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COMMENT: I'LL TAKE MY SIN TAXES UNWRAPPED AND MAXIMIZED, WITH A SIDE OF INELASTICITY, PLEASE*

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LEXISNEXIS SUMMARY:

... Even Hollywood joined in the fray with the story of Lucas Doolin, a Kentucky mountain moonshine runner, who would rather risk death in a high speed car crash than pay the federal excise tax on alcohol. ... This Comment uses the taxation of alcohol to demonstrate that, because the most efficient tax is one that least alters taxpayers' behavior, when the government seeks to implement a selective excise tax it should focus on products with price-inelastic demands. ... The sin tax on alcohol is directly related to the American Revolution. ... " As such, the birth of the sin tax came in 1791. ... Predictably, the sin tax was hated. ... User fees do not provide a sound rationale for the alcohol sin tax. ... Abandoning the Sin Tax and Moving Toward Necessity ... Within the confines of these ideals, I argue that the sin tax rationale for the alcohol excise tax should be rejected and abandoned. ... Ramsey's rule justifies an excise tax on alcohol. ... This is because, as defined by both the corrective tax and paternalistic rationales, the primary goal of a sin tax is to discourage a particular behavior, in our case the consumption of alcohol. ... That is, an excise tax should be measured by its effect on the individual, rather than as a tool of comparison holding classes of individuals (grouped by income) next to each other to achieve relative equity (i.e., vertical equity). ...

TEXT:

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I. Can Someone Please Explain "Why" We Are Paying "These" Taxes?

Why tax? Are taxes truly "what we pay for [a] civilized society?"ⁿ¹ Or, are taxes merely collected "to pay for the responsibilities we have assigned to our government?"ⁿ² Despite the debate that might erupt over whether the implementation of responsible government is synonymous with the promotion of civilized society, all entities need money to operate. The government is no different. So, while the initial answer to the opening question is simple, it only begs the more serious of inquiries; the government having the power to tax,ⁿ³ so, what shall be taxed?

To be sure, whatever the choice, it will enrage; as "only [the] tax laws seem capable of engendering nearly universal anger, anxiety, paranoia and outright hatred" ⁿ⁴ Americans are obsessed with taxation, focusing obscene amounts of time and intense personal and political debate on the subject. ⁿ⁵ Even Hollywood joined in the fray with the

story of Lucas Doolin, a Kentucky mountain moonshine runner, who would rather risk death in a high speed car crash than pay the federal excise tax on alcohol. ⁿ⁶ For all taxpayers, the opening words of Thunder Road [*544] bring the sensation of tax fear mixed with the pride of law enforcement--an odd feeling:

Each year, the millions of gallons of illegal whisky, manufactured in the Southeastern United States, represents millions of dollars in taxes lost to the American people. The [tax collectors] and their continuing service to their country, have, within one year, captured over 10,000 stills and impounded over 3,000 of the powerful vehicles which are used by the transporters; those wild and reckless men who transport illegal whisky from its source to its point of distribution. This is the story of a transporter and his opposite number, an agent of the U.S. Treasury. ⁿ⁷

Enacting a tax forces the government to grapple with many competing interests, chiefly the economic and the political. ⁿ⁸ Buried amongst these considerations lies rationale, ⁿ⁹ i.e., the "why" supporting the choice made. This Comment focuses on the rationale behind the implementation of selective excise taxes; ⁿ¹⁰ specifically, the taxation of culturally disfavored products, or more commonly, "sin taxes." ⁿ¹¹

Because of its unique history, the taxation of alcohol is arguably the most notorious of all sin taxes. ⁿ¹² This Comment uses the taxation of alcohol to demonstrate that, because the most efficient tax is one that least alters taxpayers' behavior, when the government seeks to implement a selective excise tax it should focus on products with price-inelastic demands. Such a policy will prove economically efficient and will provide the government with a revenue maximizing opportunity. I conclude that the production of revenue and economic efficiency are the only legitimate justifications for selective excise taxes. As such, any desired social engineering [*545] and/or equitable considerations should be abandoned when forming the rationale underlying the institution of an excise tax. Finally, this leaves the decision of which price-inelastic items to tax--those that are necessary or those that are not--to be governed by what is politically acceptable.

Specifically, Part II briefly discusses the history of the taxation of alcohol. Part III outlines and critiques the modern policy justifications for sin taxes. Part IV presents the argument for the abandonment of the concept of sin taxes in favor of economic efficiency and revenue maximization. Part V concludes that maximizing revenue from the selected excise tax of price-inelastic items is compatible with the tax system's ability-to-pay concerns and that such taxes should be levied on goods that political debate deems non-essential.

II. A Brief History of Excise Taxation and Its Relationship with Alcohol

A. Sin Taxes are Luxury Taxes are War Taxes

The sin tax on alcohol is directly related to the American Revolution. ⁿ¹³ The new nation, fresh from victory, owed large sums of money because of its war debt. Ironically, as excise taxes in England likely drove many to the new world and were at the heart of the Revolution, Alexander Hamilton proposed an excise tax on whiskey to cover the debt. ⁿ¹⁴ Hamilton noted that duties on imports were as high as trade permitted and that ""the consumption of ardent spirits particularly, no doubt very much on account of their cheapness, is carried on to an extreme, which is truly to be regretted, as well in regard to the health and the morals, as to the economy of the community."" ⁿ¹⁵ As such, the birth of the sin tax came in 1791. ⁿ¹⁶

[*546] Predictably, the sin tax was hated. It even sparked the Whiskey Rebellion of 1794, in which Pennsylvania farmers, despite strong words of revolt, were easily quelled by 12,500 militia dispatched by President Washington. ⁿ¹⁷ By the elections of 1800, similar excise taxes on snuff, sugar, horse drawn carriages, auction sales, and salt had been imposed. ⁿ¹⁸ The government had found, with a bit of persuasion, a new and constant source of revenue--the selective excise tax. By 1807, however, Congress had repealed all of the excise taxes, just as Thomas Jefferson had promised in his presidential campaign. ⁿ¹⁹

During the War of 1812, duties on imports again failed to generate needed revenue. Consequently, the government again turned to excise taxes, this time labeling them "war taxes."ⁿ²⁰ Despite being the very same taxes imposed on the public only a decade earlier, the 1813 excise taxes sparked neither riot nor rebellion, but rather compliance.ⁿ²¹ This is because they were sold to the public as temporary "war taxes," making them much more palatable.ⁿ²² Moreover, the country was not just paying down a debt, but actually using the money contemporaneously to fight a war. Notwithstanding the success of the "war taxes," they were repealed in 1817, as promised.ⁿ²³

During the Civil War and World War I, the government also used excise taxes to raise substantial amounts of revenue for wartime emergencies.ⁿ²⁴ Again, the public accepted this responsibility without visible rebellion, even when, in 1865, Congress raised the whiskey tax to \$ 2.00 per gallon, ten times its actual cost.ⁿ²⁵ While most of the excise taxes were repealed after the Civil War, the tax on liquor remained and became a "permanent fixture of the federal revenue system."ⁿ²⁶ Ironically, in 1913, just as the tax on alcohol [*547] became the primary source of federal revenue, the modern income tax system was introduced.ⁿ²⁷

B. Prohibition, the New Deal, and Beyond

The introduction of the modern income tax system ensured that the excise tax on alcohol, and other commodities, would never again play the primary role in the federal revenue system.ⁿ²⁸ For example, in 1915, income tax provided only sixteen percent of federal revenue.ⁿ²⁹ By 1918, however, that number had exploded to seventy-nine percent.ⁿ³⁰ For the first time, Congress perceived that it could sustain an intake of revenue, even during wartime, without having to rely on excise taxes to bail out the government.ⁿ³¹ With the prohibitionists' social agenda knocking, sympathetic congressmen could now safely support the prohibitionist cause without worrying about re-election.ⁿ³² As such, in 1919, the Eighteenth Amendment was passed and the "manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes [was thereby] prohibited."ⁿ³³

The repeal of Prohibition, just twelve years after it was ratified, was likely the result of many factors. The immediate emergence of a large black market made clear that a sizeable portion of society did not fully share the values of the temperance movement.ⁿ³⁴ Further, the government did not have, and was unwilling to commit, the resources to enforce the ban on such a widespread scale.ⁿ³⁵ Moreover, the advocates of Prohibition were now faced with the unpleasant thought of choosing between the creation of [*548] rampant crime and the continued adherence to an obviously unwelcome social experiment.ⁿ³⁶

The Great Depression devastated the American economy and was the final straw needed to repeal Prohibition. By 1932, income tax receipts fell to less than half of their 1930 level.ⁿ³⁷ Despite the early success of the income tax, the well appeared to be running dry. Congress needed another source of tax revenue and their old standby, alcohol, was unavailable.ⁿ³⁸

Like Alexander Hamilton before him, Franklin Delano Roosevelt realized the revenue generating power of liquor.ⁿ³⁹ During his 1932 campaign, Roosevelt pledged to repeal Prohibition "'to provide therefrom a proper and needed revenue.'"ⁿ⁴⁰ Moreover, the Democrats were quite forthcoming about the government's need for money from alcohol sales, stating: "'If only given a chance, Americans might drink themselves into a balanced budget.'"ⁿ⁴¹ Indeed, after the repeal of Prohibition, alcohol taxes leaped from two percent of federal revenues in 1933 to thirteen percent in 1936; not the primary source, but a strong contributor.ⁿ⁴²

The realization that the alcohol sin tax was, again, set to be a permanent facet of the federal revenue system sparked debate about its use and long-range goals. Many desired to use the tax for revenue maximization.ⁿ⁴³ Others believed that the tax should be used primarily as a social control.ⁿ⁴⁴ Nearly seventy years later, despite the fact that the health effects and social costs of alcohol are widely publicized and well-known,ⁿ⁴⁵ not much has changed. [*549] The consumption of alcohol continues to be a way of life for many, a cultural stigma for others, and taxed heavily, but not fully, for all.ⁿ⁴⁶

C. History Provides the Wrapping

At its inception, the tax on alcohol was sold to the public as a pound of flesh that had to be exacted from somewhere. Why not tax those who partake of spirits, in excess, and care not of their health and morals? Despite being a sin tax, however, its roots lay in revenue. Nonetheless, wars and luxuries provided better sales pitches and opened the door to other excises. Even after its constitutional death, the would-be Valhalla of sin taxes, the alcohol tax reemerged as a hefty contributor to the pool of federal revenue. Why? Was it revenue? Or was Prohibition so unworkable that, pragmatically speaking, a tax on an act deemed to be without social value was the only acceptable means of discouraging that behavior? It seems that, like all political packaging jobs, these two rationales share a nurturing and symbiotic relationship.

III. Policy Justifications for Sin Taxes

As seen above, when politicians want to raise taxes they need to find ways to circumvent the inevitable barrage of taxpayer opposition. Sin taxes make this possible for two reasons. First, they remove the focus of the tax away from an individual's tax burden and toward the promotion of some socially virtuous objective, for example, education. Second, that virtuous objective is achieved in the name of discouraging some particularly unwelcome social behavior, such as drinking alcohol.ⁿ⁴⁷ Beyond the political sale, however, modern sin taxes find justifications in economic and paternalistic policies.

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A. Economic Policies

1. User Fees

Many selective excise taxes are enacted on a benefits received principle.ⁿ⁴⁸ The premise is that individual users of a particular publicly provided benefit consume a larger share of that benefit and, thus, should bear a greater burden in financing its provision.ⁿ⁴⁹ This burden comes in the form of user fees. The collected taxes are then, in theory, directly re-allocated to the public service.ⁿ⁵⁰ In common parlance, this is known as earmarking. Further, by taxing a particular product or activity, the user fees allow the tax to be avoided by non-users. Thus, the intensity of an individual's tax burden is directly linked to his regularity of use.ⁿ⁵¹

The excise tax on airline tickets provides one example of a user fee, the monies being earmarked to improve air traffic control facilities, runways, terminals, and other operational needs.ⁿ⁵² Each passenger provides revenue that is paid into the Airport and Airway Trust Fund ("Fund").ⁿ⁵³ As the Fund matures, specific outlays should be made for the earmarked purpose. Initially, the airline industry supported the creation of the Fund, as it afforded the opportunity to pool resources for expenditures and improve service for the collective benefit of their "taxpayers," the users.ⁿ⁵⁴ Practical reality, as it often does, disrupted this plan.

Revenue collected from user fees, like any other collected tax monies, requires Congress to act before funds are allocated. Intended beneficiaries of user fees, even the air-traveling public, are a minority of the population in a majority-rule system.ⁿ⁵⁵ In this case, receipts and outlays from the Fund are budget items that [*551] have federal budget deficit implications.ⁿ⁵⁶ Thus, Fund spending generates "red ink" spending which is "politically unpopular."ⁿ⁵⁷ Despite extensive lobbying by the airline industry, the Fund remains relatively unspent, instead being used to reduce the budget deficit.ⁿ⁵⁸

User fees do not provide a sound rationale for the alcohol sin tax. The user fees concept is a benefits-based theory, and there is no such publicly provided good or service specifically and directly related to the consumption of alcohol. One possible exception, however, might be the funding of liquor licensing authorities and state operated liquor stores.ⁿ⁵⁹ This provides weak support, however, because a fundamental difference exists between state-provided benefits, such

as roads, and state regulation of a particular industry. The latter monitors and perhaps curtails an activity while the former makes an activity possible. Further, once revenue is collected it would be nearly politically impossible to allocate funds designated to specifically benefit drinkers or the alcohol industry.

2. Corrective Taxes/Social Costs

Corrective taxes are instituted when society suffers market failure.ⁿ⁶⁰ Market failure occurs when "freely functioning private market institutions "fail to sustain "desirable" activities or to estop "undesirable" activities."ⁿ⁶¹ This situation arises when activities do not bear their full social costs, or cannot seize their full social benefits.ⁿ⁶² This phenomenon applies to sin taxes because of the problem of negative externality; that is, social costs in excess of private costs.ⁿ⁶³

The social costs of the consumption of alcohol are perceived in all shapes, sizes, and volumes. For example, in order to combat [*552] the "'increasing tide of drunkenness ... "tending to the destruction of the health of the people, enervating them, and rendering them unfit for useful labor and service" ... [corrupting their] morals, driv[ing them] into all manner of vices and wickedness," the English Parliament, in 1727, passed the Act Against Geneva providing for a steep excise tax on the consumption of gin.ⁿ⁶⁴ This "increasing tide" also exists in America: it is currently estimated that seventy-six million adults have been exposed to alcoholism in the family home.ⁿ⁶⁵ And, researchers believe that alcoholism "retards educational attainment by more than a full grade, with corresponding decreases in earning potential."ⁿ⁶⁶ Further, alcohol directly drains the resources and operating capabilities of already overburdened entities such as public hospitals, police forces, courts, prisons, and the welfare system.ⁿ⁶⁷ For example, public hospitals dealing with health care problems directly related to the consumption of alcohol may be undercompensated by nearly \$ 1 billion per year for the treatment of those problems.ⁿ⁶⁸ Lastly, it is unlikely that these social costs will subside as the number of alcoholics continues to rise, as does the amount society spends on alcohol.ⁿ⁶⁹

Proponents of corrective sin taxes argue that the consumption of alcohol imposes the above discussed costs on society that consumers themselves do not directly bear, and consequently, do not consider when making the decision to drink.ⁿ⁷⁰ Consumers, therefore, will drink "more than is optimal from society's point of view."ⁿ⁷¹ The government, through sin taxes, can force consumers to internalize the negative externalities of these actions.ⁿ⁷² This is [*553] because when an excise tax is levied, its burden is passed on to the ultimate consumer, at an increased price. Those favoring sin taxes believe that being forced to pay more for a bottle of liquor will cause an individual to buy less, and, in turn, drink less.ⁿ⁷³ Thus, less drinking on a societal scale will decrease the overall social costs and correct the failed market. Further, similar to use taxes, the revenue generated can be earmarked and used to compensate those entities facing the brunt of the remaining external costs.ⁿ⁷⁴

The major critique of corrective taxation is its distortion of the concept of externalization.ⁿ⁷⁵ Simply, critics argue that advocates of corrective taxation greatly exaggerate social costs in comparison to those that remain private.ⁿ⁷⁶ For example, if an individual misses work due to alcohol consumption, society pays for his lack of production. While this might be true on a daily, case-by-case basis, over time, frequently absent workers produce less and, thus, get paid less and are most likely overlooked for promotions.ⁿ⁷⁷ On a societal scale, then, the allocation of resources over time internalizes the costs without taxation.ⁿ⁷⁸

Further, current data dealing with medical costs used by corrective tax advocates does not sufficiently support a finding of causation.ⁿ⁷⁹ Aside from property damage and third party personal injury, there has been no demonstration that alcohol-related medical costs exist in addition to regular medical costs.ⁿ⁸⁰ Specifically, the advocates' premise rests on the unproved assertion that "drinkers and nondrinkers have identical medical costs for everything unrelated to alcohol."ⁿ⁸¹

[*554] When insurance is involved, as it usually is, it is incorrect to say that those filing claims are imposing costs on those not filing.ⁿ⁸² At first, this may seem erroneous from an ex post point of view; that is, the claimants are being subsidized by the non-claimants and generating more pay-outs and, thus, there is a greater potential for a hike in premiums.ⁿ⁸³ However, people buy insurance knowing that accidents happen, houses burn down, and people get ill.

That is why they participate in the first place. Viewed ex ante, participants bargain for this benefit.ⁿ⁸⁴ Lastly, without data that drinkers, in fact, use insurance more often and for alcohol-related claims, it is incorrect to say that such costs are societal.ⁿ⁸⁵

B. Paternalistic Policies

Paternalism is the care of an underling, a subordinate, by a knowing and compassionate father.ⁿ⁸⁶ While this may be a bit flowery for a sin tax, the rationale is the same - the protection of a person's welfare, values, and interests, as perceived by the government to be "good" or "beneficial" to that person's life.ⁿ⁸⁷ This line of thinking is aptly described by Ronald Dworkin: "In a genuine political community each citizen has a responsibility for the well-being of other members and should therefore use his political power to reform those whose defective practices will ruin their lives."ⁿ⁸⁸ Further, because paternalistic taxes focus on the benefit to the person, any revenue gained is purely incidental.ⁿ⁸⁹ Taken to its logical conclusion, a paternalistic tax is temporary and self-destructive, in that like medicine, it only seeks to curb and eventually terminate the undesired behavior. In theory, once the problem is taken care of, the tax will be repealed.ⁿ⁹⁰

[*555] While the potential effects of the excessive or long-term consumption of alcohol are well known and will not be repeated here,ⁿ⁹¹ paternalistic taxes suffer heavy criticism due to their subjectivity - that is, "one's own good" is not defined by the individual's sense of his own personal welfare, but what is deemed to be beneficial for him by his community.ⁿ⁹² Some find it odd that a society dedicated to social compassion and individual dignity reverses field on selected subjects, thereby giving relatively little weight to individual perceptions of the quality and goals of one's life, instead employing coercive methods to change behavior.ⁿ⁹³

Related to the promotion of an individual's well-being is society's interest in the advancement and observance of cultural values.ⁿ⁹⁴ The paternalistic tax can be used to enforce behaviors which will benefit society as a whole. For example, the teetotalers of the temperance movement argued that the discouragement of idle and unproductive activities such as drinking would eventually lead to greater social welfare.ⁿ⁹⁵ Such majoritarian tactics, however, seem to be in direct conflict with America's ideal of protecting and securing individual rights and liberties.

Beyond the possible sacrifice of individual freedoms, paternalistic taxes looking to promote the societal good may also take on class biases.ⁿ⁹⁶ Evidence of this originated in the early temperance proponents' desire to provide a "moral uplift" for the lower classes, prone to indulge in drinking.ⁿ⁹⁷ One need only look to the "vices" chosen for taxation --smoking and drinking--to see that these activities pervade the daily lives of the lower classes.ⁿ⁹⁸ Activities traditionally engaged in by the middle and upper classes, such as skiing, are nary the subject of a sin tax, yet they are arguably just as physically dangerous and socially unproductive.ⁿ⁹⁹

Finally, paternalistic taxes, like all taxes, threaten individual choice, and they do so in an internally contradictory manner.ⁿ¹⁰⁰ [*556] Choice and the exercise of free will are cornerstones of our democratic government, yet paternalistic policies transform these cornerstones into "good receptacles."ⁿ¹⁰¹ They are good receptacles in that ""interference with that process of choice produces dissatisfaction because adjudging individuals incapable of making their own decisions implies a lack of respect for their worth as human beings.""ⁿ¹⁰² While attempting to create a "better" society, paternalistic taxes work to erode the desired values of community respect and societal integrity.

IV. Abandoning the Sin Tax and Moving Toward Necessity

Regardless of the rationale or justification, taxation is fundamentally unfair to taxpayers. "Each dollar the Government collects is a dollar someone else has earned."ⁿ¹⁰³ Similarly, the unfairness to taxpayers rings in the economic burden imposed by a particular tax.ⁿ¹⁰⁴ Taxation is also economically inefficient; taxes force the allocation of economic resources away from their most productive uses.ⁿ¹⁰⁵ Because of these truths, modern tax theory has adopted three ideals to which legislators should aspire when enacting or reforming a tax.ⁿ¹⁰⁶ These ideals are equity, efficiency, and simplicity.ⁿ¹⁰⁷ Within the confines of these ideals, I argue that the sin tax rationale for the alcohol excise tax should be

rejected and abandoned. When the government seeks to exercise its power to enact selective excise taxes, the production of revenue and economic efficiency are the only legitimate justifications. These goals will best be promoted by taxing only price-inelastic and unnecessary goods.

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A. Economic Efficiency

1. Neutrality

In a free market economy without any taxation, assuming competition, resources tend to be put to their most productive uses.ⁿ¹⁰⁸ Therefore, it is assumed that the price of a bottle of liquor is equal to its marginal cost.ⁿ¹⁰⁹ That price will be where the market has reached equilibrium.ⁿ¹¹⁰ When an excise tax is introduced, however, the supplier of the product is forced to raise the price, which in turn will cause consumers to buy less.ⁿ¹¹¹ The higher price, in terms of real dollars, persuades consumers not to buy, or to switch to other products (e.g., beer) that seem cheaper, despite being either inferior to our bottle of liquor or perhaps more costly to produce.ⁿ¹¹²

Aside from shifting consumers to and from different products, the effect of this tax "wedge" between the price of the bottle of liquor and the money taken in by the supplier also produces what is known as a "deadweight" loss or excess burden.ⁿ¹¹³ It is called deadweight because the losses to the market participants are greater than the revenue collected by the government.ⁿ¹¹⁴ The deadweight is, however, not to be confused with the actual tax revenue. Rather, these losses represent some purchases, benefiting both buyers and sellers, that are not made because the tax has been levied.ⁿ¹¹⁵ Alternatively, it is the value of the goods not produced and consumed because of the tax - the burden the tax imposes on society - which is transferred away from the market participants and lost forever, not being transferred to anyone.ⁿ¹¹⁶ While this may seem insignificant in the context of a bottle of liquor, a recent study estimates the excess burden of the entire federal tax system to be between thirteen and twenty-four cents for [*558] every tax dollar collected, or nearly five percent of the United States's Gross National Product.ⁿ¹¹⁷

At the heart of an economically efficient tax is the concept of neutrality. Neutrality demands that an ideal tax system disrupt these marketplace decisions as little as possible.ⁿ¹¹⁸ As such, without more, the imposition of selective excise taxes violates this concept in the most egregious of manners.

2. Elasticity

The "something more" suggested above is the consideration of the price elasticity of demand (or price elasticity).ⁿ¹¹⁹ Price elasticity "measures how much the quantity demanded of a good changes when its price changes."ⁿ¹²⁰ More precisely, it is the percentage change in quantity demanded over the percentage change in price.ⁿ¹²¹ While the price elasticities of different goods vary enormously, goods are generally placed into two categories - price-elastic or price-inelastic demand.ⁿ¹²²

Goods are considered to have a price-elastic demand if a one percent change in price generates more than a one percent change in the quantity demanded.ⁿ¹²³ Conversely, if a one percent change in price precipitates less than a one percent change in the quantity demanded, the goods are considered to have a price-inelastic demand.ⁿ¹²⁴

As will be discussed in more detail below, price elasticity is closely related to individual necessity.ⁿ¹²⁵ Items like food, fuel for the home and car, and clothing cannot easily be gone without and, thus, tend to be more price-inelastic. The closer an item comes to being a luxury or having a ready substitute, such as vacations and designer clothing, the more likely those items will be [*559] price-elastic.ⁿ¹²⁶ Price elasticity is also time sensitive. That is, the longer a person has to adjust his or her behavior, the more price-elastic items that he consumes will become.ⁿ¹²⁷ Gasoline provides a good example. A substantial hike in gas prices will be unlikely to alter a person's desire to purchase gasoline while driving on a cross-country vacation. Will the person sell his car to walk the rest of the way? Unlikely.ⁿ¹²⁸ Over

time, however, that same person might adjust his behavior, opting to utilize mass transit in lieu of driving, or perhaps buying a more fuel-efficient car, thereby reducing his demand for gasoline. ⁿ¹²⁹

3. The Relationship Between Selective Excise Taxes and Price Elasticity

British economist and mathematician Frank Ramsey expressed the relationship between selective excise taxes and price elasticity in 1927. ⁿ¹³⁰ Ramsey's rule states that "in order to minimize the excess burden ... taxes should be placed on goods in inverse proportion to their elasticities of demand." ⁿ¹³¹ Given the goal of economic efficiency through neutral tax policies, the rationale is that the less people care about changes in a commodity's price, from whatever the source, the smaller the reduction in their purchases of the commodity when its price rises, i.e., the quantity demanded falls less. ⁿ¹³²

Ramsey's rule justifies an excise tax on alcohol. ⁿ¹³³ Just as Alexander Hamilton noted over 200 years ago, despite alcohol not being a staff of life, consumption "is carried on to an extreme." ⁿ¹³⁴ That the alcohol tax carried the federal tax system on its back until the institution of the modern income tax is a testament to the price-inelasticity of demand for alcohol. No matter what the tax was, the revenue kept coming in. This continues today. ⁿ¹³⁵ "As history [*560] reveals, fashion may come and go, but there has never been an effective substitute, in terms of satisfaction, to the drinking of wines and spirits... ." ⁿ¹³⁶

4. Economic Efficiency Versus Discouragement: An Inherent Contradiction

Opponents argue, and I agree, that the use of Ramsey's rule for the justification of sin taxes fails as a matter of logic. This is because, as defined by both the corrective tax and paternalistic rationales, the primary goal of a sin tax is to discourage a particular behavior, in our case the consumption of alcohol. ⁿ¹³⁷ Therefore, proponents attempting to sell a sin tax on alcohol will invariably find themselves in the precarious situation of arguing against themselves; first expounding upon the need to discourage the disruptive and unwanted behavior, but then not too much, as the tax must raise needed revenue. ⁿ¹³⁸ Because Ramsey's rule dictates that the impact of taxation on the quantity demanded of commodities with price-inelastic demands is substantially lessened, if not minimal, the teetotaler's original objective of discouragement will most likely fail. ⁿ¹³⁹ Thus, the rationale and ultimate policy goals of Ramsey's rule directly conflict with those of a sin tax.

To remedy this conflict, I propose divorcing the two and abandoning the sin tax rationale. This will leave the excise tax on alcohol in place, justified by Ramsey's rule. It will also remove the goal of any direct and desired social engineering. When the attempt to control individuals' actions through taxation is abandoned, the only legitimate justification for taxation is the production of revenue. Thus, considering economic efficiency, the government, if it does tax commodities, must focus on those with price-inelastic demands. This promotes the production of revenue [*561] because when the price of a price-inelastic good is increased, so is the amount of tax revenue collected. ⁿ¹⁴⁰ Further, because the tax is economically more efficient, it will create a smaller amount of excess burden. ⁿ¹⁴¹

As discussed above, the desire of corrective tax proponents, and to some extent user fee proponents, to use a sin tax to recoup the societal costs imposed by consumption may be compelling when viewed from the standpoint of social responsibility - that is the drinkers' need to internalize the negative externalities of their drinking, but fails even the most basic form of efficiency analysis. The attempt to coerce the non-consumption of alcohol through taxation is, by definition and design, not revenue neutral; instead, it "distorts choices about how income is ... spent," ⁿ¹⁴² thereby forcing economic resources away from their most productive uses. This is not efficient. Paternalistic rationales fail for the same reasons.

5. Revenue Maximizing

All goods with price-inelastic demands provide the government with a revenue maximizing opportunity. A recent study shows, however, that the taxation of alcohol, including both federal and state taxes, is well below the revenue

maximizing level.ⁿ¹⁴³ Thus, governments clearly have room to adjust and experiment with their taxes to fully exploit the tax potential of alcohol.ⁿ¹⁴⁴

Governments estimate the amount of tax dollars they expect to collect from any particular tax when setting the rates.ⁿ¹⁴⁵ They do this with, we hope, some eye toward the amount of revenue they will need to operate successfully. The ability to maximize revenue from a tax that inflicts the minimum amount of excess burden will, in turn, allow the government to reduce, or possibly eliminate, [*562] taxes from areas where economic neutrality is more difficult to achieve.

Despite this fact, forty-nine states and the federal government do not maximize their potential profits from the sale of alcohol.ⁿ¹⁴⁶ In the 1990s, it was estimated that Congress could raise an additional \$ 23.5 billion dollars over five years by increasing the federal excise tax on alcohol (distilled spirits) from \$ 13.50ⁿ¹⁴⁷ to \$ 16.00 per gallon.ⁿ¹⁴⁸ Nevertheless, despite balanced budget concerns, Congress did not take this action. Similarly, most states that control the sale of one or more types of alcohol do not exploit their monopoly to maximize revenue.ⁿ¹⁴⁹ Instead, they operate to ""reasonably satisfy the public demand and protect the public interest.""ⁿ¹⁵⁰ Only New Hampshire directs its liquor commission to operate state stores to maximize revenue.ⁿ¹⁵¹ Given the analysis above, these governments should reconsider their fiscal policy concerning the taxation of alcohol.

B. The Inapplicability of Equity Considerations in Excise Taxation

Fairness in taxation is a widely accepted ideal that manifests itself in horizontal equity, the non-discriminatory treatment of similarly situated taxpayers, and vertical equity, the consideration of taxpayers' ability to pay.ⁿ¹⁵²

Horizontal equity is based on the theory that, if two taxpayers have similar incomes, their tax burdens should also be relatively similar.ⁿ¹⁵³ Excise taxes do not create any real horizontal equity problems because the tax is a per unit tax, wholly independent of the tax status of the purchaser. By definition, when any two consumers in groups with similar incomes purchase items subject to an excise tax, they are treated equally.

[*563] Vertical equity, however, is more difficult because it is rooted in the notion that "households [or taxpayers in groups] with incomes below the poverty level should pay little or no tax."ⁿ¹⁵⁴ Further, after poorer taxpayers attempt to provide themselves with the basic necessities of life, they do not have any real tax-paying ability.ⁿ¹⁵⁵ In short, to ensure that the ability-to-pay notion remains intact, the goal of the concept of vertical equity is to maintain inequality in taxing.

Many argue that, because excise taxes are exacted on a per unit basis, they are regressive.ⁿ¹⁵⁶ That is, the tax imposed accounts for a larger percentage of a poorer taxpayer's income than it does for a wealthier taxpayer, which violates the concept of vertical equity.ⁿ¹⁵⁷ With the realm of excise taxation, I disagree.

There are two arguments presented below that negate the use of a vertical equity analysis in the context of excise taxation, as posited in this Comment. Both arguments turn on the concept of choice, both in its subjective and objective forms. First, the excise taxation of commodities that society, through its political processes, deems unnecessary, do not warrant equitable concerns, namely regressivity concerns. This is because the taxpayers' subjective choice in purchasing unnecessary goods, that is, he does not need them to survive, ameliorates the ability-to-pay and allocation of the burden concerns prevalent in our tax system. Second, the excise taxation of commodities as opposed to, say, income grants individuals an objective choice as to how they will be taxed. This objective choice renders all taxpayers equal as well as inherently enhancing their individual welfare by being given the choice.

1. Importance of the Effect on the Individual

At the heart of any regressivity argument lies the assumption that the value of dollars to an individual decreases as he amasses more money.ⁿ¹⁵⁸ If this assumption about the importance of money [*564] was not made, the concept of

vertical equity would have no teeth. For instance, if a purchaser of a bottle of liquor was unconcerned about the utility and value of his dollars, no matter how many he had, it could hardly be inequitable to have him spend a larger percentage of it on excise taxes than did the next person. The larger point to be gained from this example is not that people do not care about the utility of their money. Surely they do. Rather, the larger point is the personalization of the fairness argument. This is the precise point where vertical equity fails when used to evaluate excise taxation.

This focus on the individual is supported by scholarship advocating the use of welfare economicsⁿ¹⁵⁹ and optimal taxationⁿ¹⁶⁰ in the evaluation of legal and tax policy, which are firmly based on the idea of individual welfare or well-being.ⁿ¹⁶¹ While the goal of these theories is to maximize the welfare of society,ⁿ¹⁶² it is their means of measuring individuals' welfare that are persuasive for us.ⁿ¹⁶³ Individual welfare depends primarily on the amount of consumption and leisure a person enjoys.ⁿ¹⁶⁴ Consumption and leisure are then, of course, traded off against work as individuals find their optimal utility.ⁿ¹⁶⁵

The notion of well-being used in welfare economics is comprehensive in nature. It incorporates in a positive way everything that an individual might value - goods and services that the individual can consume, social and environmental amenities, personally held notions of fulfillment, sympathetic feelings for others, and so forth. Similarly, an individual's well-being reflects in a negative way harms to his or her person and property, costs and inconveniences, and anything else the individual might find distasteful The only limit on what is included in well-being is to be found in the minds of individuals themselves, not in the minds of analysts.ⁿ¹⁶⁶

This concept of individual well-being, its proponents argue, should replace and subsequently exclude current notions of fairness.ⁿ¹⁶⁷ [*565] Notions of fairness serve as "rules of thumb or proxy principles," thought to aid in the evaluation of policy to promote social fairness without regard to the actual effect on individual well-being.ⁿ¹⁶⁸ The concepts of vertical equity and regressivity are examples of these notions.

While the policy goals of optimal taxation and welfare economics, and the mechanisms employed to obtain those goals, are quite different from those which I advocate here, in the context of policy evaluation they shift the focus on how the effect of a tax should be measured. That is, an excise tax should be measured by its effect on the individual, rather than as a tool of comparison holding classes of individuals (grouped by income) next to each other to achieve relative equity (i.e., vertical equity).

It is important to note that while the theories of welfare economics and optimal taxation rest on the concept of individual welfare, their ultimate goal is to use findings on individual welfare to assist in making policy decisions that increase the welfare of society.ⁿ¹⁶⁹ Using the amorphous definitions of individual welfare provided by these theories, I find that the concepts of social and individual welfare are not interchangeable nor compatible in the context of excise taxation. An individual's thoughts on the proper disposal of his resources, and his choice whether to act on those thoughts, are virtually unknowable and nearly immeasurable. Individuals are therefore much less capable of being grouped with others considered to be equals for the purposes of excise taxation. This is because the importance individuals place on their time and resources, combined with their ever-fluctuating consumer desires, changes daily, if not more rapidly. Thus, the basic concept of choice aggravates the concept of social welfare with respect to excise taxation, as well as the pigeon-holing done for the sake of vertical equity.

2. Affecting Choice and Optional Taxation

When evaluating an excise tax, then, analysts should ask: does the tax unreasonably overburden an individual's ability to affect [*566] his own welfare or well-being? Or, alternatively, does the tax intolerably inhibit a person from exercising rational choice to maximize his own well-being? For an excise tax, the answer is most surely no. This flows from the concept of choice, which pervades both the operation of our market places and our societal fabric.ⁿ¹⁷⁰ It is axiomatic that all of these activities necessarily involve choice. Further, it is important to understand that this argument

embraces the concept of "pure" choice; it makes no differentiation between a diabetic's choice in deciding whether to buy insulin or a bottle of liquor. It purposely avoids the concept of necessity and makes no assumptions or value judgments between commodities or the demands individuals tend to place on them.

Inside the realm of taxation, choice plays a key role. Aside from emigration, death, and tax evasion, no taxpayer, assuming he has employment, has a choice as to whether he should pay income tax.ⁿ¹⁷¹ In this sense, the income tax is similar to a head tax, or poll tax.ⁿ¹⁷² An excise tax, however, presents a very different situation for the taxpayer. As noted above, this tax does not inhibit an individual from weighing all the factors surrounding his personal welfare before choosing whether to be taxed. Should the taxpayer feel that an excise tax consumes too large a portion of his income, thus increasing the opportunity cost of the purchase and upsetting his currently desired balance of consumption, leisure, and work, he can choose not to consume. This tradeoff is easily seen when a taxpayer buys a bottle of liquor. The purchase and subsequent drinking represent the taxpayer's belief that the money (including the excise tax) is best spent on that particular item [*567] and that his time spent in lieu of work, and therefore without compensation, is more valuable to him in this activity. As such, being taxed is optional. Weighing of factors is, for the most part, unavailable when considering whether to pay income tax.ⁿ¹⁷³

3. Final Questions for Policy Makers

Despite the conclusion above, there is a very real relationship between necessity and choice. I assume that a taxpayer has an income to purchase items necessary to survive such as food, water, shelter, and clothing. While these are plainly choices, they are, for most, "choiceless" necessity. It is, however, extremely probable that all would agree that alcohol is the type of product that is not necessary or essential to sustain life. Therefore, a tax on alcohol does not hold an individual hostage to a higher price on an item he must have to survive. No real element of compulsion exists.ⁿ¹⁷⁴

For other excise taxes, this leaves two tough and intertwined questions for policy makers. First, the idea of maximizing taxes on "necessary and essential" items is not compatible with the ability-to-pay notions that permeate our current tax system. So, what should be considered "necessary?" Quite obviously this category extends well beyond the "bare essentials." Second, given this political and social reality, where should the lines be drawn? What choices on consumption, if any, does the government want to force upon taxpayers? Although the answer to the second question largely depends on the first, I will not attempt to draft guidelines to generate answers for these questions, as what is accepted as necessary will differ greatly from community to community and from person to person. These are purely political questions; as the winds of necessity change, so do the answers.

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V. Final Thoughts

At the beginning of this Comment, I raised many broad and sweeping questions and briefly discussed them. These questions dealt with some of the basic underlying feelings with which nearly all taxpayers grapple. For example, why are we being taxed at this rate and in this particular manner? Whether the rationale behind the tax is merely being touted to generate political and social acceptance or is firmly grounded in efficiency and equity analysis, the effect on the taxpayer is the same; we pay the tax. Because it is (was) commonplace to refer to the tax on alcohol as a sin tax, it is important to level any preconceived notions about the validity of even questioning such a tax. These notions tend to reflect the belief that alcohol should be taxed through the roof because it is, well, alcohol.

Given this, it has been demonstrated that whether a particular product is "good" or "bad" is particularly inconsequential when deciding if and how to tax that item. Here, the traditional tax concepts of efficiency and equity provide solid answers to scholars and lay persons who may question the maximization of the taxation of alcohol or confuse its maximization with other proposed rationales such as paternalism or the corrective tax. The remaining question is, does that really matter?

As is evidenced throughout this Comment, the taxation of alcohol has been given many different names and has supporters of its many different rationales. These rationales have come in and out of fashion over the history of the nation, yet the tax itself, not even excluding the years of prohibition, has remained. One has to question then: what is the real rationale for the tax on alcohol? The history and endurance of the tax leaves us with only one sensible answer - to raise revenue. If this is the "real" answer, and given that alcohol has a price-inelastic demand and is thought by many to be "unnecessary," then maximization is a most logical next step.

Legal Topics:

For related research and practice materials, see the following legal topics:

Criminal Law & Procedure
Criminal Offenses
Intoxicating Liquors
General Overview
Tax Law
Excise Taxes
Alcohol, Tobacco & Related Items
Alcohol
Tax Law
State & Local Taxes
Alcohol & Tobacco Products Tax
General Overview

FOOTNOTES:

n1. *Compañia General De Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

n2. 143 Cong. Rec. S3228 (daily ed. Apr. 15, 1997) (statement of Sen. Thompson).

n3. See, e.g., U.S. Const. art. I, 8, cl. 1.

n4. Joshua D. Rosenberg, *The Psychology of Taxes: Why They Drive Us Crazy, and How We Can Make Them Sane*, 16 Va. Tax Rev. 155, 157 (1996).

n5. *Id.* at 159.

n6. See *Thunder Road* (MGM / United Artists Pictures 1958).

n7. *Id.* The term "Thunder Road" comes from the echo-like sound made by the gigantic "mills," large super-charged engines, of the

moonshine runners' cars as they barreled through the mountains of Appalachia. *Id.* Further, and just as a point of general interest, many believe that the moonshine runners of the Southeast, like those depicted in *Thunder Road*, were the forefathers of modern stock car racing, i.e., NASCAR. See *Start Your Engines, Thunder Road USA*, at <http://www.thunderroadusa.com> (last visited Apr. 3, 2002).

n8. Rosenberg, *supra* note 4, at 162.

n9. See Donald J. Boudreaux & A.C. Pritchard, *The Price of Prohibition*, 36 *Ariz. L. Rev.* 1, 2 (1994).

n10. An excise tax imposes a duty on the manufacture, sale, and or consumption of a commodity which in turn forms an indirect tax that falls on the ultimate consumer. *Webster's Third New International Dictionary* 792 (1993).

n11. Jendi B. Reiter, *Citizens or Sinners? - The Economic and Political Inequity of "Sin Taxes" on Tobacco and Alcohol Products*, 29 *Colum. J.L. & Soc. Probs.* 443, 443 (1996).

n12. See Boudreaux & Pritchard, *supra* note 9, at 3-4.

n13. Brenda Yelvington, *Excise Taxes in Historical Perspective*, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 31, 32 (William F. Shughart, II ed., 1997).

n14. *Id.* at 33.

n15. *Id.* (quoting *The Reports of Alexander Hamilton* 34 (Jacob E. Cooke ed., 1964)).

n16. *Id.*

n17. Id. at 34.

n18. Id. at 34-35.

n19. Id. at 35.

n20. Id.

n21. Id. at 36.

n22. Id.

n23. Id. at 36.

n24. Id. at 37-38.

n25. Id. at 37.

n26. Id.

n27. U.S. Const. amend. XVI; see also Yelvington, *supra* note 13, at 40.

n28. Boudreaux & Pritchard, *supra* note 9, at 3-4.

n29. *Id.* at 4 n.12.

n30. *Id.*

n31. *Id.* at 5.

n32. *Id.*

n33. U.S. Const. amend. XVIII (repealed 1933). Oddly, the alcohol excise tax remained good law and collection continued. "Thus, here [was] an instance in which taxation was made to apply to something which had no constitutional existence and in which the rights of property were by law expressly abolished." Tun Yuan-Hu, *The Liquor Tax in the United States, 1791-1947*, at 57 (1950).

n34. Reiter, *supra* note 11, at 447-48.

n35. Boudreaux & Pritchard, *supra* note 9, at 5.

n36. Reiter, *supra* note 11, at 448-49.

n37. Boudreaux & Pritchard, *supra* note 9, at 6.

n38. *Id.*

n39. Yelvington, *supra* note 13, at 40.

n40. *Id.* (citations omitted).

n41. *Id.* (citations omitted).

n42. Boudreaux & Pritchard, *supra* note 9, at 7.

n43. Reiter, *supra* note 11, at 448.

n44. *Id.* at 449.

n45. See *Joseph E. Seagram & Sons, Inc. v. McGuire*, 814 S.W.2d 385, 388 (Tex. 1991). In holding that alcohol manufacturers have no duty to warn users of the dangers of the prolonged consumption of their products, the Supreme Court of Texas stated:

From ancient times, the danger of alcoholism from prolonged and excessive consumption of alcoholic beverages has been widely known and

recognized. Consequently, we hold that, because the danger of developing the disease of alcoholism from prolonged and excessive consumption of alcoholic beverages is and has been generally known and recognized, it is within the ordinary knowledge common to the community.

Id. (citations omitted).

n46. See Reiter, *supra* note 11, at 450-51.

n47. Dwight R. Lee, *Overcoming Taxpayer Resistance by Taxing Choice and Earmarking Revenues*, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 105, 106 (William F. Shughart, II ed., 1997).

n48. William F. Shughart, II, *The Economics of the Nanny State*, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 13, 18 (William F. Shughart, II ed., 1997).

n49. Id.

n50. Id.

n51. Id.

n52. See Randall G. Holcombe, *Selective Excise Taxation from an Interest-Group Perspective*, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 81, 87 (William F. Shughart, II ed., 1997).

n53. Id.

n54. *Id.* at 88.

n55. *Id.*

n56. *Id.*

n57. *Id.*

n58. *Id.* at 88-89.

n59. See Lawrence Zelenak, *The Puzzling Case of the Revenue-Maximizing Lottery*, 79 N.C. L. Rev. 1, 9-10 (2000).

n60. Shughart, *supra* note 48, at 20.

n61. *Id.* (quoting Francis M. Bator, *The Anatomy of Market Failure*, 72 Q.J. Econ. 351, 351 (1958)).

n62. *Id.* at 20-21.

n63. *Id.* at 21.

n64. Adam Gifford, Jr., *Whiskey, Margarine, and Newspapers: A Tale of Three Taxes*, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 57, 60 (William F. Shughart, II ed., 1997) (quoting 4 Stephen Dowell, *A History of Taxation and Taxes in England* 167 (Augustus M. Kelley ed., 3d ed. 1965) (1884)).

n65. Raymond E. Gangarosa et al., *Suits by Public Hospitals to Recover Expenditures for the Treatment of Disease, Injury and Disability Caused by Tobacco and Alcohol*, 22 *Fordham Urb. L.J.* 81, 100 (1994).

n66. *Id.*

n67. *Id.* at 90.

n68. *Id.* at 101.

n69. See *id.* at 100. For example, there were 750,000 reported alcoholics in 1940. That number rose to over six million by 1980. As of 1994, the country was spending in excess of \$ 92 billion on alcohol products. *Id.*

n70. Shughart, *supra* note 48, at 21.

n71. *Id.*

n72. *Id.*

n73. *Id.*

n74. *Id.* In 1993, the Clinton Administration attempted this very scheme by trying to raise the federal excise tax on cigarettes as "a fair way to support health care." Yelvington, *supra* note 13, at 52 (internal citations omitted).

n75. See Richard E. Wagner, The Taxation of Alcohol and the Control of Social Costs, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 227, 232 (William F. Shughart, II ed., 1997).

n76. See Shughart, *supra* note 48, at 21.

n77. See *id.* at 22--23.

n78. See *id.* at 22.

n79. See Wagner, *supra* note 75, at 238.

n80. *Id.*

n81. *Id.*

n82. *Id.* at 239.

n83. *Id.* at 239--40.

n84. *Id.* at 240.

n85. See *id.* at 239-40.

n86. See Webster's Third New International Dictionary 1654 (1993).

n87. Reiter, *supra* note 11, at 451.

n88. Ronald Dworkin, *Liberal Community*, in *Morality, Harm, and the Law* 36, 36 (Gerald Dworkin ed., 1994).

n89. Reiter, *supra* note 11, at 451-52.

n90. See *id.* at 452.

n91. See, e.g., Gangarosa et al., *supra* note 65, at 86.

n92. See Reiter, *supra* note 11, at 452.

n93. See id.

n94. Id. at 453.

n95. See id.

n96. See id. at 454.

n97. Id.

n98. See id.

n99. Id.

n100. Id. at 456.

n101. See id.

n102. Id. at 457 (quoting Steven Kelman, Regulation and Paternalism, in *Rights and Regulation: Ethical, Political, and Economic Issues* 217, 220 (Tibor R. Machan & M. Bruce Johnson eds., 1983)).

n103. 143 Cong. Rec. S3228 (daily ed. Apr. 15, 1997) (statement of Sen. Thompson).

n104. See Rosenberg, *supra* note 4, at 162.

n105. See, e.g., 1 U.S. Treasury Dep't, Tax Reform for Fairness, Simplicity, and Economic Growth 13 (1984) [hereinafter Treasury I]. In this connection the words of Justice Holmes should be kept in mind: "Every exaction of money for an act is a discouragement to the extent of the payment required." *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting).

n106. See Treasury I, *supra* note 105, at 13-16.

n107. *Id.* As the concept of simplicity is not particularly germane to my proposal, I will save its discussion for another day.

n108. Richard A. Posner, *Economic Analysis of Law* 482 (4th ed. 1992).

n109. *Id.*

n110. Paul A. Samuelson & William D. Nordhaus, *Economics* 52 (15th ed. 1995).

n111. Posner, *supra* note 108, at 482.

n112. *Id.*

n113. Shughart, *supra* note 48, at 16.

n114. See *id.*

n115. See *id.*

n116. *Id.*

n117. *Id.* at 17 (citing Randall G. Holcombe, *Public Sector Economics* 173 (1988)).

n118. Treasury I, *supra* note 105, at 13.

n119. Posner, *supra* note 108, at 482-83.

n120. Samuelson & Nordhaus, *supra* note 110, at 58.

n121. *Id.*

n122. *Id.* at 59.

n123. Id.

n124. Id.

n125. See id. at 58.

n126. Id.

n127. Id.

n128. Id.

n129. Id.

n130. Shughart, *supra* note 48, at 17.

n131. Id.

n132. See Samuelson & Nordhaus, *supra* note 110, at 311.

n133. Shughart, *supra* note 48, at 17-18.

n134. Yelvingston, *supra* note 13, at 33.

n135. See Reiter, *supra* note 11, at 446; Shughart, *supra* note 48, at 17 (noting that consumers are unresponsive to increases in the price of alcohol). An economic survey providing price elasticity estimates for a number of goods gives a price elasticity for alcohol of 0.92 which, given the formula discussed above, is price-inelastic. See Ralph T. Byrns & Gerald W. Stone, *Economics* 456 (6th ed. 1995).

n136. Paula A. Gant & Robert B. Ekelund, Jr., Excise Taxes, Social Costs, and the Consumption of Wine, in *Taxing Choice: The Predatory Politics of Fiscal Discrimination* 247, 247 (William F. Shughart, II ed., 1997).

n137. Shughart, *supra* note 48, at 18.

n138. *Id.*

n139. See *id.*

n140. *Id.*

n141. Samuelson & Nordhaus, *supra* note 110, at 62.

n142. Treasury I, *supra* note 105, at 13.

n143. Zelenak, *supra* note 59, at 8. It must be noted, however, that the revenue maximizing tax level will also depend on the price elasticity of supply. Specifically, unless the price elasticity of supply is infinite, it is unlikely that tax revenue will be maximized at the point which the price elasticity of demand of a good reaches 1.0.

n144. *Id.* at 9.

n145. See, e.g., Congressional Budget and Impoundment Control Act of 1974, 2 U.S.C. 621-61 (2000).

n146. Zelenak, *supra* note 59, at 10.

n147. I.R.C. 5001(a)(1) (2000).

n148. Zelenak, *supra* note 59, at 9.

n149. *Id.* at 10.

n150. *Id.* (quoting Utah Code Ann. 32A-7-704(3) (1999)).

n151. *Id.* (citing N.H. Rev. Stat. Ann. 177:3(II) (1994)). The New Hampshire statute states that one of the "primary duties" of the liquor commission is to "optimize the profitability of the commission." N.H. Rev. Stat. Ann. 176:(3)(I) (1994).

n152. Treasury I, *supra* note 105, at 14-15.

n153. *Id.*

n154. *Id.* at 14.

n155. *Id.*

n156. Reiter, *supra* note 11, at 461.

n157. *Id.* at 461-62.

n158. See Joseph Bankman & Thomas Griffith, *Social Welfare and the Rate Structure: A New Look at Progressive Taxation*, 75 Cal. L. Rev. 1905, 1947 (1987).

n159. See Louis Kaplow & Steven Shavell, *Fairness v. Welfare*, 114 Harv. L. Rev. 961 (2001).

n160. See Bankman & Griffith, *supra* note 158, at 1946-65 (explaining and analyzing James Mirrlees' original 1971 theory of the optimal taxation of income).

n161. *Id.* at 1946; see also Kaplow & Shavell, *supra* note 159, at 979-89.

n162. Bankman & Griffith, *supra* note 158, at 1946.

n163. See *id.* at 1950-54.

n164. *Id.*

n165. *Id.* at 1947.

n166. Kaplow & Shavell, *supra* note 159, at 980.

n167. *Id.* at 1011.

n168. See *id.* at 1004.

n169. See Bankman & Griffith, *supra* note 158, at 1950-54.

n170. See, e.g., *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976) (noting, as a matter of public interest, the importance of the free flow of commercial information and that, "in the aggregate," consumers' numerous commercial choices should "be intelligent and well informed"); *Roth v. Bd. of Regents*, 408 U.S. 564 (1972). In *Roth*, the Supreme Court expressed "liberty," under the Fifth and Fourteenth Amendments, as:

"not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ... as essential to the orderly pursuit of happiness by free men." ... In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.

Id. at 572 (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

n171. I.R.C. 1 (2000).

n172. See Samuelson & Nordhaus, *supra* note 110, at 312.

n173. This, of course, assumes that the majority of people would rather pay their taxes than face criminal punishment. It also ignores people who, for example, would choose to not work extra hours because after taxes they feel that their monetary gain is not as important as the required time commitment.

n174. There are arguments about the addictive qualities of alcohol and their relationship to necessity that might be discussed here, but they are outside the scope of this Comment.