# The Short Case for WWCR for New Hampshire (with long responses to objections)

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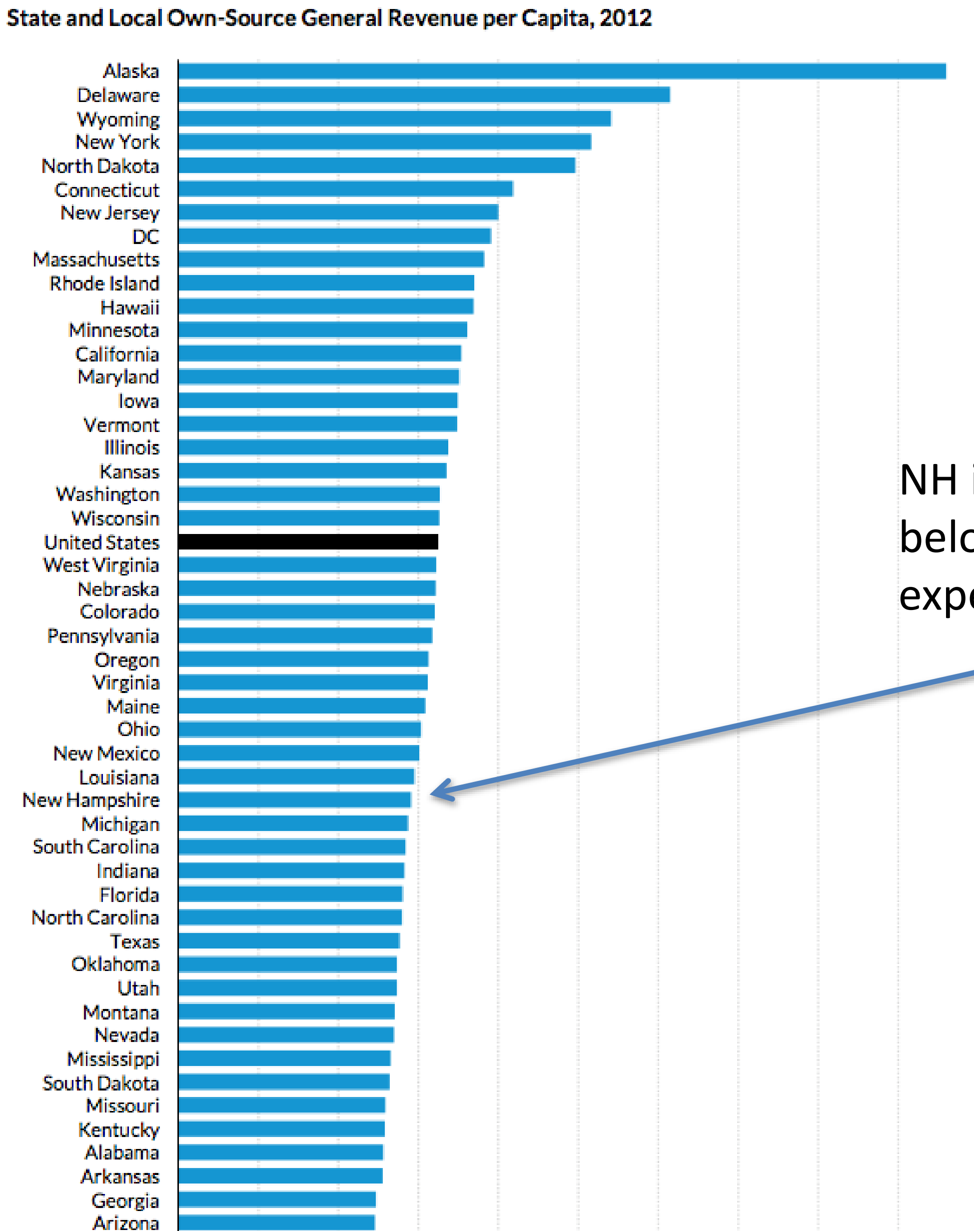
Commission on Worldwide Combined Reporting for Unitary Business
under the Business Profits Tax

# Agenda

- NH's tax base
- What is profit shifting?
- How does WWCR address?
- Responses to objections
  - Won't NH be an outlier?
    - Will this hurt NH competitively?
  - Isn't WWCR compliance burdensome?
  - Won't the rest of the world get angry?
  - WWCR won't raise any revenue anyway!

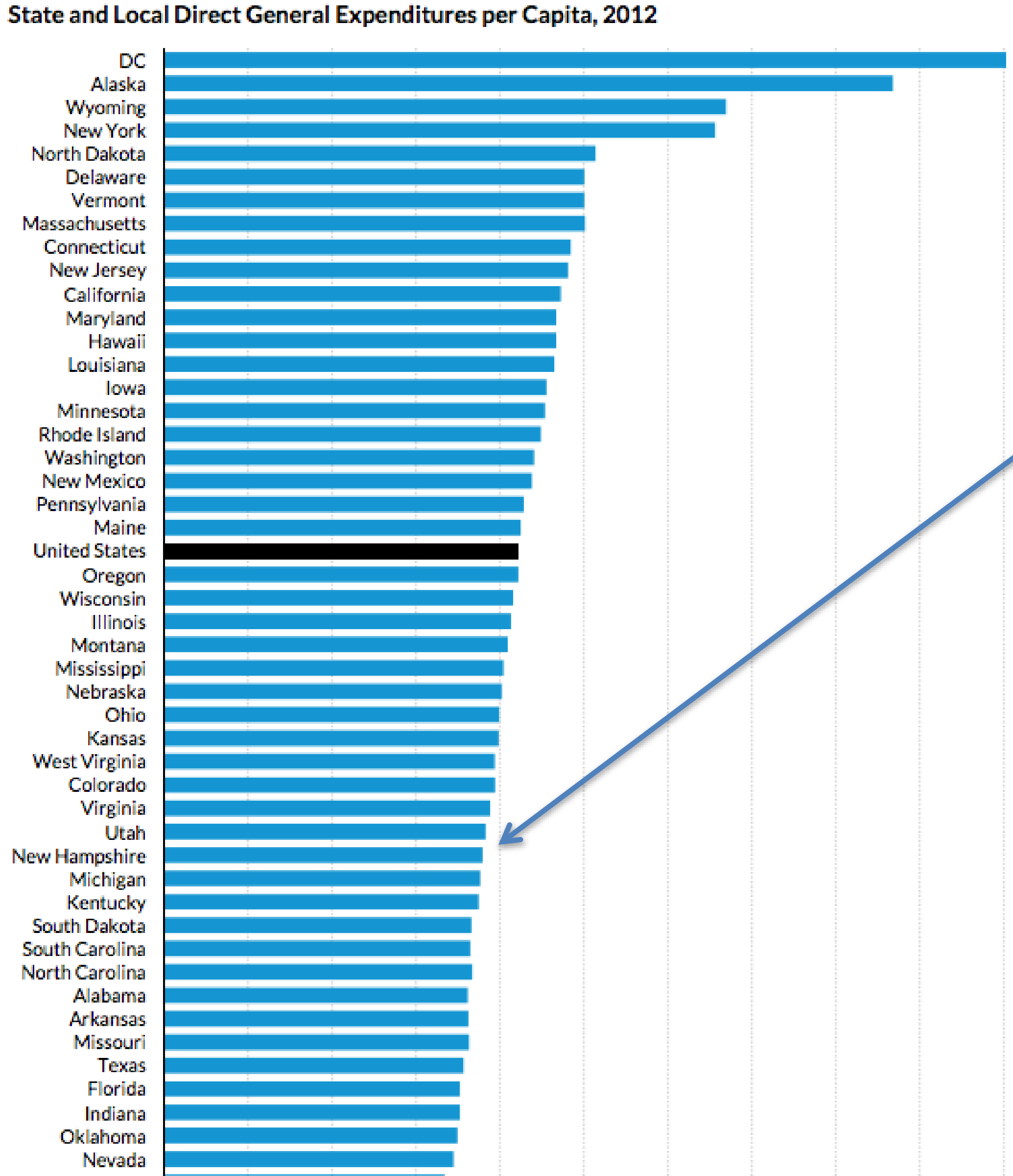
# New Hampshire Expenditures

Source: https://www.urban.org/sites/default/files/publication/78431/2000646-assessing-fiscal-capacities-of-states-a-representative-revenue-system-representative-expenditure-system-approach-fiscal-year-2012_1.pdf




NH is just a little below average in expenditures.

# New Hampshire Revenues

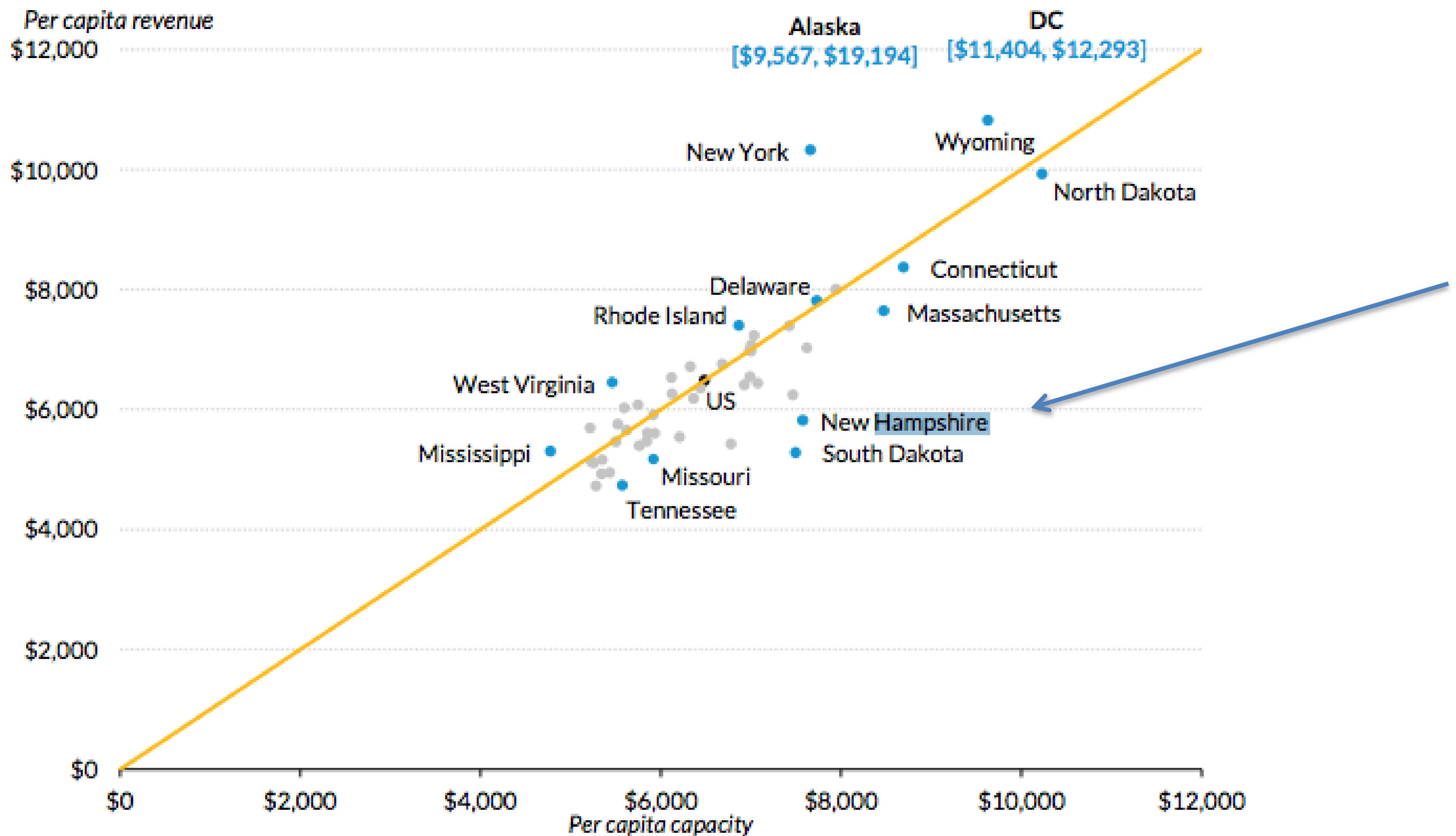



Similar re revenues

# I think interesting

FIGURE 6

**Total Revenue**



# New Hampshire State Taxes

- So, NH raises about an average amount of per capita revenue and spends about an average amount, but raises a lot less than it might.
  - How *does* NH raise revenue?
- NH has no personal income tax (mostly).
- NH has no sales tax (sort of).
- BUT:
  - NH has business profits tax
  - NH has a business entities tax, which operates like a value added tax.
  - NH raises twice the national average (see Fiscal Capacity Report at 8) from the property tax.

# The Details

**General Fund & Education Trust Fund FY 2020, 2021 & 2022**

($ in millions)

| Revenue Category | FY 2020 Total | FY 2021 General | FY 2021 Education | FY 2021 Total | FY 2022 General | FY 2022 Education | FY 2022 Total | FY 2022 Combined Plan |
|---|---|---|---|---|---|---|---|---|
| Business Profits Tax | $ 450.8 | $ 543.2 | $ 124.0 | $ 667.2 | $ 712.1 | $ 177.0 | $ 889.1 | $ 648.5 |
| Business Enterprise Tax | 259.0 | 88.6 | 247.4 | 336.0 | 37.4 | 297.5 | 334.9 | 314.6 |
| Subtotal | 709.8 | 631.8 | 371.4 | 1,003.2 | 749.5 | 474.5 | 1,224.0 | 963.1 |
| Meals & Rentals Tax | 315.4 | 327.5 | 7.2 | 334.7 | 298.1 | 9.1 | 307.2 | 238.8 |
| Tobacco Tax | 214.0 | 153.2 | 99.4 | 252.6 | 142.9 | 89.0 | 231.9 | 247.5 |
| Liquor Sales and Distribution | 131.8 | 150.2 | | 150.2 | 140.4 | | 140.4 | 137.6 |
| Interest & Dividends Tax | 125.7 | 120.7 | | 120.7 | 157.5 | | 157.5 | 138.0 |
| Insurance Tax | 134.0 | 138.9 | | 138.9 | 154.9 | | 154.9 | 130.0 |
| Communications Tax | 39.8 | 40.0 | | 40.0 | 29.9 | | 29.9 | 39.1 |
| Real Estate Transfer Tax | 158.4 | 138.2 | 71.6 | 209.8 | 155.2 | 77.4 | 232.6 | 197.8 |
| Transfers from Lottery Commission | 99.8 | | 144.2 | 144.2 | | 146.6 | 146.6 | 128.5 |
| Tobacco Settlement | 42.6 | 7.8 | 40.0 | 47.8 | 9.0 | 40.0 | 49.0 | 38.2 |
| Utility Property Tax | 43.3 | | 38.2 | 38.2 | | 43.3 | 43.3 | 40.6 |
| Property Tax Retained Locally | 363.2 | | 363.1 | 363.1 | | 363.3 | 363.3 | 363.1 |
| Other | 139.3 | 131.9 | 0.8 | 132.7 | 139.0 | 0.2 | 139.2 | 133.9 |
| Subtotal Traditional Taxes | 2,517.1 | 1,840.2 | 1,135.9 | 2,976.1 | 1,976.4 | 1,243.4 | 3,219.8 | 2,796.2 |
| DHHS Recoveries | 3.1 | 3.6 | | 3.6 | 3.4 | | 3.4 | 2.7 |
| FEMA Recoveries of Prior Year Expenses | | | | | 3.0 | | 3.0 | |
| Subtotal Receipts | 2,520.2 | 1,843.8 | 1,135.9 | 2,979.7 | 1,982.8 | 1,243.4 | 3,226.2 | 2,798.9 |
| Legal Settlement | | | | | 8.2 | | 8.2 | |
| Total Receipts | $ 2,520.2 | $ 1,843.8 | $ 1,135.9 | $ 2,979.7 | $ 1,991.0 | $ 1,243.4 | $ 3,234.4 | $ 2,798.9 |

# NH and BPT

- NH raises a higher percentage of its budget from the BPT than any other state.
- Further, NH's BPT is already the best designed corporate income tax in the country because it does not just tax corporations, but all large business entities.
  - Note: I also consider NH's BET a national model.
  - I understand the level and distribution of NH's property tax is currently controversial.

# What is profit shifting?

For example, imagine Widget, Inc. sells 1 million widgets in NH with a profit margin of $100 each. Instead of paying NH taxes on $100 million in profits, the corporation instead incorporates a subsidiary in a lower-tax jurisdiction and places their intellectual property in that jurisdiction. The foreign subsidiary then charges the US-based company $90 per widget for use of its IP. The US-based Widget corporation now records just $10 million of profits in NH.

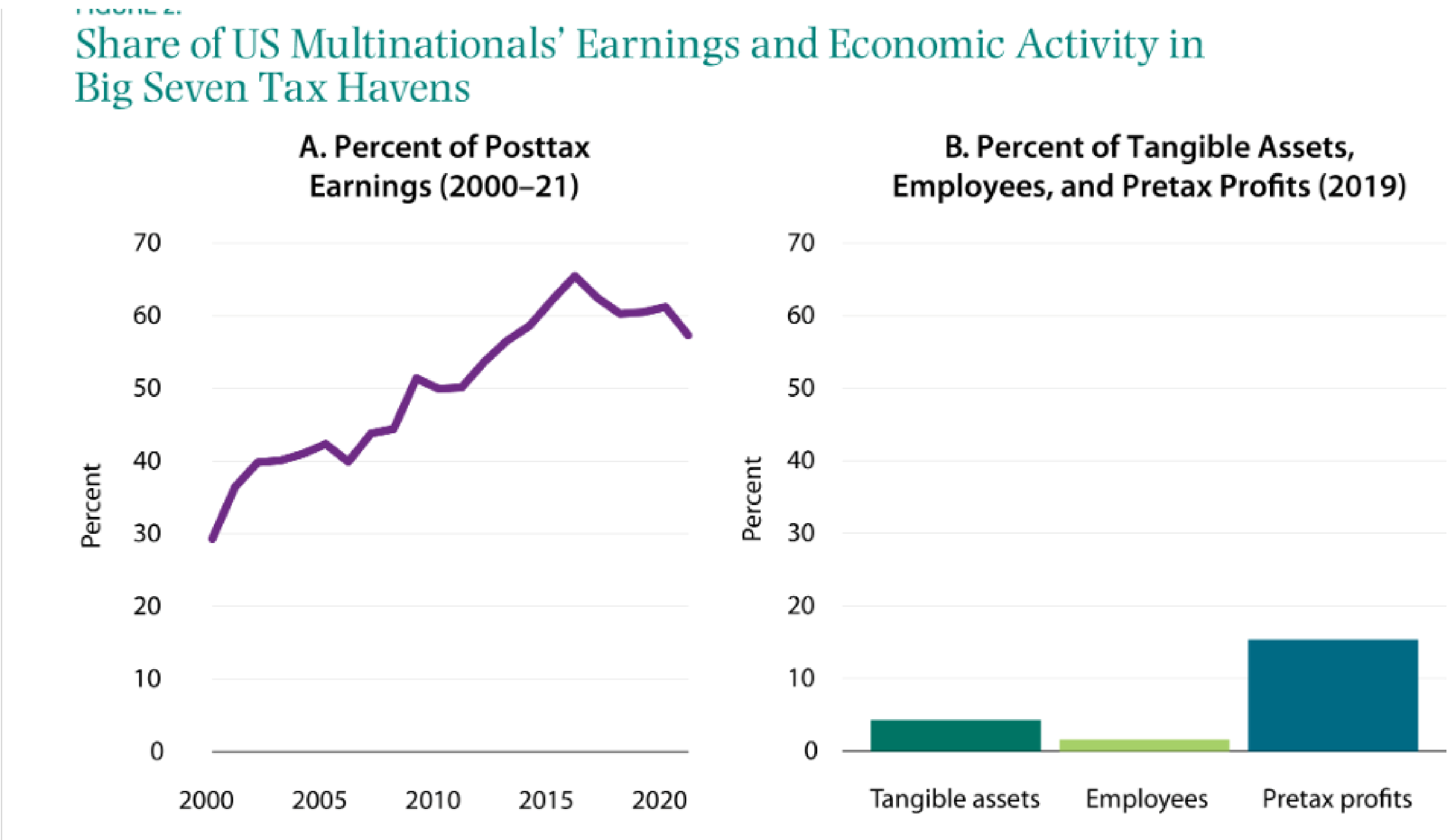
# How much is there?

"[P]rofit shifting is still significant, with companies estimated to be shifting more than $300 billion each year in profits out of the United States, and the share of foreign earnings reported in tax havens little changed."

- Edelberg et al. 2022. Six Economic Facts on International Corporate Taxation. Hamilton Project/The Tax Law Center. (Fact #2: "US multinationals still shift profits into lower-tax countries.").

- By way of context, the federal government has been making between $200 and 300bn in corporate tax revenues since 2020 [Source: BEA]. Thus the lost $300bn in profits * 21% (rate) would have yielded about $60bn or between a 30% and 20% increase.
- Assuming $700mn in BPT and a similar 20% increase if profit shifting were eliminated would yield $140mn.
- Note that ITEP projected $177 mn in 2019. [https://itep.org/a-simple-fix-for-a-17-billion-loophole/](https://itep.org/a-simple-fix-for-a-17-billion-loophole/)
- WARNING: *These estimates are inherently uncertain (with a further qualification to come)*.

# What does it look like?




Source: https://www.brookings.edu/articles/six-economic-facts-on-international-corporate-taxation/

# More evocative?

**The Ten Most Obvious Corporate Tax Havens**

**10 Countries with Highest Reported Profits as a Share of GDP in 2014 from Subsidiaries of American Corporations (dollars in billions)**

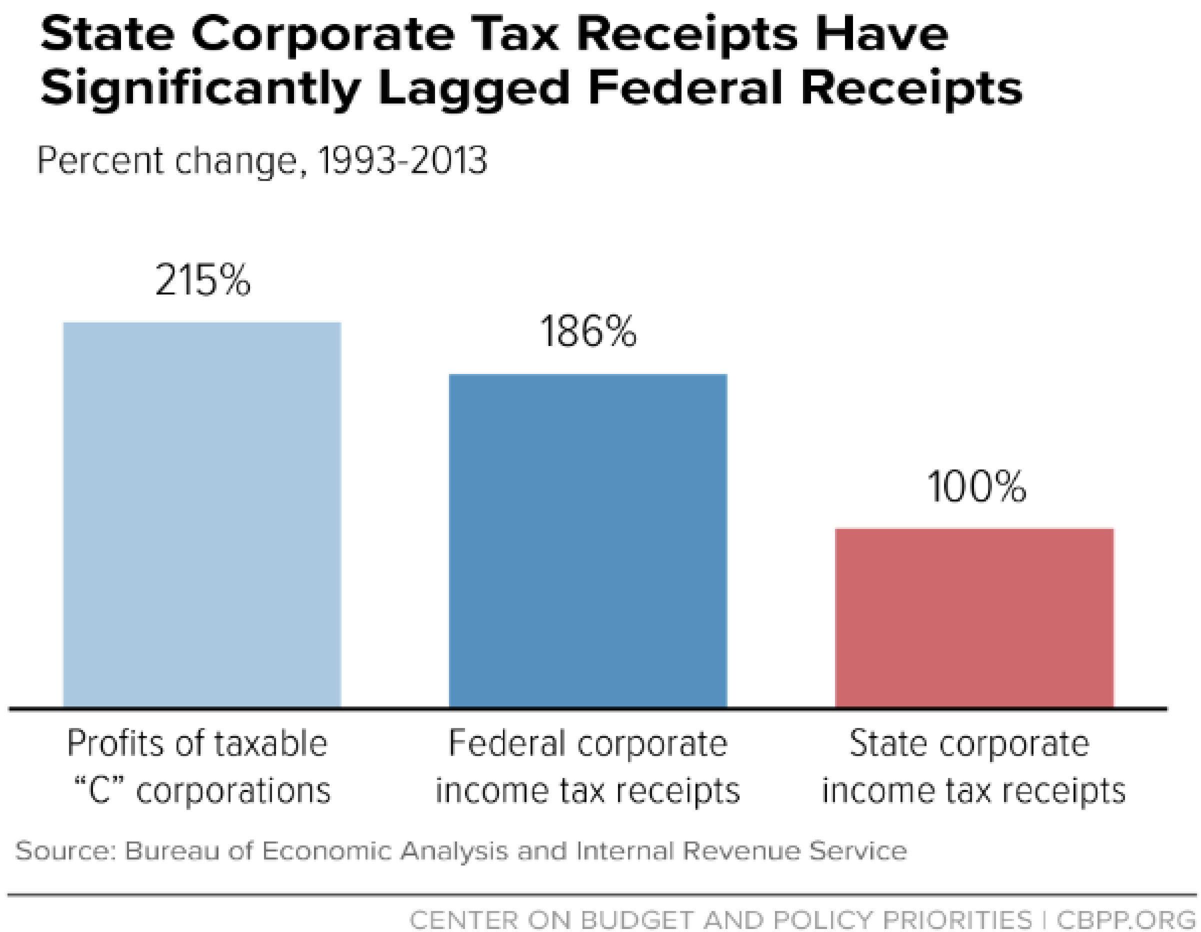
| | Reported Profits of US-Controlled Subsidiaries | Gross Domestic Product | Subsidiary Profits as % of GDP | Foreign Income Taxes Paid by Subs* | Foreign Taxes Paid by Subs/Profits of Subs |
|---|---|---|---|---|---|
| Bermuda | $ 96 | $ 6 | 1709% | $ 12 | 13% |
| Cayman Islands | 40 | 3 | 1158% | 9 | 23% |
| British Virgin Islands | 8 | 1 | 880% | 1 | 8% |
| Bahamas | 17 | 9 | 194% | 1 | 9% |
| Luxembourg | 109 | 66 | 165% | 5 | 5% |
| Ireland | 148 | 256 | 58% | 3 | 2% |
| Netherlands | 140 | 880 | 16% | 14 | 10% |
| Singapore | 36 | 308 | 12% | 1 | 4% |
| Hong Kong | 20 | 291 | 7% | 1 | 5% |
| Switzerland | 46 | 703 | 7% | 4 | 8% |
| **Total for Ten Most Obvious Tax Havens** | **$ 660** | **$ 2,523** | **26%** | **$ 52** | **8%** |
| **Total for All Other Countries in IRS Data** | **$ 429** | **$44,594.56** | **1%** | **$ 76** | **18%** |

*Foreign taxes paid to any foreign countries, not just to countries listed.

Source for Profit and Tax Figures: IRS, Statistics of Income Division, April 2014
Source for GDP Figures: World Bank http://data.worldbank.org/indicator/NY.GDP.MKTP.CD, United Nations Statistics Division http://unstats.un.org/

Source: https://itep.org/wp-content/uploads/corpoffshorechart2.jpg

# A Picture of Opportunity?




http://www.ncsl.org/Portals/1/Documents/Taskforces/GILTI.pdf

# But no one else is doing it!?

“A simple analogy from sports refutes the […] point. Suppose that each team in a basketball league inexplicably tied their players’ shoelaces together. A team could clearly improve its competitiveness by untying its players shoelaces, no matter what other teams did.”

- Charles McLure, preeminent tax economist, discussing a similar argument made as to why states should not improve their sales taxes, https://arev.assembly.ca.gov/sites/arev.assembly.ca.gov/files/hearings/ProfMcLure_Testimony_revised.pdf

# So we need to ask is this good policy?

This is a building in Southampton, UK.  What is the deal with the windows?

For more, see https://www.lincolninst.edu/publications/articles/window-tax#:~:text=In%201696%2C%20King%20William%20III,of%20windows%20in%20an%20abode.

# OK, maybe it is good policy but won't businesses leave?

- The BPT is not triggered by physical presence in the state but by significant economic activity directed to the state.
- NH apportions income based on sales in the state.
- Thus, short of refusing to make profitable sales in the state, there is no real economic action that a taxpayer can take to avoid the BPT.

# But clearly WWCR is a huge compliance burden.

Says the Tax Foundation,

> When states force companies to apportion some of the profits of their foreign subsidiaries, they also massively increase compliance costs for many businesses, since those subsidiaries' books must be converted from local rules to align with U.S. and state accounting rules, and transactions recorded in different currencies must be standardized. Factors that do not matter for taxation elsewhere—like the payroll of all affiliates in all countries, even for subsidiaries that do no business in the United States—must be tracked to comply with a single state's apportionment regime.

Sounds bad, does WWCR require recalculating foreign income using NH rules? Is that how it worked in the 1980s?

"Massively increase"? Where is the evidence?

Wait, why would there be a need to track payroll when NH just uses the sales factor?

Source: https://taxfoundation.org/blog/new-hampshire-worldwide-combined-reporting/

# Here is some evidence and facts

- “The California Court of Appeal additionally found that Barclays’ actual compliance costs were ‘relatively modest’ during the years just prior to those here at issue, ranging from $900 to $1,250 per annum, for BBI.”
- Barclays, 512 U.S. 298, 314, n.13 (citing 10 Cal. App. 4th, at 1760, n.9).”

# Also

- As the Supreme Court also noted in Barclays, under the California WWCR regulations, taxpayers could use “reasonable approximations” based on ordinary financial records for calculating the income of foreign subsidiaries in connection with WWCR.
- These regulations are still there – and still used! – because taxpayers can and do elect to file on a worldwide basis in California. See Cal. Code Regs. tit. 18, section 25106.5-10(e)(1).

# More fundamentally

- It is surreal to suggest that these MNCs will have huge difficulties figuring out estimated income and sales.
  - In many cases, they already need to disclose their sales for purposes of securities law.
- Note as well that the required information for reporting under the new federal Corporate Alternative Minimum Tax is similar.
- BUT given the fact that there is *some* fixed compliance cost – it would not be unreasonable to limit WWCR to taxpayers already subject to the CAMT.

# Really

From Amazon’s 2022 Annual Report.

| | | 2020 | | 2021 | | 2022 |
|---|---|---|---|---|---|---|
| United States | $ | 263,520 | $ | 314,006 | $ | 356,113 |
| Germany | | 29,565 | | 37,326 | | 33,598 |
| United Kingdom | | 26,483 | | 31,914 | | 30,074 |
| Japan | | 20,461 | | 23,071 | | 24,396 |
| Rest of world | | 46,035 | | 63,505 | | 69,802 |
| Consolidated | $ | 386,064 | $ | 469,822 | $ | 513,983 |

It just makes sense for Amazon to tell us this, but note that it has to under accounting standards. FIN. ACCT. STANDARDS BD., STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 131, 42 (1997). And these accounting standards must be complied with as part of federal securities law.
https://www.sec.gov/divisions/corpfin/cfacctdisclosureissues.pdf, P.50

# The rest of the world

- It turns out much of the rest of the world is at least as agitated about income shifting, hence:
  - There has been a project meant to address Base Erosion and Profit Shifting (BEPS) since 2013. This has resulted in 15 proposed best practices.
  - Pillar 1, which seems unlikely to get implemented; tax on supranormal profits of largest MNCs.
  - Pillar 2, which seems likely to get implemented: 15% minimum tax on MNCs.
  - Many nations have already imposed digital service taxes in part to address aggressive income shifting by some MNCs.

# The Pillars and WWCR

- Of particular interest, both of the core OECD proposals have strong WWCR components, which makes sense.
  - How to avoid evasion of either tax if the various entities are not combined?
  - How to figure out the income of the entity across jurisdictions without relying on financial statement income?
  - How to give credit to market jurisdictions without apportioning using sales?
- The point here is not that the pillars are identical to WWCR. Rather, they show the dominant trends in tax policy at the moment and also that large MNCs are going to need to deal with a form of WWCR in any event.

# Again, some evidence

- Article 1.1.1: The GloBE [Pillar 2] Rules apply to Constituent Entities that are members of an MNE Group that has annual revenue of EUR 750 million or more in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) in at least two of the four Fiscal Years immediately preceding the tested Fiscal Year. . . .
- Article 1.2.2: A Group means a collection of Entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those Entities:
- (a) are included in the Consolidated Financial Statements of the Ultimate Parent Entity . . .

- https://www.oecd-ilibrary.org/docserver/782bac33-en.pdf?expires=1695485634&id=id&accname=guest&checksum=FD54B0ACED6C567DA0A3795C8787D784

# But there is no money there!

Tax Foundation again, citing itself

Unfortunately, some policymakers have been enticed by highly inaccurate projections of potential revenue gains by adopting worldwide combined reporting. An analysis by one progressive group, which we have critiqued previously, takes two high estimates of the amount of profit-shifting to foreign countries and simply allocates shares of those foreign-shifted profits to each state. All projections have to make certain simplifying assumptions, but the fundamental assumption here is indefensible, and policymakers should understand that the projections are completely divorced from how worldwide combined reporting actually works.

# The critique is unsound

- The claim is that ITEP was wrong to add back in income without also diluting the percentage of the income the states can tax.
- But the whole (reasonable!) premise is that what was added back was the income that never should have left.
- With WWCR, a much larger amount of foreign income would be a starting point for the calculation – and NH's percentage – would be diluted, but, on balance, the claim is that NH would raise more revenue because it is including the income that should always have been there.
- BUT, *as the draft fiscal note indicates, there is an unknown way in which WWCR estimates might interact with the BPT given NH's conformity to GILTI*.
- We can talk about ways to address this interaction.

# Upshots

- NH has gone its own way in tax policy.
  - With great success!
- No other state would benefit more from making the right call on WWCR.
- The primary arguments for WWCR are that it is efficient and fair. NH could adopt WWCR and cut some less efficient tax – even the rate on the BPT - and come out ahead.
  - (This is not to say that there does not appear to be needs, particularly as to education and equalization.)
- Personal request/offer: I have tried to provide actual evidence about administrability, competition etc. I am happy to provide more/engage further should there be contrary evidence presented.

# Some More [Shanske] Sources With More Sources

- *Professors Letter on Worldwide Combined Reporting in Minnesota* (May 9, 2023), https://ssrn.com/abstract=4446650.
- *White Paper on Eliminating the Water's Edge Election and Moving to Mandatory Worldwide Combined Reporting* (August 2, 2018), https://ssrn.com/abstract=3225310.
- *How the States Can Tax Shifted Corporate Profits: An Application of Strategic Conformity*. 94 Southern California Law Review 251 (2021), https://ssrn.com/abstract=3679356.