The Daily Dish

If You Are Going to BURP Again, Please Say Excuse Me

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You may have noticed that the advance of civilization is not uniformly paced, or even uniformly upward. Federal policy follows a similar non-linear path. But even some of the more unusual policy downdrafts can have a familiar feel. Consider the proposal for a 15 percent corporation minimum tax based on book (or financial, as opposed to taxable) income – something someone labeled the worst of a bad lot of taxes. As examined by Gordon Gray, we've made this mistake before.

Meet the BURP – the Business Untaxed Reported Profits tax adjustment from the Tax Reform Act of 1986 (TRA86).

As Gray notes, "The BURP tax was imposed from 1987-1989 before being supplanted by a more conventional corporate alternative minimum tax (AMT). A review of America's brief experiment with conflating taxable and financial income suggests that rather than make the tax code better, it simply made financial reporting worse."

The pressures to introduce the BURP sound very familiar. There was populist outrage (as usual published in elite law journals) that a handful of large, seemingly profitable corporations has no income tax liability. The arguments made in the 1980s and today are eerily similar and identically orthogonal to reality.

Then, as now, some had reservations about mixing tax law and financial accounting. The Ways and Means Committee noticeably left the book tax out of its original committee-passed legislation. After all, who knows better than the pros at Ways and Means the danger of outsourcing the tax base to the Financial Accounting Standards Board (FASB)? In 1986, the concern was that the tax would harm financial reporting. "A 1988 law review article noted that GAAP accounting can involve multiple accounting methods and subjective judgment by accountants. The article also echoes the concern that the tax would degrade the quality of

financial reporting given the new incentive to under-report book income to minimize tax, a view that was shared by other accounting institutions. Indeed, the SEC similarly expressed concern and nearly drafted a letter to this effect to the Congress, but the commissioners decided to avoid a jurisdictional squabble with Treasury."

But a difference, at least so far, is that Congress understood that it was in dangerous territory: "When Congress enacted the TRA86, and the BURP along with it, it included a requirement for the Department of the Treasury to conduct a study on the operation of the BURP adjustment in practice." Good plan. Alas, as with many congressional plans, Congress repealed the requirement before the study was published. Nevertheless, Treasury got its shot in testimony for the Ways and Means Committee and noted "that the 'book income adjustment may be having a detrimental effect on the quality of financial reporting.' Further, the Treasury official observed that the book income adjustment was effectively a 'one-way street,' overtaxing firms due to timing differences and the operation of the book adjustment was only a positive adjustment." For these and other reasons, "Treasury, 'would generally be opposed to making the book income adjustment permanent.'"

Perhaps Congress could order up a three-year review of the book tax? Or, be as ambitious as Gray hopes: "Rather than repeat the mistakes of the past, this Congress should learn from them." Or, if not, aspire to the Eakinomics standard: If you are going to BURP again, please say excuse me.