongly favor: 53%
  - Not so strongly favor: 27%
  - Strongly oppose: 32%
  - Total: 65%

- **Establishing a corporate minimum tax**
  - Strongly favor: 39%
  - Not so strongly favor: 24%
  - Strongly oppose: 29%
  - Total: 60%

*Split-sampled questions*
Strategic Messaging

Making the American Dream Mean Something Again
Inequality and the Middle Class

Research conducted for Change to Win by
Drew Westen, Ph.D., Westen Strategies

Westen Strategies, LLC

April 2011
Every time you turn on the television, you hear another politician telling us we're broke. And the solution's always the same: cut taxes for millionaires while cutting unemployment insurance for working people, Medicare and Social Security for seniors, and education for our kids. But the problem isn't that we're broke; it's that our system is broken. In the last 30 years, our economy has doubled in size. So you'd think the average working family would be twice as comfortable. But that hasn't happened. The pie is getting bigger, but the people cutting it are cutting themselves bigger and bigger slices. Corporate taxes used to account for 40 percent of all tax dollars. Now it's just over 5 percent, and the majority of companies doing business in this country, including foreign companies, aren't paying a cent. CEOs always got paid well, but now it's out of control. Every time a CEO cuts himself a bonus check for $25 million, he's cutting the paychecks of 25,000 of his workers by $1000 each. You want to eliminate the deficit? Let big corporations and their CEOs pay what they used to pay in taxes, and the deficit will be gone faster than you can say "fairness."
Every time you turn on the television, you hear another politician telling us we're broke. And the solution's always the same: cut taxes for millionaires while cutting unemployment insurance for working people, Medicare and Social Security for seniors, and education for our kids. But the problem isn't that we're broke; it's that our system is broken. In the last 30 years, our economy has doubled in size. So you'd think the average working family would be twice as well-off. But that hasn't happened. The pie is getting bigger, but the people cutting it are cutting themselves bigger and bigger slices. The majority of companies doing business in this country, including foreign companies, aren't paying a cent in American taxes. CEOs always got paid well, but now it's out of control. Every time a CEO cuts himself a bonus check for $25 million, he's cutting the paychecks of 25,000 of his workers by $1000 each. You want to eliminate the deficit? Let big corporations and their CEOs pay what they used to pay in taxes, and the deficit will be gone faster than you can say “pull your own weight.”
5. Common Tax Loopholes at State Level

The following policy briefs issued by the Institute on Taxation and Economic Policy (ITEP) provide some specific information on state level common tax loopholes.

- Combined Reporting of State Corporate Income Taxes
- “Nowhere Income” and Throwback Rule
- The “QPAI” Corporate Tax Break: How it Works and How States Can Respond
- Corporate Income Tax Apportionment and the “Single Sales Factor”

This presentation “Closing Corporate Tax Loopholes to Achieve Strong Schools, Strong Communities, Strong Economy” backs up ITEP’s policy papers, outlining problems and possible fixes. It contains some state-by-state data on corporate loopholes presented in maps.
Combined Reporting of State Corporate Income Taxes: A Primer

Over the past several decades, state corporate income taxes have declined markedly. One of the factors contributing to this decline has been aggressive tax avoidance on the part of large, multi-state corporations; a 2003 study by the Multistate Tax Commission suggests that states in the aggregate lost as much as $7.1 billion in corporate income tax revenue in fiscal year (FY) 2001 due to such activities. The most effective approach to combating corporate tax avoidance is the use of combined reporting, a method of taxation currently employed in over 20 states. Texas, New York, West Virginia, Michigan, Massachusetts, and Wisconsin have all enacted legislation to institute combined reporting within the past five years, while commissions in several other states, such as North Carolina, Pennsylvania, and Kentucky, have recently recommended its adoption. This policy brief explains how combined reporting works and assesses its advantages and disadvantages.

How Combined Reporting Works

For corporations that only do business in one state, paying corporate income taxes can be pretty simple – all of their profits are taxable in the state in which they are located. For corporations with subsidiaries in multiple states, the task of determining the amount of profits subject to taxation is more complicated. There are broadly two ways of doing this: combined reporting, which requires a multi-state corporation to add together the profits of all of its subsidiaries, regardless of their location, into one report, and separate accounting, which allows companies to report the profit of each of its subsidiaries independently. For example, if the Acme Corporation has three subsidiaries in three different states, a combined reporting state would require Acme to report the profits of the four parts of the corporation as one total, on the grounds that each of the parts of the corporation contribute to its profitability. In contrast, a separate accounting state would require only those parts of the Acme Corporation that have “nexus” in that state – that is, enough in-state economic activity to be subject to the state’s corporate income tax – to report their profits, even if the out-of-state parts of the corporation are responsible for the bulk of Acme’s overall profits.

How Businesses Abuse Separate Accounting

In addition to allowing companies to structure their operations so that some subsidiaries avoid taxation, separate accounting enables corporations to use certain gimmicks to shift their profits from high-tax states to low-tax states. The most infamous example of such a gimmick is the passive investment company (PIC) loophole.

Here’s how the PIC loophole works: suppose the Acme Corporation is based in State A, which uses separate accounting. If Acme has sales of $100 million and expenses of $70 million, its taxable profits ought to be $30 million. If Acme sets up a subsidiary – commonly referred to as a passive investment company (PIC) – in a state, like Delaware, that does not tax intangible property such as trademarks and patents and makes that subsidiary the owner of Acme’s intangible property, then the subsidiary can charge Acme...
for the use of these trademarks. Although Acme’s payment to the PIC is basically a transfer of funds within the company, under separate accounting, this expense counts as a cost of doing business—and can therefore be subtracted from Acme’s income in determining its taxable profits in State A. Since the subsidiary can charge Acme whatever it wants for the use of the trademarks, Acme may actually be able to zero out its taxable profit through this sham “expense.” In the example at right, Acme’s subsidiary (i.e. its PIC) charges it $30 million for the use of the trademarks, which reduces Acme’s taxable profit in State A to zero. Because the subsidiary exists only to lease trademarks to Acme, none of the subsidiary’s sham “income” is taxable in Delaware. Furthermore, because the PIC does not have nexus in State A, Acme pays no tax to State A on the profits generated by the PIC. A wide variety of major corporations currently use the PIC loophole in separate accounting states, including K Mart, Home Depot and Circuit City.

Unfortunately, the PIC loophole is one of just many tax avoidance techniques available to corporations operating in separate accounting states. For example, a February 2007 Wall Street Journal article notes that Wal-Mart may have been able to avoid as much as $350 million in state corporate income taxes between 1998 and 2001 due to another, similar loophole known as “captive real estate investment trusts (REITs)”.

### Combined Reporting: A Simple Approach to Preventing Tax Avoidance

In a combined reporting system, all of the income and expenses of Acme and its subsidiaries would be added together, so that PICs and other loopholes would have no impact at all on the company’s taxable profits. In the example above, if Acme tried to use the PIC loophole, the subsidiary’s $30 million of income from the sham transaction would be canceled out by Acme’s $30 million of expenses, with a net impact of zero on Acme’s taxable profits.

Of course, combined reporting is not the only option available to states seeking to prevent the use of accounting gimmicks such as the PIC loophole. States can also close these loopholes one at a time. For example, several states have enacted legislation that specifically prohibits shifting income to tax haven states through the use of passive investment corporations. The main shortcoming of this approach is that in the absence of combined reporting, multi-state corporations will always be able to develop new methods of transferring profits from high-tax to low-tax states. The only limit to the emergence of new approaches to transferring income to tax haven states is the creativity of corporate accountants. Combined reporting is a single, comprehensive solution that eliminates all potential tax advantages that can be derived from moving corporate income between states.

### Conclusion

Reform strategies that broaden the corporate income tax base by eliminating expensive loopholes can ensure that profitable corporations pay their fair share for the public services they use every day, can level the playing field between multistate corporations and locally-based companies that can not avail themselves of sophisticated tax avoidance schemes, and can help balance state budgets without requiring unpopular increases in tax rates. Requiring combined reporting is the single best strategy available to lawmakers seeking to stamp out accounting shenanigans by large and profitable corporations.
“Nowhere Income” and the Throwback Rule

Every state that levies a corporate income tax must determine, for each company doing business within its borders, how much of the company’s profits it can tax. One factor that all such states use to make this determination is the percentage of the company’s nationwide sales that can be attributed to the state. Ideally, all of a company’s sales would be attributed to the states in which it operates, but, due to differences among states’ corporate income tax rules, this is not always the case. In some instances, a portion of a business’ sales are not attributed to any state, which means that a corresponding portion of its profits go untaxed, a phenomenon often referred to as “nowhere income.” This policy brief explains how this phenomenon arises and discusses how a throwback rule can be used to ensure that all corporate profits are subject to taxation.

Dividing Corporate Profits Among the States

Once a state has determined that a company is liable for its corporate income tax, it must then calculate how much of that company’s nationwide profits can be taxed in that state, a process know as apportionment. The general aim of apportionment is to estimate how much of a company’s activities occur in each state and to distribute its profits, for tax purposes, on that basis. The most widely accepted approach to apportionment looks at three different activities — the total amount of sales a company makes, the total amount of property it owns, and the total amount it pays its employees — and calculates the percentage of those activities that took place in that state. Some states now ignore property and payroll in apportioning profits, but all states still use the location of a company’s total sales in making these calculations. In other words, for each potentially taxable corporation, every state with a corporate income tax must figure out total in-state sales as a percentage of total overall sales. (For more on state apportionment rules, see ITEP Policy Brief #11.)

To calculate this percentage — often called the “sales factor” — each individual sale a corporation makes must be assigned to just one state. For sales of tangible personal property (that is, items with physical substance that can be touched, like a machine), most states do this using the “destination rule,” which assigns sales to the state into which the product sold is delivered. For example, if a New York business manufactures a machine and sells it to a customer in Pennsylvania, this sale counts toward that business’ total Pennsylvania sales, but does not count toward its New York sales.

The Problem of “Nowhere Income”

Sometimes, however, sales assigned to other states by the destination rule end up not being included in those states’ sales factors, because the destination state lacks the authority to tax the seller. When this happens, a portion of that company’s profits go untaxed. That untaxed profit is known as “nowhere income” — and many large businesses are aware that they can set up their operations to maximize nowhere income and minimize the taxes they owe.

Nowhere income arises when a company is not subject to a corporate income tax in one of the states into which it makes sales, either because that state does not levy such a tax or because the company doesn’t have a sufficient level of activity in the state to be taxed.
subject to the tax, a concept known as “nexus”. Having property or payroll in a state is always sufficient to constitute nexus, but making sales into a state is not. A little known federal statute, Public Law 86-272, stipulates that making sales into a state is not sufficient to generate nexus if:

1. the company’s activities in the state are limited to soliciting sales of tangible personal property;
2. the orders for the company’s sales are taken outside of the state, and;
3. all such sales are delivered from outside of the state.

Given these restrictions, companies may be able avoid establishing nexus in some of the states into which they make sales and thus generate nowhere income that is untaxed in any state.

A Simple Solution: “Throwback” or “Throwout” Rules

The best state remedy for the problem of nowhere income is enacting a “throwback rule,” which mandates that sales into other states or to the federal government that are not taxable will be “thrown back” into the state of origin for tax purposes. In other words, the throwback rule is a backup for the destination rule: when the destination rule assigns a sale to a state that can’t tax that sale, the sale is re-assigned back to the state that is the source of the sale. When legal reformers sought to create a uniform and fair system of state corporate taxation in the 1950s, they included the throwback rule in their recommendations, known as the Uniform Division of Income for Tax Purposes Act (UDITPA). About half of the states with corporate income taxes have now created a throwback rule in keeping with the UDITPA recommendations—but half of the states have yet to enact this important reform.

One alternative to the throwback rule is the “throwout rule” currently used by New Jersey and West Virginia. Rather than seeking to assign all sales to the states in which the company operates, the throwout rule simply excludes from overall sales any sales that are not assigned to any state.

Why Throwback and Throwout Rules Are Necessary

The existence of states without throwback rules creates a clear tax avoidance opportunity for multi-state corporations. These companies can reduce their state taxes by locating their property and payroll in states that don’t have a throwback rule and then making sales to customers in states in which the company does not have nexus. Companies aggressively pursuing this “nowhere income” tax avoidance strategy can reduce their state tax bill far below what they ought to pay — and far below the taxes paid by competing companies.

Allowing companies to minimize their tax liability through these strategies distorts the economic incentives they face, puts other businesses at a disadvantage, and drains away tax revenue that could be used to finance vitally important long-term public investments. Throwback and throwout rules can help to level the economic playing field among all businesses and to reduce state fiscal stress, just by simply ensuring that all of the profits companies earn are subject to taxation in the states in which they do business.
The “QPAI” Corporate Tax Break:
How It Works and How States Can Respond

The past quarter century has seen a dramatic decline in the yield of corporate income taxes at both the federal and state levels. Major federal corporate tax legislation enacted in 2004 created a new tax break, known as the “Qualified Production Activities Income” (QPAI) deduction, that has further accelerated the decline of the corporate tax. This policy brief evaluates the QPAI deduction and discusses possible state policy responses.

The Origin of QPAI

Over the past 35 years, the federal government has allowed a series of tax breaks designed to encourage exports by American manufacturers. The most recent such tax break, the “extra-territorial income” (ETI) shelter, was found to violate U.S. trade treaties with other countries by the World Trade Organization (WTO) in 2002. In the wake of this ruling, the European Union began imposing retaliatory sanctions against the United States in March of 2004.

Congressional tax writers immediately sought to comply with the WTO ruling by repealing the ETI tax break. But lawmakers were wary of being seen as hiking taxes on manufacturers—even when the “tax hike” in question resulted from repealing an illegal tax break—and sought to enact new tax cuts that would offset the lost ETI subsidy for manufacturers. However, as the tax bill took shape, this provision was hijacked by legislators seeking to use the tax bill to provide new tax breaks for other favored corporations. As finally enacted, the QPAI break ballooned to apply to a wide variety of corporate activities, and was the most expensive ornament on a bill derisively labeled a “Christmas tree” by many observers.

How QPAI Works

The QPAI deduction allows a broad category of manufacturing-related business activity, or “QPAI income,” to be partially deducted from a company’s profits. The deduction is being phased in over six years: in 2005 and 2006, companies were allowed to deduct 3 percent of their QPAI income; for 2007 through 2009, they can deduct 6 percent of such income; and starting in 2010, they will be able to deduct 9 percent. Once fully implemented, this deduction will effectively reduce the tax rate on qualifying profits from the current 35 percent to under 32 percent. (That is, taxing a certain amount of income at 32 percent is roughly the same as deducting 9 percent of that income and taxing the remainder at 35 percent.)

QPAI was ostensibly designed to benefit only the American exporters that would be hurt by ETI repeal, but the QPAI deduction’s reach was made broader—and more vaguely defined—as the bill made its way through Congress. The “domestic production” tax break was originally intended for U.S.-based manufacturers, but the enacted law interprets “production” quite loosely to include architectural and engineering services, home and building construction, filmmaking and even coffee-roasting. Corporate activities are vaguely said to be “domestic” under the new law if they take place “in whole or in substantial part” in the United States, with no further explanation of what constitutes a “substantial part.”

The broad nature of the deduction is reflected in its price tag: the Joint Committee on Taxation (JCT) initially estimated that the QPAI tax break would reduce federal revenues by $77 billion over ten years—far more than the ETI subsidy it was meant to replace. Of course, the expected cost has already grown: where JCT originally anticipated a revenue loss of roughly $37 billion for the 2007 through 2011 period, it now projects a loss of closer to $43 billion.
How QPAI Affects the States

Almost every state with a corporate income tax links its tax rules to federal law by using federal taxable income as a starting point in determining a company’s state tax liability. This linkage makes it easier for state tax administrators to monitor compliance with tax laws—but also means that states can “inherit” federal tax breaks that reduce federal taxable income, as QPAI does. The QPAI tax cut gives state lawmakers a simple choice: they can conform their state tax rules to allow the QPAI tax break (and accept the resulting revenue loss), or they can “decouple” their state tax rules from this particular federal rule by disallowing the QPAI deduction. Decoupling from QPAI generally requires only a simple statutory change, and does not require decoupling more generally from the linkage to federal taxable income.

As of July 2008, 20 of the 47 states with corporate income taxes had decoupled from the QPAI break, leaving 27 states that will continue to lose corporate tax revenue because of their linkages to the federal tax code. Furthermore, the little information that is available at the state level suggests that those losses could be significant—New York expects to save $50 million annually from its move to decouple, while Oregon, which is no longer tied to QPAI, had originally projected losses of about $27 million per year once QPAI was fully implemented.

Advantages and Disadvantages of QPAI

The new QPAI break has one clear advantage from the perspective of its beneficiaries: it provides the largest single federal corporate tax cut enacted in years. But for state and federal lawmakers—and taxpayers in general—the costs are much clearer than the benefits:

- The QPAI deduction has little value as an economic development strategy for individual states, because a corporation can use the QPAI deduction to reduce its taxable income for “domestic production” activities anywhere in the United States. That is, a multi-state company that engages in manufacturing activities in Michigan will be able to use those activities to claim the QPAI deduction—and thus cut its taxes—in any state that offers the deduction, even if the company does not have manufacturing facilities in those states.

- By giving a tax preference for manufacturing, filmmaking and coffee-roasting, the QPAI tax break distorts the allocation of private investment between these tax-favored industries and other less-favored industries. In other words, if the QPAI tax break actually affects businesses’ investment decisions, it does so by channelling private resources towards investments that are made only for tax reasons—and thereby channels the same resources away from more productive investments.

- Because the QPAI deduction makes a distinction between “domestic production” that is eligible for the tax break and other activities that are ineligible, businesses have an incentive to artificially shift their profits toward lower-taxed, eligible activities, making its QPAI-related activities appear more profitable than they really are. As former IRS Commissioner Mark Everson has noted, corporations “naturally will classify everything possible as production activities” to take advantage of the tax break.

- The QPAI bill’s vague wording is likely to generate long-term administrative and enforcement difficulties. The Treasury Department’s 100-plus pages of QPAI regulations were promulgated more than a year after QPAI was enacted. States conforming with the QPAI deduction will likely be swept up in litigation over which corporate activities will be eligible for QPAI even after the regulations are finalized.

- State revenue lost to the QPAI deduction will reduce lawmakers’ ability to devote revenues to better-targeted, more effective economic development strategies such as adequate spending on public schools and transportation infrastructure.
Corporate Income Tax Apportionment and the “Single Sales Factor”

One of the thorniest problems in administering state corporate income taxes is how to distribute the profits of multi-state corporations among the states in which they operate. Ultimately, each corporation’s profits should be taxed in their entirety, but many corporations pay no tax at all on a portion of their profits. This problem has emerged, in part, due to recent state efforts to manipulate the “apportionment rules” that distribute such profits. This policy brief explains how apportionment rules work and assesses the effectiveness of special apportionment rules such as “single sales factor” as economic development tools.

Why Apportionment is Necessary

Most large corporations do business in more than one state and, as a result, are typically subject to the corporate income tax in multiple states. However, each state faces two important limits on how much of these corporations’ profits it can tax.

- First, if a corporation does not conduct at least a minimal amount of business in a particular state, that state is not allowed to tax the corporation at all. Corporations that have sufficient contact in a state to be taxable are said to have “nexus” with that state.
- Second, each state with which a corporation has nexus must devise rules for dividing the corporation’s profits into an in-state portion and an out-of-state portion — a process known as “apportionment.” The state can then only tax the in-state portion.

These limits exist for a good reason: if every state taxed all of the income of all corporations operating within the state's borders, businesses could find their profits taxed multiple times. Indeed, when state corporate income taxes were first adopted, there were no agreed-upon rules for dividing corporate profits among states. As a result, some businesses found that nationally, more than 100 percent of their profits were subject to state taxes. In the 1950s, legal reformers worked to set up a fair, uniform way of allocating income among states that would result in multi-state businesses’ profits being taxed exactly once. The result was the Uniform Division of Income for Tax Purposes Act (UDITPA), a piece of model legislation that about half the states with a corporate income tax have adopted.

How States Apportion Income

UDITPA recommends an apportionment rule that relies equally on three different factors in determining the share of a corporation’s profits that can be taxed by a state. These factors are:

- The percentage of a corporation’s nationwide property that is located in a state.
- The percentage of a corporation’s nationwide sales made to residents of a state.
- The percentage of a corporation’s nationwide payroll paid to residents of a state.

The main rationale for using these three factors to determine taxable income is that companies benefit from a state’s public services in a variety of ways, including owning property in a state, making sales within a state, and having an in-state employee base. The three-factor formula ensures that corporate tax liability reflects the benefits received by each type of corporation.

If every state used the apportionment rule UDITPA recommends, it would be an important step towards ensuring that all corporate profits are subject to taxation. However, over the past twenty years, many states have chosen to reduce the importance of the property
and payroll factors and increase the importance of the sales factor. The majority of states now use apportionment formulas that give “double-weight” or greater to the sales factor; in such formulae, a corporation’s in-state sales are at least twice as important as each of the other factors. At the extreme, more than a dozen states now rely entirely on the sales factor (and therefore do not use the property or payroll factors at all) in determining at least some corporations’ tax liabilities. This approach is known as the “single sales factor” or SSF.

### Advantages and Disadvantages of Increasing the Sales Factor

Single sales factor is typically enacted for two reasons. First, it is argued that SSF makes a state a more attractive place for businesses to expand their property and payroll: if the property and payroll factors are ignored in calculating a state’s corporate tax, then a business can hire employees or build a plant in a state without incurring any additional corporate profits tax. Second, SSF is sometimes enacted in response to threats from companies that already have substantial in-state employment and property. For example, Massachusetts adopted SSF in response to threats from Raytheon that it would reduce its employment in the state unless it was adopted.

These arguments overlook several disadvantages of heavily weighting the sales factor:

- **While some companies will benefit from SSF, other companies will actually pay more taxes under SSF.** Manufacturing companies that have more of their property and payroll in-state (and sell more of their products to customers in other states) will benefit from SSF, but companies with little in-state employment and property that sell proportionately more of their products in-state will be hurt by SSF. Whether SSF will reduce, or increase, a state’s corporate income tax revenue depends on the importance of the state for the purposes of producing goods and services relative to its importance as a market for those goods and services.

- **When SSF is enacted in response to the threats of in-state corporations to relocate in other states, there is no guarantee that these corporations will not “take the money and run.”** For example, after the passage of SSF, Raytheon cut thousands of Massachusetts jobs.

- **SSF creates harmful incentives for some businesses.** A company that sells products in an SSF state, but does so only by shipping products into the state (and therefore has no nexus) will not have to pay any income tax to the state. But if such a company makes even a small investment of employees or property in the state, it will immediately have much of its income apportioned to the state because the sales factor counts so heavily. Thus, SSF gives these companies a clear incentive not to invest in the state. Even worse, SSF gives companies with in-state employees an incentive to move all of their employees out of state to eliminate their nexus with the state—thus zeroing out their tax.

- **By discriminating against some companies and in favor of others, SSF makes corporate income taxes less fair—and can result in profitable companies paying no income tax.** For example, under the Illinois SSF rules, a corporation that has all of its employees and property in Illinois—but makes all of its sales to customers in other states—will pay no Illinois income tax, no matter how profitable it is. This unfairness reduces public confidence in the tax system.

The use of SSF has created a lack of uniformity in corporate tax rules. As a result, corporations now face the same inequitable treatment that prompted the UDITPA rules fifty years ago: some multi-state businesses find their income taxed more than once, while others are not taxed at all. This inequitable treatment undermines the perceived legitimacy of the tax system by arbitrarily discriminating in favor of certain corporations and creates perverse tax incentives that can deter corporations from moving to, or remaining in, some states. Returning to a more uniform set of apportionment rules is an important first step in preventing widespread tax avoidance and ensuring that state corporate income taxes are applied fairly.
Closing Corporate Tax Loopholes

Achieving

Strong Schools, Strong Communities, Strong Economy
Closing Corporate Tax Loopholes:

The Problem:

• **LOOPHOLES:**
  – Corporations use loopholes to minimize their state tax payments.
  – e.g., use of subsidiary corporations in multiple states to shift profits on paper enables profits to be taxed at lower rates, if at all.

• **ABUSE OF INCENTIVES:**
  – Corporations extort an ever-widening array of special tax incentives from states as the price of placing new jobs and investments within particular states and/or retaining existing jobs and facilities.
Closing Corporate Tax Loopholes:

The Symptom:
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

10.2%

1979
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

1989
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

1994
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

4.1% 2000
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

3.9%

2005
State & Local Revenue Pie

Percentage of Tax Revenues from Corporate Income Tax

4.3%

2008
If Corporations Were Taxed in 2008 at the Same Rate They Were Taxed in 1979...

State & Local Tax Revenues

- 2008 Actual: $58 Billion
- 2008 @1979 rate: $136 Billion
If Corporations Were Taxed in 2008 at the Same Rate They Were Taxed in 1979...

State & Local Tax Revenues

2008 Actual: $58 B

Gap: $78 B

2008 @1979 rate: $136 B

Would fund about 1.25 million teachers
The Leaky Bucket

1) **Alabama**: Of the companies making $25 million or more in the state in 2005, 30% of them paid exactly ZERO in state corporate income taxes.

2) **Iowa**: Half of $1m+ corporations pay ZERO income tax.

3) **Oklahoma**: In the boom year of 2000, 2/3 of corporations reported ZERO taxable income - or less.

4) **Mississippi**: 103 of 130 largest corporations paid ZERO in taxes.
Where are the Holes in the Bucket?

*At the state & local level...*

1) Loopholes in the Corporate Income Tax

2) Subsidies that Aren’t a Good Investment
What are the fixes available?

Model legislation to:
1) Close various loopholes
2) Require transparency in state subsidy programs & tax expenditures
Corporate Responsibility and Economic Prosperity Act (Model Legislation)  
FACT SHEET 

Want to stop corporations from slipping profits through loopholes in your state’s income tax laws? 

Corporate Responsibility and Economic Prosperity Act (Model Legislation)  
WHITE PAPER (narrative description) 

TITLE I  
Mandating Company- and State-Specific Corporate Tax Disclosure  

This Title aims to remedy some of the major deficiencies of previous state bills and ballot measures that have attempted to mandate corporate tax disclosure. These have included such serious problems as failure to ensure that corporations that were subsidiaries of publicly-traded corporations but were not themselves publicly-traded would be subject to the disclosure requirement and failure to take into account whether or not the state required commonly-owned corporations to calculate their taxes on the basis of consolidated or combined reporting. 

Many state-specific studies have found that most corporations filing income tax returns paid the minimum corporate tax — often $0 — even in years in which the economy was growing strongly. More broadly, it is clear from data available from numerous sources that something is seriously wrong with the state corporate income tax. The share of tax revenue supplied by this tax in the 45 states that levy it fell from more than 10 percent in the late 1970s, to less than 9 percent in the late 1980s, to less than 7 percent today. The effective rate at which states tax corporate profits fell from 6.9 percent in the 1981–85 period, to 5.4 percent in 1991–95, to 4.8 percent in 2001–05. 

True, there is a vigorous debate about the meaning of these data. While the business community generally seems to think firms are simply taking advantage of provisions of corporate income tax laws, the data do seem to point to abuse of the loophole in the corporate income tax law. 

The following improvements should be made:

1. Mandate corporate tax reporting. 
2. Require consolidated tax reporting. 

The mandatory corporate tax disclosure provision of this act may be modified by the state legislature. 

For more information about the bill, please call (00) 555-1212.

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1 Title I, III, V, VI, and VIII, Policy Priorities adopted by Greg Lee and adopted and approved (http://www.maineuniversal.com/).
Eliminating or reducing ineffective corporate subsidies can make a big contribution to closing state budget gaps, according to our report Slashing Subsidies, Bolstering Budgets. Read it here.
Corporate Transparency in State Budgets

Monday, November 30, 2009

PERMALINK: http://www.progressivestates.org/node/24136

IN THE NEWS
3 Steps Forward, 2 Steps Back

GET INVOLVED
Sign up with PSN
Tell a friend about PSN
Contribute to PSN
Stateside Dispatch Archives

NEW MEDIA
PSN on Facebook
PSN on Twitter

CONFERENCE CALL
PSN will host a conference call tomorrow, December 1st at 4pm EST with national experts and legislative leaders to discuss Rx reforms and the 2010 Multi-State Agenda. Speakers will discuss policy details, how federal reform could impact these initiatives, and best practices for building campaigns and moving Rx reform initiatives. For more information and to RSVP, please visit http://www.progressivestates.org/conferencecallrsvp.
“Corporate Citizenship and Economic Prosperity Act”

- Title I: Corporate Tax Disclosure
- Title II: Corporate Tax Incentive Disclosure and Accountability
- Title III: Nexus Standard
- Title IV: Combined Reporting
- Title V: Throwback Rule
- Title VI: Business and Nonbusiness Income Defined
- Title VII: Deduction for Net Operating Loss “Carrybacks” Disallowed
- Title VIII: Deduction for “Qualified Production Activities Income” Disallowed
# Title I: Corporate Tax Disclosure

<table>
<thead>
<tr>
<th>Problem:</th>
<th>Solution:</th>
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<tbody>
<tr>
<td>• No public outrage over corporations’ “perfectly legal” avoidance of state and local taxes.</td>
<td>• Mandates company- and state-specific corporate tax disclosure.</td>
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<tr>
<td>• Lack of public access to information about which corporations pay taxes, and where.</td>
<td>• Enables analysis of factors explaining low payments, e.g:</td>
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<td>− above-average deductions,</td>
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<td>− legitimate losses,</td>
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<td></td>
<td>− state’s rules for dividing income among the states,</td>
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<td>− claiming of economic development tax incentives.</td>
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<td>Problem:</td>
<td>Solution:</td>
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| • Economic development subsidies are so overgrown that they often violate sound principles and create unintended consequences.  
  − Undermines adequate funding for public education and other public goods.  
  − Discriminates between competing employers.  
  − Denies taxpayers the ability to participate in decision-making.  
  − Promotes unhealthy, sprawling land use patterns. | • **Disclosure** of the costs and benefits of every deal every year.  
  • **Job Quality Standards** to create family-wage jobs with healthcare.  
  • **Clawbacks** to recapture funds if specific deals fall short on job creation or other project goals.  
  • **Unified Development Budgets.** |
## Title III: Nexus Standard

<table>
<thead>
<tr>
<th><strong>Problem:</strong></th>
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<tr>
<td>• A state ought to be able to tax any corporation that is earning more than a minimal amount of profit from selling goods and services to its resident individuals or businesses.</td>
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<tr>
<td>– The corporate income tax is a tax on income that is earned within the state.</td>
</tr>
<tr>
<td>– There is no reason that such income should not be subject to taxation by a state merely because the corporation is capable of earning it without physically entering the state.</td>
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<th><strong>Solution:</strong></th>
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<tr>
<td>• Ensures that no court could interpret the state’s corporate income tax nexus language in such a way as to prevent the state from imposing its corporate income tax on any corporation that federal law would permit it to tax.</td>
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<tr>
<td>Problem:</td>
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</table>
| • Corporations doing business in more than one state have multiple strategies for shifting taxable profits out of the states in which they are actually earned and into states where they will be taxed at lower rates -- or not at all.  
  - e.g., tax shelters that transfer ownership of trademarks to a subsidiary corporation located in a state that does not tax royalties, interest, or similar types of “intangible income.” (PICs)  
  • Single largest problem! | • All related corporations that operate as a single business enterprise (any part of which is being conducted in the state) are essentially treated as one taxpayer for state corporate income tax purposes.  
  • Combined, nationwide profits are then “apportioned” to the state using that state’s formula.  
  • No advantage to shifting profits around via PICs or other mechanisms. |
States that Need to Enact Combined Reporting for Corporate Income Tax
Title V: Eliminating “Nowhere Income” with the “Throwback Rule”

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<th><strong>Problem:</strong></th>
<th><strong>Solution:</strong></th>
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<tr>
<td>• States with no “throwback rule” see 50-100 percent of their resident corporations’ profits become “nowhere income” — profit that is earned somewhere in the U.S. but not subject to tax by any state.</td>
<td>• A simple change in a state’s corporate income tax law: “Sales of tangible personal property are [deemed to be] in this State [for apportionment purposes] if the … taxpayer is not taxable in the State of the purchaser.”</td>
</tr>
<tr>
<td>• Twenty states could gain corporate income tax revenue and do their part in cooperation with other states to eliminate corporate “nowhere income” if they enacted the throwback rule.</td>
<td>• Enactment of the “throwback rule” is the only way to ensure that corporations pay state income tax on 100 percent of their incomes, just as individuals do.</td>
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States that Need to Institute a “Throwback Rule”
## Title VI: Limiting Claims that Corporate Profits Are “Nonbusiness Income” Taxable Only in Other States

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<th><strong>Problem:</strong></th>
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| • Ambiguous statutes allow corporations to avoid paying their fair share of tax on profits they earn on major, irregular transactions, like the gain on the sale of an entire subsidiary.  
• Corporations claim these statutes say such profits can’t be apportioned among all states in which they do business but must instead be assigned to the HQ state (which may not tax the income).  
• But the Supreme Court has said that most such profits *can* be apportioned among the states under the Constitution. | • Remaining states could ensure they obtain their fair share of corporate income tax revenue from irregular corporate transactions by amending their statutes to define as apportionable income all income they are permitted to apportion under U.S. Supreme Court standards. |
### Title VII: Disallowing the Deduction for Net Operating Loss “Carrybacks”

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<th>Solution:</th>
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<tr>
<td>• Net operating loss (NOL) “carryback” provision in 17 states allows businesses to:</td>
<td>• Policymakers who wish to avoid an unnecessary revenue loss during future recessions should amend their tax laws to disallow carrybacks of business losses.</td>
</tr>
<tr>
<td>− file amended income tax returns for past years in which they were profitable,</td>
<td></td>
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<td>− use current year business losses to offset those profits,</td>
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<td>− receive refunds of excess taxes paid in past years,</td>
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<td>− in recession years, this further compounds states’ fiscal problems.</td>
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States that Need to Repeal the “Net Operating Loss ‘Carryback’ Deductions”
# Title VIII: Disallowing the Unwarranted Deduction for “Qualified Production Activities Income” (QPAI)

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<th>Solution:</th>
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| • Federal QPAI tax break, enacted in 2004, is the largest new federal tax break for American corporations in years.  
• Companies can claim tax deductions based on their profits from “qualified production activities,” (e.g., food production, filmmaking, utilities).  
• States are losing up to 5% of their corporate tax revenue, plus some of their personal income tax revenue, unless they decouple from QPAI. | • Decouple from the QPAI deduction (as 18 states have already done).  
• Require corporations to add back the deducted amount to their taxable income. |
States that Need to Close the “Domestic Production Deduction” Loophole Created by the Feds in 2004
Beyond this Act: Uniform Income Division

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<td>• State apportionment formulas are diverging.</td>
<td>• Repeal/block Single-Sales Factor legislation.</td>
</tr>
<tr>
<td>• States are being bamboozled into enacting formula based only on where sales occur (SSF).</td>
<td>• Adopt Uniform Division of Income for Tax Purposes Act (UDITPA) model legislation prescribed relying equally on three different factors in determining the share of a corporation’s profits that can be taxed by a state.</td>
</tr>
<tr>
<td>• SSF violates “reasonable relation” principle; corporations earn profits where they produce, too.</td>
<td></td>
</tr>
<tr>
<td>• SSF can violate “full accountability” principle: corporations often not taxable where they sell.</td>
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</table>
States Losing Revenues Due to Adoption of “Single Sales Factor” Apportionment
State Corporate Income Tax Rates and Economic Growth

Top marginal rate, 2008

PCPI GROWTH RATE LAST 10 YEARS: 5.0%

Top Marginal Rate (Percentage)

Nevada, South Dakota, Texas, Washington and Wyoming have no state corporate income tax

6. Model Legislation to Close Corporate Tax Loopholes

NEA has developed a model bill entitled the “Corporate Responsibility & Economic Prosperity Act” with the invaluable assistance of Michael Mazerov at Center on Budget & Policy Priorities, and Greg LeRoy of Good Jobs First. The model bill is included here in its entirety. It is preceded by a two-page “Fact Sheet” summary explaining the rationale for the bill and what exactly it would do.
Corporate Responsibility & Economic Prosperity Act  
(Model Legislation)  
FACT SHEET

Want to stop corporations from slipping profits through loopholes in your state’s income tax laws? Should corporations be allowed to “paper shift” profits to low-tax venues, or offshore where they aren’t taxed at all? Should mega-business, in the name of so-called “economic development,” be allowed to pressure local governments into exempting them from property taxes for decades, leaving homeowners responsible for public services used by everyone?

If inequities like these bother you, you may find the attached Model Legislation timely and useful. It calls for full accountability of corporate income, for transparency in corporate tax payments and government “tax expenditures” (exemptions and subsidies), and for restoring the corporate income tax to its proper level and function in supporting vital public services, such as education.

One of the pillars of NEA’s TEF Strategic Goal is to make tax structures fair. This is the solid fiscal foundation upon which we will build adequate, equitable, and sustainable funding systems for America’s public schools, as well as for our continued national prosperity. Any state that reforms its tax code along the lines of the attached Model Legislation will have taken a major step toward achieving this goal.

Why is this necessary?
A major obstacle to a fair tax structure is that corporations use “perfectly legal” means — i.e., loopholes — to minimize their contribution to American prosperity and maximize their profits. For example, strategic use of subsidiaries in multiple states allows corporations to “paper shift” profits, massing them in states where they are taxed at lower rates, if at all. Corporations also have a demonstrated ability to game the system and extort an ever-widening array of special incentives from states and communities as the price of establishing a new facility or, in some cases, of not relocating an existing facility.

There is considerable evidence that the effective rate at which corporate profits are taxed by states has fallen off dramatically over the past 25 to 30 years. Very little of this erosion is due to deliberate cuts in nominal rates. Rather, the decline of the corporate income tax as a significant source of state revenue stems largely from two principal causes: loopholes and abuse of development incentives.

These and other issues surrounding corporate taxation and financial incentives for economic development are the subject of a package of legislation our TEF team has assembled. It’s called the Corporate Responsibility & Economic Prosperity Act, and we attach a copy for your consideration. If enacted, this Model Legislation would go far towards closing loopholes and halting abuse of incentives.

What would it do?
The model bill consists of eight titles. Together they would provide for:
1. Full accountability of income. Corporations would have to report 100% of domestic profit to the states — just as individuals are required to do — in reasonable relationship to where profits are actually earned.

2. Government tax expenditures and corporate payments would be publicly visible, enabling accountability and policy impact analysis through transparency and ongoing reporting.

3. Returning the corporate income tax to its proper level and function as a reliable, stable source of state revenue and increasing the overall fairness of state tax structures.

The bill’s Title I would require limited corporate disclosure, primarily in order to make data available for proper analysis of the impact of various tax and economic development policies — data that are now almost universally unavailable.

Title II would provide for thorough disclosure and accountability in the area of economic development incentives.

Title III would bolster “nexus” laws in order for states to be able — as they are entitled — to tax any corporation earning more than a minimal amount of profits from selling goods and services to resident individuals and businesses.

Title IV, using the draft language adopted by the Multistate Tax Commission, would mandate combined reporting of corporate income, regardless of how many subsidiaries a company divides itself into. This would effectively prevent paper shifting.

Titles V through VIII would help plug the remaining holes in the leaky bucket that is now the state corporate income tax.

**Who drafted it?**

This Model Legislation, along with the accompanying White Paper that provides a narrative description of the draft legislation, has been produced through the very dedicated efforts of Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities, and Greg LeRoy, Executive Director of Good Jobs First. We are grateful for their help and cooperation. As stated above, Title IV (combined reporting) represents, in its entirety, the language approved in August 2006 by the Multistate Tax Commission.

**What’s next?**

Do you see an opportunity to move all or part of this legislation in your state this year? How can we be of assistance? Please let us know. For more information contact Dwight Holmes at 202-822-7465 (dholmes@nea.org) or e-mail TEF@nea.org.
A.B.______

To

______________________________

THE STATE OF ____________________

____, __ 2007

______ (for _______ and _______) introduced the following bill; which was referred to the Committee on _______________

______________________________

A BILL

The Corporate Citizenship and Economic Prosperity Act\(^1\), in the State of ________________.

Be it Enacted by the Legislature of the State of ________________,

SEC. 1. SHORT TITLE

This act may be cited as the “Corporate Citizenship and Economic Prosperity Act”.

SEC. 2. TABLE OF CONTENTS

The table of contents for this Act is as follows:

- Sec. 1: Short Title
- Sec. 2: Table of Contents

Title I: Corporate Tax Disclosure

\(^1\) Titles I, III, V, VI, VII, and VIII were drafted by Michael Mazerov, Senior Fellow, Center on Budget and Policy Priorities (mazerov@cbpp.org), drawn from existing state statutes in some cases. Title II was drafted by Greg LeRoy, Executive Director of Good Jobs First (goodjobs@goodjobsfirst.org). Title IV was adopted and approved by the Multistate Tax Commission (http://www.mtc.gov/) August 17, 2006, and is available at: http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Projects/A_ - _Z/Combined%20Reporting%20-%20FINAL%20version.pdf.
Corporate Citizenship and Economic Prosperity Act

17 Sec. 101: Findings and Purpose
18 Sec. 102: Definitions
19 Sec. 103: Tax Disclosure Statement Required
20 Sec. 104: Content of Tax Disclosure Statement
21 Sec. 105: Alternative Statement Option for Corporations Not Required to File Tax Return
22 Sec. 106: Supplemental Information Permitted
23 Sec. 107: Amended Tax Disclosure Statements Required
24 Sec. 108: Public Access to Tax Disclosure Statements
25 Sec. 109: Enforcing Compliance

26 Title II: Corporate Tax Incentive Disclosure and Accountability
27 Sec. 201: Findings and Purpose
28 Sec. 202: Definitions
29 Sec. 203: Unified Economic Development Budget
30 Sec. 204: Unified Reporting of Property Tax Reductions and Abatements
31 Sec. 205: Application for Economic Development Subsidies
32 Sec. 206: Reports
33 Sec. 207: Subsidy Limit and Job Quality Standards
34 Sec. 208: Recapture
35 Sec. 209: Private Enforcement Action
36 Sec. 210: Public Record Disclosure
37 Sec. 211: Pre-emption
38 Sec. 212: Separability
39 Sec. 213: Effective Date

40 Title III: Nexus Standard
41 Sec. 301: Findings and Purpose
42 Sec. 302: Nexus applies, under certain circumstances

43 Title IV: Combined Reporting
44 Sec. 401: Findings and Purpose
45 Sec. 402: Definitions
46 Sec. 403: Combined reporting required, when; discretionary under certain circumstances
47 Sec. 404: Determination of taxable income or loss using combined report
48 Sec. 405: Designation of surety
49 Sec. 406: Water’s-edge election; initiation and withdrawal

50 Title V: Throwback Rule
51 Sec. 501: Findings and Purpose
52 Sec. 502: Application of “throwback rule” to eliminate “nowhere income”

53 Title VI: Business and Nonbusiness Income Defined
54 Sec. 601: Findings and Purpose
55 Sec. 602: Definition of business and nonbusiness income

56 Title VII: Deduction for Net Operating Loss “Carrybacks” Disallowed
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64  Sec. 702: Operating loss, defined
65  Sec. 703: Operating loss deduction, disallowal of carryback, allowance of carryover
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67  Title VIII: Deduction for “Qualified Production Activities Income” Disallowed
68  Sec. 801: Findings and Purpose
69  Sec. 802: Deduction for “Qualified Production Activities Income” Disallowed
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72  SEC. 3: TEXT OF THE BILL
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75  APPENDIX: IMPLEMENTING THE THROWBACK RULE IN STATES IN
76  WHICH IT IS NOT IN EFFECT
Title I: Corporate Tax Disclosure

Sec. 101: Findings and Purpose

The Legislature finds that:

(a) Data collected by the federal government indicate that state corporate income taxes represent a declining share of state tax revenue and that the effective rate at which states are taxing corporate profits has fallen sharply in recent decades. Numerous state studies have found that a majority of corporations filing income tax returns have zero liability, even in years in which the economy is growing and corporate profits are healthy;

(b) A study conducted in [year] in this state by [organization/government agency] found that [summarize key findings and statistics from any state-specific study conducted on trends in corporate income tax collections and compliance];

(c) Research conducted by leading academics suggests that the causes of state corporate tax base erosion include such factors as greater corporate aggressiveness and sophistication in exploiting loopholes and structural weaknesses in state corporate income tax laws, state conformity to federal tax law changes that reduced state corporate tax revenues as well, the enactment of tax cuts and special credits aimed stimulating in-state job creation and other desired corporate behavior, and corporate implementation of federal corporate income tax shelters that also reduce state corporate tax payments;

(d) Data extracted from state corporate income tax returns and then published in an aggregated form that averages results for corporations falling within certain income or asset-size categories is extremely limited in its capacity to illuminate the source of state corporate income tax base erosion. Such data do not, for example, permit an examination of whether corporations that reported losses on their state income tax returns reported profits to their shareholders in the same year;

(e) To determine whether a) [State]’s corporate income tax is structured in such a way as to ensure that all corporations doing business here are paying their fair share and b) whether tax incentives enacted to encourage corporations to invest and create jobs here are effective, it is necessary to begin requiring corporations to publicly disclose the amount of corporate income tax they pay to [state], the amount of economic development tax incentives they receive, the number of employees they have in this state, and additional, limited information drawn from their tax returns needed to understand the major factors that determine their corporate income tax liability;

(f) By providing concrete, real-world examples of the operation of [State]’s corporate income tax, such company-specific disclosure will facilitate both understanding of and interest in critical corporate tax policy issues confronting [State] on the part of policymakers and interested citizens alike.
(g) The goal of corporate tax disclosure is not to single-out corporations for criticism; the vast majority of corporations doing business in this state likely are in full compliance with their legal obligations. Rather, disclosure is aimed at ensuring that the Legislature and other elected leaders have the information needed to fulfill their responsibilities to implement appropriate corporate income tax policy for this state.

The people of the State of _______ do enact as follows:

Sec. 102: Definitions

A. As used in this Title, “corporation” means any entity subject to the tax imposed by [reference state corporate income or franchise tax statute] or by Section 11 of the Internal Revenue Code of 1986 as amended, except that “qualified personal service corporations,” as defined in section 448 of the Internal Revenue Code of 1986, as amended, shall be exempt from this Title.

B. As used in this Title, “doing business in this state” means owning or renting real or tangible personal property physically located in this state; having employees, agents, or representatives acting on the corporation’s behalf in this state; making sales of tangible personal property to purchasers that take possession of such property in this state, performing services for customers located in this state, performing services in this state, earning income from intangible property that has a business situs in this state, engaging in regular and systematic solicitation of sales in this state; being a partner in a partnership engaged in any of the preceding activities in this state; or being a member of a limited liability company engaged in any of the preceding activities in this state.

Sec. 103: Tax Disclosure Statement Required

The following corporations, if doing business in this state, shall file with the Secretary of State the statement described by Section 3 of this Title:

(1) All publicly traded corporations, including corporations traded on foreign stock exchanges; and

(2) All corporations fifty percent or more of the voting stock of which is owned, directly or indirectly, by a publicly-traded corporation;

Sec. 104: Content of Tax Disclosure Statement

The statement required by Section 2 of this Title shall be filed annually in an electronic format specified by the Secretary of State no more than 30 days following the filing of the tax return required by [reference to state corporate income or franchise tax statute], or, in the case of a corporation not required to file such a tax return, within 90 days of the filing of such corporation’s federal tax return, including such corporation’s inclusion in a federal consolidated return. The statement shall contain the following information:
Corporate Citizenship and Economic Prosperity Act

(1) The name of the corporation and the street address of its principal executive office;

(2) If different from (1), the name of any corporation that owns, directly or indirectly, 50 percent or more of the voting stock of the corporation and the street address of the former corporation’s principal executive office;

(3) The corporation’s 4-digit North American Industry Classification System code number;

(4) A unique code number, assigned by the Secretary of State, to identify the corporation, which code number will remain constant from year to year;

[Note: The following (5) and (6) are applicable to non-combined-reporting states]

(5) The following information reported on or used in preparing the corporation’s tax return filed under the requirements of [reference state corporate income or franchise tax statute], or, in the case of a corporation included in a state consolidated tax return, reported on or used in preparing the state consolidated tax return filed under the requirements of [reference state corporate income or franchise tax statute], or, in the case of a corporation not required to file a tax return under the requirements of [reference to state corporate income or franchise tax statute], the information that would be required to be reported on or used in preparing the tax return were the corporation required to file such a return:

(a) Total receipts; [Note: or substitute state term for total gross income]

(b) Total cost-of-goods-sold claimed as a deduction from gross income;

(c) Taxable income prior to net operating loss deductions or apportionment;

(d) Property, payroll, and sales apportionment factors; [Note: as applicable to state]

(e) Calculated overall apportionment factor in the state;

(f) Total business income apportioned to the state;

(g) Net operating loss deduction, if any;

(h) Total non-business income and the amount of non-business income allocated to the state;

(i) Total taxable income;
(j) Total tax before credits;

(k) Tax credits claimed, each credit individually enumerated; [Note: individual enumeration might be limited to credits reducing pre-credit liability for all corporations taxable in the state collectively by more than 5-10 percent]

(l) Alternative minimum tax [if applicable];

(m) Tax due;

(n) Tax paid;

(o) Amount of tax due paid under protest, if applicable.

(6) The following information:

(a) Total deductions for management services fees, for rent, and for royalty, interest, license fee, and similar payments for the use of intangible property paid to any affiliated entity that is not included in the state consolidated income tax return, if any, that includes the corporation, and the names and principal executive office addresses of the entities to which the payments were made;

(b) The sales factor that would be calculated for this state if the corporation [or consolidated group] were required to treat as sales in this state sales of tangible personal property to the Federal Government and sales of tangible personal property shipped or delivered to a customer in a state in which the selling corporation is neither subject to a state corporate income tax or state franchise tax measured by net income nor could be subjected to such a tax were the state to impose it; [Note: only to be reported in states not having in effect the standard “throwback rule” under the Uniform Division of Income for Tax Purposes Act]

(c) A description of the source of any nonbusiness income reported on the return and the identification of the state to which such income was reported;

[(d) A listing of all corporations included in the consolidated tax return that includes the corporation, if such a return is filed, and their state identification numbers assigned under the provisions of this section;]

(e) Full-time-equivalent employment of the corporation in the state on the last day of the tax year for which the return is being filed and for the three previous tax years;
(f) In the case of a publicly-traded corporation incorporated in the United States or an affiliate of such a publicly-traded corporation, profits before tax reported on the Securities and Exchange Commission Form 10-K for the corporation or the consolidated group of which the corporation is a member for the corporate fiscal year that contains the last day of the tax year for which the return is filed;

[(g) The property and payroll factors for this state calculated as required by the Uniform Division of Income for Tax Purposes Act as embodied in Article IV of the Multistate Tax Compact and Multistate Tax Commission regulations applying thereto.] [Note: this provision to be included in single sales factor formula states only]

(h) Accumulated tax credit carryovers, enumerated by credit.

[Note: The following (5) and (6) are applicable to combined-reporting states]

(5) The following information reported on or used in preparing the corporation’s tax return filed under the requirements of [reference state corporate income or franchise tax statute], or, in the case of a corporation not required to file a tax return under the requirements of [reference to state corporate income or franchise tax statute], the information that would be required to be reported on or used in preparing the tax return were the corporation required to file such a return:

(a) Total receipts of the unitary group of which the corporation is a member; [Note: or substitute state term for total gross income]

(b) Total cost-of-goods-sold claimed as a deduction from gross income by the unitary group of which the corporation is a member;

(c) Taxable income of the unitary group of which the corporation is a member prior to net operating loss deductions or apportionment;

(d) Property, payroll, and sales apportionment factors of the corporation as calculated on the combined report; [Note: as applicable to state]

(d) Calculated overall apportionment factor in the state for the corporation as calculated on the combined report;

(f) Total business income of the corporation apportioned to the state;

(g) Net operating loss deduction, if any, of the corporation apportioned to the state;
(h) Total non-business income of the corporation and the amount of non-
business income allocated to the state;

(i) Total taxable income of the corporation;

(j) Total tax before credits;

(k) Tax credits claimed, each credit individually enumerated; [Note: 
individual enumeration might be limited to credits reducing pre-credit 
liability for all corporations taxable in the state collectively by more than 
5-10 percent]

(l) Alternative minimum tax [if applicable];

(m) Tax due;

(n) Tax paid;

(o) Amount of tax due paid under protest, if applicable.

(6) The following information:

(a) Total deductions for management services fees, for rent, and for 
royalty, interest, license fee, and similar payments for the use of intangible 
property paid to any affiliated entity that is not included in the unitary 
combined group that includes the corporation and the names and 
principal office addresses of the entities to which the payments were 
made;

(b) The sales factor that would be calculated for this state on the 
combined report if the corporation were required to treat as sales in this 
state sales of tangible personal property to the Federal Government and 
sales of tangible personal property shipped or delivered to a customer in a 
state in which the selling corporation is neither subject to a state 
corporate income tax or state franchise tax measured by net income nor 
could be subjected to such a tax were the state to impose it; [Note: only to 
be reported in states not having in effect the standard “throwback rule” 
under the Uniform Division of Income for Tax Purposes Act]

(c) A description of the source of any nonbusiness income reported on the 
return and the identification of the state to which such income was 
reported;

(d) A listing of all corporations included in the unitary group that includes 
the corporation, their state identification numbers assigned under the 
provisions of this section, if applicable, and a listing of all variations in
the unitary group that includes the corporation used in filing corporate income or franchise tax returns in any of the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Illinois, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oregon, Utah, Vermont;

(e) Full-time-equivalent employment of the corporation in the state on the last day of the tax year for which the return is being filed and for the three previous tax years;

(f) In the case of a publicly-traded corporation incorporated in the United States or the affiliate of such a publicly-traded corporation, profits before tax reported on the Securities and Exchange Commission Form 10-K for the corporation or the consolidated group of which the corporation is a member for the corporate fiscal year that contains the last day of the tax year for which the return is filed;

[(g) Property and payroll factors for the corporation for this state calculated on the basis of combined reporting and as required by the Uniform Division of Income for Tax Purposes Act as embodied in Article IV of the Multistate Tax Compact and Multistate Tax Commission regulations applying thereto.] [Note: this provision to be included in single sales factor formula states only]

(h) Accumulated tax credit carryovers, enumerated by credit.

Sec. 105: Alternative Statement Option for Corporations Not Required to File Tax Return

In lieu of the statement described in Section 3, a corporation doing business in this state but not required to file a tax return under the requirements of [reference state’s corporate income or franchise tax statutes] may elect to file a statement with the Secretary of State containing the following information:

(1) The information specified in Section 3, items (1) through (4), inclusive;

(2) An explanation of why the corporation is not required to file a corporate income tax return in this state, which explanation may take the form of checking one or more possible explanations drafted by the Secretary of State;

(3) Identification of into which of the following ranges the corporation’s total gross receipts from sales to purchasers in this state fell in the tax year for which this statement is filed:

(a) Less than $10 million;
(b) $10 million to $50 million;

(c) More than $50 million to $100 million;

(d) More than $100 million to $250 million;

(e) More than $250 million.

Sec. 106: Supplemental Information Permitted

Any corporation submitting a statement required by this Title shall be permitted to submit supplemental information that, in its sole judgment, could facilitate proper interpretation of the information included in the statement. The mechanisms of public dissemination of the information contained in the statements described in Section 7 of this Title shall ensure that any such supplemental information be publicly available and that notification of its availability shall be made to any person seeking information contained in a statement.

Sec. 107: Amended Tax Disclosure Statements Required

If a corporation files an amended tax return, the corporation shall file a revised statement under this section within sixty calendar days after the amended return is filed. If a corporation’s tax liability for a tax year is changed as the result of an uncontested audit adjustment or final determination of liability by the [name state’s administrative appeals body] as provided for in [reference administrative appeals portion of state statute] or by a court of law as provided for in [reference legal appeals portion of state statute], the corporation shall file a revised statement under this section within sixty calendar days of the final determination of liability.

Sec. 108: Public Access to Tax Disclosure Statements

The statements required under this Title shall be a public record. The Secretary of State shall make all information contained in the statements required under this Title for all filing corporations available to the public on an ongoing basis in the form of a searchable database accessible through the Internet. The Secretary of State shall make available and set charges that cover the cost to the state of providing copies on appropriate computer-readable media of the entire database for statements filed during each calendar year as well as hard copies of an individual annual statement for a specific corporation. No statement for any corporation for a particular tax year shall be publicly available until the first day of the third calendar year that follows the calendar year in which the particular tax year ends.

Sec. 109: Enforcing Compliance

The accuracy of the statements required under this Title shall be attested to in writing by the chief operating officer of the corporation and shall be subject to audit by the
[department of revenue] as the agent of the Secretary of State in the course of and under
the normal procedures applicable to corporate income tax return audits. The Secretary of
State shall develop and implement an oversight and penalty system applicable to both the
chief operating officer of the corporation and the corporation itself to ensure that
corporations doing business in this state, including those not required to file a return
under the requirements of [reference state corporate income or franchise tax statute], shall
provide the required attestation and disclosure statements, respectively, in a timely and
accurate manner. The Secretary of State shall publish the name and penalty imposed
upon any corporation subject to a penalty for failing to file the required statement or
filing an inaccurate statement. The Secretary of State shall promulgate appropriate rules
to implement the provisions of this Title under the rulemaking procedures described in
[reference state administrative procedures act].
Title II: Corporate Tax Incentive Disclosure and Accountability

Sec. 201: Findings and Purpose

The Legislature finds that:

(a) Although the State and its local government units have granted numerous economic development subsidies in the last 25 years, the real wage levels and health care coverage of working families have declined; and

(b) When workers receive low wages and poor benefits, such jobs often impose hidden taxpayer costs upon its citizens, in the form of Medicaid, food stamps, earned income tax credits and other forms of public assistance to the working poor and their families;

(c) Citizen participation in economic development has been impeded by a lack of readily accessible information regarding expenditures and outcomes;

(d) In order, therefore, to improve the effectiveness of expenditures for economic development and to ensure that they achieve the goal of raising living standards for working families, it is necessary to collect, analyze and make publicly available information regarding those expenditures and to enact certain safeguards for their use.

The people of the State of _______ do enact as follows:

Sec. 202: Definitions

A. “Corporate parent” means any person, association, corporation, joint venture, partnership, or other entity, that owns or controls 50 percent or more of a recipient corporation.

B. "Date of subsidy” means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

C. "Development subsidy” means any expenditure of public funds with a value of at least $25,000.00 for the purpose of stimulating economic development within the State, including but not limited to bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.
D. “Full-time job” means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

E. "Granting body" means any agency, board, office, public benefit corporation or authority of the State or a local government unit that provides a development subsidy.

F. “Local government unit” means an agency, board, commission, office, public benefit corporation, or public authority of a political subdivision of the State.

G. “New Employee” means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. “New employee” does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least 6 months before hiring the employee.

H. “Part-time job” means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

I. "Project site" means the site of a project for which any development subsidy is provided.

J. "Property-taxing entity" means any entity which levies taxes upon real or personal property.

K. “Recipient corporation” means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

L. "Small business” means a corporation whose corporate parent, and all subsidiaries thereof, that employed fewer than twenty full-time employees or had total gross receipts of less than one million dollars during the calendar year.

M. “State” means an agency, board, commission, office, public benefit corporation or public benefit authority of the State.

N. "Subsidy value” means the face value of any and all development subsidies provided to a recipient corporation.

O. “Temporary job” means a job in which an individual is hired for a season or for a limited period of time.

Sec. 203: Unified Economic Development Budget

a. The State Department of Revenue shall submit an annual Unified Economic Development Budget to the Legislature no later than three months after the end of the State’s fiscal year. The report shall present all types of expenditures for economic development during the prior fiscal year, including but not limited to:
1. The amount of uncollected state tax revenues resulting from every corporate
tax credit, abatement, exemption and reduction provided by the State or a local
governmental unit including but not limited to gross receipts, income, sales, use, raw
materials, excise, property, utility, and inventory taxes.

2. The name of each corporate taxpayer which claimed any tax credit, abatement,
exemption or reduction under subdivision (1) of any value equal to or greater than
$5,000, together with the dollar amount received by each such corporation.

3. Any tax credit, abatement, exemption or reduction received by a corporation of
less than $5,000 each shall not be itemized. The Department of Revenue shall report
an aggregate dollar amount of such expenditures and the number of companies so
aggregated for each tax expenditure.

4. All State appropriated expenditures for economic development, including line-
item budgets for every State-funded entity concerned with economic development,
including but not limited to State Department of Commerce, State Department of
Employment and Training, vocational education programs, State university research
programs, manufacturing extension service, Workforce Investment Boards, Economic
Development Commissions, Industrial Development Authorities, Regional
Development Authorities, and Finance Authorities.

Sec. 204: Unified Reporting of Property Tax Reductions and Abatements

a. Each property-taxing entity shall annually submit a report to the State Department of
Revenue regarding any real property in the entity’s jurisdiction that has received a
property tax abatement or reduction during the fiscal year. The report shall contain
information including but not limited to: the name of the property owner; the address of
the property; the start and end dates of the property tax reduction or abatement; the
schedule of the tax reduction; each tax abatement, reduction and exemption for the
property; and the amount of property tax revenue not paid to the taxing entity as a result
of the reduction or abatement.

b. Each property-taxing entity shall also submit a report to the Department setting forth
the total property tax revenue not paid to such entity during the fiscal year as a result of
all property tax reductions and abatements in the entity’s jurisdiction.

c. The reports required under paragraphs (a) and (b) of this section shall be prepared on
two forms prepared by the Department, and shall be submitted to the Department by the
property-taxing entity no later than three months after the end of the fiscal year.

d. The Department shall annually compile and publish all of the data contained in the
reports required under paragraphs (a) and (b) in both written and electronic form,
including the Department’s World Wide Web site.
e. If a property-taxing entity fails to submit its reports to the Department within the prescribed time, the Department shall notify the State Comptroller, whereupon the Comptroller shall withhold further payments of any development subsidy to the delinquent entity until the entity files its reports with the Department.

Sec. 205: Application for Economic Development Subsidies

a. Each granting body, together with the applicant for a development subsidy, shall complete an application for the subsidy on a form prepared by the State Department of Economic development. The information required on the application shall include the following:

1. An application tracking number for the granting agency and the project;

2. The name, street and mailing address, and phone number of the chief officer of the granting body;

3. The name, street and mailing address, and phone number of the chief officer of the applicant’s corporate parent;

4. The name, street and mailing address, and phone number of the chief officer of the applicant;

5. The street address of the project site;

6. The three-digit North American Industry Classification System number of the project site;

7. The total number of individuals employed by the applicant at the project site on the date of the application, broken down by full-time, part-time, and temporary positions;

8. The total number of individuals employed in the State by the applicant’s corporate parent, and all subsidiaries thereof, as of December 31 of the prior fiscal year, broken down by full-time, part-time and temporary positions;

9. The development subsidy or subsidies being applied for with the granting body, and the value of such subsidy or subsidies;

10. The number of new jobs to be created by the applicant at the project site, broken down by full-time, part-time and temporary positions;

11. The average hourly wage to be paid to all current and new employees at the project site, broken down by full-time, part-time and temporary positions, and further broken down by wage groups as follows: $6.00 or less an hour, $6.01 to $7.00 an hour, $7.01 to $8.00 an hour, $8.01 to $9.00 an hour, $9.01 to $10.00 an hour, $10.01 to $11.00 an hour.
an hour, $11.01 to $12.00 an hour, $12.01 to $13.00 an hour, $13.01 to $14.00 an hour, and $14.01 or more per hour;

12. For project sites located in a Metropolitan Statistical Area, as defined by the federal Office of Management and Budget, the average hourly wage paid to non-managerial employees in the State for the industries involved at the project, as established by the United States Bureau of Labor Statistics.

13. For project sites located outside of Metropolitan Statistical Areas, the average weekly wage paid to non-managerial employees in the county for industries involved at the project, as established by the United States Department of Commerce.

14. The type and amount of health care coverage to be provided by the applicant within ninety days of commencement of employment at the project site, including any costs to be borne by the employees;

15. A list of all development subsidies which the applicant is requesting, and the name of any other granting body from which such subsidies are sought;

16. A statement as to whether the development subsidy may reduce employment at any other site controlled by the applicant or its corporate parent, within or without of the State, resulting from automation, merger, acquisition, corporate restructuring or other business activity.

17. A certification by the chief officer of the applicant as to the accuracy of the application.

b. If the granting body shall approve the application, it shall send a copy to the State Department of Economic Development within fifteen days of such approval. If the application is not approved, the granting body shall retain the application in its records.

Sec. 206: Reports

1. Each granting body shall file a progress report with the State Department of Economic Development for each project for which a development subsidy has been granted, no later than February 1 each year. The report shall include the following information:

a. The application tracking number;

b. The name, street and mailing addresses, phone number and chief officer of the granting body;
c. The name, street and mailing addresses, phone number, and chief officer of the recipient corporation;

d. A summary of the number of jobs required, created and lost, broken down by full-time, part-time and temporary positions, and by wage groups.

e. The type and amount of health care coverage provided to the employees at the project site, including any costs borne by the employees;

f. The comparison of the total employment in the State by the recipient's corporate parent on the date of the application and the date of the report, broken down by full-time, part-time and temporary positions;

g. A statement as to whether the use of the development subsidy during the previous fiscal year has reduced employment at any other site controlled by the recipient corporation or its corporate parent, within or without of the State as a result of automation, merger, acquisition, corporate restructuring or other business activity.

h. A signed certification by the chief officer of the recipient corporation as to the accuracy of the progress report.

2. On all subsequent annual progress reports, the granting body shall indicate whether the recipient corporation is still in compliance with its job creation, wage and benefit goals, and whether the corporate parent is still in compliance with its State employment requirement.

3. Granting bodies and recipient corporations shall file annual progress reports for the duration of the subsidy, or not less than five years, whichever period is greater.

b. Two-Year Report

1. No later than fifteen days after the second anniversary of the date of subsidy, the granting body shall file with the Department a two-year progress report including the same information as required under paragraph (a). The recipient corporation shall certify as to the accuracy of such report.

2. The granting body shall state in the two-year report whether the recipient corporation has achieved its job creation, wage and benefit goals, and whether the corporate parent has maintained 90% of its employment in the State.

c. The Department shall compile and publish all data from the progress reports in both written and electronic form, including the Department’s World Wide Web site.

d. The granting body and the Department shall have access at all reasonable times to the project site and the records of the recipient corporation to in order monitor the project and to prepare progress reports.
e. A recipient corporation that fails to provide the granting body with the information or access required under paragraphs (1) and (2) of this section shall be subject to a fine of not less than $500 per day to commence within ten working days after the February 1 deadline, and of not less than $1,000 per day to commence twenty days after such deadline.

**Sec. 207: Subsidy Limit and Job Quality Standards**

a. A granting body shall not grant award a development subsidy if the cost per job is greater than $35,000.00. Such cost shall be determined by dividing the amount of the subsidy by the number of full-time jobs required under the application approved by the granting body.

b. A granting body shall not grant a subsidy to an applicant unless the wages paid to employees at the project site are equal to or exceed 85% of the average wage as established under paragraphs (12) and (13) of Sec. 5, provided, however, that for small businesses, the average wage must equal or exceed 75% of the wages established hereunder. The computation of wages under this section shall only apply to a recipient corporation that provides the health care coverage as approved in its application by the granting body.

**Sec. 208: Recapture**

a. A recipient corporation shall fulfill its job creation, wage, health care and other benefit requirements for the project site within two years of the date of subsidy. Such recipient shall maintain its wage and benefit goals as long as the subsidy is in effect, or five years, whichever is longer.

b. The corporate parent of a recipient corporation must maintain at least 90% of its employment in the State as long as the development subsidy is in effect, or not less than five years, whichever is longer.

c. If the requirements under paragraphs (a) or (b) are not fulfilled, the granting body shall recapture the development subsidy from the recipient corporation as follows:

1. Upon a failure by the recipient corporation to create the required number of jobs or to pay the required wages or benefits, the amount recaptured shall be based on the pro rata amount by which the unfulfilled jobs, wages or benefits bear to the total amount of the development subsidy.

2. Upon a failure of the corporate parent to maintain 90% of its employment in the State, the rate of recapture shall equal twice the percentage by which such employment is less than 90%. 


d. The granting body shall provide notice to the recipient corporation of its intent to recapture the development subsidy and state the reasons and amount to be recaptured. The recipient corporation shall remit to the governing body such amount within 60 calendar days of the date of such notice.

e. If a recipient corporation defaults on a development subsidy in three consecutive calendar years, the granting body shall declare the subsidy null and void, and shall so notify the Department of Development and the recipient corporation. The recipient corporation shall pay back to the granting body all remaining value of the development subsidy it has not previously repaid within 180 calendar days of the date of the notice of such default.

Sec. 209: Private Enforcement Action

If a granting body fails to enforce any provision of this Act, any individual who paid personal income taxes to the State in the calendar year prior to the year in dispute, or any organization representing such taxpayers, shall be entitled to bring a civil action in state court to compel enforcement under this statute. The court shall award reasonable attorney’s fees and costs to such prevailing taxpayer or organization.

Sec. 210: Public Record Disclosure

All records required to be prepared or maintained under this Act, including but not limited to applications, progress reports, recapture notices and any other records or proceedings relating thereto, shall be subject to disclosure under the State's Open Records Act.

Sec. 211: Pre-emption

Nothing in this chapter shall be read to require or authorize any recipient corporation to reduce wages or benefits established under any collective bargaining agreement or state or federal prevailing wage law.

Sec. 212: Separability

If any provision of this Act is determined to be unenforceable in a court of law, such determination shall not affect the validity or enforceability of any other provision of this Act.

Sec. 213: Effective Date

This act shall take effect within sixty days of its enactment, except where otherwise provided.
Title III: Nexus Standard

Sec. 301: Findings and Purpose

The Legislature finds that:

(a) the tax imposed by [reference corporate income tax statute] is a tax on income earned within this state;
(b) regardless of the nature of the activities they conduct within this state, corporations earning income by selling goods and services to [state] resident individuals and businesses are benefiting from public services provided by [state], such as the roads that bring their products to [state] customers and the availability of [state]’s court system;
(c) because of these benefits they receive from [state] services and infrastructure, out-of-state corporations can reasonably be expected to pay their fair share of this state’s income tax;
(d) federal statutes and the U.S. Constitution place some limits on the authority of this state to impose an income tax on out-of-state corporations that are earning income within [state]’s borders;
(e) the boundaries of those limits remain unclear, however, due to contradictory and constantly evolving state and federal court decisions interpreting them;
(f) because of the fundamental fairness of [state]’s taxing the income earned by out-of-state corporations when they sell to state residents and the uncertainty surrounding the precise limits of federal laws restricting such taxation, it is advisable that [state]’s law state clearly that it is [state]’s intention to impose its corporate income tax on out-of-state corporations to the limits permitted by applicable federal statutes and the U.S. Constitution.

The people of the State of _______ do enact as follows:

Sec. 302. Nexus applies, under certain circumstances

The tax imposed by this [Title, Chapter, etc.] shall apply to the entire [reference term corresponding to “taxable income” or “net income”], as defined in [reference to Chapter, Section, etc. defining “taxable income” or “net income”], received by every foreign or domestic corporation owning property within this state, doing business within this state, or deriving income from sources within this state to the extent permitted by the United States Constitution and federal statutes. A corporation shall be deemed to be doing business within this state if it engages within this state in any activities or transactions for the purpose of financial profit or gain whether or not:

(1) The corporation qualifies to do business in this state;
(2) The corporation maintains an office or place of doing business within this state; or
(3) Any such activity or transaction is connected with interstate or foreign commerce.
Title IV: Combined Reporting

Sec. 401: Findings and Purpose

The Legislature finds that:

(a) corporations doing business in [state] and concurrently in other states have available to them at present multiple strategies for shifting taxable profits actually earned here into other states in which those profits will be taxed at lower rates -- or not at all;
(b) the fundamental mechanism of this artificial profit shifting is engaging in transactions with commonly-owned and - controlled corporations formed in other states, whether they be parent, sister, or subsidiary corporations;
(c) this profit-shifting has had a significant negative impact on small business enterprise in this state, as large multistate corporations are able to avoid taxes otherwise owed by them while the small businesses in our communities as well as individual taxpayers end up shouldering a greater share of the burden than would otherwise be necessary;
(d) this tax-avoidance has also resulted in a loss of state revenue that is needed to provide vital public services, such as health care and education;
(e) approximately 20 states are not vulnerable to many forms of artificial income-shifting because they treat related corporations that operate as a single business enterprise (any part of which is being conducted in the state) as one corporation for tax purposes, apportioning a share of the combined, nationwide profit to the state using the appropriate, governing formula;
(f) such “combined reporting” has twice been upheld by the U.S. Supreme Court as a fair and constitutional means of determining the state taxable income of a multistate corporation;
(g) states mandating the use of combined reporting can be found among the most economically successful states in the country, enjoying healthy rates of job growth and business investment;
(h) the adoption by this state of mandatory combined reporting will ensure that multistate corporations pay their fair share of [state]’s corporate income tax.

The people of the State of _______ do enact as follows:

Sec. 402: Definitions

A. “Person” means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation (whether or not the corporation is, or would be if doing business in this state, subject to [state income tax act]), company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

B. “Taxpayer” means any person subject to the tax imposed by [State Corporate income tax act].
C. “Corporation” means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be a “taxpayer.” The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation’s distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation.

D. "Partnership" means a general or limited partnership, or organization of any kind treated as a partnership for tax purposes under the laws of this state.

E. “Internal Revenue Code” means Title 26 of the United States Code of [date] [and amendments thereto] without regard to application of federal treaties unless expressly made applicable to states of the United States.

F. “Unitary business” means [a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.] Drafter’s note: This portion of the definition is drafted to follow MTC Reg. IV(b), defining a “unitary business.” A state that does not wish to define unitary business in this manner should consider alternative language. In addition, this MTC Regulation defining unitary business includes a requirement of common ownership or control. A state which treats ownership or control requirements separately from the unitary business requirement will need to make additional amendments to the statutory language. Any business conducted by a partnership shall be treated as conducted by its partners, whether directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the percentage of the partner's ownership interest or its distributive share. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership if the conditions of the first sentence of this Sec. 1.F. are satisfied, to wit: there is a synergy, and exchange and flow of value between the two parts of the business and the two corporations are members of the same commonly controlled group.

G. “Combined group” means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to Sec. 2.A. or 2.B. in determining the taxpayer’s share of the net business income or loss apportionable to this State.

H. “United States” means the 50 states of the United States, the District of Columbia, and United State’s territories and possessions.

I. “Tax haven” means a jurisdiction that, during the tax year in question:
i. is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven or as having a harmful preferential tax regime, or

ii. exhibits the following characteristics established by the OECD in its 1998 report entitled Harmful Tax Competition: An Emerging Global Issue as indicative of a tax haven or as a jurisdiction having a harmful preferential tax regime, regardless of whether it is listed by the OECD as an un-cooperative tax haven:

   (a) has no or nominal effective tax on the relevant income; and

   (b) (1) has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;

   (2) has tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer’s correct tax liability, such as accounting records and underlying documentation, is not adequately available;

   (3) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;

   (4) explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or

   (5) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

Sec. 403: Combined reporting required, when; discretionary under certain circumstances

A. Combined reporting required, when. A taxpayer engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, determined under Sec. 3.C. of this act, and apportionment factors, determined under [provisions on apportionment factors and Sec. 3.B. of this act], of all corporations that are members of the unitary business, and such other information as required by the Director.

B. Combined reporting at Director’s discretion, when. The Director may, by regulation, require the combined report include the income and associated apportionment factors of any persons that are not included pursuant to Sec. 2.A., but that are members of a unitary business, in order to reflect proper apportionment of income of entire unitary businesses. Authority to require combination by regulation under this Sec. 2.B. includes authority to require combination of persons that are not, or would not be if doing business in this state, subject to the [State income tax Act].

In addition, if the Director determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not included pursuant to Sec. 2.A.
represents an avoidance or evasion of tax by such taxpayer, the Director may, on a case
by case basis, require all or any part of the income and associated apportionment factors
of such person be included in the taxpayer’s combined report.

With respect to inclusion of associated apportionment factors pursuant to Sec. 2.B., the
Director may require the exclusion of any one or more of the factors, the inclusion of one
or more additional factors which will fairly represent the taxpayer's business activity in
this State, or the employment of any other method to effectuate a proper reflection of the
total amount of income subject to apportionment and an equitable allocation and
apportionment of the taxpayer's income.

Sec. 404: Determination of taxable income or loss using combined report

The use of a combined report does not disregard the separate identities of the taxpayer
members of the combined group. Each taxpayer member is responsible for tax based on
its taxable income or loss apportioned or allocated to this state, which shall include, in
addition to other types of income, the taxpayer member’s apportioned share of business
income of the combined group, where business income of the combined group is
calculated as a summation of the individual net business incomes of all members of the
combined group. A member’s net business income is determined by removing all but
business income, expense and loss from that member’s total income, as provided in detail
below.

A. Components of income subject to tax in this state; application of tax credits
and post apportionment deductions.

i. Each taxpayer member is responsible for tax based on its taxable income or loss
apportioned or allocated to this state, which shall include:
   (a) its share of any business income apportionable to this State of each of the
       combined groups of which it is a member, determined under Sec. 3.B.,
   (b) its share of any business income apportionable to this State of a distinct
       business activity conducted within and without the state wholly by the taxpayer
       member, determined under [provisions for apportionment of business income],
   (c) its income from a business conducted wholly by the taxpayer member
       entirely within the state,
   (d) its income sourced to this state from the sale or exchange of capital or
       assets, and from involuntary conversions, as determined under Sec. 3.C.ii.(g), below,
   (e) its nonbusiness income or loss allocable to this State, determined under
       [provisions for allocation of non-business income],
   (f) its income or loss allocated or apportioned in an earlier year, required to
       be taken into account as state source income during the income year, other than a net
       operating loss, and
   (g) its net operating loss carryover or carryback. If the taxable income
       computed pursuant to Sec. 3 results in a loss for a taxpayer member of the combined
       group, that taxpayer member has a [state] net operating loss (NOL), subject to the net
       operating loss limitations, carryforward and carryback provisions of [provisions on
NOLs]. Such NOL is applied as a deduction in a prior or subsequent year only if that taxpayer has [State] source positive net income, whether or not the taxpayer is or was a member of a combined reporting group in the prior or subsequent year.

ii. Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the group, but not fully used by or allowed to that member, may be used in whole or in part by another member of the group or applied in whole or in part against the total income of the combined group; and a post-apportionment deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year, regardless of the composition of that income as apportioned, allocated or wholly within this state.

B. Determination of taxpayer’s share of the business income of a combined group apportionable to this State.

The taxpayer’s share of the business income apportionable to this State of each combined group of which it is a member shall be the product of:

i. the business income of the combined group, determined under Sec. 3.C., and

ii. the taxpayer member’s apportionment percentage, determined under [provisions on apportionment factors], including in the [property, payroll and sales factor] numerators the taxpayer’s [property, payroll and sales, respectively,] associated with the combined group’s unitary business in this state, and including in the denominator the [property, payroll and sales] of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group’s unitary business wherever located. The [property, payroll, and sales] of a partnership shall be included in the determination of the partner’s apportionment percentage in proportion to a ratio the numerator of which is the amount of the partner’s distributive share of partnership’s unitary income included in the income of the combined group in accordance with Sec. 3.C.ii.(c). and the denominator of which is the amount of the partnership’s total unitary income.

C. Determination of the business income of the combined group.

The business income of a combined group is determined as follows:

i. From the total income of the combined group, determined under Sec. 3.C.ii., subtract any income, and add any expense or loss, other than the business income, expense or loss of the combined group.

ii. Except as otherwise provided, the total income of the combined group is the sum of the incomes, separately determined, of each member of the combined group. The income of each member of the combined group shall be determined as follows:

(a) For any member incorporated in the United States, or included in a consolidated federal corporate income tax return, the income to be included in the total income of the combined group shall be the taxable income for the corporation.
after making appropriate adjustments under [state tax code provisions for adjustments
to taxable income].

(b) (1) For any member not included in Sec. 3.C.ii.(a), the income to be included
in the total income of the combined group shall be determined as follows:

(A) A profit and loss statement shall be prepared for each foreign branch or
corporation in the currency in which the books of account of the branch or
corporation are regularly maintained.

(B) Adjustments shall be made to the profit and loss statement to conform it
to the accounting principles generally accepted in the United States for the
preparation of such statements except as modified by this regulation.

(C) Adjustments shall be made to the profit and loss statement to conform it
to the tax accounting standards required by the [state tax code]

(D) Except as otherwise provided by regulation, the profit and loss statement
of each member of the combined group, and the apportionment factors related
thereto, whether United States or foreign, shall be translated into the currency in
which the parent company maintains its books and records.

(E) Income apportioned to this state shall be expressed in United States
dollars.

(2) In lieu of the procedures set forth in Sec. 3.C.ii.(b)(1), above, and subject
to the determination of the Director that it reasonably approximates income as
determined under [the State tax code], any member not included in Sec. 3.C.ii.(a)
may determine its income on the basis of the consolidated profit and loss
statement which includes the member and which is prepared for filing with the
Securities and Exchange Commission by related corporations. If the member is
not required to file with the Securities and Exchange Commission, the Director
may allow the use of the consolidated profit and loss statement prepared for
reporting to shareholders and subject to review by an independent auditor. If
above statements do not reasonably approximate income as determined under [the
State tax code] the Director may accept those statements with appropriate
adjustments to approximate that income.

(c) If a unitary business includes income from a partnership, the income to be
included in the total income of the combined group shall be the member of the
combined group's direct and indirect distributive share of the partnership's unitary
business income.

(d) All dividends paid by one to another of the members of the combined group
shall, to the extent those dividends are paid out of the earnings and profits of the
unitary business included in the combined report, in the current or an earlier year, be
eliminated from the income of the recipient. This provision shall not apply to
dividends received from members of the unitary business which are not a part of the
combined group.

(e) Except as otherwise provided by regulation, business income from an
intercompany transaction between members of the same combined group shall be
deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of the
following events, deferred business income resulting from an intercompany
transaction between members of a combined group shall be restored to the income of
the seller, and shall be apportioned as business income earned immediately before the event:

1. the object of a deferred intercompany transaction is
   A. re-sold by the buyer to an entity that is not a member of the combined group,
   B. re-sold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or
   C. converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged, or
2. the buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.

A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Sec. 170, be subtracted first from the business income of the combined group (subject to the income limitations of that section applied to the entire business income of the group), and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense (subject to the income limitations of that section applied to the nonbusiness income of that specific member). Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member, and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

Gain or loss from the sale or exchange of capital assets, property described by Internal Revenue Code Sec. 1231(a)(3), and property subject to an involuntary conversion, shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows.

1. For each class of gain or loss (short term capital, long term capital, Internal Revenue Code Sec. 1231, and involuntary conversions) all members' business gain and loss for the class shall be combined (without netting between such classes), and each class of net business gain or loss separately apportioned to each member using the member's apportionment percentage determined under Sec. 3.B., above.

2. Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this State, using the rules of Internal Revenue Code Sections 1231 and 1222, without regard to any of the taxpayer member's gains or losses from the sale or exchange of capital assets, Sec. 1231 property, and involuntary conversions which are nonbusiness items allocated to another state.

3. Any resulting state source income (or loss, if the loss is not subject to the limitations of Internal Revenue Code Sec. 1211) of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.

4. Any resulting state source loss of a member that is subject to the limitations of Sec. 1211 shall be carried forward [or carried back] by that...
member, and shall be treated as state source short-term capital loss incurred by
that member for the year for which the carryover [or carryback] applies.
(h) Any expense of one member of the unitary group which is directly or
indirectly attributable to the nonbusiness or exempt income of another member of the
unitary group shall be allocated to that other member as corresponding nonbusiness or
exempt expense, as appropriate.

Sec. 405: Designation of surety

As a filing convenience, and without changing the respective liability of the group
members, members of a combined reporting group may annually elect to designate one
taxpayer member of the combined group to file a single return in the form and manner
prescribed by the department, in lieu of filing their own respective returns, provided that
the taxpayer designated to file the single return consents to act as surety with respect to
the tax liability of all other taxpayers properly included in the combined report, and
agrees to act as agent on behalf of those taxpayers for the year of the election for tax
matters relating to the combined report for that year. If for any reason the surety is
unwilling or unable to perform its responsibilities, tax liability may be assessed against
the taxpayer members.

Sec. 406: Water’s-edge election; initiation and withdrawal

A. Water’s-edge election.

Taxpayer members of a unitary group that meet the requirements of Sec. 5.B. may elect
to determine each of their apportioned shares of the net business income or loss of the
combined group pursuant to a water’s-edge election. Under such election, taxpayer
members shall take into account all or a portion of the income and apportionment factors
of only the following members otherwise included in the combined group pursuant to
Sec. 2, as described below:

i. the entire income and apportionment factors of any member incorporated in the
United States or formed under the laws of any state, the District of Columbia, or any
territory or possession of the United States;

ii. the entire income and apportionment factors of any member, regardless of the
place incorporated or formed, if the average of its property, payroll, and sales factors
within the United States is 20 percent or more;

iii. the entire income and apportionment factors of any member which is a domestic
international sales corporations as described in Internal Revenue Code Sections 991 to
994, inclusive; a foreign sales corporation as described in Internal Revenue Code
Sections 921 to 927, inclusive; or any member which is an export trade corporation, as
described in Internal Revenue Code Sections 970 to 971, inclusive;

iv. any member not described in [Sec. 5.A.i.] to [Sec. 5.A.iii.], inclusive, shall
include the portion of its income derived from or attributable to sources within the United
States, as determined under the Internal Revenue Code without regard to federal treaties,
and its apportionment factors related thereto;
v. any member that is a “controlled foreign corporation,” as defined in Internal Revenue Code Sec. 957, to the extent of the income of that member that is defined in Sec. 952 of Subpart F of the Internal Revenue Code (“Subpart F income”) not excluding lower-tier subsidiaries’ distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in Internal Revenue Code Sec. 11;

vi. any member that earns more than 20 percent of its income, directly or indirectly, from intangible property or service related activities that are deductible against the business income of other members of the combined group, to the extent of that income and the apportionment factors related thereto; and

vii. the entire income and apportionment factors of any member that is doing business in a tax haven, where “doing business in a tax haven” is defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards. If the member’s business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria established in Sec. 1.1., the activity of the member shall be treated as not having been conducted in a tax haven.

B. Initiation and withdrawal of election

i. A water’s-edge election is effective only if made on a timely-filed, original return for a tax year by every member of the unitary business subject to tax under [state income tax code]. The Director shall develop rules and regulations governing the impact, if any, on the scope or application of a water’s-edge election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members, and any other similar change.

ii. Such election shall constitute consent to the reasonable production of documents and taking of depositions in accordance with [state statute on discovery].

iii. In the discretion of the Director, a water’s-edge election may be disregarded in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of [this act] or if a person otherwise not included in the water's-edge combined group was availed of with a substantial objective of avoiding state income tax.

iv. A water’s-edge election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of 10 years. It may be withdrawn or reinstated after withdrawing, prior to the expiration of the 10 year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law, or policy, and only with the written permission of the Director. If the Director grants a withdrawal of election, he or she shall impose reasonable conditions as necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the 10 year period, a taxpayer may withdraw from the water’s edge election. Such withdrawal must be made in writing
within one year of the expiration of the election, and is binding for a period of 10 years, subject to the same conditions as applied to the original election. If no withdrawal is properly made, the water’s edge election shall be in place for an additional 10 year period, subject to the same conditions as applied to the original election.
Title V: Throwback Rule

Sec. 501: Findings and Purpose

The Legislature finds that:

(a) individual citizens of [state] are subject to state income tax on 100 percent of their incomes, even if some of it is earned in other states;
(b) some major multistate corporations doing business here, however, enjoy “nowhere income” that is not subject to tax by any of the states in which they are earning it;
(c) a majority of states agreed fifty years ago to cooperatively address the “nowhere income” problem by enacting the “throwback rule,” which effectively sources “nowhere income” for taxation to the state in which otherwise non-taxable sales originate;
(d) [state] should ensure that corporations are subject to tax on 100 percent of their incomes, just as individuals are, by enacting the “throwback rule.”

The people of the State of _______ do enact as follows:

Sec. 502: Application of “throwback rule” to eliminate “nowhere income”

[The throwback rule is the underlined text below. See the Appendix for a presentation of the actual modification of existing statutory text needed to implement the throwback rule in the states in which it is not yet in effect. The definition of “taxable in another state” that appears below the throwback rule is needed to implement the rule with clarity; this definition generally appears elsewhere in the apportionment section of state corporate income tax statutes. The “free on board point” is the place at which the legal risk of loss for the shipped item transfers from the seller to the buyer.]

Sales of tangible personal property are in this State if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or
(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

A taxpayer is “taxable in another State” if (1) in that State he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that State has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the State does or does not do so.
Title VI: Business and Nonbusiness Income Defined

Sec. 601: Findings and Purpose

The Legislature finds that:

(a) The U.S. Supreme Court has held that the Constitution requires that corporate profits attributable to general business operations must be fairly apportioned to the states in which such operations occur, while profits attributable to passive investment activities may only be taxed by the state in which the investments are managed;

(b) Ambiguity in [state]’s definitions of these two categories of taxable income result in our state losing its fair share of income tax on certain irregular corporate transactions, such as the profit earned on the sale of a corporation’s subsidiary;

(c) This ambiguity is best resolved by expressly stating that it is [state]’s intention to include in apportionable corporate income all income that this state has the right to tax under applicable constitutional standards.

Sec. 602: Definition of business and nonbusiness income

[Strike definitions of apportionable “business income” and allocable “nonbusiness income” and substitute the following:]

“‘Business income’ means all income of a taxpayer which is apportionable under the Constitution of the United States.”

“‘Nonbusiness income’ means all income of a taxpayer other than business income.”
Title VII: Deduction for Net Operating Loss “Carrybacks” Disallowed

Sec. 701: Findings and Purpose

The Legislature finds that:

(a) The net operating loss (NOL) “carryback” provision currently in our tax law allows businesses to:
   1) file amended income tax returns for past years in which they were profitable,
   2) use current year business losses to offset those profits, and
   3) receive refunds of excess taxes paid in past years; and that

(b) an unintended consequence of said provision is that the budgetary shocks occurring during years of economic recession are multiplied, further compounding the fiscal problems of this state; therefore

(c) amendment of our tax laws to disallow carrybacks of business losses is the best and necessary solution.

Sec. 702: Operating loss, defined

[In states in which the definition of taxable income for corporations corresponds to federal taxable income after the deduction for net operating loss carryforwards and carrybacks (line 30 of the federal corporate income tax form), add the following to the section of the statute listing required additions to federal taxable income needed to arrive at state taxable income:]

The amount of net operating loss deducted pursuant to Section 172 of the Internal Revenue Code.

[Then, to permit net operating loss carryforwards only, add the following:]

Sec. 703: Operating loss deduction, disallowal of carryback, allowance of carryover.

1. Allowance of deduction. There shall be allowed as a deduction for the taxable year the amount of any net operating loss deduction as provided in section 172 of the Internal Revenue Code, subject to the limitations and modifications provided in this section.

2. Defined and limited.

(a) The term "net operating loss" as used in this section shall mean a net operating loss as defined in section 172(c) of the Internal Revenue Code, with the modifications specified in paragraph 4. The deductions provided in [reference section describing deduction for inter-corporate dividends] cannot be used in the determination of a net operating loss.
(b) The term "net operating loss deduction" as used in this section means the aggregate of the net operating loss carryovers to the taxable year, computed in accordance with paragraph 3. The provisions of section 172(b) of the Internal Revenue Code relating to the carryback of net operating losses, do not apply.

3. Carryover.

(a) A net operating loss incurred in a taxable year beginning after [effective date] shall be a net operating loss carryover to each of the 20 taxable years [or shorter period, if conformity to federal law is not desired] following the taxable year of such loss.

(b) The entire amount of the net operating loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable net income, adjusted by the modifications specified in paragraph 4, for each of the taxable years to which such loss may be carried.

(c) Where a corporation apportions its income under the provisions of [reference section of statute detailing apportionment rules], the net operating loss deduction incurred in any taxable year shall be allowed to the extent of the apportionment ratio of the loss year.

4. Computation and modifications. The following modifications shall be made in computing a net operating loss in any taxable year and also in computing the taxable net income for any taxable year before a net operating loss deduction shall be allowed:

(a) No deduction shall be allowed for or with respect to losses connected with income producing activities if the income therefrom would not be required to be either assignable to this state or included in computing the taxpayer's taxable net income.

(b) A net operating loss deduction shall not be allowed.
Title VIII: Deduction for “Qualified Production Activities Income” Disallowed

Sec. 801: Findings and Purpose

The Legislature finds that:

(a) the Federal “Qualified Production Activities Income” tax deduction, enacted in 2004 as Section 199 of the Internal Revenue Code, significantly reduces corporate and personal income tax revenue in [state] because our state’s definition of taxable income conforms with the federal definition;

(b) [state]’s conformity with this tax break is wholly unwarranted because there is no quid pro quo of in-state job creation and investment attached to it and no legal way to limit the deduction to increased production activities that create jobs in [state];

(c) recognizing this, approximately 20 states have “decoupled” from this deduction to ensure that their tax revenues are not adversely affected by this tax break.

(d) [state] should likewise decouple from the Qualified Production Activities Income deduction to ensure that the state has adequate revenues with which to provide vital public services and does not unnecessarily forgo revenues in the name of economic development when tax incentives are not tied to guarantees of in-state job creation and investment.

Sec. 802: Deduction for “Qualified Production Activities Income” Disallowed

[Add to the section of the state corporate income tax statute listing those items that must be added to federal taxable income to calculate pre-apportionment state taxable income:]

The amount equal to the taxpayer’s deduction relating to income attributable to qualified production activities claimed in accordance with Section 199 of the Internal Revenue Code in effect for the tax year.
The following examples illustrate underline/strikeout modification of the existing state corporate income tax statute needed to implement the throwback rule in states in which it is not in effect. These examples represent an attempt to minimize the extent to which existing statutory language needs to be modified to accommodate the throwback rule; other wording could achieve the same result. In most states it likely will be necessary to modify the formatting shown to conform with the subsection/paragraph/(etc.) numbering scheme required by state law. Statutory citation of the relevant language was provided to facilitate identification and location of the text being modified; it, too, may not conform to standard statutory citation formats used in the state.

**Connecticut**

Title 12, Chapter 208, Sec. 281(c) of the General Statutes of Connecticut is amended to read, in relevant part:

(3) The third fraction, the receipts factor, shall represent the part of the taxpayer's gross receipts from sales or other sources during the income year, computed according to the method of accounting used in the computation of its entire net income, which is assignable to the state, and excluding any gross receipts attributable to an international banking facility as defined in Sec. 12-217, but including a) receipts from sales of tangible property if the property is delivered or shipped to a purchaser within this state, other than the United States Government or a company which qualifies as a Domestic International Sales Corporation (DISC) as defined in Sec. 992 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, and as to which a valid election under Subsection (b) of said Sec. 992 to be treated as a DISC is effective, regardless of the f.o.b. point or other conditions of the sale; b) receipts from sales of tangible personal property if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser; c) receipts from services performed within the state; d) rentals and royalties from properties situated within the state; e) royalties from the use of patents or copyrights within the state; f) interest managed or controlled within the state; g) net gains from the sale or other disposition of intangible assets managed or controlled within the state; h) net gains from the sale or other disposition of tangible assets situated within the state; and i) all other receipts earned within the state.

**Arizona**

Title 43, Chapter 11, Article 4, Sec. 1146 of the Arizona Revised Statutes is amended to read, in relevant part:

Sales of tangible personal property are considered to be in this state if a) the property is delivered or shipped to a purchaser, other than the United States government, within this
state regardless of the F.O.B. point or other conditions of the sale; or b) the property is
shipped from an office, store, warehouse, factory, or other place of storage in this state
and the purchaser is the United States Government or the taxpayer is not taxable in the
state of the purchaser.

Delaware

Title 30, Chapter 19, Sec. 1903(b)(6) of the Delaware Code is amended to read, in
relevant part:

   c. Gross receipts from sales of tangible personal property physically delivered within
this State to the purchaser, other than the United States Government, or the
purchaser's agent (but not including delivery to the United States mail or to a
common or contract carrier for shipment to a place outside this State) and gross
receipts from sales of tangible personal property shipped from an office, store,
warehouse, factory, or other place of storage in this State if the purchaser is the
United States Government or if the taxpayer is not taxable in the State of the
purchaser and gross income from other sources within this State for the income year
expressed as a percentage of all such gross receipts from sales of tangible personal
property and gross income from other sources both within and without the State for
the income year; provided, that any receipts or items of income that are excluded in
determining the taxpayer's entire net income or are directly allocated under
paragraphs (1) to (6) of this subsection shall be disregarded.

Florida

Title XIV, Chapter 220, Sec. 220.15 of the 2005 Florida Statutes is amended to read, in
relevant part:

Sales of tangible personal property occur in this state if (a) the property is delivered or
shipped to a purchaser, other than the United States Government, within this state,
regardless of the f.o.b. point, other conditions of the sale, or ultimate destination of the
property, unless shipment is made via a common or contract carrier or (b) the property is
shipped from an office, store, warehouse, factory, or other place of storage in this state
and the purchaser is the United States Government or the taxpayer is not taxable in the
state of the purchaser. However, for industries in SIC Industry Number 2037, if the
ultimate destination of the product is to a location outside this state, regardless of the
method of shipment or f.o.b. point or the taxability of the taxpayer in the state of the
purchaser, the sale shall not be deemed to occur in this state.

Georgia

Title 48, Chapter 7, Sec. 31 of the Georgia Code is amended to read, in relevant part:

(C) Gross receipts factor.
(i) The gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For the purposes of this subparagraph, receipts shall be deemed to have been derived from business done within this state only if: a) the receipts are received from products shipped to customers in this state, other than the United States Government, or from products delivered within this state to customers other than the United States Government; or b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser. In determining the gross receipts within this state, receipts from sales negotiated or effected through offices of the taxpayer outside this state and delivered from storage in this state to customers outside this state shall be excluded;

Iowa

Title X, Chapter 422, Sec. 422.33 of the 2005 Merged Iowa Code and Supplement is amended to read, in relevant part:

The gross sales of the corporation within the state shall be taken to be the gross sales from goods a) delivered or shipped to a purchaser, other than the United States Government, within the state regardless of the f.o.b. point or other conditions of the sale, excluding deliveries for transportation out of the state and from goods b) shipped from an office, store, warehouse, factory, or other place of storage in this state if the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser.

Kentucky

Title XI, Chapter 141, Sec. 141.120 of the Kentucky Revised Statutes is amended to read, in relevant part:

Sales of tangible personal property are in this state if:

a. The property is delivered or shipped to a purchaser, other than the United States government, or to the designee of the purchaser within this state regardless of the f.o.b. point or other conditions of the sale; or

b. The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government or the taxpayer is not taxable in the state of the purchaser.

Louisiana

Title 47, Sec. 245 of the Louisiana Revised Statutes is amended to read, in relevant part:

(3) For the purpose of this Subsection sales attributable to this state shall be all sales where the goods, merchandise, or property is a) shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States
Government or the taxpayer is not taxable in the state of the purchaser; or b) received in this state by a purchaser other than the United States Government. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state.

Maryland

Title 10, Subtitle 4, Sec. 10-402 of the Maryland Code is amended to read, in relevant part:

(3) The property factor under paragraph (1) of this subsection shall include:
   (i) rented and owned real property; and
   (ii) tangible personal property located in the State and used in the trade or business.

(4) For purposes of the sales factor under paragraph (1) of this subsection, sales of tangible personal property are in this state if:
   (i) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or
   (ii) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and the purchaser is the United States Government or the taxpayer is not taxable in the State of the purchaser.

Massachusetts

Title IX, Chapter 63, Sec. 38 of the General Laws of Massachusetts is amended to read, in relevant part:

Sales of tangible personal property are in this commonwealth if:

1. the property is delivered or shipped to a purchaser, other than the United States government, within this commonwealth regardless of the f.o.b. point or other conditions of the sale; or

2. the purchaser is the United States government or the corporation is not taxable in the state of the purchaser and the property was not sold by an agent or agencies chiefly situated at, connected with or sent out from premises for the transaction of business owned or rented by the corporation outside this commonwealth.

“Purchaser”, as used in clauses 1 and 2 of this paragraph, shall include the United States government.

Minnesota
Chapter 290, Sec. 290.191, Subdivision 5, of the Minnesota Statutes 2005, is amended to read, in relevant part:

(b) Sales of tangible personal property are made within this state if the property is received by a purchaser, other than the United States Government, at a point within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point, other conditions of the sale, or the ultimate destination of the property; or if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser.

Nebraska

Chapter 77, Sec. 77-2734.14 of the State of Nebraska Statutes is amended to read, in relevant part:

(2) Sales of tangible personal property in this state include:

(a) Property delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale;

(b) Property shipped from an office, store, warehouse, factory, or other place of storage in this state if (i) the purchaser is the United States Government or (ii) for all taxable years beginning or deemed to begin before January 1, 1995, under the Internal Revenue Code of 1986, as amended, the taxpayer is not taxable in the state of the purchaser;

(c) For all taxable years beginning or deemed to begin on or after January 1, 1995, and before January 1, 1996, under the Internal Revenue Code of 1986, as amended, two-thirds of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser; or

(d) For all taxable years beginning or deemed to begin on or after January 1, 1996, but before January 1, 1997, under the Internal Revenue Code of 1986, as amended, one-third of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser.

New York

Article 9-A, Sec. 210 of the Laws of New York is amended to read, in relevant part:

(2) ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from

(A) sales of its tangible personal property, other than sales to the United States Government, where shipments are made to points within this state, regardless of the f.o.b. point or other conditions of the sale, plus sales of its tangible personal property shipped
from an office, store, warehouse, factory, or other place of storage in this state, where the
purchaser is the United States Government or where the taxpayer is not taxable in the
state of the purchaser,
(B) services performed within the state.

North Carolina

Article 4, Chapter 105, Sec. 105-130.4 of the North Carolina General Statutes is amended
to read, in relevant part:
(2) Sales of tangible personal property are in this State if the property is shipped from an
office, store, warehouse, factory, or other place of storage in this State and i) the
purchaser is the United States Government or ii) the taxpayer is not taxable in the state of
the purchaser; or if
the property is received in this State by a purchaser other than the
United States Government. In the case of delivery of goods by common carrier or by
other means of transportation, including transportation by the purchaser, the place at
which the goods are ultimately received after all transportation has been completed shall
be considered as the place at which the goods are received by the purchaser. Direct
delivery into this State by the taxpayer to a person or firm designated by a purchaser from
within or without the State shall constitute delivery to the purchaser in this State.

Ohio

Title LVII, Chapter 5733, Sec. 5733.05 of the Ohio Revised Code is amended to read, in
relevant part:
Receipts from the sale of tangible personal property shall be sitused to this state if a) such
property is shipped from an office, store, warehouse, factory or other place of storage in
this state and (1) the purchaser is the United States Government or (2) the taxpayer is not
taxable in the state of the purchaser; or b) such property is received in this state by a
purchaser other than the United States Government. In the case of delivery of tangible
personal property by common carrier or by other means of transportation, the place at
which such property is ultimately received after all transportation has been completed
shall be considered as the place at which such property is received by the purchaser.
Direct delivery in this state, other than for purposes of transportation, to a person or firm
designated by a purchaser constitutes delivery to the purchaser in this state, and direct
delivery outside this state to a person or firm designated by the purchaser does not
constitute delivery to the purchaser in this state, regardless of where title passes or other
conditions of sale.

Pennsylvania

Title 61, Chapter 153, Sec. 153.26 of the Pennsylvania Code is amended to read, in
relevant part:
(1) When sales of tangible personal property are in this Commonwealth. Sales of tangible personal property are in this Commonwealth if:

(i) the property is delivered or shipped to a purchaser, other than the United States Government, within this Commonwealth regardless of the f.o.b. point or other conditions of the sale; or

(ii) the property is shipped from an office, store, warehouse, factory, or other place of storage in this Commonwealth and a) the purchaser is the United States Government or b) the taxpayer is not taxable in the state of the purchaser.

Rhode Island

Title 44, Chapter 44-11, Sec. 44-11-14 of the State of Rhode Island General Laws is amended to read, in relevant part:

(2) The second fraction shall represent that part of the taxpayer’s total receipts from sales or other sources during the taxable year which is attributable to the taxpayer’s activities or transactions within this state during the taxable year; meaning and including within that part, as being thus attributable, receipts from:

(i) Gross sales, other than to the United States Government, of its tangible personal property (inventory sold in the ordinary course of business) where shipments are made to points within this state and gross sales of its tangible personal property shipped from an office, store, warehouse, factory, or other place of storage in this state where a) the purchaser is the United States Government or b) the taxpayer is not taxable in the state of the purchaser;

South Carolina

Title 12, Chapter 6, Sec. 12-6-2280 of the South Carolina Code of Laws is amended to read, in relevant part:

(B) The term “sales in this State” includes sales of goods, merchandise, or property received by a purchaser in this State other than the United States Government and also includes sales of goods, merchandise, or property shipped from an office, store, warehouse, factory, or other place of storage in this State when a) the purchaser is the United States Government or b) the taxpayer is not taxable in the State of the purchaser.

The place where goods are received by the purchaser after all transportation is completed is considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person designated by a purchaser constitutes delivery to the purchaser in this State.

Tennessee

Title 67, Chapter 4, Part 20, Sec. 67-4-2012 of the Tennessee Code is amended to read, in relevant part:
(h) Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, inside this state regardless of the F.O.B. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government or the taxpayer is not taxable in the State of the purchaser.

Virginia

Title 58.1, Chapter 3, Sec. 58.1-415 of the Code of Virginia is amended to read, in relevant part:

Sales of tangible personal property are in the Commonwealth if such property is shipped from an office, store, warehouse, factory, or other place of storage in this Commonwealth and a) the purchaser is the United States Government or b) the taxpayer is not taxable in the State of the purchaser; or if such property is received in the Commonwealth by the purchaser other than the United States Government. In the case of delivery by common carrier or other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in the Commonwealth, other than for purposes of transportation, to a person or firm designated by a purchaser, constitutes delivery to the purchaser in the Commonwealth, and direct delivery outside the Commonwealth to a person or firm designated by the purchaser does not constitute delivery to the purchaser in the Commonwealth, regardless of where title passes, or other conditions of sale.
7. Top 10 Companies that Paid Zilch

On March 27, 2011 Senator Bernie Sanders (Independent-Vermont) issued a news release asking the wealthiest Americans and most profitable corporations to do their fair share. In the release, he listed ten worst income tax avoiders, led by Exxon-Mobil. The #1 tax avoider, Exxon-Mobil earned $19 billion in profits in 2009 and not only paid nothing in Federal taxes, it actually received a $156 million rebate from the IRS!
Bernie Sanders on The Ten Worst Corporate Tax Avoiders: It's Time for Them to Pay up and Share the Sacrifice

Submitted by BuzzFlash on Sun, 03/27/2011 - 1:55pm.
A BUZZFLASH NEWS ALERT

The following is a news release from the office of Sen. Bernie Sanders (Vermont-I)

While hard working Americans fill out their income tax returns this tax season, General Electric and other giant profitable corporations are avoiding U.S. taxes altogether.

With Congress returning to Capitol Hill on Monday to debate steep spending cuts, Sen. Bernie Sanders (I-Vt.) said the wealthiest Americans and most profitable corporations must do their share to help bring down our record-breaking deficit.

Sanders renewed his call for shared sacrifice after it was reported that General Electric and other major corporations paid no U.S. taxes after posting huge profits. Sanders said it is grossly unfair for congressional Republicans to propose major cuts to Head Start, Pell Grants, the Social Security Administration, nutrition grants for pregnant low-income women and the Environmental Protection Agency while ignoring the reality that some of the most profitable corporations pay nothing or almost nothing in federal income taxes.

Sanders compiled a list of some of the 10 worst corporate income tax avoiders:

1) Exxon Mobil made $19 billion in profits in 2009. Exxon not only paid no federal income taxes, it actually received a $156 million rebate from the IRS, according to its SEC filings.

2) Bank of America received a $1.9 billion tax refund from the IRS last year, although it made $4.4 billion in profits and received a bailout from the Federal Reserve and the Treasury Department of nearly $1 trillion.

3) Over the past five years, while General Electric made $26 billion in profits in the United States, it received a $4.1 billion refund from the IRS.

4) Chevron received a $19 million refund from the IRS last year after it made $10 billion in profits in 2009.

5) Boeing, which received a $30 billion contract from the Pentagon to build 179 airborne tankers, got a $124 million refund from the IRS last year.

6) Valero Energy, the 25th largest company in America with $68 billion in sales last year received a $157 million tax refund check from the IRS and, over the past three years, it received a $134 million tax break from the oil and gas manufacturing tax deduction.

7) Goldman Sachs in 2008 only paid 1.1 percent of its income in taxes even though it earned a profit of $2.3 billion and received an almost $800 billion from the Federal Reserve and U.S. Treasury Department.

8) Citigroup last year made more than $4 billion in profits but paid no federal income taxes. It received a $2.5 trillion bailout from the Federal Reserve and U.S. Treasury.

9) ConocoPhillips, the fifth largest oil company in the United States, made $16 billion in profits from 2007 through 2009, but received $451 million in tax breaks through the oil and gas manufacturing deduction.

10) Over the past five years, Carnival Cruise Lines made more than $11 billion in profits, but its federal income tax rate during those years was just 1.1 percent.

Sanders has called for closing corporate tax loopholes and eliminating tax breaks for oil and gas companies. He also introduced legislation to impose a 5.4 percent surtax on millionaires that would yield up to $50 billion a year. The senator has said that spending cuts must be paired with new revenue so the federal budget is not balanced solely on the backs of working families.

"We have a deficit problem. It has to be addressed," Sanders said, "but it cannot be addressed on the backs of the sick, the elderly, the poor, young people, the most vulnerable in this country. The wealthiest people and the largest corporations in this country have got to contribute. We've got to talk about shared sacrifice."

http://blog.buzzflash.com/node/12533
8. Corporate Accountability Checklist

⚠️ Seeking information on loopholes and subsidies is part of a broader movement towards bringing about great transparency and accountability to government and its interaction with corporations.

⚠️ This checklist may serve as a plan of action for your state to follow as you work to shore up revenues for education by closing corporate tax loopholes and bringing greater scrutiny to tax expenditures intended to promote economic growth.
Corporate Accountability Action Items

✓ Get the Facts
Submit an Information Request
  o Submit an information request to your department of revenue to determine the current corporate tax contributions. *Attached is a sample information request.*
  o Use resources like Good Jobs First ([www.goodjobsfirst.org](http://www.goodjobsfirst.org)) to learn what corporate tax giveaways are costing your state.
  o Learn which businesses in your state will be impacted by policy changes. Manufacturers may threaten to leave the state, but in the cases of Alabama and Mississippi it was large retailers who were skirting tax laws and they will not cede the state’s business to their competitors, and therefore are unlikely to move business to another state.

✓ Educate your members
  o Schedule a TEF/Economic Summit to share key research and provide training to members to increase their understanding of the connection of corporate accountability efforts to their schools.

✓ Schedule Briefings with Legislators
  *Attached is a sample presentation given to MAE, using the example of Alabama’s tax structure to tell the story.*
  o Briefings help educate and identify leaders’ interest in the issue and moving a bill.
  o Based on state dynamics, determine whether it is better to move this quietly or whether public pressure is needed.
    • For instance in Mississippi, hold “internal” briefings with legislators – MAE agreed not to do press, member alerts, anything, etc.
  o Given the current budget climate, this type of legislation has moved in other states with bipartisan support.
    ▪ The loophole was closed in Alabama with the support of then-Republican Gov. Bob Riley in 2006.

✓ Tailor Model Legislation for your State
  Once you have a clear understanding of the corporate tax issues in your state, tailor the model legislation to address the issues that will best address corporate tax giveaways in your state.

✓ Identify Key Partners
Coalition partners can provide key support in research, legislative testimony, outreach to the public, or mobilizing for public events. Identify groups that will help leverage your work with state legislative targets.
  o **State Budget and Revenue Policy Groups**
    Are there state budget and revenue groups that can assist in this work, providing testimony, analyzing budget documents or developing presentations and op-eds to educate the public?
  o **Coalitions**
    Are there health and human services groups, children’s advocacy coalitions or senior groups that may be interested in supporting this work?
    Are there small business groups interested in leveling the playing field with the large box stores or other businesses that might benefit from state tax loopholes?
guide to BESTPRACTICES

How to develop a state level collaborative to advance fair tax objectives, including closing tax loopholes

Created in May 2011 in partnership by the National Education Association and members of the Tax Fairness Organizing Collaborative at United for a Fair Economy.
An advocacy coalition brings together individuals and organizations to address a specific policy or issue, for example health care reform or environmental protection. Over the last decade – during which both the internet and housing bubbles burst – states across the nation have been utilizing the coalition approach to press state governments for fair and adequate taxation to help balance severe budget shortfalls.

Coalitions bring together diverse organizations across issue lines, each of which brings a unique asset to the table. Members of the coalition can effectively organize and educate their base to generate community-level support.

This guide offers a step-by-step, best practices approach to organizing and sustaining a state-level revenue coalition. While many of these best practices could be applied to coalitions formed around any issue, this guide offers strategies and best practices unique to coalitions built around revenue issues. This guide draws from the expertise of 8 state tax fairness organizing groups from across the United States that have participated in various stages of state-level revenue coalitions. It is intended for individuals and organizations with a stake in promoting fair and adequate revenue at the state level, particularly through closing tax loopholes.

States across the nation have been utilizing the coalition approach to press state governments for fair and adequate taxation to help balance severe budget shortfalls.
Revenue coalitions are an efficient and effective strategy for individuals and groups to organize and communicate. Whether large or small, the success of a coalition can often be determined by how effectively it operates, meaning:

- The coalition must be beneficial to all of its members; there must be something in it for everyone.
- There must be mutual respect and understanding. Each partner must demonstrate an ability to understand the others’ point of view, even when there is disagreement.
- Members must be willing to compromise.
- There must be a sense of partnership, even if member parties are different in size. Partnership does not mean that all responsibilities and positions are divided evenly within the coalition, but that each group is respected for the unique attributes it brings to the coalition and has an equitable and fair say in how decisions are made and benefits distributed.

**START SMALL**

The impetus for establishing a tax fairness coalition often begins with a small group of concerned organizational leaders. Often these core leaders work on issues that are largely dependent on adequate revenue and/or economic justice. Examples of core coalition members who may play a lead role in establishing the coalition are:

- Organizing groups that work directly on revenue issues and/or issues primarily sustained by state revenue;
- State fiscal policy groups;
- Public employee unions;
- Community groups serving constituents who rely on public funds (senior citizens, homeless, students, etc.).

If there are groups whose membership is particularly important to the future impact of the coalition, it may be prudent to involve these groups at the outset of the coalition’s formation. For example, if the revenue coalition’s campaign is to close corporate tax loopholes, involving a few business groups from the beginning would be wise.

Ideally, the coalition has a budget and at least one paid staff member to provide administrative support. Funding for these resources can come from participating members on a sliding scale based on financial ability.
MISSOURI
“Revenue issues, especially, involves outreach to folks you might not usually work with. Revenue streams, allocation, and reform give you opportunities for unusual alliances.”

DEFINE THE COALITION’S PURPOSE
It is critical that the core group define the purpose and scope of the newly established coalition. This includes articulating a clear mission and core guiding principles. These initial items can be debated/altered by the larger coalition once formed, but it’s helpful to have a small, committed group doing this work even before something formal has coalesced. That way, organizations know what they’re getting into when considering whether or not to join. In the case of a closing tax loophole campaign, the mission is to raise revenue through closing tax loopholes, but the specific tax loopholes to be closed can either be identified by the core group at this point or can be left for the larger coalition to decide in accordance with the mission and core guiding principles.

BUILD OUT THE MEMBERSHIP
With a mission and core principles established, the initial small group (with the assistance of staff, if any) must now recruit organizations to join the coalition. To do so, the small group must determine which organizations in the state are logical allies. With a closing loophole coalition, potential members are individuals or groups who have a stake in a more fair and adequate tax system and/or who have political influence to help win fair tax reforms.

To determine who can help the coalition win tax reforms, the group should start with a power analysis, a tool that helps identify who has the power to give the coalition what it wants. In the state tax policy arena, primary targets are state legislators and the governor, and secondary targets are the people who have the power to influence those primary targets (e.g., legislators’ constituents, donors, influential/powerful people, business leaders, etc.).

In COLORADO, the common interest of the coalition members is maintaining and strengthening the common good.

In NEW YORK, the coalition’s focus is on revenue raising options rather than how the money raised should be spent, since the latter creates tension and can divide the coalition.

NEVADA’s core principles are: 1) Vital government services must be preserved, and 2) New revenues must be a component of any fiscal solution.

In conservative states, like MAINE, a nonpartisan approach may be effective. “Be careful not to allow the coalition to become too partisan; give full voice to people with divergent ideological reasons for opposition.”
When considering allies or interested parties who have a stake in fair and adequate taxation, any group that gets direct or indirect government funding (e.g., social service agencies, contractors) or relies on government infrastructure or services (business owners) should be asked to join. Be sure to think outside the box— for example, maybe the state Chamber of Commerce won’t join a closing tax loopholes coalition, but some local chambers will. Aim for breadth and depth in establishing these partnerships since coalitions must have diversity to get attention and reach an array of constituents.

Community organizing organizations and unions play a particularly vital role in tax fairness coalitions because they bring to the table the voices of those most affected by regressive taxation—low-income people and often communities of color. Also, they reach deeply into various constituencies and demographic groups, and have the mission and capacity to educate and organize. Since tax increases are among the hardest votes for a legislator to take, clear support from the people in their districts is vital.

PRACTICAL TIPS TO BUILD OUT YOUR COALITION

1. For recruitment, create a one-page document that describes the coalition’s mission, goals, and core principles, and lists the endorsers. Once the coalition determines its specific policy solutions to close tax loopholes, also include a short background piece on the state’s revenue problem and proposed solutions.

2. Create and distribute a sample email pitch that coalitions members can use to recruit new members.

3. Make it easy for groups to join the coalition— create a simple sign-on sheet that groups can fill out with their contact information.

4. Consider convening an initial forum that brings together as many of the identified groups as possible.

WISCONSIN

“Our coalition building has focused on targeted individual communities and the constituent groups most directly invested in or impacted by the policies we are attempting to change. This includes not only citizens and residents but also local elected and appointed officials, public sector union leadership and members, school districts, institutes of higher education, students, municipal employees, professional associations and—to the extent possible the business community.”
Coalitions operate most effectively with a clearly established leadership structure because it leads to wiser utilization of resources and collaboration, satisfaction with the effort itself, and more responsible and committed members. In addition to leadership, other key elements of the coalition’s structures that must be established early on include a decision-making process, membership roles, and internal communications channels.  

**RECRUIT LEADERSHIP**

A coalition’s leadership (e.g., a steering committee) must be readily identifiable with a clear and transparent decision-making process. The role of the coalition’s leadership is to:

- Provide the coalition with a clear sense of direction;
- Keep the bigger picture in mind;
- Ensure the goals and objectives are being met;
- Ensure that the coalition stays on message; and
- Promote inclusiveness and a sense of ownership among all members.

Those who opt for leadership positions should be prepared to put in the increased time and effort demanded by such a role.

**TEXAS**

“It is strategic to also include in the coalition’s leadership the people the coalition are trying to move.” This may include people influential with state legislators, since they are often the coalition’s primary targets.

**COLORADO**

“A tax fairness coalition should include in its leadership structure representatives from communities most negatively affected by economic inequality and regressive taxation.”
COLORADO
“As the largest organizing group in the Engage Colorado coalition, CPC (Colorado Progressive Coalition) did much of the community organizing, door knocking, and turning out people for rallies. Other coalition members testified at legislative hearings, and still others did data analysis and wrote reports about the policies we were advocating for.”

ESTABLISH A DECISION-MAKING PROCESS
The decision-making process should be stated clearly so that all members fully understand the process. Decision-making authority should be distributed among the core leadership body as well as lower-level coalition bodies (such as working groups). This distributes leadership opportunities more widely and allows all members of the coalition to feel empowered. If the coalition has a staff person, it is often preferable for that person to take a back seat in decision-making and serve in a supportive role to the core leaders.

CLARIFY MEMBERSHIP ROLES
Clearly describe and communicate the expectations and roles of the members. Be realistic in your expectations of members; in larger coalitions, membership expectations should be lower than in small coalitions with few members. Setting realistic and clear expectations will result in members who more actively participate and contribute toward the coalition’s efforts.

Deliberately set a tone from the beginning that all members participate in coalition activities at some level. Within that condition, the level of participation and the division of responsibilities should be based on members’ skills and available resources.

NOTES ON MANAGING LISTSERVS
“Internal communication within our MISSOURI coalition are critical in ensuring that the coalition communicates effectively with the public, and grassroots members fully understand the reason for certain decisions.”

The TAX FAIRNESS ORGANIZING COLLABORATIVE (a national coalition) uses listserves that serve different purposes to communicate with members. General lists are open to all members of the coalition. For strategy discussions with the leadership, closed lists are used for private communication.

In TEXAS, coalition members know to expect a weekly email from the steering committee with important updates for the upcoming week. In between, action alerts are sent out on an as needed basis.
Electronic communication, however, cannot entirely replace in-person meetings. Face-to-face gatherings are important for establishing cohesiveness between members, strategizing, and maintaining enthusiasm. The coalition should meet in-person frequently enough to accomplish these tasks, while making each meeting productive and useful by establishing and adhering to an agenda with clear goals and start/end times.

Coalitions sometimes employ a two-tiered membership structure, with active participants in Tier 1 and less active participants in Tier 2. If adopting this structure, make sure members are clear about the roles and responsibilities of each Tier.

**DETERMINE INTERNAL COMMUNICATION CHANNELS**

In the digital age, it is likely that a coalition will communicate more through technology than through in-person meetings. Thus, it is important to have mechanisms that enable clear, transparent, real-time reporting between coalition members. It is also desirable that members know what kind and frequency of communications to expect from the coalition.

**WISCONSIN**

“The emergence of specific positive policy proposals to mobilize around is sporadic so it’s important to keep our alliances cohesive, energized and motivated in between opportunities to fight. We hold regular meetings of the alliances in communities all around the state and occasional meetings of all the alliances. Both types of meetings show participants they aren’t alone in their beliefs and fears.”

In Wisconsin, the Statewide Alliance on Aging Research provides a broad understanding of the critical needs of aging Wisconsinites. We hold regular meetings of the alliances in communities all around the state and occasional meetings of all the alliances. Both types of meetings show participants they aren’t alone in their beliefs and fears.”
By this stage, your coalition has articulated its purpose to close tax loopholes, recruited a broad and diverse membership base, established a leadership structure, and determined its communication channels. Now the real work begins.

**DEFINE THE CAMPAIGN**
Coalitions need a clear campaign for members to rally around. Using information from the state’s fiscal policy group, coalition members should establish a legislative agenda by identifying specific state tax policies that will advance the coalition’s mission to close loopholes. Tackling every tax loophole could dilute the coalition’s efforts. Instead, establish a process for prioritizing and selecting the exact policy (or policies) that will form the campaign.

If the policies selected are incremental tax reforms because they are the only ones deemed to be politically feasible, consider also using the campaign as an opportunity to lay the groundwork for a longer-term progressive tax agenda. Under this scenario, the coalition would educate the base about the policies they’d like to see enacted in the medium and long-term, while also advocating for their short-term campaign and connecting it to the bigger, long-term picture.

Revenue campaigns differ from other policy areas in that substantial grassroots education is generally required for raising community awareness related to any tax issue. While this requires substantial time and effort, it is an effective strategy. In Wisconsin, the coalition focused initially on public education and base-building around tax issues instead of advocating state government leadership.
CREATE A STRATEGIC PLAN
Map out a strategic plan with a timetable to achieve coalition goals. Make sure every item in the plan is assigned a member or working group that is responsible for overseeing its implementation.

The specific functions of a revenue coalition can vary greatly, depending on the coalition’s size, level of administrative support, and availability and resources of its membership. Some typical activities within the scope of state revenue coalitions include:

- Increase Community Awareness and Support – Popular education (http://www.popednews.org/newsletters/definitions.html) workshops are a particularly effective methodology for educating the grassroots about tax fairness. It is also useful to distribute key information about budget cuts and alternatives to allies and potential allies who will pass it along to their constituencies and to elected leaders.

- Strategy and Tactics - Compare intelligence and ideas about legislative strategy and tactics as legislation moves through various committees.

- Coordination - Leverage the scarce resources of organizations to provide members with the tools they need to play their roles, since most organizations have little experience advocating on revenue issues.

- Energize and Activate Groups - Keep spirits and passion high as people advocate to advance the coalition’s tax reform goals.

- Communicate to the Media, Public and Elected Officials – Coordinate a rapid response media plan, hold press conferences, compose letters to the editor and op-eds, organize through social media, etc. Identify coalition and community members to testify and speak in support of the issue and build relationships with local and state policy makers.

TIPS & TRICKS: THE “MESSAGING TREE”
A useful tool to identify key messages and coordinate your coalition is a Messaging Tree. This simple tool allows your coalition to identify the “top line message”, that is, the most important core message you wish to convey. Beneath, are the three most important points you wish to emphasize. Finally, under each point, are the supporting facts and data.

The message tree can be customized so that different members can develop targeted, constituent-specific messaging that emphasizes different (though not contradictory) points. But the top-line, core message ought to be consistently communicated by all members.
WISCONSIN

The Wisconsin coalition’s messages emphasize making the connection between what the community values, government’s role in providing what they value, how these things are being threatened, and what people can do about it. We try to simplify public “systems” and “structures” by using visual metaphors and social math to illustrate impact.

COLORADO

Colorado conducted several focus groups with state residents to test their revenue coalition’s frame and messaging language. This allowed the coalition to make simple but strong changes to the language before going public.

- Respond to Threats - Prevent the passage of proposals that would deepen the budget crisis through further erosion of the tax base, rigid spending or revenue limits, and tighter constraints on lawmaker flexibility.
- Policy Victory - Leverage constituents to advocate for and secure desired policy outcomes.

Some coalitions list out various tasks that are part of the strategic plan to get sense of which members have the resources to do which tasks. Examples of these tasks include:
- Testify before the legislature;
- Draft action alerts;
- Serve as a media spokesperson;
- Organize rallies;
- Organize delegation visits;
- Draft campaign materials;
- Make presentations in the community;
- Organize public forums;
- Post materials in public places;
- Speak and distribute materials at community events; and

- Organize creative actions that draw attention to a well-known beneficiary of a tax loophole.

Coalition leadership and/or working groups should establish a process for assessing the progress and success of these strategies and make adjustments as needed.

CREATE A COMMUNICATIONS PLAN

Using the mission and core values of the coalition as a guide, identify the campaign’s key frame and messages. This is important in determining the tone of the coalition, and the most important message you want to convey. This frame and key messaging should be agreed upon and used by all members of your coalition. Using the same language, ideas, and positions on your issues gives your coalition a stronger, more unified voice in tax policy debates.

Tax fairness coalitions face significant challenges, since it is tempting to include taxes in the core message. Not surprisingly, however,
talk of “taxes” can turn people off instantly. Rather, it’s more effective to connect with people around common values and aspirations. In the case of a tax loophole campaign, one aspiration might be the importance of establishing a “level playing ground” so that big businesses don’t get special advantages over mom-and-pop local businesses. There are an array of messaging think tanks and research organizations testing various approaches to discussing taxes and the role of government without turning people off (e.g. Demos, Frameworks Institute, George Lakoff). Look at the research and think strategically about what will work best with residents of your state.

All coalition members should be trained to effectively communicate the coalition’s core frames and messages. Select members who will become spokespersons to the media should have more intensive interview rehearsals.

GET YOUR MESSAGE OUT
When it comes to disseminating your message, the strategies pursued by a coalition will largely be determined by its scope and function. A coalition that prioritizes base-building, for example, will use very different communications strategies than an organization that primarily responds to legislative threats.

Whatever direction your coalition chooses to go in, develop your communications strategies by considering the following:

- The audience(s) you want to reach;
- Where your audience goes for information (the internet, television, radio, community meetings, etc.); and
- Finding the appropriate messengers.

For example, who is perceived as credible and knowledgeable when it comes to speaking out on tax issues? The answer will depend on the audience. In some states, public employee unions appear to the public as driven by self-interest. If this is the case in your state, consider more universally trusted professionals, such as nurses or firefighters. For a closing tax loophole campaign, it’s particularly effective when a local mom-and-pop business owner speaks out in favor of closing loopholes for big business.

NEVADA
Remember: the formation of the coalition is a news story! Nevada rolled out its coalition with a bang by pushing the new coalition with media and public. A new major player in state politics often grabs attention.

MASSACHUSETTS
Massachusetts is in the process of creating a speakers bureau of diverse coalition members who are trained to speak to different audiences about the campaign. Once established, each speaker will be strategically connected to each speaking opportunity.
PART FOUR:
OVERCOMING COMMON CHALLENGES

A nytime diverse organizations come together, there are bound to be bumps in the road. Many of the most common challenges can be avoided by implementing a well-designed structure, including clearly defined mission and goals, clear expectations of members, transparent and diverse leadership, a clear and widely supported decision-making structure, and clear communication channels within the coalition. Even with those key elements in place, however, challenges arise. Common coalition challenges include:

1. FAILURE TO PRESENT A UNITED VOICE
This common communications challenge can be overcome if all coalition members understand from the beginning the value of a unified message and if they are sufficiently trained to effectively and confidently communicate the message.

2. FAILURE TO PURSUE AND NURTURE COMMUNITY CONNECTIONS
A coalition that relies heavily on an “inside the statehouse” strategy dominated by lobbyists will not likely produce the results they seek. To take a vote as tough as a tax increase, legislators must believe that the people in their districts will not vote them out of office because they voted for progressive tax reform. So the involvement and active participation in the coalition by diverse communities is key to any kind of sustainable policy change on revenue issues.

3. FACTIONS AND/OR TURF ISSUES WITHIN THE COALITION
This example from Wisconsin illustrates this challenge while also describing the conditions necessary for overcoming it.

A group of porcupines tried to stay close together during the winter in order to survive the cold conditions. But half the group couldn’t tolerate the pokes of the others’ quills so they scattered and did not survive. The other half decided to put up with the difficulty and pain of being together and they stuck it out for the good of themselves and the group. They lived to see spring arrive. For a coalition to succeed, any discomfort felt within the group over the goals or strategies has to be less than each member’s desire to do what’s right for the community.

In Texas, the coalition addressed factions by making sure points of disagreement were on the table, rather than being “the elephant in the room.”

One of our common challenges is making sure that groups that may have opposing positions on some items, but agreement on the coalition
items, can still continue having a respectful and productive role within the coalition. Gambling is one of these issues for us. Our approach to it was to take the issue out of “elephant in the room” status and put it out on the table. We discussed the pros and cons, gave everyone a chance to speak, and then let the coalition make a decision about how to move forward. The lesson is, don’t pretend factions don’t exist. Acknowledge them, understand them, and then remind people about the things we DO agree on and why we’re here.

4. LACK OF ACCOUNTABILITY
Big coalitions can be tough to manage. The Texas coalition was able to overcome this by identifying roles early on and laying out what each role entails.

Not being afraid to call people on the commitments they made is very important. It’s also important for the people in overseeing roles to feel the confidence to say, “Too much of this is falling on too few people; we need some more people to step up.” Being able to do this is largely based on setting the tone early that everyone will be contributing and everyone will be benefitting.
PART FOUR: STAYING EFFECTIVE

How can a revenue coalition tell when it is being effective? One important consideration is whether it achieved or advanced its tax fairness policy goals. As a representative from Colorado said, “Outcomes speak for themselves.”

Unfortunately, in the recent political and economic climate, progressive state tax policy victories come infrequently. So it is important to evaluate the coalition’s progress and success using various measuring sticks that align with the strategic plan.

Given the political realities in many states, for the foreseeable future, there’s an advantage to preserving a tax fairness coalition for the long haul. However, it is challenging to maintain member engagement in a coalition over time, especially when policy victories are not around the corner. The Missouri coalition’s efforts to overcome this challenge point us in the right direction.

CONCLUSION
Establishing and running an effective coalition takes a great deal of thought, cooperation, and commitment. But when organizations come together across issue lines, the impact of their collective strengths can be significant. Coalitions are especially effective in state revenue campaigns. With an issue as divisive and contentious as taxes, this approach is especially effective. A well-conceived and well-managed coalition can effectively leverage the unique strengths of its membership to advance fair tax objectives at the state level.
EXAMPLES OF REVENUE COALITION NAMES:
Engage Maine
A Better Choice for New York
Together NC
Colorado’s Worth It

EXAMPLES OF COALITION MISSIONS:
A Better Choice for New York is a committed to investing in the future of New York by making smart revenue and budget balancing choices.

Together NC’s mission is to promote wise choices for shared prosperity for all North Carolinians.

EXAMPLE OF A COALITION’S SHARED PRINCIPLES:
• Build upon our sound public investments
• Think big, think forward
• Only a balanced approach will work
• Revenue solutions must be adequate, stable, and fair (From Together NC)

WISCONSIN
The Wisconsin coalition has had more process victories than policy victories at this point since the focus has been on base-building. “Success is judged by how our alliances are growing and becoming deeper and more diversified. Success is judged by the quality of the groups’ community meetings and actions. How well were they attended and by how broad of an audience? Was public awareness raised? Was the group able to educate the public and key players such as legislators.”
ENDNOTES
1 - The Center on Budget and Policy Priorities identified some of these tips during a workshop at the Economic Analysis and Research Network conference in Atlanta in December, 2010.
3 - The Center on Budget and Policy Priorities identified the majority of these functions during a workshop at the Economic Analysis and Research Network conference in Atlanta in December, 2010.

ABOUT THE NATIONAL EDUCATION ASSOCIATION
The National Education Association works to advocate for education professionals and to unite our members and the nation to fulfill the promise of public education to prepare every student to succeed in a diverse and interdependent world.

ABOUT THE TAX FAIRNESS ORGANIZING COLLABORATIVE AND UNITED FOR A FAIR ECONOMY
The Tax Fairness Organizing Collaborative is a network of 28 state-level advocacy groups that promote fair and adequate taxation at the state and federal levels through grassroots organizing.

United for a Fair Economy is a national, independent, nonpartisan, 501(c)(3) non-profit organization located in Boston, Massachusetts, that works to promote economic justice by supporting social movements for greater equality. Learn more at www.faireconomy.org.
9. Letter to Obtain Info on State Corporate Income Tax

Because corporations are given the same privacy rights as individuals, their state corporate income tax information is protected. However, there are certain facts that can be ascertained by asking the right questions in the right way of your state’s Department of Revenue.

This sample letter contains a set of carefully crafted questions to obtain statistical information on state corporate income tax from your State Revenue Department or Fiscal Officer.
Dear Revenue Department:

As a means of gaining statistical information on our state’s system of taxation and on the tax obligation of corporations that do business in [Name of STATE], could you answer the following six questions?

1. As measured by payroll withholding, of our state’s 150 largest for-profit employers, how many paid zero state corporate income tax in 2007, 2008, 2009 and 2010?

2. Of these 150 companies that reported over $5 million in total income to the IRS, how many paid zero state corporate income tax for 2007, 2008, 2009 and 2010? Please provide the same information for companies that reported over $10 million and over $25 million to the IRS. (For each income category and for each year above, could you provide the actual number of companies in the income category, and the actual number of companies that paid zero? Could you also provide the total dollar amount of income reported in each category for each year, on which no income tax was paid? For example in 2007, of the 500 companies making over $25 million, 40% or 200 companies paid no state income tax. In 2007, those 200 companies made more than $600 million in total income and did not pay state corporate income tax.)

3. Of all corporations doing business in [STATE], what percentage paid no state corporate income tax for 2007, 2008, 2009 and 2010?

4. Of all the corporations doing business in [STATE] that reported income to the IRS, what percentage paid no state corporate income tax for 2007, 2008, 2009 and 2010?

5. What percentage of total state income taxes was contributed by C-Corporations and LLC’s for the 2007, 2008, 2009 and 2010 tax years?

6. Have any corporations doing business in [STATE] been granted authority to retain employee personal income tax withholdings as part of any economic development incentive program? If yes, what was the total amount of personal income tax withholdings retained in each of the four most recent, complete reporting years? Which corporations have participated in this withholding retention program? For each participating corporation, what is the total amount retained in each of the four most recent, complete reporting years?

If you or your staff has any questions regarding this request, please do not hesitate to contact me.

Sincerely,
Here is the official response from the Mississippi agency in answer to the Five Questions letter. You can see that even though they were unable to answer every part of every question, the information revealed shows very clearly how pervasive it is that many large corporations pay absolutely nothing in state corporate income taxes.
The following is an assistance memo prepared by the PEER Committee staff in response to a specific legislative request. It is not a report of the PEER Committee, nor does it represent the individual or collective views of the PEER Committee members. A legislative assistance memo is the PEER staff's best efforts to answer the questions posed within the timeframe allowed and with the information sources available. Unless prior approval has been given, this memo will be distributed only to the requesting legislator(s) named below.

TO: Representative Cecil Brown
FROM: Max Arinder/N/A
SUBJECT: Mississippi Corporate Income Tax
DATE: January 18, 2011

As you requested, PEER staff sought information on a series of questions regarding corporate income tax rates in Mississippi.

Responses to Specific Questions Regarding Corporate Income Tax Rates

Please note that the Department of Revenue did not provide responses to questions 2 and 4, citing provisions of federal Internal Revenue Code 6103 (d), which allows the use of federal tax information for tax administration purposes only.

1. As measured by payroll withholding, of our state's 150 largest for-profit employers, how many paid zero state corporate income tax in calendar years 2006, 2007, 2008 and 2009?

In 2006, the Department of Revenue only recorded information for the top 130 for-profit employers, but of these 130 employers, ninety-one did not pay state corporate income tax. In 2007, 2008, and 2009, 103 of the 150 largest for-profit employers paid zero state corporate income tax.

2. Of these 150 companies that reported over $5 million in total income to the Internal Revenue Service (IRS), how many paid zero state corporate income tax for calendar years 2006, 2007, 2008 and 2009? Please provide the same information for companies that reported over $10 million and over $25 million to the IRS. (For each income category and for each year above, please provide the actual number of companies in the income category and the actual number of companies that paid zero state corporate income tax. Also, please provide the total dollar amount of income reported in each category for each year on which no income tax was paid. For example in 2006, of the 500 companies making over $25 million, 40% or 200 companies paid no state income tax. In 2006, those
200 companies made more than $600 million in total income and did not pay state corporate income tax.)

The Mississippi Department of Revenue receives federal tax information under Internal Revenue Code 6103(d), which allows the use of information for tax administration purposes only. The IRC does not permit state tax agencies to furnish federal tax information to other state agencies, tax or non-tax, or to political subdivisions, for any purpose, including tax administration, absent explicit legislative authority. Therefore, the Department of Revenue was unable to provide any information based on amounts reported to the Internal Revenue Service.

3. Of all corporations doing business in Mississippi, what percentage paid no state corporate income tax for calendar years 2006, 2007, 2008 and 2009?

In calendar years 2006, 2007, and 2008, 80% of corporations doing business in Mississippi paid no state corporate income tax. In 2009, 81% of corporations paid zero state income tax.

Note that of the corporations paying zero state income tax, some corporations may have made no profit and thus owe no tax.

4. Of all the corporations doing business in Mississippi that reported income to the IRS, what percentage paid no state corporate income tax for calendar years 2006, 2007, 2008 and 2009?

Please refer to the answer to number 2 above.

5. What percentage of total state income taxes was contributed by C Corporations and by limited liability entities (LLEs) for the 2006, 2007, 2008 and 2009 tax years?

In 2006, C Corporations contributed 85% of state income taxes, and LLEs contributed 0.37% of state income taxes. In 2007, contributions were 81% and 0.38% respectively. In 2008, contributions were 91% and 0.37%, and in 2009, 79% of state income taxes were paid by C Corporations, and 0.28% were paid by LLEs. The remaining corporate collections were comprised of payments from composite returns filed by S Corporations and some insurance companies.

Additional Information Regarding Corporate Taxes

Corporate income tax revenues may be reduced by a variety of Mississippi programs that offer incentives to companies, allowing them to apply credits to decrease their tax liability. The Jobs Tax Credit, Skills Training Tax Credit, and the Broadband Technology Tax Credit are examples of many programs that allow a business to take a credit of up to 50% of income tax liability in a given year. The Growth and Prosperity Program allows companies that create jobs in counties with high unemployment and poverty rates to have full exemption from all state income taxes.

State corporate income tax rates differ considerably from state to state. Some states, such as Nevada and South Dakota, have a 0% corporate income tax rate, while others such as Iowa and Pennsylvania have 9.9%. Mississippi’s 3%, 4%, and 5% rates are lower than many other states’ rates; Mississippi ranks 13th among all states in an index of FY 2011 corporate tax rates. This ranking means that Mississippi has the 13th most favorable tax system for businesses. Other southern state rankings are as follows: Arkansas—40th, Alabama—24th, Louisiana—19th, Tennessee—11th, and Georgia—8th.

Should you need further assistance, please feel free to contact Ted Booth or me at (601) 359-1226.
The news that out of the 150 largest for-profit employers in Mississippi, fully 103 of them paid no corporate income taxes in 2008 or 2009 produced – as one might expect – some quotable responses from members of the Mississippi legislature.

Here are some media reports of the issue.
## Mississippi News Stories

<table>
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<th>Headline</th>
<th>Link</th>
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12. Real Life Efforts in Alabama

Here are two documents from the Alabama Education Association, a leader in the effort to identify and close down corporate income tax loopholes.

⚠️ A list of common sense approaches to closing loopholes and making major out-of-state corporations pay their fair share for schools.

⚠️ *Fully Implemented TEF in Alabama* (a PowerPoint presentation) gives you an overview of how TEF was implemented in the state; included are Alabama-specific data about big businesses tax avoidance, past and pending lawsuits, and a list of alternative tax revenue sources.
Common sense approaches to close loopholes and make major out-of-state corporations pay their fair share for schools.

The following is a description of twelve bills AEA has worked to organize that will close the worst loopholes used by out-of-state corporations to avoid paying Alabama taxes. These are loopholes that for the most part are simply not allowed in other states and not only hurt schoolchildren and education employees, they often put local small businesses at a competitive disadvantage.

There is now a clear choice between schools and unfair corporate loopholes.

It is apparent there is something very wrong with our corporate income tax system. Current Alabama Department of Revenue figures show individual income tax receipts are up from last year, as to be expected as the state economy improves. Yet corporate state income tax receipts are actually down from last year, though profits are up in Alabama and nationwide. It is through our broken corporate tax system that such a disparity can take place. Simply put, these revenue figures show Alabama families and small businesses pay their fair share, major out-of-state corporations do not.

Working to draft these loophole-closing measures is AEA Education Funding and Revenue Manager Susan Kennedy, former chief counsel for the Alabama Department of Revenue. These twelve bills that if enacted would bring in $228 million to the Education Trust Fund next year. Susan is available to legislators and members for any questions you may have on these bills. She is in the Statehouse each day the Legislature is in session as a member of our lobby team.

Those who have been following AEA for a number of years can attest, the work of closing loopholes and stopping new tax gimmicks never ends. In 2001, AEA worked on the issue of Combined Reporting reforms when it came to light that Toys-R-Us was using its own Geoffrey the Giraffe as a huge tax deduction. The Add-Back effort was necessary to stop dozens of companies from taking inappropriate deductions to use their own names and logos. In 2008, AEA worked to close the Real Estate Investment Trust shell game where major companies paid themselves rent for huge deductions on Alabama state income tax.

Listed in these bills are similar loopholes and practices that the average Alabamian can clearly see are unfair and will want to see closed.

The ability for large global companies to not pay their fair share for education hurts children and education employees. With these bills there is a chance to stop at least some of the worst practices, while bringing in some desperately needed funding during this budget crisis.

Only the Alabama Education Association has the experts and tax lawyers that fight for education revenue and protect the Education Trust Fund.

<table>
<thead>
<tr>
<th>Bill Number Pending</th>
<th>Corporate Loopholes: Description of Reform</th>
<th>Revenue Estimate</th>
<th>Action Required</th>
<th>Rationale for Revenue Reforms and Closing Loopholes</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB300 BY REP. LINDSEY</td>
<td>Decouple from the ARRA Accelerated Depreciation Rules</td>
<td>$55,000,000</td>
<td>Pass Legislation</td>
<td>Reform cost of performance rules related to apportionment for income tax. For income tax apportionment the location of a sale is determined largely by the location of the cost of performance of the sale. Changing Alabama’s definition of location of sales from cost of performance to market based sourcing tends to tax out of state corporations more than local corporations. Good for economic development. For example, a brokerage house will argue that the sales factor is low in Alabama because the “cost of performance” of the service is largely external to Alabama and is incurred in New York, where the research is done, or trades are made. This rule allows brokerage houses and other industries with large external costs to shift income out of the state. A local brokerage house or business may have costs that are all internal to Alabama, and is therefore unable to use this scheme to shift its income out of state.</td>
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<tr>
<td>HB377 BY REP. MELTON</td>
<td>Listed Transactions Enforcement Statute; increase penalties and various enforcement measures (NY Model)</td>
<td>$7,000,000</td>
<td>Pass Legislation</td>
<td>By decoupling from the ARRA accelerated depreciation, and allowing regular depreciation, the State could see a savings of $55 million for education. This is a change that was implemented on the Federal Tax Laws and is automatically adopted by the State because Alabama’s depreciation rules are tied to the Federal Rules.</td>
</tr>
<tr>
<td>BILL NUMBER PENDING</td>
<td>Reform Credit for Taxes Paid in Corporate and Individual Income Tax</td>
<td>$5,000,000</td>
<td>Pass Legislation</td>
<td>An easy way to adopt a comprehensive Listed Transactions Statute is to reference IRS Code Section 6707 in the enforcement statutes of Section 40-2A-1(c); This will require reporting of illegal tax shelters and voluntary reporting of income illegally sheltered and payment of tax.</td>
</tr>
<tr>
<td>BILL NUMBER PENDING</td>
<td>Capital Credit Headquarters Exemption</td>
<td>$10,000,000</td>
<td>Pass Legislation</td>
<td>Reform cost of performance rules related to apportionment for income tax. For income tax apportionment the location of a sale is determined largely by the location of the cost of performance of the sale. Changing Alabama’s definition of location of sales from cost of performance to market based sourcing tends to tax out of state corporations more than local corporations. Good for economic development. For example, a brokerage house will argue that the sales factor is low in Alabama because the “cost of performance” of the service is largely external to Alabama and is incurred in New York, where the research is done, or trades are made. This rule allows brokerage houses and other industries with large external costs to shift income out of the state. A local brokerage house or business may have costs that are all internal to Alabama, and is therefore unable to use this scheme to shift its income out of state.</td>
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**Everyone must pay their fair share.**

**Close the loopholes and fix our broken tax system.**

**Our kids are worth it.**
## POTENTIAL LOOPHOLE CLOSING MEASURES

<table>
<thead>
<tr>
<th>BILL NUMBER PENDING</th>
<th>HOUSE BILL #</th>
<th>CORPORATE LOOPHOLES: DESCRIPTION OF REFORM</th>
<th>TOTAL OF REFORMS</th>
<th>REVENUE ESTIMATE</th>
<th>ACTION REQUIRED</th>
<th>RATIONALE FOR REVENUE REFORMS AND CLOSING LOOPHOLES</th>
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<tr>
<td>BILL NUMBER PENDING</td>
<td>BILL NUMBER PENDING</td>
<td>Limit Corporate Net Operating Losses of income or adopt a SRLY Rule.</td>
<td>$25,000,000</td>
<td>$10,000,000</td>
<td>Pass Legislation or Issue Regulation</td>
<td>Mergers and acquisitions can create billions in old NOL's (over 15 yrs old). These losses can result in large companies never owing any income tax in Alabama. Coca Cola, Inc. and Weyerhaeuser Inc. are examples. These NOL's never expire and can be carried forward in unlimited amounts for an unlimited amount of time. One solution is to limit the amount of NOL's that can be taken in any one year to 50% of taxable income. Another solution could be to limit the carry forward rules or to adopt a Separate Return Loss Year Rule or SRLY Rule.</td>
</tr>
<tr>
<td>HB241 BY REP. KNIGHT</td>
<td>HB241 BY REP. KNIGHT</td>
<td>Gross Income Regulation</td>
<td>$25,000,000</td>
<td>$55,000,000</td>
<td>Issue New Regulation or Pass Legislation</td>
<td>This is a hole in our tax structure that allows multi-state companies and individuals to shelter millions in Alabama income and to pay zero Alabama tax. Consider the simple example of a law firm that does equal business in each of its three offices—one in Alabama, Mississippi, and Georgia. Assume each partner in the Birmingham office earns $900,000—all in Alabama. Under the existing Alabama regulation, the Birmingham partner divides his income into three equal parts and only reports $300,000 to Alabama. This is permissible under Alabama’s regulation even though the entire $900,000 was earned in Birmingham. Then, because Alabama allows a deduction for Federal Income Taxes at 100%, that Birmingham Partner can deduct the $300,000 in Federal income taxes he paid from the $300,000 he reported in Alabama income. He will report $0 in income in Alabama even though he earned $900,000 sitting at a desk in Birmingham.</td>
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<tr>
<td>HB 373 BY REP. J. HUBBARD</td>
<td>HB 373 BY REP. J. HUBBARD</td>
<td>Adopt an Economic Presence standard for income tax</td>
<td>$25,000,000</td>
<td>$10,000,000</td>
<td>Pass Legislation</td>
<td>The U.S. Supreme Court has not made a definitive statement on what type of economic presence subjects a company to that state’s income tax. Alabama can adopt the Multistate Tax Commission’s Factor Presence Test to determine whether Alabama has a constitutional right to tax income earned in this state. This is the most expansive standard, and might require companies like Amazon to pay income tax. Adoption of this test will not affect whether Amazon will collect sales tax because they have no physical presence in Alabama, and the U.S. Supreme Court requires physical presence for a state to require that a company collect sales tax.</td>
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<tr>
<td>HB 301 BY REP. LINDSEY</td>
<td>HB 301 BY REP. LINDSEY</td>
<td>Continue Add-Back and Combined Reporting Reforms</td>
<td>$25,000,000</td>
<td>$5,000,000</td>
<td>Pass Legislation</td>
<td>Expand prohibited related company transactions in the Add-Back Statute including i.e. administrative expenses; eliminate the “primarily engaged” exception; restrict losses that can be selectively sourced to Alabama; Enact Combined Reporting, Transfer pricing mandate to prevent secreting of income in chain of commerce not subject to Alabama income tax. (Dividing operations into two entities—one that makes income and one that makes losses and creating tax jurisdiction in Alabama for only the one that makes losses.)</td>
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### Close the loopholes and fix our broken tax system.

Our kids are worth it.
## POTENTIAL LOOPHOLE CLOSING MEASURES

<table>
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<tr>
<th>HOUSE BILL#</th>
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</tr>
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<tbody>
<tr>
<td>HB 300 BY REP. LINDSEY</td>
<td>Eliminating the Domestic Production Deduction or Section 199 Deduction</td>
<td>$36,000,000</td>
<td>Pass Legislation</td>
<td>In 2006, the original Federal DPD was 3%, but now the deduction has increased to 9%. Federal estimates suggest that allowing this deduction is likely to cost states more than five percent of their corporate tax revenue, plus a portion of their individual income tax receipts. Estimates forecast that Alabama loses $12 million for every 3% of the DPD, so eliminating the deduction completely should produce $36 million annually. The beneficiaries of the deduction are likely to be mostly large, out of state, profitable corporations and their shareholders. The deduction is unlikely to protect or create state jobs, because corporations can claim the deduction for out-of-state “production activity” just as they can for in-state activity. Alabama is not required to allow this deduction, and 22 states have decoupled from the DPD. Some include, Arkansas, California, Georgia, Hawaii, Indiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Hampshire, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas and West Virginia. New Jersey, has partially decoupled.</td>
</tr>
<tr>
<td>HB 302 BY REP. LINDSEY</td>
<td>Conform Oil and Gas Depletion to Federal Depletion</td>
<td>$5,000,000</td>
<td>Pass Legislation</td>
<td>Under Alabama’s depletion rules for oil and gas companies, some companies are allowed to deplete or depreciate their assets more than they are worth. Alabama should conform to the Federal Depletion allowance.</td>
</tr>
<tr>
<td>BILL NUMBER PENDING</td>
<td>End income tax exemption for Captive Insurance Companies and non-premium income</td>
<td>$25,000,000</td>
<td>Pass Legislation</td>
<td>Currently insurance companies are exempt from income tax. Some corporations have captive or related insurance companies in their organizations. These conglomerates will shift income earned by some corporate partners into the parent’s captive insurance company to avoid income tax. Also insurance companies should pay income tax on non-premium income, when the income is earned from activities unrelated to insurance. (Eastchase Development).</td>
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</table>

**TOTAL OF REFORMS** $228,000,000

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**Everyone must pay their fair share.**

Close the loopholes and fix our broken tax system.

Our kids are worth it.

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Only the Alabama Education Association has the experts and tax lawyers that fight for education revenue and protect the Education Trust Fund.
Alabama Education Association works consistently to reduce attacks on education revenue for schools. AEA is well known as the standard bearer for protecting education money.

- AEA has worked to address loopholes & increase revenue.
- AEA provides ammunition to fight tax avoidance strategies & education revenue erosion.
- AEA works to increase education funding, protect benefits, & protect existing funding.
Who Pays Taxes in Alabama?

- Small Business and People pay Taxes.
- A family of four making $21,201, will pay $423 in Alabama Income tax.
- For most Alabama citizens income tax rates are 5%.
- Some Corporate effective income tax rates are below 3%.
- Insurance Companies do not pay income tax.
- There are special breaks for car companies, coal companies, banks, airlines, oil companies, and many others.
Is Big Business Paying a Fair Share?

In 2005, 1056 companies doing business in Alabama made more than $105 billion dollars in total income and did not pay one cent in Alabama corporate income tax.

In 2005, out of 36,017 companies in Alabama, 23,442, over half paid no corporate income tax.
Corporate Loopholes: Most Companies Have Paid Nothing
Companies Making BIG Money Pay Zero

† In 2005, of the 14,692 corporations that made money, over 25% paid zero Alabama Corporate Income Tax.

† Of the companies making more than $5 million dollars in Alabama, almost one out of every three paid zero Alabama Corporate Income Tax.

† Of the companies making more than $25 million dollars in Alabama, over 30% paid zero Alabama Corporate Income Tax.
Top 150 Corporations Doing Business in Alabama, 2005: Those Paying Alabama Income Tax & Those that Aren't

- Corporations Paying Alabama Income Tax: 80
- Corporations Paying No Alabama Income Tax: 70
Corporations with over $25 million in Federal Taxable Income that Do Business in Alabama, 2005: Those Paying Alabama Income Tax & Those that Aren't

<table>
<thead>
<tr>
<th>Corporations Paying Alabama Income Tax</th>
<th>Corporations Paying No Alabama Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>961</td>
<td>439</td>
</tr>
</tbody>
</table>
The Add-Back Gimmick: Shifting Alabama Income To No-Tax States

PIC makes Dividend payment To West Coast Parent

West Coast Parent

Payment for trademark (deducted as expense)

Delaware PIC Company

Alabama Corporation

Parent makes Dividend payment To Alabama Company. Dividend Is tax free.
IT GETS EVEN WORSE: How do they do it?

- In 2003 Exxon made $89 million in Alabama and paid Zero income tax.
  - They deducted $418 million in payments to themselves.
  - They deducted 6 times the Federal Depletion allowance.
  - Deducting 6 times the Federal Depletion Allowance allows Exxon to deduct more than the oil and gas is worth.
  
  Source: Records on file with the Alabama Department of Revenue
Who is Using These Loopholes?

- **Lowes Inc.** deducted $833 million in payments to itself and reduced its Alabama income by $25 million.
- **McDonalds Corp.** deducted $500 million in payments to itself and reduced its Alabama income by 55%.
- **Abercrombie & Fitch** deducted over $200 million in royalty payments to itself and reduced its income by almost 90%.
- **Talbotts** income tripled after add-backs by State auditors.
- **Rheem’s** income rose by 2200% after add-backs.

Source: Records on file with the Administrative Law Division of the Alabama Department of Revenue.
In one case, nine related companies of the Limited, Inc. received payments from their affiliates of $423,098,963 in one year.

The nine Limited companies had no employees, and shared office space, equipment, and supplies.

The primary office space used by the nine Companies was also the primary office address for more than 650 other companies.
### Add-Back Lawsuits on File Now

<table>
<thead>
<tr>
<th>DOCKET NO.</th>
<th>TAXPAYER</th>
<th>$ AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>CORP. 06-321</td>
<td>AARON RENTS, INC.</td>
<td>$227,128.00</td>
</tr>
<tr>
<td>CORP. 04-113</td>
<td>ABERCROMBIE &amp; FITCH</td>
<td>$126,058.00</td>
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<tr>
<td>CORP. 06-1111</td>
<td>AMERICAN STANDARD, INC.</td>
<td>$725,376.00</td>
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<tr>
<td>CORP. 05-647</td>
<td>AVOCENT HUNTSVILLE CORP</td>
<td>$651,895.00</td>
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<tr>
<td>CORP. 05-552</td>
<td>BATH &amp; BODY WORKS, INC.</td>
<td>$92,225.00</td>
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<tr>
<td>CORP. 07-1024</td>
<td>BIG LOTS STORES, INC.</td>
<td>$3,480.00</td>
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<tr>
<td>CORP. 06-845</td>
<td>BNSF RAILWAY COMPANY</td>
<td>$360,354.00</td>
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<tr>
<td>CORP. 06-685</td>
<td>CASTROL INDUSTRIAL N AMERICA</td>
<td>$17,251.00</td>
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<tr>
<td>CORP. 05-1107</td>
<td>CISCO SYSTEMS, INC.</td>
<td>$307,932.00</td>
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<tr>
<td>CORP. 05-1308</td>
<td>COCA COLA BOTTLING</td>
<td>$47,590.00</td>
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<tr>
<td>CORP. 06-404</td>
<td>DELUXE FINANCIAL SERVICES, INC.</td>
<td>$41,334.00</td>
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<tr>
<td>CORP. 07-941</td>
<td>DELUXE FINANCIAL SERVICES, INC.</td>
<td>$67,420.01</td>
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<tr>
<td>CORP. 07-1008</td>
<td>DELUXE FINANCIAL SERVICES, INC.</td>
<td>$43,509.52</td>
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<tr>
<td>CORP. 04-929</td>
<td>DESOTO MILLS</td>
<td>$383,297.00</td>
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<tr>
<td>CORP. 06-1186</td>
<td>DUKE ENERGY GAS TRANSMISSION</td>
<td>$336,704.00</td>
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<tr>
<td>CORP. 06-1154</td>
<td>ECCA CALCIUM PRODUCTS, INC.</td>
<td>$125,220.00</td>
</tr>
<tr>
<td>CORP. 05-553</td>
<td>EXPRESS LLC</td>
<td>$36,397.00</td>
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<tr>
<td>CORP. 07-449</td>
<td>EXXON MOBIL CORPORATION</td>
<td>$1,426,543.00</td>
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<tr>
<td>CORP. 07-450</td>
<td>EXXONMOBIL OIL CORPORATION</td>
<td>$141,086.00</td>
</tr>
</tbody>
</table>
# Add-Back Lawsuits on File Now

<table>
<thead>
<tr>
<th>CORP.</th>
<th>Company Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>05-455</td>
<td>FAMILY DOLLAR STORES</td>
<td>$139,125.00</td>
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<tr>
<td>06-498</td>
<td>H&amp;R BLOCK EASTERN TAX SERV. INC.</td>
<td>$404,299.00</td>
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<tr>
<td>06-745</td>
<td>HOME DEPOT USA INC.</td>
<td>$489,147.00</td>
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<tr>
<td>07-526</td>
<td>HOME DEPOT USA INC.</td>
<td>$1,834,065.13</td>
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<tr>
<td>05-995</td>
<td>HORMEL FOODS CORP</td>
<td>$87,556.00</td>
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<tr>
<td>05-550</td>
<td>INTIMATE BEAUTY CORP.</td>
<td>$4,665.00</td>
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<tr>
<td>07-638</td>
<td>HUDDLE HOUSE, INC.</td>
<td>$3,221.00</td>
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<tr>
<td>07-978</td>
<td>INTERNATIONAL DIESEL OF ALA., LLC</td>
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</tr>
<tr>
<td>07-375</td>
<td>J.B. HUNT TRANSPORT, INC.</td>
<td></td>
</tr>
<tr>
<td>06-285</td>
<td>JACK HENRY &amp; ASSOCIATES, INC.</td>
<td>$164,114.00</td>
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<tr>
<td>07-554</td>
<td>JSC BREWTON, INC.</td>
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<tr>
<td>06-318</td>
<td>KELLWOOD COMPANY</td>
<td>$170,809.00</td>
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<tr>
<td>06-1237</td>
<td>KELLWOOD COMPANY</td>
<td>$63,883.13</td>
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<tr>
<td>05-861</td>
<td>KRAFT FOODS GLOBAL</td>
<td>$1,765,724.00</td>
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<td>05-551</td>
<td>LANE BRYANT, INC.</td>
<td>$1,375.00</td>
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<td>06-925</td>
<td>LORILLARD TOBACCO COMPANY</td>
<td>$720,211.85</td>
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<tr>
<td>04-292</td>
<td>LORILLARD TOBACCO COMPANY</td>
<td>$705,322.00</td>
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<td>Corp.</td>
<td>Company Name</td>
<td>Amount</td>
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<tr>
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<td>----------------------------------------------</td>
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<tr>
<td>06-1195</td>
<td>Lowe's Home Centers, Inc.</td>
<td>$38,714.30</td>
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<tr>
<td>04-721</td>
<td>Lowes Home Centers, Inc.</td>
<td>$1,141,026.35</td>
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<tr>
<td>05-637</td>
<td>McDonald's Corp.</td>
<td>$398,509.00</td>
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<tr>
<td>05-1252</td>
<td>NYT Holdings, Inc.</td>
<td>$445,164.00</td>
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<tr>
<td>06-405</td>
<td>PPS Holding Co., Inc.</td>
<td>$42,974.00</td>
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<td>07-976</td>
<td>Regis Corporation</td>
<td>$69,355.94</td>
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<tr>
<td>05-736</td>
<td>R.J. Reynolds Tobacco</td>
<td>$234,021.00</td>
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<tr>
<td>05-215</td>
<td>R.J. Reynolds Tobacco</td>
<td>$748,521.00</td>
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<td>06-1238</td>
<td>Rheem Manufacturing Co., Inc.</td>
<td>$560,147.60</td>
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<tr>
<td>06-320</td>
<td>Rheem Manufacturing Co., Inc.</td>
<td>$896,202.00</td>
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<tr>
<td>06-319</td>
<td>Rheem Manufacturing Sales, Inc.</td>
<td>$1,007,264.00</td>
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<tr>
<td>06-104</td>
<td>Shaw Industries</td>
<td>$571,405.00</td>
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<tr>
<td>06-451</td>
<td>Shaw Industries Group, Inc.</td>
<td>$448,539.00</td>
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<tr>
<td>06-429</td>
<td>Shaw Industries Group, Inc.</td>
<td>$676,139.00</td>
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<tr>
<td>07-962</td>
<td>Smiths Medical ASD, Inc.</td>
<td>$10,981.76</td>
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<tr>
<td>07-1074</td>
<td>Supercuts Corp. Shops, Inc.</td>
<td>$8,214.00</td>
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<tr>
<td>05-269</td>
<td>Talbots, Inc.</td>
<td>$48,167.00</td>
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<tr>
<td>07-176</td>
<td>Target Corporation</td>
<td>$2,200,872.64</td>
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<tr>
<td>05-507</td>
<td>Target Corporation</td>
<td>$319,812.00</td>
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</table>
## Add-Back Lawsuits on File Now

<table>
<thead>
<tr>
<th>Corp. No.</th>
<th>Company Name</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>CORP. 05-889</td>
<td>THE CATO CORPORATION</td>
<td>$207,292.00</td>
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<tr>
<td>CORP. 05-545</td>
<td>THE HEIL COMPANY</td>
<td>$583,346.00</td>
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<tr>
<td>CORP. 07-324</td>
<td>THE HEIL COMPANY</td>
<td>$558,828.00</td>
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<tr>
<td>CORP. 07-1073</td>
<td>THINGS REMEMBERED, INC.</td>
<td>$3,074.00</td>
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<tr>
<td>CORP. 05-891</td>
<td>UNITED HEALTHCARE SERVICES, INC.</td>
<td>$170,803.00</td>
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<td>CORP. 06-503</td>
<td>UNITED PARCEL SERVICE, INC.</td>
<td>$208,688.00</td>
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<tr>
<td>CORP. 05-549</td>
<td>VICTORIA'S SECRET STORES, INC.</td>
<td>$71,336.00</td>
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<tr>
<td>CORP. 06-479</td>
<td>WESTERN UNION FINANCIAL SVCS, INC.</td>
<td>$37,914.98</td>
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<tr>
<td>CORP. 06-923</td>
<td>WHIRLPOOL CORP.</td>
<td>$52,470.86</td>
</tr>
</tbody>
</table>

| **Total** |                                           | **$22,395,637.07** |
Using REIT Strategies to Avoid Alabama Income Tax

- **Nevada REIT** makes Dividend payment To Related Corporation in Delaware.
- Related Corporation in Delaware makes Rent paid to REIT (deducted as expense).
- Rent paid to REIT (deducted as expense) makes Dividend payment To Alabama Corporation.
- Alabama Corporation makes Dividend payment To Related Company.
- Related Company makes Dividend payment To Alabama Company. Dividend Is tax free.
Wal-Mart used the REIT Tax Shelter.

- In the late 1990’s Wal-Mart transferred ownership of its stores to Captive REITs and rented from those REITs
- REITs pay no corporate income tax
- In one four-year period, Wal-Mart saved $230 million in State Taxes, by paying rent to itself.
- Wal-Mart deducted the rent payments even though they never left the company.

Source: Wall Street Journal, Jessie Drucker, 2-01-07
Alabama Corporate Tax Liability, by Fiscal Year

FY99 FY00 FY01 FY02 FY03 FY05 FY06
# Combined Reporting in the Fifty States - 2007

<table>
<thead>
<tr>
<th>States With Combined Reporting</th>
<th>States Considering Combined Reporting</th>
<th>States Without Combined Reporting</th>
<th>States For Which Combined Reporting is Not Relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>Iowa</td>
<td>Alabama</td>
<td>Nevada</td>
</tr>
<tr>
<td>Arizona</td>
<td>Maryland</td>
<td>Arkansas</td>
<td>South Dakota</td>
</tr>
<tr>
<td>California</td>
<td>Massachusetts</td>
<td>Connecticut</td>
<td>Washington</td>
</tr>
<tr>
<td>Colorado</td>
<td>Michigan</td>
<td>Delaware</td>
<td>Wyoming</td>
</tr>
<tr>
<td>Hawaii</td>
<td>New Mexico</td>
<td>Florida</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>North Carolina</td>
<td>Georgia</td>
<td></td>
</tr>
<tr>
<td>Illinois</td>
<td>Pennsylvania</td>
<td>Indiana</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td></td>
<td>Kentucky</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td></td>
<td>Louisiana</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td></td>
<td>Mississippi</td>
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</tr>
<tr>
<td>Montana</td>
<td></td>
<td>Missouri</td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td></td>
<td>New Jersey</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td></td>
<td>Ohio</td>
<td></td>
</tr>
<tr>
<td>New York*</td>
<td></td>
<td>Oklahoma</td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td></td>
<td>Rhode Island</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td></td>
<td>South Carolina</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td></td>
<td>Tennessee</td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td></td>
<td>Virginia</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td></td>
<td>Wisconsin</td>
<td></td>
</tr>
<tr>
<td>West Virginia*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
When you invest, you gain.

New Nuclear Plant: Tax Incentives v. Tax Benefits

- State Sales Tax: $167,459,920
- State Property Tax: $117,612,504
- State Income Tax: $266,421,587

New Clean Coal Plant: Tax Incentives v. Tax Benefits

- State Sales Tax: $48,449,673
- State Property Tax: $79,528,531
- State Income Tax: $83,925,658
Proposed Subsidy Amount for 2,000 sq. ft. Home/Business Solar Panel System

$2,000 Federal Government Subsidy

$40,500 Education Trust Fund Subsidy


Cost of system uses data from these sources to derive a solar generating system with equipment for a 2,000 square foot home to run certain typical electricity demands, excluding heat. At least 10,000 watt system is assumed to be used.
Construction and permanent jobs created by nuclear and clean coal plants

Construction jobs
- 6,000 Nuclear
- 1,100 Clean Coal

Permanent jobs
- 898 Nuclear
- 200 Clean Coal

Solar subsidy jobs
WHAT ARE YOUR OPTIONS?

- Examine sourcing formulas inside your state’s version of Combined Reporting.
- Gaming Taxes if you haven’t done it.
- Oil and Gas Depletion and Severance Issues.
- High-income surcharges for $200,000 +
- Limit Loss deducts for Corps. and Indiv.
- Services Taxes (38 states do it).
- Digital Property definitions for sales tax.
MORE OPTIONS. . .

- Medicaid Surcharge on Large Employers.
- Decouple from new any Federal changes that lose you money.
- On-Demand Cable Taxes.
- Mobile Communications Taxes.
- Floor on Property Taxes—Examine 4 year or 2 year Appraisal in down years.
- PLAY DEFENSE!!!!!!!
13. What about Tax Subsidies?

In addition to corporate tax loopholes, another source of large revenue leakage is the plethora of ‘tax expenditures’ made by states in the name of economic development. These include a variety of tax abatements and direct subsidies that reduce the tax obligations of corporations. Some of these programs produce a reasonable return on investment, while some do not. The main problem is there very little accountability required of the state or the corporations that benefit from these programs.

Good Jobs First, a 501(c)(3) non-profit organization, is the nation’s go-to resource for information on the whole gamut of economic development subsidies, and for strategies for making state governments and the corporations receiving these subsidies more accountable for results.

One feature on the Good Jobs First website is their “Subsidy Tracker.” Each item in this database is a state economic development program. You will learn the name of the recipient company and, when data are available, the dollar value of the subsidy, names of the program and state agency involved, where the facility is located, and any impact that the subsidy has had on jobs.

In the following pages you can see the results from a Subsidy Tracker query on the State of Alabama. As you can see, a 3/28/2011 search yielded 4,721 results – and the database is constantly growing as more information is added!
WHAT ABOUT TAX SUBSIDIES

Link: http://www.goodjobsfirst.org/accountable-usa
14. Track Where You Are in Your State

Whether you are already on the TEF path or about to initiate a TEF movement or campaign, here is a handy tool that will keep you on track.
TEF TRACK: Where are we?

A. POLITICAL
- Candidates Forum
- Grassroots Campaign
- Election of Pro-TEF Agenda Candidates

B. LEGISLATIVE
- Coalition
- Draft Legislation
- Sponsors
- Mobilization of Support
- Testimony
- Passage

C. LITIGATION
- Adequacy Study
- Coalition
- Testimony
- Victory

D. BALLOT
- Coalition
- Draft Ballot
- Signatures
- Mobilization of Support
- Approval

- State Leaders
- Board of Directors
- State Staff: (GR, PR, RES)
- Local Leaders
- UniServ Director
- Rank and File

- Cadre of Trainers
- Membership Organizing
- PR Campaign
- Community Organizing/House Parties
- Coalition Building

- A. POLITICAL
- Candidates Forum
- Grassroots Campaign
- Election of Pro-TEF Agenda Candidates

- B. LEGISLATIVE
- Coalition
- Draft Legislation
- Sponsors
- Mobilization of Support
- Testimony
- Passage

- C. LITIGATION
- Adequacy Study
- Coalition
- Testimony
- Victory

- D. BALLOT
- Coalition
- Draft Ballot
- Signatures
- Mobilization of Support
- Approval
15. Contact Information

This sheet lists important contact information of individuals and organizations that can provide you technical assistance and valuable TEF resources.
OTHER RESOURCES

• Susan Kennedy, Alabama Education Association – susan.kennedy@aeaedu.org

• Michael Kahn, NEA Research – mkahn@nea.org

• Center on Budget and Policy Priorities, Michael Mazov – www.cbpp.org

• Good Jobs First, Greg Leroy – www.goodjobsfirst.org

• George Washington University, David Brunori – david_brunori@tax.org

• Institute on Taxation and Economic Policy – www.itepnet.org

• DEMOS – www.demos.org

• Or learn more about Strong Schools, Strong Community, Strong Economy at: www.nea.org/tef