Government Matters

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Settlement in Public Interest Lawsuit Should Improve Fracking Disclosure in Wyoming

by Amanda Frank

Drilling companies nationwide have been keeping the identities of many fracking chemicals a secret by simply stamping them "confidential business information," also known as "trade secrets." In Wyoming, regulators had long accepted these claims with little validation, and residents were left in the dark about the toxic chemicals being injected into the ground near their homes, schools, and water supplies. A recent settlement agreement in a lawsuit filed by public interest groups, including the Center for Effective Government, will change this practice.

Under the terms of the settlement, drilling companies in Wyoming will be required to substantiate their trade secrets claims with more facts and evidence. This is a win for state residents and sets a standard for other states to follow.

The Dangers of Fracking Chemicals

Fracking injects a mixture of water, sand, and various chemical additives into the ground. Drilling holes often pass through aquifers, risking drinking water contamination. Additionally, fracking releases toxins into the air, sometimes at levels exceeding federal safety standards. Communities have a right to know what chemicals are being used in fracking so they can protect themselves from possible chemical exposure and hold companies responsible for their practices.

Wyoming was the first state to require drilling companies to identify the chemicals used in fracking. But the trade secrets exemption – along with Wyoming regulators' failure to scrutinize these claims – created a massive loophole. Companies could simply claim their fracking fluids were confidential business information in order to avoid public scrutiny.

The Lawsuit and Settlement

Advocates in Wyoming and beyond demanded that the Wyoming Oil & Gas Conservation Commission close this loophole. They were joined by five environmental and public interest organizations. In March 2012, the groups filed a lawsuit, arguing that under the state's public records law and the 2010 fracking chemical disclosure rule, the commission should be required to reveal the identities of chemicals used in fracking.

In March 2013, the district court upheld the commission's decision to withhold the identity of chemicals, as requested by Halliburton and other energy companies under Wyoming's open records law. The district court concluded that the commission's supervisor, who withheld the information, "acted reasonably."

The groups appealed to the Wyoming Supreme Court, which ruled on March 12, 2014 that the district court had to reconsider the public disclosure requests and that the commission would have to explain exactly why the requests were denied. The court's decision also held that the commission has the burden of proof for justifying its use of trade secrets exemptions. The court further ruled that any information withholding must fall within a narrow definition of trade secrets that generally favors disclosure over secrecy.

Rather than engage in a protracted legal battle over each claim of trade secrets, the commission agreed to pursue a settlement with the public interest groups. Halliburton intervened in the settlement to promote industry interests.

On Jan. 23, the court approved a settlement agreement that requires the commission to adopt policies that better scrutinize trade secrets claims. This includes requiring substantially more information from companies to back up their claims.

A Victory for Public Health

The settlement is a victory for the people of Wyoming and for public health. If properly administered, landowners will be able to access information on the chemicals being injected on their land. Families will know what chemicals are being used near their homes and schools, and medical providers will have quicker access to crucial chemical safety data in the event of a chemical spill or other exposure.

Most other states that allow fracking have trade secrets exemptions that often favor industry over the public's health and safety, so there is more work to be done on fracking chemical disclosure. Other states can and should use the Wyoming settlement as a model, close disclosure loopholes, and uphold citizens' right to know what chemicals are being used during fracking. After all, if we can require Coca-Cola to list its soda's ingredients without revealing its well-guarded, confidential recipe, we can surely do the same for fracking fluids.

President's Revenue Plan Rewards Tax Dodgers

by Scott Klinger

President Obama's budget rewards corporate tax avoiders by forgiving hundreds of billions of dollars of corporate income taxes they owe on profits stashed offshore. The president proposed a minimum tax on offshore corporate profits last year, but only with today's budget was he specific about the tax rates he would propose.

Under the terms of the plan, corporations would pay a minimum of 19 percent on their foreign profits going forward and an even lower 14 percent "transition tax" on the more than $2 trillion of corporate wealth already held offshore. The revenue from the one-time transition tax would be used to fund domestic infrastructure projects.

In fairness, the president's proposed tax holiday is preferable to several schemes recently introduced in Congress. The president's plan is mandatory and imposes a higher rate than any of the congressional plans. Still, it forgives more than half the taxes these companies already owe under current law. And the plan does not do enough to stem the annual flow of hundreds of billions of dollars in corporate profits earned in the United States to offshore tax havens, out of the reach of U.S. tax authorities. Legal tax dodging by corporations costs the U.S. Treasury an estimated $90 billion a year.

This enormous subsidy to America's most prosperous corporations comes at a time when corporate taxes as a share of the economy remain near post-World War II lows – yet corporate profits and the stock market are at all-time highs. In the 1950s, corporations paid nearly a third of the cost of operating the federal government. Last year, corporate taxes accounted for just 10.6 percent of federal government receipts, according to budget documents released by the White House today. Corporate tax collections in 2014 fell $12 billion, short of estimates the White House made a year earlier. In contrast, collections from individual income taxes last year exceeded earlier forecasts.

A few corporations adept at the offshore tax haven game offer a glimpse into just how little they pay on their foreign profits. According to an analysis by Citizens for Tax Justice (CTJ) and U.S. PIRG (PIRG), 26 large U.S. corporations with combined offshore profits of over $400 billion paid just 3.3 percent in taxes to foreign governments, demonstrating that most of their assets are held in tax havens where corporate profits are taxed lightly, if at all. The 26 corporations in the CTJ/PIRG study have a combined U.S. tax liability of $129.6 billion on the money they have parked offshore. Under the president's proposal, they would be required to pay just $57 billion. The remaining $72.6 billion of taxes would be "forgiven" and unavailable to fund infrastructure and other unmet needs.

Apple told its shareholders that it paid only 2.3 percent in taxes on the $111 billion it holds offshore. Under the Obama plan, nearly $21 billion of Apple's tax liabilities would be forgiven. Microsoft disclosed to its shareholders last year that it paid just 3.1 percent in taxes on the more than $76 billion in profits it holds offshore. If the president's plan becomes law, Microsoft would enjoy a tax windfall of $13.7 billion.

There is no question that our infrastructure requires serious attention; we need $3.6 trillion in new investments over the next five years if we want our economy to remain healthy and competitive, according to the American Society of Civil Engineers. The president's proposal barely makes a dent in that figure. Closing offshore tax loopholes would raise $90 billion each and every year for infrastructure; the president's one-time tax holiday would raise just $238 billion – and we would be back looking for more road and bridge funds next year.

Under the Obama plan, nearly $21 billion of Apple's tax liabilities would be forgiven.

Farmers know that if you've got a hole in the fence through which the horses are running, it makes no sense to round them up and put them back in that corral until the fence is fixed.

The president needs to fix the fence. We need to shut down foreign tax havens and end the flagrant corporate avoidance of tax responsibilities. The nation needs corporate tax rates in the 30 percent range to make critical investments and reduce our interest payments. We need to demand more of the corporations that have used their political muscle to avoid paying for the infrastructure, courts, and public services on which they rely to run successful business operations in the U.S. If they don't want to pay their fair share, they shouldn't expect access to the world's largest consumer market.

The 16th Amendment: Raising Revenues for Public Investments Since 1913

by Scott Klinger

One hundred and two years ago, Wyoming became the final state to ratify the 16th Amendment, giving Congress the constitutional authority to establish a federal income tax. Later that year, Congress used that authority to establish the modern income tax system.

History of Income Taxes in America

The nation's first income tax was signed into law by President Abraham Lincoln. In order to pay the costs of the Civil War, it imposed a three percent tax on incomes between $600 and $10,000 ($600 in 1862 is the equivalent of about $14,000 today) and five percent on incomes over $10,000 (almost $234,000 in today's dollars). After the war ended, Congress cut the tax rate in 1867 and repealed it entirely in 1872.

Throughout the first 125 years of American history, the nation's peacetime bills were largely paid by tariffs on imported goods. These import taxes were added to the cost of goods sold in the United States. Because working people spent more of their income on consumer goods than wealthier people, these tariffs fell more heavily on low- and moderate-income Americans. These tariffs also protected U.S.

manufacturers from foreign competition, so they allowed rich industrialists to achieve greater levels of profit than they would have without import taxes.

Growing disparities in income and wealth led to public calls for a renewed income tax toward the end of the 19th century. The Wilson Tariff Act was passed in 1894, but unlike the Civil War income tax, which fell on all but the poorest citizens, the 1894 tax applied only to the top one percent of income earners; those earning more than $4,000 per year paid a two percent tax on their income.

The rich did not look kindly on even this modest tax and mounted a constitutional challenge at the U.S. Supreme Court. Opponents of the tax contended that it represented a direct tax on people, a violation of the Constitution, which allowed only for taxes apportioned on the states in proportion with their population. The Court agreed and struck down the income tax.

While the income tax was dead for the moment, popular interest in using a progressive income tax to rein in the excesses of the nation’s most prosperous citizens grew. When President William Howard Taft entered office in 1909, public support for the income tax reached a crescendo. Rather than simply defying the Supreme Court and enacting a new income tax, Taft instead called for a constitutional amendment allowing for direct taxation to address the earlier concerns of the Court. Congress passed the proposed amendment in 1909 and sent it to the states for ratification. They also passed a one percent tax on business income, the nation’s first corporate income tax.

In 1913, with international tensions building and the looming prospect of an expensive global war central in the minds of political leaders, Wyoming became the 36th and final state needed to ratify the 16th amendment. It did so on Feb. 3, 1913. A few months later, President Woodrow Wilson proposed a sweeping set of tariff reforms, which included a new tax on personal income. Tariffs on imported goods were slashed, and a one percent tax was established on incomes above $3,000 (about $70,000 in today’s dollars). The tax rate steadily increased, reaching seven percent on incomes over $500,000 (nearly $12 million in 2014 dollars). The first income tax bill was straightforward, just 14 pages long.

Income tax rates reached their peak of 94 percent at the height of the Second World War in 1944 and remained above 90 percent until 1963. This period of high personal tax rates coincided with the strongest economic growth the nation has seen since World War II.

Presidents Kennedy and Reagan presided over sharp cuts in the top income tax rates. In 1993, President Clinton signed into law the most significant increase in personal income tax rates in the post-World War II era. President George W. Bush cut top income tax rates modestly, and President Obama reversed the Bush tax cuts on America’s wealthiest taxpayers in 2013.

Top Income Tax Rates Since World War II

Year	Top Rate	On Incomes Over	In 2014 Dollars
1944	94.0%	$200,000	$2,656,212
1946	91.0%	$200,000	$2,393,080
1963	91.0%	$400,000	$3,052,078
1964	77.0%	$400,000	$3,013,108
1981	70.0%	$215,400	$552,451
1986	50.0%	$175,250	$372,463
1987	38.5%	$ 90,000	$184,633
1988	28.0%	$ 29,750	$ 58,628
1993	39.6%	$250,000	$403,470
2003	35.0%	$311,950	$399,553
2013	39.6%	$450,000	$457,200

Source: Tax Foundation (Federal Individual Income Tax Rates History). Inflation adjustments via the Westegg Inflation Calculator

Individual Income Taxes Pay Nearly Half the Nation's Bills

Since World War II, the share of the federal government's bills paid for by individual income taxes has been relatively stable, accounting for about 45 percent of the total revenue of the U.S. government. In stark contrast, the share of federal revenues accounted for by corporate income taxes has plummeted. In the midst of the Second World War, corporations paid more than a third of the cost of government; last year, corporate taxes accounted for a little more than a tenth of federal government revenue. Payroll taxes for Social Security and Medicare account for most of the remaining federal government revenue.

U.S. Personal and Corporate Income Taxes as a Share of Total Federal Revenue 1944-2014

Year	Personal Income Tax	Corporate Income Tax
1944	45.0%	33.9%
1954	42.4%	30.3%
1964	43.2%	20.9%
1974	45.2%	14.7%
1984	44.8%	8.5%
1994	43.1%	11.2%
2004	43.0%	10.1%
2014	46.2%	10.6%

Source: President's FY 2016 Budget, Historical Table 2.1

To Learn More:

Historical Highlights of the IRS, Internal Revenue Service, Jan. 23, 2015

A Short History of the Income Tax, John Steele Gordon, *Wall Street Journal*, Sept. 27, 2011

Dollar Stores Found Selling Toys, Earrings, and More Containing Lead and Other Toxins

by Amanda Frank

Target and Walmart made headlines in 2013 when both companies pledged to phase-out certain hazardous chemicals from their supply chains, good news for the millions of Americans who rely on these stores for household and personal care products. But discount retailers known as "dollar stores" have yet to follow suit, putting the communities they serve at risk of toxic chemical exposures.

The Campaign for Healthier Solutions launched a recent effort pressuring dollar store chains to remove hazardous chemicals from their supply chains. The campaign is a collaborative project of more than 100 health and environmental organizations, including Coming Clean and the Environmental Justice and Health Alliance for Chemical Policy Reform. (Disclosure: The Center for Effective Government is a member of the Coming Clean Collaborative.)

Why Dollar Stores?

Dollar stores offer household items at discounted prices and target families in lower-income communities. In fact, 40 percent of dollar store customers rely on some type of government assistance. Communities of color make up a sizable portion of the companies' clientele.

Low-income and minority communities already face disproportionate risks from toxic exposures and chemical accidents. Minority children have higher rates of asthma and other diseases linked to chemical exposures, as well as higher rates of lead poisoning, relative to white children and those from higher-income families. Being exposed to toxic materials in dollar store products only exacerbates the chemical exposure risks minority families – especially children – face.

Toxins for Sale

The Campaign for Healthier Solutions tested 164 products purchased at the four largest dollar store chains (Dollar General, Dollar Tree, Family Dollar, and 99 Cents Only) for the presence of specific hazardous chemicals.

Eighty-one percent (133 of 164) tested positive for hazardous chemicals above the level of concern set by mandatory and/or voluntary health standards. This included toys and beauty products made with chromium and antimony – toxic heavy metals that can cause serious health problems like lung irritation and heart damage.

Nearly a third of vinyl products tested contained phthalates above the limit for children's products. Phthalates can disrupt hormones and exposure is linked to early puberty in girls.

A vinyl tablecloth for sale at Dollar Tree contained lead levels ten times the limit for children's products, and an earring set from Family Dollar contained 65 times the limit. While these don't fit into the narrow definition of children's products, children are likely to come into contact with them. Even low levels of lead exposure can cause irreversible developmental and behavioral effects in children.

More findings are available in the full report.

Cleaning Up the Supply Chain

The Campaign for Healthier Solutions sent letters to the CEOs of these four dollar store chains challenging them to remove hazardous products from their shelves and offering advice on how to replace them with safer products. The campaign's report and materials also outline practical steps that companies can take to disclose chemicals in their products and find safer alternatives.

Large retail chains like dollar stores and Target can have a significant impact on reducing the toxic products that circulate in our economy, but government should be the real line of defense in preventing harmful chemicals from being used in the first place.

Unfortunately, we have a broken chemical regulatory system in the United States. With over 84,000 chemicals registered for use in the U.S., fewer than 300 have been federally tested for safety, and only nine have been banned or restricted. Attempts to restrict known toxins are met with intense industry opposition, such as when the U.S. asbestos ban was challenged and overturned in 1991.

This spring, lawmakers are expected to revisit the Toxic Substances Control Act (TSCA), the main law that gives the U.S. Environmental Protection Agency the authority to regulate chemicals in commerce. An improved TSCA is critical for better protecting the public from hazardous products. Unfortunately, revisions to the law under the current anti-regulatory Congress are likely to weaken federal public health protections and could roll back state protections as well.

Center for EFFECTIVE GOVERNMENT

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