

The Sun

Could Tax Code Be Used to Make U.S. Reparations?

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Could a racial priority for getting a Covid-19 vaccine turn out to be just the first stop on the way to race-based tax rates?

A tax bill that varies depending on the taxpayer's race might strike readers as some law professor's remote fantasy, far from anything that might become reality.

Things are developing more quickly on this front, though, than is widely recognized.

Just this month, the governor of Vermont, Phil Scott, a Republican, attracted attention when he announced, "If you or anyone in your household identifies as Black, Indigenous, or a person of color (BIPOC), including anyone with Abenaki or other First Nations heritage, all household members who are 16 years or older can sign up to get a vaccine!"

A Reason article notes that in December 2020, while Republican Donald Trump was still president, the federal Department of Veterans Affairs announced that it would prioritize Black, Hispanic, Native American, and Asian veterans in vaccine distribution. Reason cites the Cato Institute's Walter Olson as describing these schemes as unconstitutional, a violation of the "equal protection" clause of the 14th Amendment.

Yet vaccine line-leapfrogging may be just a warmup act for a longer-term issue to ponder as this year's annual Internal Revenue Service tax-filing deadline (extended to May 17 for individuals) approaches.

"Prediction: By tax year 2024, Americans will be asked to indicate their race on the Form 1040," tweeted Scott Greenberg, a former analyst at the Tax Foundation who now writes about tax policy in a Substack newsletter called "No Withholding."

Greenberg was reacting to a tax-policy reporter for the Wall Street Journal, Richard Rubin, who had flagged the news that the Biden administration had put the Treasury department's top tax-policy official on an "equitable data working group."

According to the Biden executive order, "Many Federal datasets are not disaggregated by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. This lack of data has cascading effects and impedes efforts to measure and advance equity. A first step to promoting equity in Government action is to gather the data necessary to inform that effort."

The Census provides plenty of race-based income and poverty data, but the IRS has not done so. That surprises even some savvy observers. Kai Ryssdal, of the public radio show “Marketplace,” devoted a recent segment to an interview with Dorothy Brown. A law professor at Emory, Ms. Brown is the author of “The Whiteness of Wealth: How the Tax System Impoverishes Black Americans — And How We Can Fix It.”

Ms. Brown said, “The IRS doesn’t collect or publish statistics by race.”

Mr. Ryssdal stopped her: “That to me, when I read it, was mind boggling. I need you to say it again.”

Ms. Brown repeated the point: “The IRS does not collect or publish statistics by race.”

As the Biden executive order and Ms. Brown’s book both make clear, though, collecting and reporting the information is merely, as the executive order puts it, “a first step.”

What’s the next step?

Ms. Brown’s book, just out from Crown, has a suggestion: “A reparations credit is the final piece of closing the black-white wealth gap. The reasoning is simple. The overtly racist policies of the past aren’t truly behind us, and not just because the taxpayers held back and victimized by them are still part of our society and members of our families. Our racist tax policies disadvantage black Americans who were born after Jim Crow was legally invalidated, too. Today, black taxpayers are still paying too much ...The victims need to be compensated.”

Ms. Brown’s book goes on, “My first choice for race-based reform would be a refundable tax credit ... Under this plan, Congress would assign a single fixed credit to all black taxpayers.”

She concedes, “this, or any tax reform designed to compensate black Americans for years of higher taxes, is unlikely to be found constitutional under our current Supreme Court.”

That could be. But before dismissing the idea, consider that we’ve arrived at the point where the Republican governor of Vermont and the Trump administration’s Department of Veterans Affairs are openly touting racial preferences in allocating scarce life-saving vaccines.

The tax code already rewards or punishes all sorts of behaviors — home-ownership, say, or marriage and child-rearing, retirement saving, even electric-vehicle purchasing. In that context, a reparations credit seems less exceptional than it otherwise might.

There are plenty of potential downsides other than the constitutional obstacles. Yet those taxpayers who think Form 1040 is already complex enough, thank you, without adding race to the mix might want to get their arguments in order lest they find themselves, in some future tax season, in the IRS equivalent of the back of the vaccine line.