

A DEFENSE OF HORIZONTAL AND VERTICAL EQUITY IN TAXATION

Although horizontal and vertical equity are textbook criteria of tax fairness, the weight of recent scholarly opinion seems squarely against them. Horizontal equity is the principle that taxpayers with equal income should pay equal tax. Vertical equity requires that tax obligations vary in proportion to income such that if A has a greater income than B, A will owe more income tax than B. Scholars ranging from the legal theorist Louis Kaplow and philosophers Thomas Nagel and Liam Murphy question their conceptual coherence and normative significance. In this paper, I defend horizontal and vertical equity as norms of tax fairness that provide a focal point for compromise between people who disagree about deeper principles of distributive justice.

The crux of the case against horizontal and vertical equity is that it seems irrational to worry about the relationship between *pre-tax* income and tax obligations rather than determining tax policy in light of what our best theory of distributive justice tells us is the best *post-tax* outcome. For example, Louis Kaplow argues that tax law should maximize aggregate welfare whereas Rawlsians believe that taxes should be set in accordance with ‘the difference principle.’ On either theory, it is of no real significance whether taxes turn out to be horizontally or vertically equitable.

I argue that horizontal and vertical equity are best understood as compromise principles for people who disagree about the justice of redistributive taxation. Horizontal and vertical equity require a sort of procedural fairness in allocating obligations to contribute to public goods in accordance with pre-tax holdings. They are valuable because they serve to constrain parties who may wish to use the tax system to gain at the expense of their fellow citizens and limit the extent to which distributions of wealth that have been fixed by private law may be unsettled by public law. Proponents and opponents of redistributive taxation can agree that at any given level of redistribution, they will each be better off if taxes are horizontally equitable. Tax equity norms can thus prevent conflict over tax policy from generating wasteful patchwork of narrow taxes and tax subsidies. They also can structure tax reform bargains in which people with ideological disagreements agree to reduce tax rates while expanding the tax base.

Tax equity norms would be unnecessary if people agreed on principles of justice and the relevant empirical facts. But when there is moral and empirical disagreement over tax policy, horizontal and vertical equity have a valuable role to play. This account of tax equity illustrates the utility of non-ideal political theory and provides a compelling defense of the normative

significance of pre-tax income that does not rely upon 'natural property rights' or pre-institutional moral desert.