Evaluating the Proposed National Retail Fairness Act

July 9, 2019

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LEGISLATIVE OVERVIEW

- Imposes a 7 percent corporate income tax on the retail, hospitality, and food service industries
  - Limited to companies required to file federal corporate income taxes and with 100+ shareholders or elected as unincorporated entity
  - Three-factor apportionment
  - Throwback rule
  - Credit against liability for sales, use, excise, and severance taxes paid
- Would represent Wyoming's first foray into corporate income taxation
  - Income taxes considered during Great Depression
  - In 1974, voters ratified a constitutional amendment requiring any future income tax to allow a credit against liability for any sales, use, or other *ad valorem* tax paid to the state

PROPONENTS' CASE FOR THE NRFA

- Revenue volatility due to state's heavy reliance on revenue from natural resource extraction ✓
- The argument that national pricing strategies mean that chains will absorb the tax, with little or no incidence on Wyoming consumers ?
- The belief that other states' throwback rules mean that the activity is subject to corporate income taxes anyway, and that the only question is whether those taxes go to Wyoming or some other state ✗

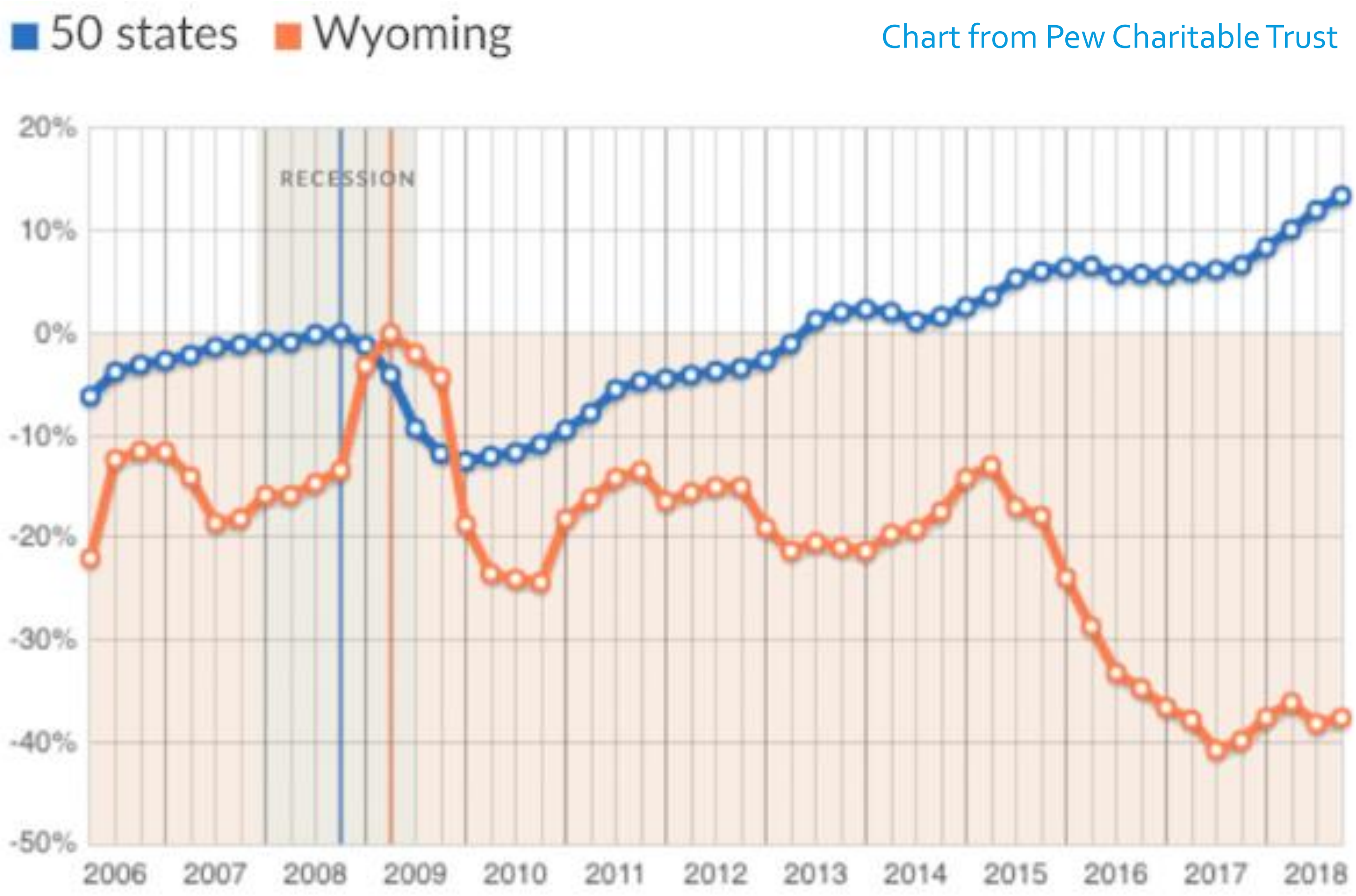
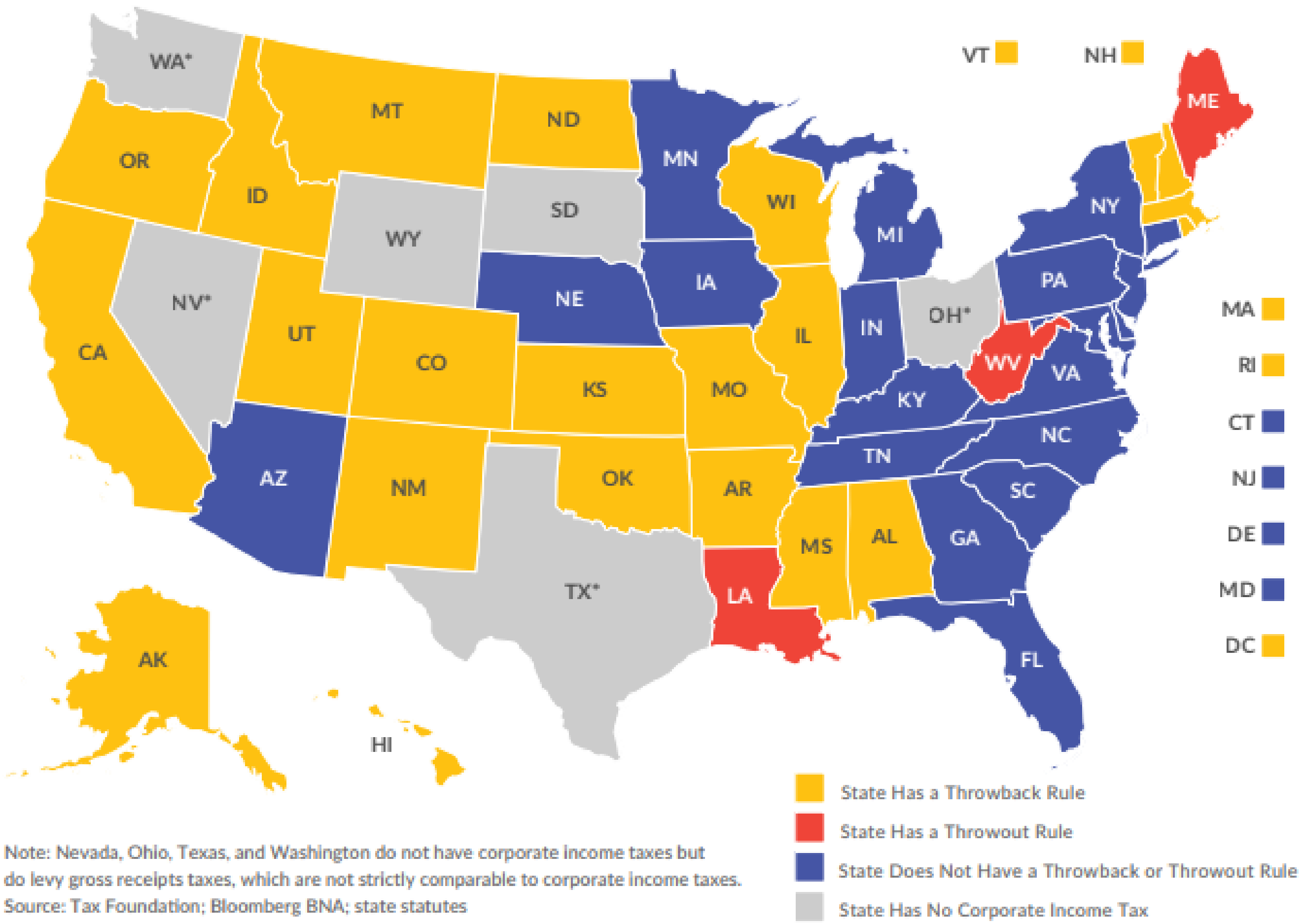


Chart from Pew Charitable Trust

CHANGE IN TAX REVENUE FROM PEAK QUARTER

REVENUE VOLATILITY

- Severance taxes, along with other taxes (property and sales) imposed on extractive industries, tend to be highly volatile, subject to swings in energy and natural resource markets
- Because Wyoming forgoes an individual or corporate income tax, its stability needs to come from its sales tax—and although a well-structured sales tax tends to be quite stable, Wyoming's sales tax collections have proven remarkably unstable
- State has a few options –
  - Adopt a new, more stable tax
  - Enhance revenue stabilization funds
  - Introduce greater stability into existing taxes



Note: Nevada, Ohio, Texas, and Washington do not have corporate income taxes but do levy gross receipts taxes, which are not strictly comparable to corporate income taxes.
Source: Tax Foundation; Bloomberg BNA; state statutes

STATES WITH THROWBACK OR THROWOUT

THROWBACK RULES AND THE NRFA

- Under throwback rules, if sales income is untaxable in a destination state, it may be thrown back into the numerator of the origination state's apportionment formula, with that apportioned income subject to tax
- The income thrown back must be *untaxable* (lack of nexus), not just *untaxed* (state decision not to tax)
- Wyoming already has nexus with its retailers, hoteliers, and restaurateurs—that income is not subject to throwback with or without a state CIT

UDITPA THROWBACK LANGUAGE

"For purposes of allocation and apportionment of income under this Article, 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."

Tax Status	# of States	Tangible	Intangible
Home State	1	$7 million	$3 million
Subject to Corporate Tax	2	$14 million	$6 million
No Jurisdiction	6	$42 million	$18 million
No Corporate Tax	1	$7 million	$3 million
All States	10	$70 million	$30 million

$42 million thrown back — $18 million thrown out

52/82 = 63.4% sales factor

HYPOTHETICAL THROWBACK SCENARIO

ECONOMIC IMPLICATIONS OF THE NRFA

- Proponents note, correctly, that some large retail chains adhere to national pricing strategies—albeit with varying degrees of rigidity
  - Nationally advertised items, loss leaders – yes
  - Other products – often not
- Stores operate under pricing constraints, particularly in low-density areas
  - Higher costs: transportation costs, low volume of sales
  - Lower costs: property values, labor costs
- If low-margin retailers cannot absorb a 7 percent tax, they have a few options (likely in combination) –
  - Raise prices
  - Cut costs (including layoffs or pay cuts)
  - Limit product selection (high-volume, high-margin only)
  - Reduce store hours or shut down entirely

ECONOMIC IMPLICATIONS OF THE NRFA

- Many Wyoming communities already have few retail options and may have to drive long distance
- Statewide, there are —
  - 12 Walmarts
  - 9 Albertsons
  - 5 Safeways
- National pricing strategies are significantly less relevant for dining and lodging, also taxed

Location	Area (Sq. Mi.)	Population	Density per Sq. Mi.
Cheyenne	29	63,587	2,222.5
Casper	27	57,814	2,152.4
Laramie	18	32,306	1,759.6
Gillette	23	30,560	1,327.5
Rock Springs	19	23,350	1,204.9
Five Most Populous Cities	116	207,617	1,786.3
The Rest of Wyoming	97,798	371,317	3.8
Wyoming as a Whole	97,914	578,934	5.9

WYOMING'S LOW POPULATION DENSITY

OTHER ISSUES

- Uncertainty of revenue projections
- Choice of imposing on limited industries
  - Given the constitutionally mandated credit, may have trouble applying to many other industries
- Non-neutrality and tax avoidance
  - Imposition depends on business form, whether franchised or corporate-owned, etc.

Questions?

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