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Fake News and the Tax Law

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Abstract

The public misunderstands many aspects of the tax system. For example, people frequently misunderstand how marginal tax rates work, misperceive their own average tax rates, and believe they benefit from tax deductions for which they are ineligible. Such confusion is understandable given the complexity of our tax laws. Unfortunately, research suggests these misconceptions shape voter preferences about tax policy which, in turn, impact the policies themselves.

That people are easily confused by taxes is nothing new. With the rise of social media platforms, however, the speed at which misinformation campaigns can now move to shape public opinion is far faster. The past five years have seen a dramatic shift in the landscape of false information and scholars in a variety of disciplines, from law to psychology to journalism, have explored the increasing influence of fake news.

Building on this burgeoning literature, this Article is the first to examine the incidence and impact of fake news on tax law. We analyze a unique dataset of tax stories flagged as "false" or "untrue" by reputable, third-party news sources. We

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use this dataset to explore common themes in fake tax news, as well as the ways tax laws' complexity contributes to spreading false information. We then offer recommendations for how tax administrators and policymakers can combat these misinformation efforts. Specifically, we argue that insights from the literature on fake news can and should inform how administrators disseminate true tax information to the public. Further, understanding what types of tax laws are easily misunderstood or subject to manipulation should inform substantive tax policy design.

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INTRODUCTION

The public misunderstands many aspects of the tax system. People misunderstand how marginal tax rates work, misperceive their own average tax rates, and believe they benefit from tax deductions for which they are ineligible.[1] These misunderstandings can be significant. For example, surveys taken in the early 2000s revealed that many people thought the estate tax applied broadly even though only a tiny fraction of taxpayers—about 2% at the time—would face it.[2]

Such confusion is understandable given the complexity of our tax system. Unfortunately, a significant body of evidence suggests these misconceptions shape voter preferences about tax policy which, in turn, impact the policies themselves.[3] What's more, politicians and interest groups can exploit this confusion about the tax law to advance their own interests.[4]

That people are easily confused by false tax information is nothing new. Over a decade ago, Michael Graetz and Ian Shapiro documented a multiyear effort by a subset of the country's wealthiest families to reshape Americans' understanding of the estate tax.[5] Such efforts framed the estate tax as an unfair "double tax" that would burden small businesses and family farms, although, in reality, neither group faced a significant estate tax burden.[6] This messaging campaign eroded popular support for the estate tax, leading to bipartisan legislation to permanently reduce and temporarily repeal it.[7]

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1. Casey Musarra, *SURVEY: Millennials & Men Are Most Likely to Be Overconfident About Their Tax Expertise*, CREDELLO, https://perma.cc/F72V-EA6D (last updated Aug. 18, 2022).

2. *See infra* Part I.C.

3. *See infra* Part I.B.

4. *See infra* note 123 and accompanying text.

5. *See* MICHAEL J. GRAETZ & IAN SHAPIRO, DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH 3 (2006); *see also* Daniel N. Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s*, 139 U. PA. L. REV. 1, 58 (1990) ("[P]ublic opinion about taxation suffers from a number of serious defects. Rational ignorance is mixed with just plain ignorance, creating rich opportunities for the enactment of bad or deceptive tax legislation.").

6. *See infra* Part I.C.

7. *See infra* note 120 and accompanying text.

Now, however, the speed at which misinformation campaigns can shape public opinion is far faster. The past five years have seen a dramatic shift in the landscape of false information.[8] Misinformation campaigns no longer need to rely on paid advertisements or a coordinated campaign of industry groups, some of which may be created specifically to cultivate opposition to policy changes, as was the case with the estate tax.[9] Nor do they need to develop fake grassroots organizations to suggest popular support for—or opposition to—policies.[10] Rather, social media allows false information to be shared directly and cheaply with those most likely to be susceptible to misinformation, allowing it to spread quickly and widely.[11]

In recent years, scholars in a variety of disciplines, from law to psychology to journalism, have explored the increasing influence of fake news. Following current conventions, we use "fake news" in this Article to mean news intentionally created to distort public opinion. We use the terms "false news" and "misinformation" to refer to information with less malicious origins, stories that are created and shared due to general confusion or mistakes by the original author. However, the lines between false and fake news are not always clear. The same inaccurate story can be written both by authors who are honestly mistaken and authors who likely know better. Moreover, an author might write a story knowing it to be untrue, yet the story may be shared many times on social media by users who genuinely believe it to be true. Because it is often hard to know for certain whether a particular story is fake or false, much of our analysis will group these two kinds of misinformation together. From the reader's perspective, the effect of both kinds of stories is the same. As a result, while fake and false tax news are different, there are shared solutions to these separate types of misinformation.

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8. *See infra* Part II.A.

9. *See infra* Part I.C.

10. *See generally* JANE MAYER, DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT (2017) (arguing that much of what appeared to be grassroots roots support for the Tea Party protests in opposition to what became the Affordable Care Act was actually coordinated by entities funded by a small group of wealthy businesspeople).

11. *See infra* Part II.B.

Building on the burgeoning fake news literature, this Article is the first to examine the incidence and impact of fake news on the tax law. In Part I, we discuss what is already known about the public's misperceptions of tax law. In Part II, we discuss the rise in "fake news" more generally and what makes social media a particularly effective way of spreading false information. In Part III, we analyze a unique dataset of fifty-six tax stories flagged as "false" or "untrue" by reputable, third-party news sources.[12] We use this dataset to explore the ways tax laws' complexity—along with legitimate disagreement about tax policy—make it difficult for fact-checking journalists to flag tax "facts" as false or inaccurate. We also uncover common trends and themes in the types of fake tax stories frequently shared on social media—some surprising and others to be expected.

In the final Part of the Article, we offer recommendations for how journalists, scholars, and policymakers can combat these misinformation efforts. Specifically, we argue that insights from the literature on fake news can and should inform how administrators disseminate *true* tax information to the public. Further, understanding what types of tax laws are easily misunderstood or subject to manipulation should inform substantive policy design. These insights are of particular relevance to policymakers interested in wealth taxes or other new taxes designed to reduce inequality.

I. HOW PEOPLE THINK ABOUT TAXES AND WHY IT MATTERS

Before we turn to the impact that fake news has on the public's perception of the tax system, this Part examines what we already know about how people misunderstand taxes. Subpart A first surveys literature on common tax misperceptions, for example, that many people misunderstand the difference between a marginal tax rate and their average tax rate. After exploring well-documented misconceptions, Subpart B then examines why these misconceptions matter. Simply put, research shows that the public's views on the tax system, which are often incorrect, inform their policy and voting preferences. Finally, Subpart C explores a specific case

12. *See infra* APPENDIX.

study of how interest groups capitalized on public misperception to influence policy in the context of the estate tax.

A. *Common Misperceptions*

The complexity of the tax code is one of the few areas of tax policy not up for debate. Scholars, elected officials, and pundits of all political stripes tend to agree on this basic tenet.[13] Even when compared to other aspects of the law, tax is a shockingly complex subject. As a result, tax is the legal specialty where training beyond the J.D. is most frequently sought.[14]

Scholars have documented numerous misperceptions and cognitive biases related to how people think about the tax law.[15] These widespread errors are understandable given the complexity of the tax law and the cognitive and logistical limits on taxpayers' ability to understand such complexity.[16] The sections below briefly describe some of the common themes from this research. This survey is non-exhaustive and addresses general tax aversion; confusion about progressivity, tax rates, and the role of taxes in the economy; and mistakes about eligibility for tax deductions. The common theme in this literature is that people generally misunderstand many aspects of the tax system and therefore do not respond to taxation as rational economic actors.

1. Tax Aversion

People are averse to taxes. As the literature on tax aversion suggests, however, this does not merely mean that people dislike taxes but also that people respond to taxes in

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13. *See, e.g.*, TAX POL'Y CTR, BRIEFING BOOK 395 (2022), https://perma.cc/XU77-CXWA (PDF) [hereinafter BRIEFING BOOK] ("Almost everyone agrees that the current tax system is too complicated[.]").

14. *See* A. Harrison Barnes, *How Valuable Is a LL.M. in a Particular Field?*, FINDLAW, https://perma.cc/3N2M-YV3E (last updated Dec. 20, 2016).

15. *See, e.g.*, Edward J. McCaffery & Jonathan Baron, *Thinking About Tax*, 12 PSYCH. PUB. POL'Y & L. 106, 132 (2006) ("The average person suffers from a wide range of heuristics and biases in thinking about tax and public finance, leading to inconsistent judgment and decision making.").

16. *See id.* at 111.

economically irrational ways.[17] For example, in one study, subjects expressed strong preferences for tax-exempt bonds over taxable bonds, even when the after-tax return on the taxable bond was the same as the return on the tax-exempt bond.[18] In other words, as between two economically identical investments, people displayed a strong preference for the tax-exempt investment when economically rational actors would be neutral between these choices.[19] Commentators have suggested this tendency motivates suboptimal investment behavior in the real world, such as low-bracket taxpayers investing in tax-exempt bonds when they could earn a better return with taxable bonds.[20] Other scholars have suggested that tax aversion explains the immense popularity of retail sales tax holidays, even though studies suggest that retailers capture much of these tax savings for themselves.[21]

Studies of tax aversion provide evidence that people view the payment of taxes as more painful than other, equally-sized costs. A $100 "tax" costs the taxpayer more, at least psychologically, than $100 spent in a different way.[22] As a result, labels matter in this context.[23] Moreover, taxpayers dislike a "tax" more than a "fee" or a "payment," even when the underlying economics of the charge are identical.[24] These findings suggest that tax aversion is not simply an expressed

17. *See, e.g.*, Christopher C. Fennell & Lee Ann Fennell, *Fear and Greed in Tax Policy: A Qualitative Research Agenda*, 13 WASH. UNIV. J.L. & POL'Y 75, 79 (2003) ("A functional definition of . . . tax aversion . . . is the amount by which one's aversion to a tax exceeds the economic cost of the tax.").

18. *See* Abigail B. Sussman & Christopher Y. Olivola, *Axe the Tax: Taxes Are Disliked More Than Equivalent Costs*, 48 J. MKTG. RSCH. S91, S95 (Special Issue 2011).

19. *See id.*

20. *Id.* Tax-exempt bonds typically pay lower interest rates than taxable bonds due to capitalization of the tax benefit; so, a taxpayer with a low marginal tax rate would likely realize a better return when earning taxable bond interest (taxed at the low marginal rate). *See id.*

21. *See* Fennell & Fennell, *supra* note 17, at 81. Sales tax holidays seem to reduce incentives for retailers to reduce prices or offer discounts when they might otherwise do so, thus allowing retailers to benefit from a tax holiday meant to benefit consumers. *See id.*

22. McCaffery & Baron, *supra* note 15, at 118.

23. *See id.* at 117 ("The word *tax* itself implies a burden, Other words, such as *fee*, imply a payment for something received in return.").

24. *Id.* at 118–19.

preference for private rather than public spending, since both taxes and fees provide government revenue.

2. Confusion About Tax Rates

Scholars have also documented common misperceptions about the tax law, particularly when it comes to understanding how marginal tax rates work. The Internal Revenue Code (the "Code") imposes a progressive tax rate structure, meaning tax rates increase as income rises.[25] The Code specifies particular income thresholds and the tax rate applicable to these thresholds; this feature of the Code collectively establishes what are commonly called "tax brackets."[26] The highest rate applicable to a taxpayer is her "marginal" tax rate; all of the dollars she earns over the threshold for that bracket are taxed at that rate.[27] However, the lower tax rates still apply to her income in the lower brackets.[28] A taxpayer's *average* tax rate, on the other hand, is simply the total amount of tax she owes divided by her income.[29]

Studies show that taxpayers often do not understand the difference between marginal and average tax rates and do not know what actual tax rates are in the United States. One study asked participants what they thought the top marginal rate on wages was and what they thought the top rate on dividends was.[30] Subjects generally underestimated the top marginal rate on wages and overestimated the rate on dividends, suggesting that "people underestimate the degree of

25. *See* I.R.C. § 1.

26. *See, e.g.*, JOSEPH BANKMAN ET AL., FEDERAL INCOME TAXATION 25 (18th ed. 2019).

27. *Id.*; *see also IRS Provides Tax Inflation Adjustments for Tax Year 2023*, IRS (Oct. 18, 2022), https://perma.cc/EB4P-F23V.

28. *See* BANKMAN ET AL., *supra* note 26, at 15.

29. *See Average Tax Rate*, TAX FOUND., https://perma.cc/5YG8-AAWZ. For example, consider a simple two-bracket structure in which income up to $50,000 is taxed at 10%, and income over $50,000 is taxed at 20%. *Id.* If a taxpayer earned $80,000, her first $50,000 of income would be taxed at 10%, and only the amount over $50,000 ($30,000 in this example) would be taxed at twenty percent. *Id.* Thus, the taxpayer's tax liability would be $11,000. *Id.* In the example, the taxpayer's marginal tax rate would be 20%; this is her highest tax rate. *Id.* The taxpayer's average tax rate would be 13.75%. *Id.*

30. Michael Gideon, *Do Individuals Perceive Income Tax Rates Correctly?*, 45 PUB. FIN. REV. 97, 100 (2017).

progressivity and the amount of differentiation across levels and types of income embedded in the tax code."[31]

The study subjects were then asked to provide their best estimate of their own top marginal tax rate and average tax rate.[32] A taxpayer's marginal tax rate is always greater than their average tax rate because the average tax rate incorporates not only the marginal rate but also all the lower tax rates that apply as the taxpayer's income moves up the brackets.[33] Only about 22% of respondents reported a marginal tax rate higher than their reported average tax rate, and many reported that their average tax rate and marginal tax rates were identical.[34] These responses suggest significant confusion about the relationship between marginal and average tax rates.[35] Study subjects also tended to overestimate their average tax rates.[36]

3. Confusion About the Role of Taxes in the Economy

Taxpayers also seem to overestimate the relative role of taxes in the economy and the importance of income taxes relative to other taxes. Analyzing survey data from 2003, for example, Alan Blinder and Alan Krueger found evidence that U.S. taxpayers "substantial[ly] overestimate" the share of

31. *Id.* at 111. The mean estimate for wages was 27.4% while the actual top marginal rate at the time was 35%; the mean estimate for dividends was 20% while the dividend rate was 15%. *Id.* at 101.

32. *Id.* at 113. The survey included an explanation of what "marginal tax rate" means. It framed the average tax rate question by simply asking respondents what percentage of their overall household income they paid in taxes. *See id.* app. at 113.

33. *See Average Tax Rate*, *supra* note 29.

34. Gideon, *supra* note 30, at 105.

35. *Id.* at 107.

36. *Id.* at 111. The mean estimates of marginal tax rates were fairly accurate, but this was a result of low-income subjects overestimating their marginal rates and higher-income subjects underestimating them. *Id.* This study is consistent with a separate study conducted by Charles Ballard and Sanjay Gupta in which they surveyed a representative sample of Michigan adults. Charles L. Ballard & Sanjay Gupta, *Perceptions and Realities of Average Tax Rates in the Federal Income Tax: Evidence from Michigan*, 71 NAT'L TAX J. 263 (2018). Their results indicate that an overwhelming majority of respondents (84.9%) overstate their average tax rate, and that the average overstatement is quite large—about 83%. *Id.* at 264.

taxes paid by individuals.[37] Moreover, though the vast majority of workers pay more in payroll taxes than in income taxes (83% at the time of the survey), Blinder and Krueger found that most people believed the opposite was true.[38]

Blinder and Krueger's findings are consistent with other research on U.S. taxpayer attitudes. Vanessa Williamson's research explores attitudes toward taxation through detailed surveys and in-depth interviews about taxation.[39] She suggests that taxpayers tend to overemphasize income taxes to the exclusion of other tax payments.[40] As she describes her findings, "The federal income tax is the only tax that clearly qualifies one for 'taxpayer' status; those who pay other kinds of taxes are quick to downgrade their status to quasi-taxpayer or deny being a taxpayer at all, even when their taxes impose a sizable financial cost."[41] Taxpayers focus more on income taxation than the economic burden of taxes generally, likely contributing to the overestimation of the income tax burden as compared to the payroll tax burden in Krueger's research. These frames of what counts as "taxation" may shape taxpayers' understanding of who bears the fiscal costs of government.

Moreover, this confusion can lead taxpayers to "make suboptimal decisions regarding labor supply, saving, [and] investment,"[42] as taxpayers misunderstand the tax consequences of their economic choices. In their surveys of taxpayers, Elizabeth Lyon and J.R. Catlin discovered "widespread erroneous beliefs . . . , [including] that overtime pay is always taxed at a higher rate than regular pay" and "that a pay raise could mean lower overall pay due to a higher tax bracket."[43] Such beliefs are so widespread that they

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37. *See* Alan S. Blinder & Alan B. Krueger, *What Does the Public Know About Economic Policy, And How Does It Know It?* 17 (Nat'l Bureau of Econ. Rsch., Working Paper No. 10787, 2004), https://perma.cc/GW9X-EYGE.

38. *See id.*

39. *See generally* Vanessa S. Williamson, READ MY LIPS: WHY AMERICANS ARE PROUD TO PAY TAXES (2017).

40. *Id.* at 51.

41. *Id.*

42. Ballard & Gupta, *supra* note 36, at 263.

43. Elizabeth Lyon & J.R. Catlin, *Consumer Misconceptions About Tax Laws: Results from a Survey in the United States*, 43 J. CONSUMER POL'Y 808, 808 (2020).

occasionally get repeated by otherwise reputable mainstream media. Lyon and Catlin cite one example in which CNN suggested that "getting a pay raise could mean less take-home pay due to higher tax brackets."[44] As we will see in Subpart B, these misperceptions about the rate structure have significant implications for taxpayers' policy preferences.

4. Confusion About Tax Deductions

Survey data suggests that taxpayers also have significant misunderstandings about whether the tax code allows expenses to be deducted and about the value of those deductions. Historically, most taxpayers—about 70%—have taken the standard deduction.[45] Because many of the most well-known personal tax deductions—including the charitable deduction, the deduction for state and local taxes, and the home mortgage interest deduction—are itemized deductions, taxpayers do not deduct these expenses.[46] Studies suggest, however, that many taxpayers do not understand the consequences of the choice between itemizing and taking the standard deduction.

In their survey of taxpayers, Jacob Goldin and Yair Listokin found that 46% of itemizers failed to understand that charitable giving reduced their tax liability and that taxpayers who did understand the tax benefit of charitable giving still underestimated the magnitude of the benefit.[47] At the same time, 11% of taxpayers taking the standard deduction believed that their charitable donations reduced their tax liability.[48] Lyon and Caitlin found similar confusion about how the charitable deduction impacted tax liability in a 2017 survey.[49]

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44. *Id.* at 810.

45. *See* BRIEFING BOOK, *supra* note 13, at 159. Today, that number is even larger (closer to 90%) because the Tax Cuts & Jobs Act substantially increased the standard deduction. *Id.*

46. *See id.*

47. Jacob Goldin & Yair Listokin, *Tax Expenditure Salience*, 16 AM. L. & ECON. REV. 144, 144 (2014).

48. *Id.* at 157.

49. *See* Lyon & Caitlin, *supra* note 43, at 809. Such confusion is not surprising. As Lilian Faulhaber observes, "[T]he information that is most prominent about charitable donations is that they are, in the words of many of the organizations that receive them, 'fully tax-deductible.'" *See* Lilian V.

Goldin and Listokin's study suggests similar taxpayer confusion about the home mortgage interest deduction, with eligible taxpayers underestimating the value of the benefit and some ineligible taxpayers believing they benefited from the deduction.[50] Their survey was conducted in 2011 and there is reason to believe such taxpayer confusion has only increased since then.[51] The Tax Cuts and Jobs Act of 2017[52] both doubled the size of the standard deduction and imposed new limits on the state and local tax deduction.[53] As a result, over 87% of taxpayers took the standard deduction in 2018.[54] Given that nonprofits continue to tout the benefits of tax deductibility despite that fact that fewer people itemize, the problem may have worsened.[55]

B. *The Political Implications of Tax Misperceptions*

Subpart A surveyed broad empirical support for the claim that many taxpayers misperceive the tax system and, at times, respond to taxes irrationally. But the problem of taxpayers' misperceptions is not limited to the economic sphere. Confusion about taxes also impacts voter preferences and those preferences fuel support for policies inconsistent with

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Faulhaber, *The Hidden Limits of the Charitable Deduction: An Introduction to Hypersalience*, 92 B.U. L. REV. 1307, 1320 (2012).

50. *See* Goldin & Listokin, *supra* note 47, at 159.

51. *But see* Eric S. Smith, *Exploiting the Charitable Contribution Deduction's Hypersalience*, 2020 UTAH L. REV. 419, 422–24, nn.26 & 32 (noting that the media attention given to the impact of the TCJA on charitable giving might have increased the salience of the charitable deduction).

52. Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (codified as amended in scattered sections of 26 U.S.C.).

53. *See* BRIEFING BOOK, *supra* note 13, at 147.

54. *See SOI Tax Stats—Tax Stats-at-a-Glance*, IRS, https://perma.cc/ANJ5-NP35 (last updated May 16, 2022).

55. This survey data suggests that for many taxpayers, deductions are "hypersalient." As Lilian Faulhaber explains, hypersalience "occurs when a tax provision is fully—or almost fully—salient, but the limits restricting that provision's application are hidden, or less salient." Faulhaber, *supra* note 49, at 1309. As a result, "taxpayers inaccurately underestimate their tax burden and thus possibly over-distort their behavior to take greater advantage of a tax provision that does not actually provide the benefit they believe it provides." *Id.*

taxpayers' self-understanding of their own interests.[56] For example, taxpayers who favor more progressivity and redistribution through the tax system may mistakenly support a regressive proposal thinking it will achieve more progressivity.[57] And when tax policy is subject to ballot initiatives—as it often is at the state level—public opinion can be directly decisive.[58]

Biases and misperceptions about taxes also allow politicians to enact non-salient or "hidden" policies without opposition because people simply do not notice them.[59] Commentators have suggested this is exactly what has happened with steady, non-salient increases to payroll taxes over time during the past several decades.[60] Further, savvy politicians and interest groups can use documented cognitive errors and misperceptions to frame tax policy choices in ways that make them more appealing, even when those policies are contrary to voters' other expressed preferences.[61]

In this Subpart, we explore some of the evidence that taxpayer confusion shapes policy preferences and suggest how this opens the doors to misinformation shaping political and policy debates.

1. Tax Aversion and the "No New Taxes" Bias

Research about tax aversion suggests that taxpayers' policy preferences can be shaped simply by framing additional government revenue sources as a "new tax."[62] Professors

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56. *See* McCaffery & Baron, *supra* note 15, at 127.

57. *See id.* at 124–26.

58. *See* Richard Barton & Spencer Piston, *Undeserving Rich or Untrustworthy Government? How Elite Rhetoric Erodes Support for Soaking the Rich*, *in* POLITICS, GROUPS, AND IDENTITIES 1, 1–25 (2021).

59. *See* McCaffery & Baron, *supra* note 15, at 127 ("We have also found that subjects will not think ahead, to consider who (including themselves!) might ultimately pay the hidden tax. Thus hidden taxes will flourish.").

60. *See, e.g.*, Linda Sugin, *Payroll Taxes, Mythology, and Fairness*, 51 HARV. J. LEG. 113, 118–25 (2014).

61. *See* McCaffery & Baron, *supra* note 15, at 118–19; Deborah Schenk, *Exploiting the Salience Bias in Designing Taxes*, 28 YALE J. REG. 253, 321 (2011).

62. *See id.* at 118 (claiming that their research showed, in short, that "labels mattered").

McCaffery and Baron refer to this as the "no new taxes" bias.[63] In short, people not only dislike taxes but they particularly don't like the idea of *new* taxes.

In their research, McCaffery and Baron found that study subjects were supportive of paying for government services with something labeled as a "tax" when they were already accustomed to paying taxes for those services.[64] Examples of such services include "fire, education, and social security."[65] But subjects did not support taxes—and preferred "fees"—to pay for services that they were not accustomed to paying for with taxes, such as "phone services and theft insurance."[66] McCaffery and Baron concluded that "subjects seem to accept 'taxes' as compared to 'user fees' for items already being paid for by taxes, but to prefer user fees to taxes where there were presently no taxes in place."[67] Again, the economics of "taxes" versus "fees" in these studies are identical; only the label is different. Calling something a tax makes it less attractive to people, particularly if it is a new tax.

A recent study exploring public opinion on a real tax policy proposal offers a compelling illustration of the "no new taxes" bias.[68] In 2010, Washington State proposed a ballot initiative that would introduce a new state income tax designed to target only the wealthiest two percent of households.[69] The proposed tax would have applied to individuals earning over $200,000 per year or families earning over $400,000.[70] Public opinion polls conducted in the spring of 2010 showed strong bipartisan support for the tax, with supporters outnumbering opponents

63. *Id.*

64. *See id.*

65. *Id.*

66. *Id.*

67. *Id.* There are legal distinctions between taxes and fees. *See generally* Erin Scharff, *Green Fees: The Challenge of Pricing Externalities Under State Law*, 97 NEB. L. REV. 168 (2018) (discussing both why the distinction matters under state law and the difficulty under state law of distinguishing between the two). For purposes of this study, however, what changed was the labeling, not the design, of the government-imposed payment.

68. *See generally* Barton & Piston, *supra* note 58.

69. *Id.* at 3. Washington State is one of the few states without a personal income tax. *Id.*

70. *Id.* at 6.

by a 2-to-1 margin.[71] When voters went to the polls in November, however, they rejected the initiative by roughly a 2-to-1 margin.[72]

Political scientists Richard Barton and Spencer Piston's study sought to understand what caused this dramatic reversal. Barton and Piston point to opponents' "successful messaging campaign."[73] The initial polling conducted in the study suggested that Washington voters believed that the rich are "undeserving of their wealth" and should pay more taxes.[74] When voters perceived the proposal as a tax increase on the rich, it had widespread support.

Opponents' subsequent messaging campaign made a different aspect of the initiative more salient: that it would put in place a *new tax*. Washington did not—and, as a result of the failed initiative campaign, still does not—have a personal income tax.[75] Opponent messaging asked voters to consider whether they could trust the government with a new tax.[76] Advertisements stoked fears that this new tax could be expanded to cover lower-income taxpayers.[77] One television commercial featured a woman saying, "The problem is that in two years, Olympia can extend the income tax to everyone—including people like me."[78]

Barton and Piston argue that this campaign persuaded voters that the Washington State government could not be trusted to limit the application of the new income tax to high-income taxpayers.[79] On that basis, they rejected a proposed tax that would not have applied to most of them.[80] This theory is supported by Barton and Piston's empirical study exploring the ways priming subjects to think about their trust in government affected support for taxation.[81] In their

71. *Id.* at 7.
72. *Id.*
73. *Id.*
74. *Id.* at 3.
75. *Id.*
76. *Id.*
77. *Id.* at 8.
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.*

study, subjects who were first asked about distrust in the government were significantly less supportive of a new income tax on the wealthy as compared to subjects who were not first prompted to think about distrust in government.[82] When it comes to new taxes, the authors conclude that a successful anti-tax campaign can "prompt citizens to rely on distrust of government, rather than just attitudes towards the wealthy, as they form opinions on tax policy."[83]

This research suggests that people may be more averse to new taxes than increased rates on existing taxes,[84] a point to which we will return to in Part III below.

2. Confusion About Rates Shapes Distributional Preferences

Taxpayers' confusion about the federal tax rate structure seems to influence preferences for the distribution of income taxes—that is, the distribution of the income tax burden across economic groups.[85] Studies suggest significant confusion about the relationship between tax rates and the relative progressivity of taxes.[86] (As explained in Subpart A, under progressive tax systems, taxpayers with higher income not only face a greater tax liability but also pay taxes at a higher rate.)

In one study, subjects supported higher rates on the highest earners, that is, a more progressive tax structure, when the tax burden was framed in terms of *rates*.[87] When the tax burden was framed in *dollars*, however, subjects preferred much flatter, less progressive taxes.[88] The study authors observed that tax burdens framed in dollar terms create a "progressivity illusion" because even under flat rates, tax

82. *Id.* at 9–14.

83. *Id.* at 16.

84. Intriguingly, David Gamage argues that such new taxes would be more efficient than raising tax rates on existing taxes. *See generally* David Gamage, *The Case for Taxing (All of) Labor Income, Consumption, Capital Income, and Wealth*, 68 TAX L. REV. 355 (2015).

85. *See* McCaffery & Baron, *supra* note 15, at 113.

86. *See id.*

87. *See id.*

88. *See id.* at 113–14.

liability will grow with income.[89] For example, at a flat tax rate of 20%, a person earning $50,000 would pay $10,000 in tax, while a person earning $100,000 would pay $20,000 in tax.[90] Since a flat tax "looks progressive in dollar terms, and subjects respond to this look alone," people who otherwise would support progressivity may support flat tax proposals when the effect of such proposal is described in dollar terms.[91] The authors concluded that "the optics of progressive marginal rates introduce instability into popular perceptions of tax systems," noting that candidates who support progressive taxes should talk in rate terms and supporters of flat taxes should talk in dollar terms.[92]

Confusion over the tax rate structure may explain other seemingly contradictory preferences expressed by taxpayers.[93] For example, a study by economist Joel Slemrod found that taxpayers who view the current tax system as unfairly favoring the rich are more likely to support tax reform proposals like a flat tax and a retail sales tax.[94] This result is surprising because both a flat tax and a sales tax would *reduce* progressivity as compared to the United States's current income tax system.[95] While supporting regressive reform proposals seems inconsistent with voters' beliefs that high-income earners do not pay their fair share of taxes, Slemrod concludes that "a non-trivial amount" of support for flat taxes and consumption taxes stems from mistaken beliefs

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89. *See id.* at 113. For example, under a flat tax of 10%, a person earning $10,000 will pay $1,000 in tax, and a person earning $50,000 will pay $5,000 in tax. A person may see that $5,000 is more than $1,000 and find this an acceptable distribution of the tax burden, although that same person may think a 10% flat rate is unfair. *See id.* at 113–14.

90. *See id.* at 113.

91. *See id.*

92. *See id.* at 114.

93. *See* Joel Slemrod, *The Role of Misconceptions in Support for Regressive Tax Reform,* 59 NAT'L TAX J. 57, 61–63 (2006).

94. *See id.* at 60 ("[T]he probability of supporting a switch to a flat-rate tax is 19.6 percent higher if one thinks the current system is unfair . . . ."). Slemrod suggests "the sense of unfairness about the current system has two distinct sources: the belief that taxes are generally too high, and the belief that high-income people are not paying their fair share of the overall tax burden." *Id.* at 63.

95. *See id.* at 63 n.10.

that such changes would increase the progressivity of the U.S. tax system.[96] Most respondents thought high-income people would pay the same amount of tax or more under the reforms[97] and only a minority of respondents thought high-income people would pay *less* tax under those proposals.[98]

The study results indicate that it is not just misperceptions about the distribution of the tax burden under reform proposals that drives support for reform but misperceptions about the level of progressivity of the current income tax.[99] Indeed, over half of the respondents indicated that they believed low- and middle-income people are subject to a *higher* average tax rate than wealthier people, a belief that is at odds with the progressive income tax rate structure.[100] Slemrod argues that widespread media coverage of tax evasion by the wealthy and reports that they are "getting away with murder" fuels this misperception.[101] Thus, simplification proposals like the retail sales tax or the flat tax become attractive because they are perceived as reducing the unfair tax gamesmanship of the wealthy, even though these reforms reduce progressivity.[102]

In sum, many taxpayers seem to support regressive policy changes because they misunderstand the distributional consequences of the policies. This can be true even when the regressivity of the proposed change would economically harm taxpayers.

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96. *See id.* at 57.

97. *See id.* at 64.

98. *See id.* (finding that 35% of respondents thought high-income people would pay less under a flat-rate tax, and 26% thought high-income people would pay less under a sales tax).

99. *See id.* at 73.

100. *See id.* at 64 (noting that 51% of respondents thought that middle-income families pay a higher percentage of their income in tax than high-income families under the current law). However, other factors besides rates may influence the overall progressivity of the tax system, such as the non-taxation of unrealized gains, the level of other tax avoidance and/or of tax evasion by high-income people, as well as state and local taxes imposed on low-income people. *See id.* at 71. So, it is not clear how much people misperceive the current progressivity of the income tax in the United States. However, it is clear that the move to a retail sales tax or flat rate would result in less, not more, progressivity. *See id.* at 57.

101. *See id.* at 71.

102. *See id.*

3. Tax Salience and Tax Support

Scholars have also documented a "hidden tax bias," that is, a preference for non-salient taxes.[103] Examples include excise taxes on things like cigarettes that are embedded into prices or payroll taxes that are withheld from paychecks.[104] Behavioral science research supports the idea that these taxes are less painful and therefore politically more popular, or at least more politically acceptable, because taxpayers do not feel a psychological loss in wealth when taxes are collected in non-salient ways.[105]

For example, economists Marika Cabral and Caroline Hoxby suggest that property taxes are lower and property tax rate limits are more common in jurisdictions where the property tax is more salient.[106] Their research exploits regional variation in the use of tax escrow, that is, property owners relying on their mortgage companies to pay their property taxes on their behalf.[107] Such tax escrow arrangements make property taxes less salient to taxpayers than when the property owners must write their own property tax checks twice a year.[108] Cabral and Hoxby's research suggests that how much voters notice a particular tax influences their preferences, which in turn, may shape tax law.[109]

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103. *See* Marika Cabral & Carolina Hoxby, *The Hated Property Tax: Salience, Tax Rates, and Tax Revolts* 2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 18514, 2012) (discussing the "fiscal illusion" that non-salient taxes allow governments to collect more revenue than voters would prefer).

104. *See* Edward J. McCaffery, *Cognitive Theory and Tax*, 41 UCLA L. REV. 1861, 1875–76 (1994) (mentioning payroll taxes and the imbedded taxes in cigarettes, alcohol, and gasoline sales as examples of hidden or partially-hidden taxes).

105. *See* McCaffery & Baron, *supra* note 15, at 1762 (noting the impact of behavioral economics literature on the understanding of the ways in which people view non-salient taxes). For example, "the endowment effect predict[s] that subjects will prefer such hidden taxes to direct levies. Subjects will not feel as if they are 'losing' wealth because they never felt that they were entitled to it in the first place." *Id.* (citations omitted).

106. *See* Cabral & Hoxby, *supra* note 103, at 20–27.

107. *See id.* at 1.

108. *See id.* (finding that homeowners whose property taxes are collected through escrow report their tax liability less accurately than those who pay their property taxes directly).

109. *See id.* at 1–2; *see also generally* Andrew T. Hayashi, *The Legal Salience of Taxation*, 81 UNIV. CHI. L. REV. 1443 (2014) (finding that the

Commentators have debated the merits of increasing the political salience of taxation.[110] Milton Friedman famously excoriated the idea of a U.S. value-added tax by noting that its low salience was both a virtue and a vice: "[I]t makes the tax appear invisible, and thus it's always tempting to raise it."[111] Some scholars argue, however, that without some baseline measurement of "accurate" salience, we lack a clear articulation of why more salient taxation would be desirable.[112] For our purposes, we need not weigh in on this debate. It is enough to note that the literature suggests that the amount of attention voters pay to a particular tax can affect opposition to such taxes.

C. *Misperceptions Shaped by Advocacy: The Case of the Estate Tax*

As the previous Subparts demonstrate, taxpayers are confused about the tax law and their understanding of taxes is shaped by cognitive bias. These biases and misunderstandings, in turn, shape voters' tax policy preferences.[113] Our discussion of taxpayer bias and confusion, of course, opens the question of what shapes these misperceptions. Taxpayers do not, after all, develop their own opinions about tax policy in a vacuum. Rather, as the successful messaging campaign against Washington State's income tax initiative demonstrates, such preferences can be shaped.

In this Subpart, we describe another dramatic example of the ways advocacy has shaped voter preferences through framing and manipulating information. In their book, *Death by a Thousand Cut*s, Michael Graetz and Ian Shapiro offer a

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salience of property taxes influences whether taxpayers appeal their assessments).

110. Milton Friedman, Sr. Fellow, Hoover Inst., Testimony Before Meeting of the President's Advisory Panel on Federal Tax Reform at the Fort Mason Center in San Francisco, Cal. (Mar. 31, 2005), https://perma.cc/8KQV-KXFM.

111. *Id.*

112. *See generally* David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19 (2011); Schenk, *supra* note 61.

113. *See generally, e.g.*, Ballard & Gupta, *supra* note 36.

persuasive account of one of the more surprising turns in U.S. public opinion: that of the estate tax.[114]

In theory, one might think the estate tax would have significant public support and that, conversely, repealing the estate tax would be unpopular.[115] The tax has been—and remains—the most progressive source of federal revenue[116] and only affects a handful of the wealthiest households.[117] Further, although the estate tax has never raised a substantial portion of the total federal budget, it has historically made a meaningful contribution.[118] Thus, as of the mid-1990s, "orthodox wisdom was that any attempt to repeal the estate tax would be a debacle, an apparent move by shady politicians to do a favor for their rich friends, at the expense of ordinary Americans."[119]

However, less than a decade later, the estate tax was repealed in legislation that was almost universally supported by congressional Republicans and supported by moderate congressional Democrats as well.[120] What changed? A cohort of business groups and wealthy families funded a concerted effort both to shape popular opinion about the estate tax and congressional understanding of this popular opinion.[121]

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114. *See* GRAETZ & SHAPIRO, *supra* note 5, at 3–11.

115. *See id.* at 3–5.

116. *See id.* at 3. *See generally* JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN'S GUIDE TO THE DEBATE OVER TAXES (5th ed. 2017).

117. *See* GRAETZ & SHAPIRO, *supra* note 5, at 6 ("In 1999, just 2.3 percent of all estates were taxed by the federal government . . . .").

118. *See id.* ("The tax raised $24.4 billion in 1999. The revenue raised by the estate tax would have funded 'nearly one-half of the spending in 2004 of the Departments of Homeland Security or Education.'").

119. MAYLING BIRNEY ET AL., *The Political Uses of Public Opinion*: *Lessons from the Estate Tax Repeal*, *in* DIVIDE AND DEAL: THE POLITICS OF DISTRIBUTION IN DEMOCRACIES 298, 315 (Ian Shapiro et al. eds., 2008).

120. *See* GRAETZ & SHAPIRO, *supra* note 5, at 184 (discussing the vote in the House on 2001 cuts); *id.* at 192–93 (discussing the vote in the Senate on 2001 cuts); *id.* at 202 (discussing the vote on final legislation in both House and Senate). The repeal turned out to be temporary, as a later Congress retroactively reversed the 2001 legislation. *See* Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296, § 301(a).

121. *See* GRAETZ & SHAPIRO, *supra* note 5, at 239–52 (describing the ways money gave repeal advocates an advantage in messaging and research).

While estate tax repeal garnered significant support in standalone polls, it was never a top priority for most voters, which, again, is unsurprising.[122] When presented with policy tradeoffs, voters wanted to maintain the estate tax rather than forgo middle-class tax cuts that would benefit them directly.[123] They also preferred public sector spending programs—like a prescription drug benefit for Medicare—to estate tax repeal.[124]

But while supporters of the estate tax presumed its low salience to voters would doom repeal efforts, advocates of repeal carefully framed the issue for voters in serial opinion polling.[125] When testing messages, they found that opposition to the estate tax increased when advocates presented the estate tax as an unfair, double tax burden.[126] Voters did not like the idea of even wealthy taxpayers paying tax twice—once when income is earned and another time at death.[127] Of course, various provisions of the income tax code make it likely that much of the income of the wealthiest of taxpayers escapes income taxation all together.[128]

In addition, repeal advocates engaged in a successful media outreach campaign to generate stories about the burden the estate tax created for small business owners and family farms.[129] In truth, the estate tax did not create much of a burden for either group. *New York Times* reporter David Cay Johnston tried to track down a single example of a family forced to sell their family farm because of the estate tax burden and could not.[130] But, as Frank Luntz, one of the Republican strategists behind estate tax repeal, famously observed, "A

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122. *See* BIRNEY ET AL., *supra* note 119, at 315 (noting that the repeal of the estate tax was a "fringe issue of the extreme right" as of the early 1990s).

123. *See* GRAETZ & SHAPIRO, *supra* note 5, at 254; *see also* BIRNEY ET AL., *supra* note 119, at 308.

124. *See* GRAETZ & SHAPIRO, *supra* note 5, at 254.

125. BIRNEY ET AL., *supra* note 119, at 299.

126. *See* GRAETZ & SHAPIRO, *supra* note 5, at 81.

127. *See id.* at 81–84.

128. *See* I.R.C. § 1014.

129. *See* GRAETZ & SHAPIRO, *supra* note 5, at 81–84.

130. *See id.* at 126 ("As one Senate Democratic staffer put it, '[t]here is a lot of ignorance about this, but ignorance is something that you deal with in politics.'" (alteration in original)).

compelling story, even if factually inaccurate, can be more emotionally compelling than a dry recitation of the truth."[131]

Opponents also tried to persuade traditionally Democratic-leaning interest groups that estate tax repeal was beneficial to them.[132] Because federal law at the time did not recognize same-sex marriages, those in same-sex partnerships did not benefit from the generous marital exemption provided by the estate tax,[133] and thus opponents were able to produce public opinion polling suggesting a significant majority of the gay and lesbian community favored estate tax repeal.[134] Similarly, opponents touted support from a business group representing "minority business owners."[135] This group argued that the estate tax was an unfair burden to place on minority-owned businesses given the difficulties they had accessing capital and other burdens.[136]

Through these efforts, opponents of the estate tax were able to shape popular opinion about the tax and undermine its political support. Advocates of estate tax repeal created a new narrative about the estate tax that highlighted the burden it allegedly imposed on sympathetic family farmers and small business owners.[137] This narrative was deceptive—if not outright false[138]—but these stories changed voter perceptions of the distributive effect of the tax, which increased support for repeal as the estate tax shifted from a reasonably popular tax on the very wealthy to an unpopular tax imposed upon the death of a hardworking and thrifty small business owner.[139]

131. *Id.* at 81 (citing Memorandum to Bush White House from Frank Luntz, *The Environment: A Cleaner, Safer, Healthier America*, LUNTZ RSCH. COS. 132 (2002)).

132. *See id.* at 62–73.

133. It is perhaps not coincidental that the Federal Defense of Marriage Act (DOMA) was struck down in the context of an estate tax challenge brought by the surviving spouse of a same-sex couple who had been legally married in Canada but whose marriage was unrecognized by federal law under DOMA. *See generally* United States v. Windsor, 570 U.S. 744 (2013).

134. *See* GRAETZ & SHAPIRO, *supra* note 5, at 72–73.

135. *Id.* at 66–72.

136. *See id.*

137. *See id* at 255.

138. *See id.* at 71.

139. *See id.* at 73 ("A veritable rainbow coalition of minority groups was now actively urging repeal.").

This messaging campaign convinced voters that the estate tax was unfair and convinced small business owners they would face the tax, even when they were not likely to do so.[140]

The story of a "death by a thousand cuts" is a story of the ways a motivated interest group was able to chip away, over time, at the dominant political consensus about estate tax repeal.[141] This effort, however, was years in the making.[142] Fake and false tax news offers the opportunity to move public opinion much more quickly.

II. THE RISE OF SOCIAL MEDIA AND "FAKE NEWS"

In Part I, we discussed the public misunderstandings of tax policy and the ways such misunderstandings influence economic decision-making and policy preferences. We also described two messaging campaigns that eroded support for progressive tax proposals: the Washington State ballot initiative and the years-long saga of the estate tax. In this Part, we argue that new trends on social media involving fake news have the potential to make voters even more susceptible to confusion and bias. In Subpart A, we define fake news and describe its recent rise. Subpart B addresses the psychology of fake news, discussing both why fake news is so widely shared and how it influences opinion. In Subpart C, we discuss the potential implications of these studies for social media coverage of tax policy.

A. *Background on Fake News*

In one sense, fake news has existed for as long as the popular press. In the mid-nineteenth century, Edgar Allen Poe published several hoax news stories that only later were identified as false, including an account of a man who crossed the Atlantic by hot air balloon in three days.[143] Tabloid

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140. *See id.* at 122–26.

141. *See id.* at 3.

142. *See id.* at 4–6.

143. *See* JOANNA M. BURKHARDT, COMBATING FAKE NEWS IN THE DIGITAL AGE 6 (2017).

magazines began cropping up in the early twentieth century,[144] and Orson Welles famously (and perhaps accidentally) convinced listeners they were experiencing an alien invasion in 1938.[145] Websites with hoax news stories appeared early in the Internet Era.[146]

But scholars have confirmed what many of us feel instinctively: a meaningful shift in the fake news landscape occurred around the time of the 2016 presidential election.[147] Social media platforms became a dominant news source, replacing rather than supplementing traditional news media for many readers; at the same time, platforms experienced a rapid increase in fake news stories published and shared.[148]

1. Defining Fake News

Before proceeding further, a definition of fake news is necessary. We follow other scholars studying fake news and define it as content that is "intentionally and verifiably false, and could mislead readers."[149] This definition excludes stories that (i) contain honest reporting mistakes, (ii) are clear satire unlikely to be misunderstood as true by readers, (iii) are quoted verbal statements from politicians or other public figures, and (iv) are ambiguous stories that may be misleading but are not demonstrably false.[150] For example, we would consider a news story reporting that President Joe Biden

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144. MARK ADREJEVIC ET AL., THE TABLOID CULTURE READER 8 (Anita Biressi & Heather Nunn eds., 2008). "Scandal sheets" appeared in the United Kingdom as early as the late 1700s, but the popular tabloid style journalism we know today took off in the 1930s with the founding of the *Daily Mail* and the *Daily Mirror*. *Id.* In the same decade, American journalists launched similar tabloid journals but included photos and illustrations, leading to the evolution of the tabloid "magazine." *Id.*

145. *See* BURKHARDT, *supra* note 143, at 6.

146. *See id.* at 7 (specifying that although some of these hoaxes were meant as satire, others were meant to mislead or intentionally spread biased or fake news); Gordon Pennycook & David G. Rand, *Who Falls for Fake News? The Roles of Bullshit Receptivity, Overclaiming, Familiarity, and Analytic Thinking*, 88 J. PERSONALITY 185, 185 (2020).

147. *See* Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31 J. OF ECON. PERSPS. 211, 211, 212–13 (2017).

148. *See id.* at 212.

149. *Id.* at 213.

150. *See id.* at 214.

raised the capital gains rate to 45% to be fake news (clearly and demonstrably false but not obviously satire). But we would *not* consider a story to be fake news if it made overly optimistic predictions about how much economic growth would result from a tax rate cut, as predictions about the future can never be demonstrably false, even if such predictions run contrary to available evidence.

Because this definition of fake news requires scholars to know the motives of fake news authors and publishers, scholars often identify fake news by reference to the source rather than the content. One frequently-cited definition suggests fake news is "fabricated information that mimics news media content in form but not in organizational process or intent. Fake-news outlets, in turn, lack the news media's editorial norms and processes for ensuring the accuracy and credibility of information."[151] In other words, the easiest way to separate fake news from real news is to look at the source and determine if it employs the same journalistic norms and processes as traditional media outlets. Generally, scholars who have conducted empirical studies of fake news create datasets by compiling lists of known fake news websites that lack these journalistic norms and processes, or by relying on third-party websites specifically dedicated to compiling and debunking fake news stories, such as Snopes, FactCheck.Org, and PolitiFact.[152] We use the latter approach in this Article to

151. David M. J. Lazer et al., *The Science of Fake News*, SCIENCE, Mar. 9, 2018, at 1094, 1094, https://perma.cc/F28H-2SCY (PDF); *see also* Pennycook & Rand, *supra* note 146, at 185–86 ("[H]ere we follow Lazer et al. . . . ."); Nir Grinberg et al., *Fake News on Twitter During the 2016 U.S. Presidential Election*, SCIENCE, Jan. 25, 2019, at 363, 374, https://perma.cc/F8P5-594M (PDF) ("We follow Lazer et al. . . . .").

152. *See, e.g.*, Hunt Allcott et al., *Trends in the Diffusion of Misinformation on Social Media*, RSCH. & POL., Apr. 2019, at 1, 2–3, https://perma.cc/8TMK-JRHX (PDF) (compiling a dataset of fake news stories using FactCheck.Org, Snopes, and previously constructed lists of fake news websites); Andrew Guess et al., *Less than You Think: Prevalence and Predictors of Fake News Dissemination on Facebook*, SCI. ADVANCES, Jan. 9, 2019, at 1, 1–2, 6, https://perma.cc/2D8V-VUBA (PDF) (using previously constructed lists of fake news websites to compile dataset); Allcott & Gentzkow, *supra* note 147, at 219–20 (using Snopes, PolitiFact, and previously constructed lists of fake news websites); Grinberg et al., *supra* note 151, at 374 (using "pre-existing lists," FactCheck.Org, and PolitiFact).

compile fake news tax stories, which is discussed more in Part III below.

2. The Recent Rise in Fake News

In the months leading up to the 2016 election of President Trump, social media shifted the dissemination of news as platforms like Facebook and Twitter allowed fake news stories to go "viral," that is, when the same story is shared many times over. Viral fake news is particularly worrisome because many voters get their news on social media.[153] Studies also show that popular fake news stories are more widely shared than popular mainstream news stories and that many people believe fake news stories to be true.[154]

Unlike the newspaper or internet stories of years past, social media allows fake news to be spread quickly through visual "memes"—short infographics that convey salient headlines and that may leave a more lasting impression on viewers than lengthy text, as discussed further below. The aftermath of the 2016 election brought particular attention to fake news because widely circulating misinformation reached many voters and may have influenced their votes. Commentators have made similar observations about the United Kingdom's Brexit vote during the same period.[155]

Scholars suggest several reasons why fake news has become increasingly available and influential. First, the internet dramatically reduces the barriers to publishing; it is far easier and cheaper to disseminate false information than in times past.[156] Information dissemination no longer requires an investment in the physical infrastructure to print and circulate

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153. Research shows that over 60% of adults get their news on social media. *See* Jeffrey Gottfried & Elisa Shearer, *News Use Across Social Media Platforms 2016*, PEW RSCH. CTR. (May 26, 2016), https://perma.cc/VPY3-SY9L.

154. *See* Allcott & Gentzkow, *supra* note 147, at 212 (listing four recent findings relating to fake news in the lead-up to the 2016 election).

155. *See, e.g.*, *id.* ("[A] number of commentators have suggested that Donald Trump would not have been elected president were it not for the influence of fake news . . . ."); Dominic DiFranzo & Kristine Gloria-Garcia, *Filter Bubbles and Fake News*, XRDS: CROSSROADS, Spring 2017, at 32, 32, https://perma.cc/V2F6-S36U (PDF).

156. *See* Allcott & Gentzkow, *supra* note 147, at 214.

content; now, anyone with an internet connection can set up a website and create content. Social media platforms like Facebook and Twitter make it easy and virtually costless to disseminate this false content to the public. As a result, we can and should expect fake new stories to continue to proliferate. Moreover, scholars note that public opinion of the "mainstream media" has grown more negative in recent years and this distrust may make it harder for readers to differentiate between real and fake news.[157]

In changing the public's perception of the estate tax, repeal proponents had to rely on traditional media sources. They sent out press releases on events, placed op-eds in print newspapers, and trained spokespeople who could be interviewed at rallies by television news and by print reporters.[158] To a certain extent, these strategies depended on mainstream media to circulate advocates' messages within existing reporting conventions.[159] In the new world of fake news, such dependence—and the possibility of balanced coverage and fact-checking—seems quaint, a relic of a bygone era.

B. *The Psychology of Fake News*

Widespread scholarly interest in fake news began in the wake of the 2016 presidential race.[160] Increasing concern about the influence of fake news has inspired several empirical studies examining the psychology of fake news.[161] Specifically, researchers have considered why people believe fake news stories, what kinds of stories are most likely to be believed, and what types of interventions might be effective. In the Subparts

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157. *See id.*

158. *See supra* Part I.C.

159. *See supra* Part I.C.

160. *See, e.g.*, Guess et al., *supra* note 152, at 1; Allcott et al., *supra* note 152 ("A substantial number of U.S. adults were exposed to false stories prior to the 2016 election . . . ."); Allcott & Gentzkow, *supra* note 147, at 212.

161. *See, e.g.*, Gordon Pennycook & David G. Rand, *The Psychology of Fake News*, 25 TRENDS IN COGNITIVE SCI. 388, 388–89 (2021), https://perma.cc/YF5D-P8C8 (PDF) [hereinafter Pennycook & Rand, *The Psychology of Fake News*]; David M. Lazer et al., *supra* note 151, at 1094.

below, we briefly survey this literature.[162] Understanding the psychology of fake news illuminates why fake tax news is particularly pernicious and is helpful in thinking about how policymakers might best address public misperceptions of the tax law.

1. Repetition Matters: The Illusory Truth Effect

Psychologists have documented numerous cognitive biases that contribute to our belief in fake news stories. For example, studies of the so-called "illusory truth effect" show that we are more likely to believe that a statement is true the more we hear it repeated over time.[163] Researchers note that even false information, whether verbal or written, becomes credible to a listener when repeated enough times.[164] The illusory truth effect offers a powerful explanation for why fake news headlines and memes, particularly ones that are shared many times on social media platforms, can be so influential.

One study exploring the illusory truth effect on fake news belief found that a single prior exposure to a fake news headline made it more believable.[165] This study found that the effect of repetition was so strong that when a fake news headline was presented a second time to study participants,

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162. *See, e.g.*, Lazer et al., *supra* note 151, at 1095; Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161, at 389–91.

163. *See, e.g.*, Lynn Hasher et al., *Frequency and Conference of Referential Validity*, 16 J. VERBAL LEARNING AND VERBAL BEHAV. 107, 111 (1977) ("The present research has demonstrated that the repetition of a plausible statement increases a person's belief in the . . . validity or truth of that statement."); Alexandrea Johnston et al., *The Impact of the Illusory Truth Effect and Location of Testimony in Juror Deliberations*, 4 INT. J. RISK REC., no. 1, 2021, at 18, 18 ("The illusory truth effect (ITE) is the tendency to believe false information as being accurate after it has been presented repeatedly over time.").

164. *See* Hasher et al., *supra* note 163, at 108.

165. *See* Gordon Pennycook et al., *Prior Exposure Increases Perceived Accuracy of Fake News*, 147 J. EXPERIMENTAL PSYCH. 1865, 1868–70 (2018). In the study, participants were shown a series of both true and false news headline in the format of Facebook posts. *Id.* For the fake headlines, some subjects saw disclaimers that the headline was disputed by fact-checkers, while others did not. *Id.* The participants next took a survey of demographic questions, and then were shown a series of even more news headlines (both true and false), with some of the prior stories repeated. *Id.* In this final phase, subjects were asked to rate the accuracy of the headlines. *Id.*

the fraction of participants rating it as true *doubled* and continued to rise with subsequent exposure.[166] This effect did not depend on whether respondents had remembered the first exposure to the fake story; memory of the first exposure did not need to be explicit for it to impact perceived accuracy upon the second exposure.[167] Further, including explicit warnings that fact-checkers had disputed a story did not diminish the impact of repetition on subjects' belief in fake headlines.[168]

2. Format Matters

Another study of fake news headlines found that pictures make stories more believable.[169] Participants were given a set of true and false headlines formatted to look like a social media post and asked to rate their accuracy.[170] Some subjects saw headlines accompanied by pictures, while others saw only text.[171] Overall, participants were more likely to rate true stories as accurate as compared to false stories.[172] Stories with pictures, however, were more likely to be rated as accurate than those without pictures, for both true and fake news headlines.[173] Thus, the study's authors concluded, "[P]ictures did not make people better able to discern true from false headlines[;]they made all headlines appear more accurate."[174] This finding is particularly relevant in the current fake news environment because so many social media posts are

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166. *See id.* at 1873–75 (providing that prior exposure to fake-news headlines increased the number of participants judging previously seen fake news headlines as accurate from thirty-eight to seventy-two participants).

167. *See id.* at 1875–76.

168. *Id.* at 1875.

169. *See* Thomas J. Smelter & Dustin P. Calvillo, *Pictures and Repeated Exposure Increase Perceived Accuracy of News Headlines*, 34 APPLIED COGNITIVE PSYCH. 1061, 1067–68 (2020) ("[H]eadlines paired with pictures were perceived as more accurate than headlines without.").

170. *See id.* at 1063–64. The headlines were intentionally apolitical in nature, including things like "Bill Gates Uses Poop as Prop to Pitch Toilet of the Future" (true) and "Monster Energy Selling Caffeinated Ham" (false). *Id.*

171. *Id.* at 1062.

172. *Id.* at 1067.

173. *Id.* at 1068.

174. *Id.*

accompanied by some kind of visual, thus headlines circulated in this format may be more believable.[175]

3. Other Factors That Influence the Believability of Fake News (It's Not All Politics!)

Perhaps contrary to popular perception, research also suggests that political preferences are not the primary reason people believe fake news stories to be true.[176] Although people are more likely to believe any story—either true or false—that lines up with their political beliefs, people tend to believe true stories that go against their politics more than they believe false stories that line up with their politics.[177] In other words, "politics does not trump truth."[178]

One recent study sheds light on the role of politics in the belief in fake news.[179] Subjects were presented with fifteen fake news stories, five of which were "Democrat-consistent," five of which were "Republican-consistent," and five of which were deemed neutral.[180] Next, participants were asked to evaluate the accuracy of each story and whether they would share the story on social media.[181] After rating the stories, they were asked to complete a Cognitive Reflection Test ("CRT"),[182] which measures peoples' ability to think deliberatively and override initial gut impulses.[183] Finally, when the other tasks

175. *See id.* at 1062 ("Because of the ubiquitous nature of visual stimuli accompanying assertions on social media and online generally, we were interested in the effect that such visual stimuli (e.g., pictures) might have on evaluations of truth.").

176. *See* Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161, at 389–90.

177. *See id.*

178. *Id.*

179. *See* Gordon Pennycook & David G. Rand, *Lazy, Not Biased: Susceptibility to Partisan Fake News Is Better Explained by Lack of Reasoning Than by Motivated Reasoning*, 188 COGNITION 39, 39 (2019) [hereinafter Pennycook & Rand, *Lazy, Not Biased*].

180. *Id.* at 41.

181. *Id.*

182. *See id.* at 39.

183. For example, a classic problem on the CRT is: "A bat and a ball cost $1.10 in total. The bat costs $1.00 more than the ball. How much does the ball cost?" Most people have the original impulse to answer ten cents,

were complete, subjects were asked about their political ideology.[184]

Unsurprisingly, the subjects who were more reflective thinkers, that is, those who scored higher on the CRT, were better at spotting the fake news stories and rating them as false.[185] There was no connection, however, between a subject's politics and their ability to accurately rate stories as true or false.[186] The high scorers on the CRT rated fake news as inaccurate regardless of whether the story was Democrat-consistent or Republican-consistent.[187] Further, the researchers found that more analytic subjects were also more likely to rate true news stories as accurate, suggesting they did not harbor an overall skepticism towards the media.[188] The results held at all age levels, education levels, and for both male and female subjects.[189] Thus, the study's authors conclude, "[T]he evidence indicates that people fall for fake news because they *fail* to think; not because they think in a motivated or identity-protected way."[190]

Two other factors emerge from the literature as relevant to whether a person believes a fake news story. First, while critical thinking skills are very important to truth discernment, so is prior factual knowledge.[191] Intuitively, when

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although the correct answer is five cents. *See* Shane Frederick, *Cognitive Reflection and Decision Making*, 19 J. ECON. PERSPS. 25, 26–27 (2005).

184. Pennycook & Rand, *Lazy, Not Biased*, *supra* note 179, at 41.

185. *See id.* at 46–47.

186. *See id.* at 47.

187. *See id.*

188. *See id.*

189. *Id.*

190. *Id.* There are a couple of important caveats to the conclusion that politics does not influence fake news consumption patterns. First, the study subjects revealed an overall asymmetry between Republicans and Democrats: subjects who expressed support for Hillary Clinton did better overall at rating the accuracy of stories than did subjects who expressed support for Donald Trump. *Id.* The study authors suggest this asymmetry may explain why "Republican-consistent fake news was apparently more common than Democratic-consistent fake news leading up to the 2016 presidential election." *Id.* Second, as discussed in more detail below, political affiliation has a much stronger effect on one's willingness to *share* a fake news story, regardless of whether one believes it is accurate.

191. *See* Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161, at 392.

people have relevant knowledge—for example, scientific knowledge relevant to a headline about COVID-19—they are better able to discern whether a fake headline is true or false.[192] Additionally, emotions impact people's susceptibility to fake news.[193] For example, a recent study found that people experiencing higher levels of emotion—whether positive or negative—were significantly more likely to rate a fake news headline as accurate.[194]

4. Politics Affect Willingness to Share on Social Media

Although many people can accurately discern whether a news story is false, studies reveal they often are still willing to *share* these false stories on social media, particularly if the stories align with their political beliefs.[195] In one study of social media sharing, participants were shown a group of news headlines, half of which were true, half of which were false; and half of which were consistent with Democratic beliefs, half consistent with Republican beliefs.[196] Some subjects were asked to rate the accuracy of the headlines (the "Accuracy condition"), and others were asked whether they would share the headline on social media (the "Sharing condition").[197]

In the Accuracy condition, true stories were far more likely to be rated as accurate as compared to false stories.[198] In other

192. *See id.* ("[B]asic science knowledge is positively associated with truth discernment for (mis)information about COVID-19."); *see also* Gordon Pennycook et al., *Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention*, 31 PSYCH. SCI. 770, 772–74 (2020) [hereinafter Pennycook et al., *Fighting COVID-19 Misinformation*] (finding subjects who scored higher on a science knowledge quiz were better at discerning true versus false headlines related to COVID-19).

193. *See* Cameron Martel et al., *Reliance on Emotion Promotes Belief in Fake News*, 5 COGNITIVE RSCH. 47, 52 (2020). Emotions were rated on a survey prior to reading the news headlines, and included things like enthusiastic, excited, proud, inspired, interested, scared, nervous, jittery, upset, ashamed, and irritable. *Id.*

194. *Id.*

195. *See* Gordon Pennycook et al., Understanding and Reducing the Spread of Misinformation Online 1 (Nov. 25, 2019) (unpublished manuscript), https://perma.cc/PU7T-TULP.

196. *Id.* at 2.

197. *Id.* at 3.

198. *Id.*

words, people were good at discerning truth, and, consistent with the research studies described previously, politics had little effect on truth discernment.[199] The reverse, however, was true in the Sharing condition—politics mattered a lot.[200] Subjects were only slightly more likely to share true stories than false ones but they were significantly more likely to share a story that aligned with their political beliefs than one that did not.[201]

On a subsequent questionnaire, most subjects indicated that it was very important to them not to share false information on social media.[202] As a result, the study authors posit that people do not share fake news stories to intentionally spread misinformation but, rather, they fail to consider the truthfulness of the content because they are distracted by other factors, such as the "desire to attract and please followers/friends . . . or to engage with emotionally or morally evocative content."[203] The authors found support for this "distraction" account by showing that when subjects were first asked to consider the accuracy of a neutral news headline (thus making them pay more attention to accuracy), they were subsequently less inclined to share fake news headlines.[204] This research on shifting attention to accuracy is discussed further below.

5. Shifting People's Attention to Accuracy Improves Their Sharing Behavior

Several recent studies have demonstrated that when people pay more attention to accuracy, they are less likely to share fake news stories on social media. One such study

199. *Id.*

200. *See id.* at 3.

201. *Id.* For example, 15.7% of Republicans rate as false a headline that read, "Over 500 'Migrant Caravanners' Arrested with Suicide Vests," but 51.1% said they would consider sharing it on social media. *Id.*

202. *See id.* at 5 ("When asked whether it is important to only share content that is accurate on social media, the modal response was 'extremely important.'").

203. *Id.* at 6.

204. *See id.* at 6–7 ("[T]he Treatment roughly doubled the difference in sharing of true versus false headlines (i.e., truth discernment) relative to the Control.").

examined individuals' willingness to share false claims about COVID-19.[205] In the study, participants read a series of true and false headlines about COVID-19 and were asked whether they would share the headlines.[206] Subjects in the treatment condition were given a "pretest," asking them to rate the accuracy of a non-COVID-related headline before they saw the COVID-related stories; subjects in the control condition were not given the pretest.[207] For the participants in the control condition, there was little difference between their willingness to share true news stories and false news stories.[208] But the study showed a significant effect in the treatment condition: subjects who had focused on accuracy beforehand were more likely to share true headlines and less likely to share false headlines about COVID-19 as compared to the controls.[209] The study authors noted that the subtle intervention of merely asking subjects to think about the accuracy of the neutral headline "nearly tripled participants' level of discernment between sharing true and false headlines."[210]

Another study used a similar accuracy intervention in a real-world setting by examining the sharing behavior of over 5,000 Twitter users.[211] The users were identified as those who had recently shared stories from specific fake news websites.[212] The researchers delivered the intervention by sending users a private message and asking them to rate the accuracy of a single headline.[213] The study found that users who rated the accuracy of the headline were "more discerning" in their subsequent twenty-four hours of social media usage, meaning

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205. *See* Pennycook et al., *Fighting COVID-19 Misinformation*, *supra* note 192, at 771–72.

206. *See id.* at 772.

207. *See id.* at 775.

208. *See id.* at 776. The number of headlines participants were willing to share was about 50% on average for both true headlines and false headlines. *Id.*

209. *See id.*

210. *Id.* at 777.

211. *See* Gordon Pennycook et al., *Shifting Attention to Accuracy Can Reduce Misinformation Online*, 592 NATURE 590, 593 (2021) [hereinafter Pennycook et al., *Shifting Attention*].

212. *See id.*

213. *Id.*

the stories they shared were more likely to be true and less likely to be false.[214]

6. Other Interventions: Fact-Checking and Algorithms Have Limited Utility

In response to the proliferation of fake news since 2016, social media companies have attempted to mitigate the sharing of fake news stories on their sites.[215] These efforts have relied on two strategies, each of which has significant limitations. First, social media companies have used automated detection technology and their own algorithms to make false stories less likely to be seen by users.[216] Commentators have noted, however, that the nuances of many false news stories—some of which are debated by even human fact-checkers—make it difficult for computerized fact-checking to detect falsehood.[217] Further, misinformation evolves quickly, making it hard for automated fact-checking systems to stay relevant.[218]

Second, social media companies have labeled certain stories "false," as rated by professional fact-checkers.[219] One obvious limitation of this strategy is the limited capacity to fact-check stories compared to the volume of fake stories circulating. According to experts, "many (if not most) false claims never get fact-checked."[220] Commentators also note that fact-checking is slow and may come too late, after a viral story

214. *See id.* at 593–94.

215. *See generally* Allcott et al., *supra* note 152. *See also* Elizabeth Dwoskin, *How Facebook Is Trying to Stop Its Own Algorithms from Doing Their Job*, WASH. POST (Apr. 10, 2019, 6:04 PM), https://perma.cc/7MJZ-LLU7.

216. *See* Lee Rainie et al., *Mixed Views About Social Media Companies Using Algorithms to Find False Information*, PEW RSCH. CTR. (Mar. 17, 2022), https://perma.cc/TBU5-E239.

217. *See id.*; *see also* Caitlin Bassett, *Will AI Take over Content Moderation*, MIND MATTERS (Jan. 14, 2022), https://perma.cc/UG7P-4KLK ("AI fails to grasp the importance of context, that its system can be biased by the programmers who design it, and that it lacks the ability to comprehend the differences in languages and cultures.").

218. *See* Rainie et al., *supra* note 216.

219. *See* Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161, at 395–96; Lazer et al., *supra* note 151, at 1096.

220. Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161 at 396.

has already spread.[221] Further, evidence as to the efficacy of fact-checking warnings is mixed. While some studies indicate that fact-checking labels help people better discern accuracy and make them less likely to share fake stories, other studies suggest that the effect of labels is minimal and may even backfire.[222] Scholars have also suggested that these warnings may have a harmful "implied truth effect," meaning that people who see labels on some stories might then wrongly assume stories without labels must be true.[223]

C. *Implications for Fake Tax Stories*

To summarize the research surveyed above, the rise of social media as a platform for consuming and sharing fake news increases the influence of fake news on public opinion. When a story is posted on a site like Facebook or Twitter, it can be shared quickly, many times over. The mere repetition of a fake news headline itself—say because it appears in someone's feed multiple times—makes it more believable. Additionally, the format of social media posts, which often include photographs or infographics, also makes the headlines more believable to viewers.

Perhaps surprisingly, one's political affiliation is not the primary driver behind whether a story is believed to be true. Rather, the believability of fake news stories appears to be driven most by how critically one thinks in general and how easily one can assess the story's credibility given their prior factual knowledge. If the story evokes strong emotions, it is more likely to be believable. Further, in deciding whether to share a story on social media, people seem less likely to reflect on the story's accuracy when the story aligns with their political beliefs. When people pause to consider accuracy, they appear to be less willing to share fake stories; however, the design of social media inherently discourages such pauses. Fact-check labels may also help correct misbeliefs and deter sharing of fake stories, although there are obvious limitations

221. *See id.* (highlighting that "warnings are likely to be absent during the claim's period of peak viral spreading").

222. *See id.* at 395–96.

223. *Id.*

to how many stories can be labeled as false before they become viral.

These findings suggest tax is an area that may be especially vulnerable to manipulation of public opinion through fake news. First, and most importantly, tax law is technical, complex, and widely misunderstood. Thus, fake tax news stories may be particularly hard to spot. Even if people demonstrate high critical reasoning skills, knowledge is also important in assessing a story's credibility. When it comes to tax stories, many people may simply lack the factual knowledge or understanding of the tax law to assess accuracy.

Consider, as an example, the following from an (actual) fake tax news story that was broadly circulated on Facebook: "The Democratic party 'eliminated the income tax deduction for Social Security (FICA) withholding.'"[224] Imagine a layperson trying to assess the credibility of this claim. Is there a deduction for Social Security withholding? Has it been repealed?

There has never been such a deduction.[225] Social Security taxes get *withheld* from employees' paychecks but withholding is not a tax deduction for income tax purposes.[226] When calculating an employee's taxable income for purposes of applying income tax rates, no deduction for payroll taxes applies.[227] This distinction between what is *deducted* in

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224. Tom Kertscher, *Two-Pronged Attack on Democrats over Social Security Wrong on Both Counts*, POLITIFACT (Jan. 29, 2020), https://perma.cc/WVV8-XWYC.

225. *See, e.g.*, *Debunking Some Internet Myths,* SOC. SEC. ADMIN., https://perma.cc/8KGU-6VLU ("There [h]as never [been] any provision of law making the Social Security taxes paid by employees deductible for income tax purposes. In fact, the . . . law expressly forbid[s] this idea . . . ." (alteration in original)).

226. Rather, withheld taxes are credited against taxpayers' liability. *See* Julia Kagan, *Withholding Tax Explained: Types and How It's Calculated*, INVESTOPEDIA, https://perma.cc/8F5W-EEVN (last updated Jan. 25, 2022) ("The amount withheld is a credit against the income taxes the employee must pay during the year."); *see, e.g.*, *Understanding Employment Taxes*, IRS, https://perma.cc/SU2G-8HD6.

227. Deductions from gross income to arrive at taxable income include the so-called "above-the-line" deductions listed in I.R.C. § 62, and "below-the-line" deductions listed elsewhere in the Code, none of which include a deduction for payroll taxes withheld by employers. *See* I.R.C. §§ 62–63.

calculating taxable income and what is *withheld* from an employee's paycheck is confusing and nuanced and probably well beyond an average understanding of the tax law. To complicate matters, self-employed people can deduct a portion of their payroll taxes from their business income, but they do not pay such taxes through withholding.[228] In sum, this is a story that covers an area of law few people may understand and promotes outrage with the suggestion that Democrats removed a benefit previously enjoyed by taxpayers. It is not hard to comprehend why the story would be wrongly believed by many.

Not only does tax complexity make it hard for the public to know when fake news stories are false, but it also makes such stories harder to flag, fact check, and label as false when necessary. The many nuances of tax law complexity, such as the withholding-versus-deduction story described above, likely make fake tax news stories harder for the social media company's automated fact-checking to catch. Third-party fact-checking is harder to do as well because tax stories will often need tax law experts to explain why they are false.[229] We view this problem as distinct from the more general issue of how fact-checking should approach gray areas of the law. (As discussed above, we are excluding such stories from our definition of "fake news" for purposes of this Article.) Those stories might also be hard to fact check because it is debatable whether they are clearly false.[230]

Here, we note a different but pernicious type of fake tax story: stories that are clearly and demonstrably false but for which an expert is necessary to explain why. The deduction for Social Security taxes is an example of such a story.[231] The fact that tax stories might take more time and resources to be fact-checked means they are likely to be fact-checked less often or at a slower pace.[232] They may also fail to be flagged by social

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228. *See, e.g.*, *Security Tax/Medicare Tax for Self-Employment*, IRS, https://perma.cc/F94Y-Q4RG.

229. *See generally* Martel et al., *supra* note 193.

230. *See* Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161.

231. *See supra* note 208 and accompanying text.

232. *See e.g.*, Sakari Nieminen & Valtteri Sankari, *Checking PoitiFact's Fact-Checks*, 22 JOURNALISM STUD. 358, 360 (2021) (discussing the process by

media algorithms meant to "down-rank" fake stories[233] and, accordingly, show up in peoples' news feed more often, fueling continued sharing to more users.

Finally, research on "tax aversion" shows that taxes evoke negative emotions in people.[234] Accordingly, people may see a fake news headline suggesting that their taxes are going up or that they are going to lose a deduction and feel particularly angry or negative about it. Given that negative emotional states appear to make people more susceptible to believing fake news stories, fake stories about taxes may be particularly believable.[235]

III. FAKE NEWS ABOUT THE TAX LAW

This Part introduces a unique dataset of fake news tax stories. Subpart A describes our methodology, including how we researched and selected the fifty-six stories in the database and what types of stories we did not include. Subpart B provides a general overview of the trends we observed in the fake tax stories. This Subpart contains a brief description of many (though not all) of the stories in the database. Subpart C takes a deeper dive into three specific stories that, while clearly false, likely reflect genuine confusion about a complicated tax rule. This latter discussion highlights how the tax law's complexity fuels tax misinformation.

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which PolitiFact fact-checks, and how each topic can impact the time and resources required). Since each fact-checker can choose whether or not to review a source, it is not surprising that greater complexity could impact their decision. *Id.*

233. *See supra* note 211 and accompanying text; *see also* Rainie et. al, *supra* note 216 (discussing the use of algorithms to decrease the spread of misinformation on users' feeds); Pennycook & Rand, *The Psychology of Fake News*, *supra* note 161, at 395 ("Content classified as problematic is then down-ranked by the ranking algorithm such that users are less likely to see it.").

234. *See, e.g.*, Fennell & Fennell, *supra* note 17, at 79; McCaffery & Baron, *supra* note 15, at 117; Sussman & Olivola, *supra* note 18, at S91.

235. *See supra* note 193 and accompanying text.

A. *Background on Dataset and Methodology*

For our analysis, we collected a dataset of fifty-six unique fake news "stories."[236] The vast majority of these stories were memes, graphics, or short blocks of text that had been widely circulated on social media sites like Facebook. Others were stories from fake news websites. To source this dataset, we searched fact-check websites for any mention of a fact-checked story with the word "tax." We compiled stories from 2016 to May 1, 2022. The dataset begins with 2016 because our search did not produce results earlier than that year. The earliest story we found was fact-checked in March 2016. This date is consistent with the general trend in fake news discussed in Part B. Most fact-checking websites began posting content debunking fake news stories in 2016.[237] It was relatively common for multiple fact-checking websites to fact-check the same story or meme; when this happened, we treated this as one story, even though our search indicated multiple results.

We limited our search of fake news stories to fact-checking websites for several reasons. First, many fake news websites themselves are inoperable after a short time and can only be found through a third-party source that archived the material. Second, searching fact-checking websites allowed us to rely on third parties' pre-existing methodologies for categorizing stories as true or false. While there are certainly debates about the methodologies adopted by third-party fact-checkers,[238] we viewed the consistent application of this methodology as providing certainty in our categorization of a tax story as false. At the very least, reliance on third-party categorization prohibited our own biases from informing categorization.

Moreover, limiting the dataset in this way ensured that we focused on stories that have been widely circulated on social media and thus have been viewed and shared by many individuals. For example, for a social media post to receive a fact-check article on a site like Snopes or PolitiFact, that post

236. Links to all fifty-six stories are contained in the APPENDIX.

237. *See* Sara Fischer, *Fact-Checking Goes Mainstream in Trump Era*, AXIOS (Oct. 13, 2020), https://perma.cc/4MJF-BXAJ.

238. *See supra* Part II.B.6.

usually has been viewed and shared thousands of times.[239] On the other hand, most stories and tweets are not so widely shared or viewed. In June of 2020, for example, we searched directly on Twitter using several common tax search terms.[240] This search revealed numerous tweets, even when we confined our search to a relatively short period of time (six days) and used somewhat narrow search terms. However, most of the tweets revealed by this search were shared only a handful of times.[241]

At the same time, confining our data to stories on fact-checking websites undoubtedly narrowed the pool of fake news stories in the database. Third-party fact-checkers cannot check every possible story, and these fact-checking websites have prioritized stories circulating on what might be thought of as mainstream social media: YouTube, Facebook, Instagram, Twitter, and TikTok.[242] Sometimes these websites have formal partnerships with such social media platforms and are part of the platform's official response to their role in circulating fake news.[243] Moreover, fact-checkers can only evaluate stories circulating publicly.[244] Reporting, however, suggests that a growing number of social media users have switched to platforms like Parler and Rumble, in part out of the complaints of political bias in more "mainstream" platform's fact-checking

239. For example, a viral post describing a 61% wealth and estate tax, which was rated "false" by PolitiFact, was shared on Facebook over 1,800 times. *See* Tom Kertscher, *A 61% Federal Tax That Would Have Been Rarely Applied Is Not Under Consideration*, POLITIFACT (Oct. 13, 2021), https://perma.cc/HE5F-CYMH [hereinafter Kertscher, *A 61% Federal Tax*].

240. We used the following search terms: "45% capital gains" /s "tax"; "3%" /s "tax" /s ("home" OR "property"); "federal property tax"; "52% tax rate"; "taxing 401k"; "tax deduction for Social Security"; "Biggest tax increase" /s "history"; "Sales tax" /s "Medicare"; "Estate tax" /s "family farms";"65%" /s "estate tax"; Tax" /s "church"s; ("food stamps" OR "welfare") /s ("corporate subsidies" OR "corporate subsidy") /s ("tax" OR "taxes"); "1200" /s "relief" /s "checks" /s "owe."

241. Data on file with the authors.

242. *See infra* note 251 and accompanying text.

243. *See infra* note 274 and accompanying text.

244. *See, e.g.*, *The Principles of the Truth-O-Meter: PolitiFact's Methodology for Independent Fact-Checking*, POLITIFACT, https://perma.cc/DJD9-RKHA (last updated Apr. 18, 2022).

efforts.[245] While our database is not exhaustive, we think lessons can be drawn from this incomplete set of stories, as our methodology still allows us to collect the false tax stories most widely circulating on public-facing websites.[246]

In terms of which fact-check sites we drew from, we reviewed any tax-related fact check from a fact-checking website that is a signatory of the International Fact-Checking Network (IFCN) code of principles.[247] According to IFCN's website, the code of principles is "for organizations that regularly publish nonpartisan reports on the accuracy of statements by public figures, major institutions, and other widely circulated claims of interest to society. It is the result of consultations among fact-checkers worldwide and offers conscientious practitioners principles to aspire to in their everyday work."[248] In short, to be a signatory to the code, websites must verify their adherence to standards that include transparency, nonpartisanship, commitment to accuracy, and willingness to make corrections.[249] Each signatory must undergo an application process and an assessment.[250] Both Google Fact Check and Facebook rely on the signatories to the IFCN code of principles for fact-checking.[251]

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245. *See* Mike Isaac & Kellen Browning, *Fact-Checked on Facebook and Twitter, Conservatives Switch Their Apps,* N.Y. TIMES (Nov. 11, 2020), https://perma.cc/7RJR-24Q7 (last updated Nov. 18, 2020) (describing the growth of platforms like Parler and Rumble after Facebook and Twitter rolled out widespread fact-checking efforts).

246. By excluding from our dataset more conservative-leaning social media platforms, we likely underestimate the amount of public misinformation about tax policy out there, especially among "post-truth" thinkers. However, it is still worth analyzing what is posted on more "mainstream" social media, both because this is an audience that it will be easier to reach with our reform suggestions and may be more willing to learn. Moreover, this data set suggests significant misinformation among even this group.

247. *See About*, INT'L FACT-CHECKING NETWORK, https://perma.cc/8FC9-53EP.

248. *Id.*

249. *See The Commitments of the Code of Principles*, INT'L FACT-CHECKING NETWORK, https://perma.cc/2FQ5-VB48.

250. *See Application Process for the IFCN Code of Principles*, INT'L FACT-CHECKING NETWORK, https://perma.cc/YQ8C-6CJH.

251. *See* Olivia Ma & Brandon Feldman, *How Google and YouTube are Investing in Fact-Checking*, GOOGLE (Nov. 29, 2022), https://perma.cc/JG6N-TTUN ("Today, Google and YouTube are announcing a $13.2 million grant to

We identified fact-check stories from IFCN code signatories by searching the Google Fact Check tool and searching for "tax" among all fact-check sites.[252] The sites that turned up tax stories included in our dataset include: (i) PolitiFact; (ii) Snopes; (iii) FactCheck.org; (iv) Lead Stories; (v) USA TODAY; (vi) AFP fact-checking; and (vii) Check Your Fact.

Once we collected fact checks that included the word "tax," we further refined our dataset. First, we elected to focus only on U.S. federal tax stories, eliminating fake stories involving state or local taxes, as well as foreign country taxes. Although some of the same types of misinformation about state-level taxes appear to circulate, there were far fewer stories in our search. We suspect that state-level tax misinformation is less likely to be fact-checked given the circulation thresholds often required by third-party fact-checkers. We think focusing on misinformation about federal-level taxes makes sense in this first account of the problem.

Second, we eliminated fact-checked stories that were quotes from speeches or interviews given by political figures or quotes from political advertisements. Although fact-checking sites commonly identify misstatements in speeches by politicians, we excluded these from our dataset. In excluding these statements (or misstatements), we do not mean to give politicians a free pass. Public officials have, in our minds, a special duty to be truthful, and their statements can distort policy debates, as we have seen all too clearly in claims about fraud in the 2020 election. However, such misstatements are sometimes unintentional. For example, one fact-checked story involved President Biden misstating the top tax rate as 35% instead of 37%, which was likely an inadvertent error, not intended to deceive the public.[253] This seems especially likely

the International Fact-Checking Network (IFCN) at the nonprofit Poynter Institute to launch a new Global Fact Check Fund."); *How Meta's Third-Party Fact-Checking Program Works*, META (June 1, 2021), https://perma.cc/V284-GDCP ("Meta partners with independent third-party fact-checkers that are certified through the non-partisan International Fact-Checking Network.").

252. To view Google Fact Check tax stories, see *Fact Check Explorer*, GOOGLE, https://perma.cc/BHX2-S58R.

253. *See* D'Angelo Gore et al., *Fact Checking Biden's Town Hall*, FACTCHECK.ORG (Oct. 22, 2021), https://perma.cc/EMP9-WEY9.

since it is so easily verifiable. Moreover, the public likely understands that politicians and political ads may put a positive or negative "spin" on an issue; thus, these statements are less likely to be believed.

Finally, we included only fact-checked stories rated as "false" or "mostly false" by the fact-checking websites. As a result, the database not only excludes stories labeled "true" or "mostly true" but also stories in the middle, labeled "partially true," "misleading," and other similar ratings. Our purpose in making this distinction was to create a clear category of truly fake news that did not touch upon gray areas of interpretation.[254] While some of these partially true stories are clearly misleading, our definition of fake news for this purpose excludes this type of story.

The categorizations themselves, of course, are also subjective. In his book *Deciding What's True*, media scholar Lucas Graves discusses the rise of political fact-checking institutions in U.S. journalism and the methodological and institutional concerns that inform their work.[255] Graves argues that, like traditional journalism, "[p]olitical fact-checking depends on probing the institutional structures that underlie public claims."[256] Thus, to assess truthfulness, these fact-checkers, who by definition are not subject-matter experts, must determine who is the "relative authority" to adjudicate the truthfulness of a claim[257] and such facts may move in response to changing political consensus.[258] In explaining this observation, Lucas notes the changing ways that U.S. media

254. An example of a tax story not included in our dataset is a Snopes fact check titled, "Will Tax Refunds Be Late in 2021?", which was rated "Mixture" by Snopes. Bethania Palma, *Will Tax Refunds Be Late in 2021?*, SNOPES (Jan. 18, 2021), https://perma.cc/8SKJ-ZVNW. Snopes describes their "Mixture" rating as follows: "This rating indicates that a claim has significant elements of both truth and falsity to it such that it could not fairly be described by any other rating." *Id.* The fact check describes the claim as a mixture of true and false because, while it was true that the IRS opened the 2020 filing season two weeks late due to tax law changes related to COVID relief, it was unclear how many taxpayers would actually be impacted by receiving a late refund. *See id.*

255. *See generally* LUCAS GRAVES, DECIDING WHAT'S TRUE: THE RISE OF POLITICAL FACT-CHECKING IN AMERICAN JOURNALISM (2016).

256. *Id.* at 71.

257. *Id.*

258. *See id.*

employed the term "torture."[259] Throughout much of the twentieth century, journalism could refer to waterboarding as torture unthinkingly.[260] But when U.S. officials recategorized waterboarding as "enhanced interrogation techniques," the landscape shifted for journalists.[261] News reports "could only detail the more particular facts [that the claim of torture] was based on: the terms of international anti-torture agreements, historical prosecutions for the crime in U.S. courts, and so on."[262]

Graves uses an example from tax policy to describe how political fact-checkers struggle with questions of the relevant authority.[263] In 2011, The *Washington Post* Fact Checker assigned Senator Harry Reid two "Pinocchios" for claiming that 7,000 millionaires completely avoided federal income taxes.[264] According to the *Post*, that statistic was inaccurate because it was not supported by IRS data or by significant analysis by respected think tanks like the Tax Policy Center.[265] However, Reid's statement was supported by a Tax Policy Center report.[266] The discrepancy is related to the measurement of income.[267] The IRS and the reports cited by the *Post* used adjusted gross income,[268] which both allows for certain deductions against income and does not include gain from appreciated property that has not been sold, often referred to as "unrealized gain."[269] The Tax Policy Center report on which Reid relied used a less restrictive measurement of "cash income."[270] The *Washington Post* labeled Reid's statistic false after determining the relevant authorities, in this case think tanks and government offices, typically measured income using

259. *See id.*
260. *Id.*
261. *Id.* at 72.
262. *Id.*
263. *See id.* at 133–34.
264. *Id.* at 133.
265. *Id.*
266. *Id.*
267. *See id.*
268. *Id.*
269. *See Definition of Adjusted Gross Income*, IRS, https://perma.cc/JVV5-5PF6.
270. GRAVES, *supra* note 255, at 133.

adjusted gross income.[271] In relying on these traditional methodologies in assessing the truthfulness of Reid's claim, the *Post* avoided having to make a difficult, direct judgment call about which methodology better defines income for Reid's claim.

These examples suggest that there will frequently be controversy about the judgments made by independent fact-checkers. For our purposes, however, we think their judgments fairly capture the scope of tax misinformation reaching voters over social media.

B. *Trends in Fake Tax News*

The stories in our dataset cover a range of tax policy and enforcement issues. Many fake news stories are outright fabrications. No, income taxes are not voluntary, as one viral Facebook meme suggested,[272] and no, Vice President Kamala Harris did not propose a federal tax on your home to pay for reparations.[273] But we were struck by the surprising number of claims labeled "false" or "mostly false" that seemed grounded in legitimate confusion about the complexities of tax law and the difficulties of understanding its impact. In this Subpart, we provide a high-level description of the types of fake and false stories that appear in our database. In the next Subpart, we provide in-depth descriptions of three tax stories flagged by fact-checkers as false or mostly false, which illustrate how complex tax rules may help perpetuate fake tax news.

1. Politics

Unsurprisingly, like the broader general categories of false and fake news, politics seems to drive many of the storylines. During election years, there were a number of fake news

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271. *Id.* at 133–34.

272. Jon Greenberg, *Paying Taxes Is Not Voluntary*, POLITIFACT (July 23, 2021), https://perma.cc/H7NU-FP6P.

273. Tom Kertscher, *No Evidence Kamala Harris Backs Tax to Pay for Slavery Reparations*, POLITIFACT (Oct. 7, 2020) [hereinafter Kertscher, *Kamala Harris*], https://perma.cc/QUK7-TR63. This claim seems designed to evoke racial resentment toward the first Black woman elected to the Vice Presidency by tying to the Vice President to a policy promoting reparations for slavery.

stories that mischaracterized or fabricated elements of candidates' tax plans. Our searches picked up multiple stories about Biden's tax plans in the run-up to the 2020 election[274] and several stories about Senator Bernie Sanders's tax plans, as well.[275] These stories typically warned voters that the candidate proposed enacting a new tax or raising taxes. As we will discuss in the next Part, social media is particularly adept at exploiting the "new taxes" bias discussed in Part I.

For example, a Facebook post widely circulated in the weeks leading up to the 2020 election stated, "Biden's Capital

274. *See* Daniel Funke, *No, Joe Biden Doesn't Want to Impose a Federal Tax on Homes*, POLITIFACT (Sept. 8, 2020) [hereinafter Funke, *Joe Biden*], https://perma.cc/83XJ-FMZX (claiming that Biden proposed a 3% federal property tax on homes); David Mikkelson, *Has Biden Proposed Taxing 401(k) Plans?*, SNOPES (Oct. 28, 2020), https://perma.cc/7FK2-HKUA (claiming that "Joe Biden's campaign has announced a planned policy of taxing 401(k) retirement accounts"); Daniel Funke, *Biden's Tax Plan Would Not Impose 40% Capital Gains Tax on Most Home Sales*, POLITIFACT (Oct. 16, 2020), https://perma.cc/5FEL-NDTU [hereinafter Funke, *Biden's Tax Plan*] (claiming that "Biden's Capital Gains Tax means that when you sell your home you'll owe taxes of 40% of your profit! . . . . Let that sink in"); Bill McCarthy, *Facebook Post Wrongly Claims Biden Would Hike Tax Rates for Family Earning $75,000*, POLITIFACT (Aug. 20, 2020), https://perma.cc/9M6A-ZSXJ (claiming that "Biden's tax rate on a family making 75,000 dollars would go from 12% to 25%"); Bill McCarthy, *Another Widespread Facebook Post Spreads False Claims About Joe Biden's Tax Plan*, POLITIFACT (Aug. 26, 2020), https://perma.cc/M6U9-UWNW ("Says Joe Biden and Kamala Harris would raise the federal income tax rate for a person with a bi-weekly gross salary of $3,000 to 39.6%, costing 'nearly half your paycheck.'"); Noah Y. Kim, *Biden's Tax Proposal Isn't Largest Increase in U.S. History*, POLITIFACT (Oct. 8, 2020), https://perma.cc/HW64-5EZQ (claiming that "Joe Biden is proposing a $4 trillion tax increase, the largest in American history").

275. *See* Tom Kertscher, *Not Enough Data to Judge Impact of Sanders Tax Plans on Student-Loan Debtors*, POLITIFACT (Mar. 6, 2020), https://perma.cc/3H3Q-AEJC ("I pay $165 a month on my student loans for the next 13 years to pay them off. With Bernie Sanders' plan, my student loans will be forgiven. I'll only have to pay $450 extra in taxes a month for the next 25 years . . . ."); Aaron Sharockman, *A Second Viral Post Pops Up About Bernie Sanders' Minimum Wage, Tax Plans. It's Just as Wrong*, POLITIFACT (Feb. 29, 2020), https://perma.cc/U68S-RZC8 ("Bernie Logic: Nobody can live on $7 an hour. We must raise the minimum wage to $15 an hour. Also we must raise the tax rate to 52%. $15 an hour * 52% = $7.80. $15 an hour – $7.80 = $7.20. $7.20 an hour!!!"); Daniel Funke, *Viral Post Criticizes Bernie Sanders' 'Math' on Health Care, Taxes. It's Wrong*, POLITIFACT (Feb. 21, 2020), https://perma.cc/CLV7-S2MS ("Bernie Sanders wants free health care for all and was asked how he would pay for it. His answer was raise taxes to 52% on anybody making over $29,000 per year.").

Gains Tax means that when you sell your home you'll owe taxes of 40% of your profit! . . . . Let that sink in."[276] PolitiFact rated the post as "Mostly False" because the tax law excludes most gains on home sales from tax, and Biden's increased capital gains proposal applied only to high-income taxpayers.[277] Another viral Facebook post circulating in early 2020 claimed Bernie Sanders would raise the income tax rate to 52% on those making minimum wage.[278] Again, that post was rated "False" by PolitiFact since Sanders had only proposed a marginal tax rate of 52% on those earning over $10 million.[279] Note that both of these stories reflect a common trend, which is that some small portion of the story is tied to a legitimate fact, which in many cases, the author likely used to intentionally spin-off a fake story. For example, the 52% rate attributed to Sanders came from his actual proposal on taxing millionaires and it's plausible—if not likely—that the post was intentionally created to mislead readers while lending an air of credibility.[280]

While several fake news stories addressed changes allegedly imposed by the 2017 tax reform legislation that was one of the signature pieces of President Trump's policy agenda,[281] no stories related to Trump's tax policy positions

276. Funke, *Biden's Tax Plan*, *supra* note 274.

277. *Id.*; *see also* I.R.C. § 121 (providing for the exclusion of capital gains on sale of personal residence).

278. Sharockman, *supra* note 275.

279. *Id.*

280. *Id.* In the next Subpart, we discuss stories that we believe stem from legitimate confusion about complicated tax provisions. However, we think many stories, like this one, are likely intentionally fabricated. As discussed in the INTRODUCTION, whether a story is intentionally made up ("fake") or results from legitimate confusion on the part of the author ("false"), the impact on the reader is often the same, as well as the end result: tax misinformation is spread.

281. *See* Louis Jacobson, *Social Media Post Misrepresents Analysis of Trump Tax Law*, POLITIFACT (Feb. 5, 2021), https://perma.cc/8F3V-3B3K ("Under the 2017 tax law, 'people who make under $75,000 will have their taxes raised in 2021 and every 2 years after that until 2027.'"); Saranac Hale Spencer, *Meme Spreads Bogus Tax Information*, FACTCHECK.ORG (Feb. 28, 2019), https://perma.cc/6B4L-ML4Q (last updated Mar. 1, 2019) (claiming that certain deductions are ineligible under the Tax Cuts and Jobs Act of 2017); David Emery, *Does the 2017 Tax Reform Bill Eliminate Small Business Deductions*, SNOPES (Dec. 4, 2017), https://perma.cc/A7TG-W5AN ("Under the 2017 tax overhaul legislation currently making its way through

were fact-checked in 2020. Instead, fake news coverage of candidate Trump focused on his compliance with tax law. One story alleged that then-Judge Merrick Garland was looking into Trump's tax evasion,[282] one reported that Trump was legally prohibited from disclosing his tax returns,[283] and one said that Trump's returns showed that he had paid millions in taxes.[284] This continued a trend from the 2016 election, when many of the election-related fake tax news posts focused on Trump's tax returns. Five stories in our dataset related to either efforts to get President Trump to disclose his returns or claims about the amount of taxes he paid.[285]

Fake news stories also proliferated during congressional debates about major legislative initiatives. Three separate fake news stories mischaracterized or fabricated elements of the Build Back Better agenda during the Summer and Fall of 2021, as Congress debated expanded infrastructure funding.[286] These stories echoed others in our dataset in their focus on the

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Congress, all deductions for business-related expenses incurred by small business owners and the self-employed would be eliminated.").

282. *See* Ciara O'Rourke, *No, Merrick Garland Isn't Investigating Donald Trump for Tax Evasion*, POLITIFACT (Sept. 29, 2020), https://perma.cc/34H2-WBNH.

283. *See* Anna Staver, *Fact Check: No Law Prevents Donald Trump from Releasing His Tax Returns*, USA TODAY (Oct. 14, 2020, 4:24 PM), https://perma.cc/XQA2-VMAZ (last updated Oct. 14, 2020, 4:25 PM) (assessing a claim that the law requires Trump *not* to show his tax returns).

284. Monique Curet, *No Evidence of Claims Trump Paid Millions in Taxes in Recent Years*, POLITIFACT (Oct. 7, 2020), https://perma.cc/4XKY-XT2A.

285. *See* Ryan King, *Fact Check: Was Donald Trump Cleared of All Charges in the New York Tax Investigation?*, CHECKYOURFACT (Sept. 13, 2021, 12:58 PM), https://perma.cc/83G3-5UM7. For links to all stories in the dataset, see *infra* APPENDIX.

286. *See* Kertscher, *A 61% Federal Tax, supra* note 239 (claiming that "Under Part 2 Of The Infrastructure Bill, Upon Death The Entire Value Of Your Accumulated Wealth & Estate Will Be Taxed At 61%?"); Tom Kertscher, *Per-Mile Fee Would Be Tested, But No Proof Plan Is Aimed at Making Cars Obsolete*, POLITIFACT (Aug. 12, 2021), https://perma.cc/QES8-T77D [hereinafter Kertscher, *Per-Mile Fee*] (claiming that a new milage tax, "national motor vehicle per mile usage fee," is buried in the infrastructure bill); Louis Jacobson, *Social Media Posts Wrong About "Cow Fart Tax"*, POLITIFACT (Oct. 8, 2021) [hereinafter Jacobson, *"Cow Fart Tax"*], https://perma.cc/UMF5-F9J3 (claiming that the infrastructure bill has a new tax on methane emissions from livestock).

enactment of new taxes.[287] We were surprised at how disconnected the tax news stories labeled "false" or "mostly false" were from policies actually being debated by Congress.

2. New Taxes

Fake news stories related to new taxes were more common than any other type of story in our dataset, representing more than 20% (twelve out of fifty-six stories). By "new" taxes, we refer to stories describing a tax that is separate and apart from the existing income tax as opposed to increasing the rate of an existing tax. Mentions of new taxes in our data include a federal property tax, a national sales tax, a tax on livestock, and a mileage tax.[288] Many of the stories and memes portraying these taxes were circulated thousands of times on social media.

A key theme running through the various stories about new taxes is the idea that the author of the message is trying to warn the reader of a new proposal that they might have otherwise missed, with the new tax being clearly understood as a negative. For example, a widely circulated social media post about a fake livestock tax suggests the tax was buried in proposed legislation and could have been easily overlooked:

> Were you aware the $3.5 Trillion Human Infrastructure package includes an animal agriculture tax of $2,600‼ per head of cattle? $500 for swine!!! People it's time to make some noise!!! This will destroy us all!! No cows no swine no meat!!![289]

287. Funke, *Joe Biden*, *supra* note 274; Dan Evon, *Did Democrats Unveil a Plan for a 42% Sales Tax to Pay for Medicare for All?*, SNOPES (Oct. 30, 2019) [hereinafter Evon, *Did Democrats Unveil a Plan?*], https://perma.cc/Z2MQ-EU6G; Kertscher, *Kamala Harris*, *supra* note 273; *see also* Louis Jacobson, *Debunking (Again) a 14-Year-Old Post on Immigrants in Los Angeles*, POLITIFACT (July 29, 2020), https://perma.cc/N875-W4YU (claiming that "Nancy Pelosi 'wants to put a windfall tax' on retirement fund profits").

288. *See, e.g.*, Funke, *Joe Biden*, *supra* note 274 (federal property tax); Kertscher, *Per-Mile Fee*, *supra* note 286 (mileage tax); Evon, *Did Democrats Unveil a Plan*, *supra* note 287 (national sales tax).

289. Jacobson, *"Cow Fart Tax"*, *supra* note 286.

To be clear, there was no agricultural tax in the new infrastructure bill.[290] This rumor was started by an agricultural industry group that wanted stronger protective language for the agricultural industry in a proposal to tax the energy sector.[291] That language was added, even though it was not clear that it was necessary, but even after additional clarification, social media accounts and lawmakers continue to warn of this nonexistent proposal.[292]

Another viral social media post warned, "Biden slipped up and came out saying he's going to tax your 401k. Are any of you EVEN paying attention?"[293] Snopes rated the proposal as "False," finding only a loose connection with anything Biden has proposed.[294] Leading up to the 2020 election, Biden proposed replacing the current exclusion for retirement account contributions—which benefits high-income taxpayers more than low-income taxpayers[295]—with a tax credit that would equalize the treatment.[296] In this case, presumably, only the mention of "retirement accounts" provides a link to the fake story about "taxing" 401k accounts.

Not all stories about new taxes appear to be pulled out of thin air. For example, a Facebook post circulating in March of 2022 states:

> Beware: They want to tax us on our equity gains on our homes while we live in them when they aren't listed for sale. It's called unrealized capital gains. This is sneaky and

290. *See id.*

291. *See id.*

292. *See id.*

293. Mikkelson, *supra* note 274.

294. *Id.*

295. *See id.* ("Biden contended, this type of tax benefit is skewed in favor of higher-income families."). This is true because the value of an income exclusion to the taxpayer depends on her marginal tax rate. Imagine two taxpayers contribute $10,000 to a 401(k) plan, which means they get to exclude $10,000 from their taxable wages. A taxpayer with a 37% marginal rate saves $3,700 in taxes (37% of $10,000), while a taxpayer with a 10% marginal rate saves only $1,000 in taxes (10% of $10,000). On the other hand, a credit calculated as a percentage of the contribution would be worth the same amount to everyone. For example, if all taxpayers received a 20% credit, they would all reduce their taxes by $2,000 after making a $10,000 contribution (20% of $10,000).

296. *See* Mikkelson, *supra* note 274.

> of course it hurts anyone who improves their homes and increases the value.[297]

Lead Stories explains that this post appears to be tied to the recent Billionaire Minimum Income Tax proposal, which would tax unrealized gains from certain *liquid* assets (like stocks) but not illiquid assets such as real estate.[298] Nor would the proposal apply to anyone other than the wealthiest taxpayers.[299] Still, the proposal's somewhat novel approach of taxing unrealized gains may have fueled some confusion as to what types of assets are covered.[300] Notice, again, the post's description of the proposal as "sneaky;" this is another example of fake tax news stories accusing the government of enacting or trying to enact surprise tax policies, which is something we observed repeatedly.

3. Tax Increases

While many fake tax news stories warned readers about new taxes, several involved raising the rate on the existing income tax. For example, a 2021 Facebook post shared over 3,800 times states, "Biden signs 45 percent Capital gains tax. Kiss your inheritance goodbye."[301] The post also contained a graphic of three stacks of cash, each with wings, presumably to

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297. Christiana Dillard, *Fact Check: Government Did NOT Propose Taxing Unrealized Gains for Most Americans—Just Top Earners*, LEAD STORIES (Mar. 31, 2022), https://perma.cc/VBX3-BUK4.

298. *See id.*; *see also* Press Release, The White House, President's Budget Rewards Work, Not Wealth with New Billionaire Minimum Income Tax (Mar. 28, 2022), https://perma.cc/BK84-X3C4 [hereinafter White House Press Release].

299. *See* White House Press Release, *supra* note 298.

300. We say "somewhat" novel because there are certain mark-to-market rules under the tax code for securities dealers (though likely not widely known or understood by the public). *See* I.R.C. § 475. Additionally, this proposal does not constitute a "new" tax but rather imposes the federal income tax on a broader base of income (i.e., unrealized gains rather than realized gains). As we discuss below in Part IV, framing of taxes as "new" appears to matter significantly to voters.

301. Tom Kertscher, *No, Biden Has Not Signed a 45% Capital Gains Tax or an Inheritance Tax Increase*, POLITIFACT (Feb. 16, 2021), https://perma.cc/4QVQ-8E2R.

illustrate taxpayers' savings flying away.[302] In addition to misstating Biden's *proposal* to increase capital gains taxes on the wealthy to 39.6% (which has not been enacted), the post also appears to potentially confuse taxes on realized capital gains with inheritance taxes.[303] Another Facebook post falsely claimed that then-presidential candidate Biden was planning to raise tax rates to 39.6% for low or middle-income workers, stating:

> Say your bi-weekly gross salary is $3,000. You are giving these sad sacks 39.6% which is $1,188. Nearly half your paycheck! Forget feeding your family after you've paid all your bills. Are you really okay with this?[304]

The post not only misstates Biden's proposal, which was to raise the *top* marginal income rate to 39.6%,[305] but the example also confuses a marginal tax rate with a single (flat) tax rate.

4. Tax Obligations and the IRS

A significant number of stories in our database involve claims about tax obligations or how taxpayers interact with the tax system, and specifically the IRS. For example, although the government extended the tax filing deadline in 2020 to May 17, a Facebook cartoon image stating "The Tax Deadline is April 18. Do your taxes soon" was shared over 15,000 times.[306] Another viral post rated "false" by PolitiFact warns readers that the government will reduce their refund if they receive unemployment.[307] Similarly, a number of fake news stories wrongly told taxpayers that their COVID relief payments

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302. David Jamison, FACEBOOK (Feb. 1, 2021, 8:18 AM), https://archive.is/JhK9z.

303. *See* Kertscher, *supra* note 301.

304. McCarthy, *supra* note 274.

305. *See id.*

306. Gabrielle Settles, *No, This Year's Tax Deadline Is NOT April 18*, POLITIFACT (Apr. 1, 2021), https://perma.cc/SG3C-4VRZ. The original Facebook post appears to have originated in 2018 but was reshared many times again in 2020. Some of the comments under the post state the correct filing deadline of May 2020. D'AAAAAWWWW, FACEBOOK (Mar. 29, 2018), https://archive.ph/naMMQ.

307. *See* Jill Terreri Ramos, *Misleading Post Links Unemployment Benefits and Reduced Tax Refunds*, POLITIFACT (Mar. 3, 2022), https://perma.cc/H75E-V82D.

would have to be repaid with their tax returns, as discussed in more detail below.

5. The Distribution of the Tax Burden and How Tax Dollars Are Spent

Several stories in our database involve the distribution of the tax burden or how the government spends tax revenue. One Facebook post states, "The top 1% pays 90% of income taxes."[308] In reality, the top 1% pay about 40% of income taxes.[309] The post was flagged as false by Facebook.[310] Many users responded critically to this flagging in the comments to the original post, including one comment that says, "FB [sic] fact check is saying your post is partially false [sic]. Every thing you said was true! Those that believe in these so called fact checks are the same people that believe the sky is falling."[311]

Another social media post states, "Most of our taxes are spent on the so-called 'War on Terror.'"[312] The post contains a graphic of a table with the title "Your Taxes are Going to War" showing an average tax bill of $4,581 and itemizing how that tax money is allocated to various spending programs ($3,456 to "military"; $80 to "welfare"; and $580 to "education," among other spending).[313] Rating the post as "false," PolitiFact noted that only 18% of federal receipts go to national defense."[314]

308. Tom Kertscher, *A Rip on AOC's Dress Misses with Claim that the Top 1% Pay 90% of Income Taxes*, POLITIFACT (Sept. 14, 2021), https://perma.cc/6PVB-M3FF.

309. *Id.*

310. *See id.*

311. Peggy Sue Rozema (Oct. 25, 2021, 7:01 PM), Comment on Christian Walker, FACEBOOK (Sept. 14, 2021), https://perma.cc/MXR6-Z4FB.

312. Louis Jacobson, *Are Most of Our Taxes Spent on the War on Terror? No*, POLITIFACT (Apr. 24, 2018), https://perma.cc/JM7M-QDLB [hereinafter Jacobson, *War on Terror*].

313. Ro Khanna, FACEBOOK (Apr. 19, 2018), https://perma.cc/L8T5-W8M2. The post has since been amended in response to PolitiFact's "false" rating.

314. Jacobson, *War on Terror*, *supra* note 312.

6. Tax Deductions

Several stories in our database also involved tax deductions. One line of fake news stories warns readers about the *loss* of individual deductions. For example, several fake news stories claimed that the 2017 tax reform eliminated "small business deductions" or personal deductions like the student loan interest deduction or the deduction for property taxes.[315]

Another line of story involved deductions taken by big corporations. For example, a widely circulated meme asks readers if they know what happens when they collect donations for a charity for their birthday on Facebook, stating that "Facebook is allowed to say they donated it themselves as a corporate entity."[316] A different meme falsely tells readers that Walmart "writes off" the charitable donations that customers make at the register.[317] The meme shows a photo of a smiling Walmart employee at a cash register and is sarcastically captioned: "Hello sir, would you like to have a donation to a local charity added to your bill today? So that Walmart can donate that money in their name, and use it as a tax write off, while paying me minimum wage and treating me like crap."[318]

7. Tax-Exempt Organizations

One of the more surprising trends was the number of stories that dealt with tax-exempt status. Perhaps this should not have been a surprise given congressional efforts to stoke controversy over allegations that the IRS under President Barack Obama politicized the § 501(c)(3) designation process[319]

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315. *See* Emery, *supra* note 281; *see also* Spencer, *supra* note 281.

316. Dan Evon, *Does Facebook 'Write Off' Your Birthday Donations?*, SNOPES (Nov. 6, 2019), https://perma.cc/Z9CD-JVAX.

317. Bethania Palma, *No, Walmart Isn't Writing Off Your Checkout Donations*, SNOPES (June 29, 2021), https://perma.cc/Z2FG-6VAR [hereinafter Palma, *Walmart Checkout Donations*].

318. *Id.*

319. *See* Peter Overby, *IRS Apologizes for Aggressive Scrutiny of Conservative Groups*, NPR (Oct. 27, 2017, 3:08 PM), https://perma.cc/VX5B-W9LG (describing instances where the IRS aggressively scrutinized § 501(c)(3) applications from political organizations, particularly conservative

but interest in tax-exempt status expanded significantly beyond that political controversy. Social media stories about tax-exempt status included stories relating to the lengthy fight between the IRS and the Church of Scientology,[320] an alleged tax exemption for "After-School Satan" clubs,[321] and rumors about the white-supremacist Ku Klux Klan's tax-exempt status.[322] And as discussed in the preceding paragraph, two other widely circulated stories involved allegations that both Walmart and Facebook benefited from charitable deductions obtained through customers' donations, Walmart via checkout donations and Facebook via its birthday fundraiser feature.[323] For the record, neither company deducts such cash contributions made by its customers.[324]

8. Old Chestnuts of Fake News

Finally, we should note that the database also contains several old chestnuts of fake tax news and long-standing myths about taxation, some of which predate the internet. Social media appears to breathe new life into old lies. For example, social media allows tax protesters to perpetuate their well-known and sanctionable claims about the illegality of the federal income tax and for similar false claims to be made about Social Security taxes.[325] These false claims are so persistent and widespread that fact-checkers have little work to do to disprove the claims: the IRS and the Social Security

groups). *But see* Alan Rappeport, *In Targeting Political Groups, I.R.S. Crossed Party Lines*, N.Y. TIMES (Oct. 5, 2017), https://perma.cc/GEU7-CVCR.

320. *See The United States Revokes Scientology's Tax-Exempt Status,* SNOPES (Mar. 11, 2016), https://perma.cc/9JHL-ER2F.

321. *See* Bethania Palma, *Did the IRS 'Fast Track' Tax-Exempt Status for 'After School Satan' Clubs?* SNOPES (Mar. 28, 2017), https://perma.cc/5YL7-WM6N.

322. *See* Bethania Palma, *Is the KKK Tax-Exempt as a Religious Organization?*, SNOPES (Apr. 13, 2018), https://perma.cc/4PU6-DJ3Q.

323. Palma, *Walmart Checkout Donations*, *supra* note 317; Evon, *supra* note 316.

324. *See* Palma, *Walmart Checkout Donations*, *supra* note 317; Evon, *supra* note 316.

325. *See* Greenberg, *supra* note 272; Ed Payne, *Fact Check: You Can NOT Simply Declare Yourself Not a US Citizen to Avoid Income Taxes*, LEAD STORIES (Dec. 9, 2021), https://perma.cc/M6Z7-WVAT; Kertscher, *supra* note 224.

Administration both maintain web pages to debunk these common myths. Similarly, social media provides opportunities for anti-immigration activists to continue to spread their false claims that undocumented workers do not pay taxes.[326]

C. *Fake News Stories That Exploit Complex Tax Rules*

This Subpart looks in depth at three specific fake news stories, which all stem from complex tax rules and may reflect, to some degree, genuine confusion. These stories give some insight into how the complexity of the tax system itself can give rise to innocent mistakes and provide an invitation to those with more sinister agendas.

1. Taxes Are Going Up Every Two Years Until 2027

To take one example, PolitiFact rated as "mostly false" a post by Occupy Democrats that appeared on Facebook in February of 2021, which claimed that President "Trump passed a bill in 2017 where ppl [sic] who make under $75,000 will have their taxes raised in 2021 and every 2 years after that until 2027 . . . while the rich get richer."[327] As of PolitiFact's fact check date, this post had received 1,624 comments, was shared 15,389 times, and received 25,000 reactions.[328]

While it is true that many tax cuts enacted in 2017 expire in 2026, there were no provisions of the Code that explicitly raised taxes on those making less than $75,000 prior to 2027. And while the 2017 tax reform has been criticized as primarily benefiting upper-income taxpayers, most analyses have concluded that it *reduced* taxes for all income groups over the first ten years of enactment.[329]

But Occupy Democrats did not simply make up its numbers or rely on incompetent or biased third parties in

326. *See* Jacobson, *supra* note 287; Bethania Palma, *Did the IRS Admit It 'Encourages Illegals' to Steal Social Security Numbers for Taxes?*, SNOPES (Jan. 16, 2019), https://perma.cc/GN5H-8ASK.

327. Occupy Democrats, FACEBOOK (Feb. 1, 2021), https://perma.cc/H6WD-6NE4; Jacobson, *supra* note 281.

328. Occupy Democrats, *supra* note 327; Jacobson, *supra* note 281.

329. *See, e.g.*, Jeff Hoopes et al., *The TCJA Effects Tracker*, UNIV. N.C. TAX CTR. (2017–2022), https://perma.cc/AS9J-YA32.

making this claim. Rather, the claim was based on a report from a respected source, the Joint Committee on Taxation (JCT), which provides members of Congress with an analysis of tax policy on a nonpartisan basis.[330] The JCT analysis differs from other sources because it scored the impact of the repeal of the Affordable Care Act's (ACA) penalty provision differently. To understand how this JCT analysis relates to the fake news headline, some background is needed.

To encourage healthy individuals to pay health insurance and thus keep healthcare premiums lower, the ACA had originally imposed a tax penalty on taxpayers who failed to buy health insurance.[331] But the tax legislation passed in 2017 repealed that penalty.[332] So for taxpayers who failed to purchase health insurance, the penalty repeal *decreased* their tax liability, and most analyses scored the repeal as a tax *cut*.[333] However, the repeal of the penalty also made it less likely that taxpayers would purchase health insurance, which meant fewer low- and middle-income taxpayers would receive the generous healthcare subsidies put in place by the ACA.[334] The JCT scored this *loss of a subsidy* as a *decrease in after-tax income*.[335] The analysis further showed that this drop in after-tax income would increase over time.[336] In sum, the JCT analysis supports a claim that the 2017 tax reform would *reduce after-tax income* for low- and middle-income taxpayers due to a reduced subsidy for health insurance.

This explanation is not to suggest the Occupy Democrats's post was accurate. It was, without question, misleading. People

330. *See Overview,* JOINT COMM. ON TAX'N: CONG. OF U.S., https://perma.cc/QS6D-RAQX.

331. *See* Jacobson, *supra* note 281 (describing how the Joint Committee counterintuitively treated the elimination of the tax penalty as a net tax increase on the basis that the absence of an insurance mandate would encourage people to forgo buying insurance on ACA-established marketplaces).

332. *Id.*

333. *See id.* (citing two separate tax studies suggesting various taxpayer groups will fare better under the 2017 law as opposed to the only contrary analysis provided by the Joint Committee, which treats the elimination of the insurance tax penalty as a net tax increase instead of a net tax decrease).

334. *See id.*

335. *See id.*

336. *See id.*

do not typically think about the way the loss of a tax subsidy reduces after-tax income and the 2017 legislation did not impose the change that ordinary readers are most likely to associate with a tax increase, like an increased tax rate. Nor did the legislation less directly change tax liability; there was no phasedown of the standard deduction or any other change to tax law likely to change the effective tax rate on the earned income of low- and middle-income workers.[337]

But at the same time, framing the legislation as a tax cut for these workers misses an important element of the distributional consequences of the legislation. A more accurate way to frame this issue would have been to address it directly: the legislation made purchasing insurance coverage more costly.[338] As this example suggests, it is difficult to discuss tax policy in tweets or memes, and this difficulty provides opportunities for both misinformation and mischaracterizations.

2. COVID Relief Payments Reduce Your Tax Refund

Social media does not simply provide an additional forum for existing confusion about the distribution of the tax burden to express itself. It also serves as an echo chamber to perpetuate confusion about the complexity that exists in tax law. For example, social media was awash with confusing information about the COVID-19 relief payments made available as part of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[339] The CARES Act authorized relief payments, termed "recovery rebates," of $1,200 for eligible adults and $500 for qualifying children under

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337. *See id.* ("Taxpayers across the income spectrum will fare better under the 2017 law than they would have otherwise. Some income groups will save more money than others do, and results for individual taxpayers will vary depending on the nature of their income.").

338. *See* William G. Gale, *A Fixable Mistake, The Tax Cuts and Jobs Act*, BROOKINGS INST. (Sept. 25, 2019), https://perma.cc/9K6Y-ZCDA ("TCJA will . . . reduce health insurance coverage [and] raise health insurance prices.").

339. *See* Louis Jacobson, *No, You Don't Have to Pay Back Your Stimulus Check,* POLITIFACT (Apr. 15, 2020), https://perma.cc/VFL6-AQVD [hereinafter Jacobson, *Stimulus Check*].

seventeen.[340] Technically, these rebates were created as advanced, refundable credits on taxpayers' 2020 tax bills.[341] The legislation provided that the recovery rebates "shall be allowed as a credit against the tax imposed by subtitle A."[342]

Congress's intent, however, was never to make these payments function as normal tax credits, and so the legislation also provided that "each individual . . . shall be treated as having made a payment against the tax imposed by chapter 1 for such taxable year in an amount equal to the advance refund amount for such taxable year."[343] In other words, the legislation deemed everyone eligible for the full credit amount without regards to their actual tax liability.[344] By structuring the relief as a tax credit, Congress sought to distribute the aid quickly using the IRS's existing infrastructure for distributing tax refunds.[345] Put simply—the checks were a stimulus payment, not meant to be paid back, that didn't really have anything to do with taxes. But the government used the tax system as a delivery mechanism mostly because it was already set up to do so.

It is not surprising, however, that this legal structure was confusing for members of the public. In a widely shared TikTok video that was also shared on YouTube and Facebook, TikTok user @hunnerj9797 offered viewers this warning:

> This is something I found out today about those $1,200 stimulus checks that you may be receiving with the new coronavirus stimulus package bill. Where am I getting my information? Literally, directly from the bill itself. If you go to "Subtitle B: Rebates and Other Individual Provisions," it outlines exactly what you're going to get: the $1,200, $2,400 for the joint, for equal and qualified persons. See, what they don't tell you is this is just an advance on your next tax

340. *See Economic Impact Payments*, U.S. DEP'T OF THE TREASURY, https://perma.cc/7QKD-V4GU (detailing the three rounds of direct relief payments made to Americans during the COVID-19 pandemic).

341. 26 U.S.C. § 6428 ("This substitute allows individual taxpayers . . . a one-time refundable tax credit and other tax benefits to compensate for financial losses due to COVID-19.").

342. *Id.* § 6428(a).

343. *Id.* § 6428(f)(1).

344. *Id.*

345. *See* Richard Rubin, *Why Can't Stimulus Checks Arrive Faster*?, WALL ST. J. (Apr. 5, 2021, 10:00 AM), https://perma.cc/6GD9-ALPH.

> return. "There shall be allowed as a credit against the tax imposed by Subtitle A for the first taxable year beginning in 2020." It even further outlines it is literally "an advance refund amount." So that means next year, you're automatically going to owe $1,200 come tax season. Guys, stay safe out there. Media and public is not telling you exactly what this bill is.[346]

It is easy to see how a non-lawyer, or even a lawyer not steeped in the intricacies of the Internal Revenue Code, could read the CARES Act and reach this understanding. And such confusion no doubt made people more suspicious of the recovery rebate, thus making taxpayers worry unnecessarily and likely affecting the political popularity of the program.[347]

3. The IRS Will Monitor Your Bank, Venmo, and PayPal Accounts

Congressional efforts to increase Form 1099 reporting have led to several widely circulated fake news stories about Congress or President Biden monitoring all transactions on payment processors and imposing new taxes on these transactions. For example, a September 2021 tweet warned viewers that "the Biden administration is attempting to empower the IRS to monitor every single withdrawal, deposit, and transaction you make from your personal banking accounts, PayPal, Venmo, etc."[348]

As PolitiFact explained, claims that the IRS would receive granular information about individuals' PayPal and Venmo transactions were "mostly false."[349] Prior to a 2021 change in the law, payment processors like PayPal and Venmo were only required to issue 1099s for those accounts that received over $20,000 via at least 200 separate payments in a calendar

346. Jacobson, *Stimulus Check*, *supra* note 339. As of 2022, however, most of @hunnerj9797's social media presence seems devoted to *Star Wars* cosplay. *See* Hunner J (@hunnerj9797), TIKTOK, https://perma.cc/2ABH-ZWRL.

347. *See id.*

348. Candace Owens (@RealCandaceO), TWITTER (Sept. 9, 2021, 1:45 PM), https://archive.is/O5wNZ.

349. *See* Samantha Putterman, *Will the IRS Track 'Every' Venmo Transaction? Fact-Checking Claims on New Financial Reporting Plans*, POLITIFACT (Oct. 11, 2021), https://perma.cc/KR7A-F5RS.

year.[350] Many analysts believed this high threshold allowed taxpayers to receive significant income without the IRS knowing, allowing them to evade their tax obligations.[351] Thus, in 2021, Congress adopted a Biden Administration proposal to lower these information reporting thresholds to require reporting of business transactions that exceeded $600 in a calendar year.[352] Around the same time, Treasury officials floated a similar proposal that would apply to banking institutions.[353] That proposal has not been enacted.

Social media coverage frequently conflated the enacted change to payment processor information reporting and the proposed change to banking reporting. Moreover, the coverage misunderstood and misrepresented several aspects of informational reporting changes. First, the informational reporting requirements focused on total cash flows, not individual transactions. The IRS was never interested in individual transaction data; its goal was to use information about annual cash flows to help it confirm that taxpayers reported their full income. Second, the statutory changes to payment processor informational reporting applied to *business* transactions. No one was suggesting that the government needed information about whether you pay your brother back for your parents' anniversary gift or how you and your roommate split the bills. Third, this was a change to *information reporting* rules (that is, when a 1099 must be issued), not substantive tax law. The reform did not impose any new taxes or change anyone's tax liability.

While some of this confusion seems purposefully stoked to advance an anti-Biden agenda, in fairness, much confusion stemmed from the lack of clarity of the proposals. For example, though the information reporting requirements only applied to *business* transactions, how were payment processors like Venmo going to tell the difference between $40 you sent to your kid's tutor (taxable to the tutor) and $40 you sent to pay

350. *See General FAQs on Payment Card and Third Party Network Transactions*, IRS, https://perma.cc/G55X-C9G6 (last updated Jan. 14, 2022).

351. *See, e.g.*, Liz Farmer, *Federal Stimulus Bill Has Huge Tax Changes for Gig Workers*, FORBES (Mar. 12, 2021, 9:33 AM), https://perma.cc/Y5R8-4H9M.

352. *See* Putterman, *supra* note 349.

353. *See id.*

your friend back for dinner (not taxable to your friend)? As it turns out, payment processors plan on relying on voluntary reporting to comply with the rule.[354]

Moreover, few people know what a payment processor is or understand what entities are subject to the rule. The confusion was such that even the fact-checkers themselves failed to be completely accurate. PolitiFact, for example, reported that "[t]he American Rescue Plan Act, which Congress passed in March, has a provision that will require cash apps like Venmo, PayPal, and Zelle to file information reports on commercial transactions over $600."[355] Zelle, however, has taken the position that it is not subject to this statutory change because "Zelle facilitates messaging between financial institutions, but does not hold accounts or handle settlement of funds."[356]

IV. COMBATTING FAKE TAX NEWS

Over a decade ago, Ian Shapiro and Michael Graetz warned of the dangers of insufficiently understanding the ways public opinion on tax policy can all too easily be molded by misinformation.[357] Their lament of *Death by A Thousand Cuts* was that by the time public officials and policymakers took notice of the shift in public opinion, the battle had already been lost.[358] Advocates of fiscal responsibility and progressive tax policy alike would be wise to avoid such mistakes in the future. The first part of our project simply accounts for current trends in fake and false news in tax discussions on social media. We think analyzing this trend is important in and of itself. Without understanding the problem and its scope, it is impossible to craft solutions.

At the same time, having gathered and analyzed this database of stories, we think it is also useful to put forward

354. *See* Michelle Singletary, *Venmo, PayPal and Other Payment Apps Have to Tell the IRS About Your Side Hustle If You Make More Than $600 a Year*, WASH. POST (Jan. 21, 2022, 7:00 AM), https://perma.cc/FEK7-WJTQ.

355. Putterman, *supra* note 349.

356. Jeanne Sahadi, *IRS Delays Rule Change for People Who Get Paid on Venmo, Etsy, Airbnb and Other Apps*, CNN BUS., https://perma.cc/FUB2-DJM4 (last updated Dec. 28, 2022, 1:40 PM).

357. *See generally* GRAETZ & SHAPIRO, *supra* note 5.

358. *See id.* at 10.

some of our ideas about lessons learned and proactive steps relevant actors can take to combat tax misinformation. In some sense, the need for proactive steps is perhaps the most important of these lessons learned. Social media is a fertile ground for all kinds of misinformation, and given the pre-existing confusion about tax, we argue that tax policy is particularly susceptible to such efforts, more than other policy areas.

We divide this Part into two Subparts. The first considers more broadly what we consider the "lessons learned" from our analysis. The second focuses on solutions.

A. *Lessons Learned*

In this Subpart, we focus on four lessons learned. First, we discuss the ways social media is adept at exploring the "new taxes" bias. Second, we examine the ways social media amplifies existing confusion about tax law. Third, we note the stories reflect continued taxpayer mistrust of the IRS. In connection with this third point, we discuss the surprising interest in stories about alleged misuse of charitable deductions and tax-exempt status. Fourth, we argue that our analysis has broader implications for the intersection of the tax system and democracy.

1. No New Taxes

As discussed in Part III, a significant portion of our dataset involved allegations that politicians were enacting new taxes. The frequency with which new taxes are the subject of fake tax news appears to reflect deep disdain—bordering on hysteria—over the implementation of any new tax. This finding is consistent with the "no new taxes" bias, that is, the notion that taxpayers are particularly averse to new taxes (as opposed to mere tax increases). As discussed in Part I, a recent study demonstrated that reframing a proposed income tax on high earners as a "new" tax caused public support for the tax to plummet, which seems to have doomed what had been a popular proposal to tax high-income earners in Washington State. In a similar vein, even alleged taxes in our dataset with narrow reach, such as a livestock tax, did not appear to diminish the level of outrage engendered on social media.

Presumably, many of those sharing the livestock tax story would not be subject to such a tax.[359]

To the extent that social media activity reflects taxpayers' emotional response to policy, as studies of social media indicate, our study offers further support for the "no new taxes" bias. Further, there appears to be a strong aversion to new taxes even for proposals with a very narrow tax base.

2. Taxes Are Confusing... Still

The fake news stories also support the notion that confusion about the tax system still abounds. In one sense, this is old news. A significant body of research reveals widespread misconceptions about concepts like marginal versus average tax rates and the choice to take the standard deduction or itemize deductions.[360]

What these fake news stories seem to suggest, however, is a stunning lack of forward progress in the past several decades in terms of taxpayer education. Consider first how much of a positive influence technology, particularly the internet, has had on how taxpayers interact with the tax system. IRS guidance is easily available online on nearly any topic affecting individual taxpayers. For example, if a taxpayer was trying to sort out if her babysitter counted as a household employee and wanted to go directly to the IRS for guidance, she could google

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359. Of course, it is also possible that other factors influenced the sharing of the story. The text of the post warned that the tax would eliminate meat consumption and there seems to be significant concern in some political corners that the government may move to ban meat. This concern has led to social media posts warning of politicians' alleged plans to ban meat and even lawsuits and legislative efforts to prevent companies from labeling bean and fake-meat patties "burgers." *See, e.g.*, Bill McCarthy, *Joe Biden Banning Burgers? Fox News, GOP Politicians Fuel False Narrative*, POLITIFACT (Apr. 26, 2021), https://perma.cc/YT44-Z43N; Jason Tidd, *Can Plant-Based Patties Be Called 'Burgers'? Not According to Kansas Lawmakers*, TOPEKA CAP. J. (Mar. 24, 2022, 6:00 AM), https://perma.cc/S57V-VNUJ ("The [Kansas] meat labelling bill has been promoted as a way to help consumers at the grocery store who may accidentally buy fake meat instead of real meat.").

360. *See supra* Parts I.A–C.

"babysitter tax IRS" and find IRS Publication 926 with detailed information, including a hyperlinked menu of topics.[361]

Private tax software companies have also allowed taxpayers to not only file returns electronically without the assistance of paid preparers but also turn to those websites for tax guidance.[362] And as scholars Diane Ring and Shu-Yi Oei's work explores, taxpayers themselves are surprisingly adept at providing fairly accurate tax information to share with others via internet forums.[363] As a result of these advances, one might think that we would see advances in taxpayer awareness and understanding of their tax obligations. With more information accessible quickly and by virtually anyone, the public had the opportunity to improve its understanding of the tax system.

The public does not appear to have taken advantage of this opportunity. Our analysis of fake tax news suggests that advances in taxpayer information occurred as false information was also proliferating. In this environment, information from either the government or reputable private sources competes with fake news sources, and legitimate information may be losing the race. Since many individuals get their news and other information from social media,[364] the false tax information likely has a broader reach. Taxpayers are not inundated with true tax information from sources like the IRS to anywhere near the extent to which they are inundated with information on sites like Facebook or Twitter. In this respect, we may have taken steps back from where we were several decades ago. Whereas, in isolation, the Information Age might have meant better-educated taxpayers, fake sources are likely

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361. *See Household Employer's Tax Guide*, IRS. (Feb. 9, 2022), https://perma.cc/3U37-KMAD (explaining that a traditional babysitter is typically considered a household employee).

362. For example, a google search for "babysitter tax" also reveals articles from H&R Block and Turbo Tax. *See Babysitting Taxes 101: Is Your Sitter a Household Employee*?, H&R BLOCK, https://perma.cc/P4N7-FGRD; *Babysitter Taxes (Who Owes It and How to Pay)*, INTUIT TURBO TAX, https://perma.cc/V6NK-XST2.

363. *See* Shu-Yi Oei & Diane M. Ring, *The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums*, 8 COLUM. J. TAX L. 56, 101 (2017), ("There was a notable amount of accurate tax advice and commentary given on the discussion boards. In many instances, forum participants on Reddit and Uber people stated the tax law accurately.").

364. *See* Gottfried & Shearer, *supra* note 153.

faster, more repetitive, and more likely to go viral than reputable tax information.

Social media thus allows tax protest arguments tenth, eleventh, and twelfth lives and allows new variants on such stories to proliferate. In 2021, for one example, an internet meme suggested that customers could "gift" cash to waiters rather than tipping them, thereby saving waiters income tax liability.[365] At least one version of this meme circulated with a picture of a receipt in which a customer had written across the tip line, "[T]axation is theft."[366] The IRS has, of course, long taken the position that no matter how you choose to thank waiters for their service, any thanks in the form of cash is a taxable tip, and employers are obligated to collect and report tip information as part of their withholding obligations.[367] That information, however, is not as accessible or as memorable as the picture of a receipt across which is written: "Taxation is theft."

3. People Do Not Trust the IRS

The stories in our database also suggest that social media reflects a deep distrust in the government, particularly the IRS when it comes to the tax system. Such distrust is expressed in a variety of ways, from stories that warn readers that government "benefits" require recipients to bear unexpected costs to allegations that tax dollars are misused by the government, sometimes in non-transparent ways. An example of the former is the widely circulated story about COVID-19 relief checks, which claimed they would have to be repaid with the taxpayer's next tax return.[368] An example of the latter is a story claiming a portion of U.S. tax revenue was paid to the

365. Ed Payne, *Fact Check: Post Does NOT Show a Legal Way to Avoid Income Taxes on Tips*, LEAD STORIES (Nov. 16, 2021), https://perma.cc/7FHJ-GFGD.

366. *Id.*

367. *See Taxpayers Must Report Tip Money as Income on Their Tax Return*, IRS, https://perma.cc/6X7G-XLFJ (last updated Mar. 14, 2022).

368. *See* Jacobson, *Stimulus Check*, *supra* note 339.

Queen of England.[369] However, even less ridiculous stories share this skepticism of how tax revenue is used.[370]

Much like public misperceptions of how taxes work, the biggest lesson here appears to be one of little progress, notwithstanding significant efforts over the past several decades on the part of the government to improve taxpayer relations and public perception of the IRS. Consider, for example, that Congress first enacted a Taxpayer Bill of Rights in 1988 and established the Office of the Taxpayer Advocate in 1996.[371] The IRS adopted an updated Taxpayer Bill of Rights in 2014, which was codified in 2015.[372] This Bill of Rights guarantees taxpayers the right to be informed, the right to quality service, and the right to pay the correct amount of tax, among others.[373]

Yet, as in the case of general misinformation about how taxes work, the government finds itself on a vastly unlevel playing field in terms of information put out to the public. If taxpayers are barraged with information on social media about ways the IRS and the government more generally are taking advantage of taxpayers, even the best efforts to improve public perception may be in vain. Of course, it has not helped that these efforts to improve taxpayer relations have happened simultaneously with significant real-dollar cuts to the IRS budget[374] and the resulting spread of true stories about

369. *See* Christiana Dillard, *Fact Check: U.S. Citizens Do NOT Pay a Percentage of Their Taxes to the Queen of England*, LEAD STORIES (June 24, 2021), https://perma.cc/LKF7-R74Q.

370. *See* Jacobson, *War on Terror*, *supra* note 312; Madison Czopek, *Facebook Post Misleads You About Tax Bill Breakdown*, POLITIFACT (Feb. 19, 2021), https://perma.cc/QPA8-GQSA ("If you make $50,000/year, $36 of your taxes goes to food stamps. $4,000 goes to corporate subsidies.").

371. *See Our History*, TAXPAYER ADVOC. SERV., https://perma.cc/G2KJ-R54E.

372. *See* I.R.C. § 7803(a)(3); *see also Taxpayer Bill of Rights*, TAXPAYER ADVOC. SERV., https://perma.cc/MN3T-5QPK.

373. *See* I.R.C. § 7803(a)(3).

374. *See* Paul Kiel & Jesse Eisinger, *How the IRS Was Gutted*, PROPUBLICA (Dec. 11, 2018, 5:00 AM), https://perma.cc/KKK3-244V; TAXPAYER ADVOC. SERV., 2012 ANNUAL REPORT TO CONGRESS 34–41 (2012), https://perma.cc/2HN8-3QD6 (PDF).

significant backlogs in both return processing[375] and customer support at the IRS.[376]

Indeed, even the uptick in interest in stories about tax-exempt treatment and charitable deductions may reflect this lack of trust. Memories of "IRS-gate," efforts by conservative activists to "expose" political bias in the IRS, may have lingered[377] despite the lack of evidence of intentional bias.[378] Rumors about tax-exempt status may remain interesting to readers because of this taint of controversy. These stories, however, also reflect a more general distrust of IRS and tax law. In this context, this distrust is expressed as a willingness to assume the IRS's decisions about tax exemption are unmoored from what readers view as a commonsense approach or, alternatively, that the IRS and bad actors (ranging from "After-School Satan Clubs" to Walmart) are working together to grant tax benefits to the undeserving. Either way, it suggests more public engagement with the tax treatment of non-profits than we would have anticipated going into this study.

375. *See* Lisa Rein & Tony Romm, *IRS Backlog Hits Nearly 24 Million Returns, Further Imperiling the 2022 Tax Filing Season*, WASH. POST (Feb. 11, 2022, 7:27 PM), https://perma.cc/FD84-N78N (last updated Feb. 12, 2022, 11:57 AM).

376. *See NTA Blog: Hello, Is Anyone There? Taxpayers and Practitioners Continue to Experience Frustration Over Lack of Adequate Phone Service*, TAXPAYER ADVOC. SERV. (Feb. 1, 2022), https://perma.cc/7V7R-HHZ2 (last updated Apr. 15, 2022); *see also* David Lazarus, *Column: The IRS Can't Handle Taxpayers' Calls. This Firm Found a Way to Cash In*, L.A. TIMES (Oct. 5, 2021, 6:00 AM), https://perma.cc/2QWM-B6VE; Leslie Book, *Senators Question Commissioner About Company Offering Fee-Based Access to IRS Phone Lines*, PROCEDURALLY TAXING (Nov. 19, 2021), https://perma.cc/J8QK-U7Y3.

377. *See, e.g.*, Paul Bedard, *Treasury: IRS Targeted 292 Tea Party Groups, Just 6 Progressive Groups*, WASH. EXAM'R (June 27, 2013, 12:00 AM), https://perma.cc/A8K8-L74L.

378. *See generally* TREASURY INSPECTOR GEN. FOR TAX ADMIN., DEP'T OF TREASURY, REVIEW OF SELECTED CRITERIA USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW (2017), https://perma.cc/4ESM-JHUM (PDF) (providing in-depth analysis of audit selection criteria and how they were applied to both liberal and conservative groups).

4. Taxes and Democracy

Finally, our analysis has implications for broader questions about the interplay of the tax law, tax complexity, and democracy. In many ways, these questions echo debates tax scholars have had about the proper role of tax salience in a democracy. For example, scholars have noted that low-salience taxes can be extremely effective at raising revenue yet might pose questions about transparency and democratic values.[379] These questions about the ideal salience of taxes are not easily resolved and involve weighing costs and benefits. For example, is it better for taxes to be less salient but also less painful, or is it better for voters to fully contemplate their tax obligations?

We believe our fake news analysis poses similarly important, yet hard-to-resolve, questions about the tradeoffs between democratic values and tax policy that better targets distributional goals. For example, are taxpayer misconceptions only a problem to the extent they undermine public support for tax policy with one agrees? Similarly, to what extent would it be justified for policymakers to put their own "spin" on a reform measure to counter fake news coverage?[380] If accurate news coverage of the tax law was at odds with efficient or equitable tax policy, which value should prevail? Our inclination is that democratic values should trump policy preferences; part of the problem here is simply how much the public misunderstands tax law. As a result, we are inclined to believe further sophistry will backfire.

Nevertheless, it is beyond the scope of this Article to provide fulsome answers to these questions. Instead, we believe a major contribution of the Article is to highlight these tradeoffs. Scholars have long recognized the potential tension between public perception of taxes and tax policy design, but we have entered an entirely new era of misinformation in the age of social media and the stakes have gotten exponentially higher. More citizens are encountering false information about the tax system now than at any time in history and in high volumes. Shedding light on the sheer force of the problem

379. *See* Schenk, *supra* note 61, at 287.

380. *Cf.* Gamage & Shanske, *supra* note 112, at 82 (arguing voters should be provided with relevant and accurate information about their tax burdens, but not information that is false or arbitrary).

should bring new urgency to examining these complex tradeoffs.

B. *Insights for Tax Design and Advice to Tax Policymakers*

In this Subpart, we offer two suggestions for the ways our study of fake and false tax news should inform the administration of the tax system and tax policy. First, we argue that tax administrators need to understand how social media can decrease tax morale and work to fight such messaging early and often. Drawing on the psychology of fake news research discussed in Part II, we argue the insights from that literature should inform how administrators think about communicating tax information to the public. Second, we suggest that policymakers should consider the ways tax laws can be mispresented when thinking about how to design new policies and improve existing tax policies.

1. Messaging: Improving the Accuracy of Tax Information

The costs of complexity in the tax system are well documented.[381] Taxpayers spend exorbitant amounts of time and money on compliance costs, and the IRS expends resources on enforcement and administration costs.[382] Further, the tax compliance rate—the portion of overall tax owed that is

381. *See generally* SLEMROD & BAKIJA, *supra* note 116. Advocates have long proposed solutions to some of this complexity. *See, e.g.*, Joseph Bankman, *Simple Filing for Average Citizens: The California ReadyReturn*, TAX NOTES (June 13, 2005), https://perma.cc/3UKU-Y4P7 (discussing government prepared tax returns); Kathleen DeLaney Thomas, *The Modern Case for Withholding,* 53 U.C. DAVIS L. REV. 81, 127 (2019) (arguing that expanding withholding would reduce taxpayers' negative perceptions about tax system complexity); Leandra Lederman, *Statutory Speed Bumps: The Role Third Parties Play in Tax Compliance*, 60 STAN. L. REV. 695, 697–98 (2007) (observing that withholding enhances compliance because it makes a third party responsible for fulfilling the taxpayers' payment obligations). These reforms have faced significant opposition, including from the tax preparation industry and third parties who would be subject to withholding obligations. *See, e.g.*, Thomas, *supra*, at 84 (discussing critique that withholding poses undue burdens on payers). However, simplifying tax filling and payment obligations, while important, does not address the anxiety and uncertainty that fake tax news creates for taxpayers. Even taxpayers that pay for third-party tax preparation now likely worry about reports that their tax bill will go up.

382. Thomas, *supra* note 381, at 84.

collected by the government—is undoubtedly lower due to the complexity of the tax system.[383] Complicated rules are both easier to unintentionally get wrong and allow for more gaming by unscrupulous taxpayers.[384]

Our fake tax news database reveals yet another unappreciated cost of tax complexity: new tax rules that leave any room for confusion will undoubtedly lead to widespread dissemination of false information on social media, sometimes intentionally. In other words, if Congress or the Treasury enacts a new policy that leaves any room to misdirect or misguide the public, policymakers should assume it will happen. It does not take much imagination to see how taxpayers might react to changes in the way Venmo and PayPal report transactions by worrying about how such changes will affect them. Similarly, given what is known about taxpayer confusion over tax credit programs like the Earned Income Tax Credit, it is not surprising that a U.S. taxpaying public unaccustomed to receiving cash-based government assistance would find the recovery rebate confusing.[385]

In this way, the Treasury and the IRS compete with private citizens and fake news outlets to disseminate information. These agencies have a clear role to play in ensuring the public has accurate information about enacted tax law, and so they need to market, get ahead of the story, and anticipate how enacted changes might be falsely spun.[386] For example, the IRS need not have assumed taxpayers would understand that changes in third-party reporting requirements were targeted at business transactions and that the IRS enforcement priorities would mean such information reporting would mostly be used to investigate very large transfers of cash. Instead, it could have rolled out a proactive social media campaign that reassured taxpayers that the change did not impact most of the ways they used payment processors.

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383. *Id.*

384. *Id.*

385. *Id.*

386. To be clear, our recommendations here focus on enacted laws and on regulatory roll-outs. As an enforcement agency, the IRS should not be involved in public-facing strategy concerning pending legislation. The examples in this Subpart are consistent with this distinction.

Moreover, social media can be used in other ways to improve tax morale. For example, policymakers and government actors can use it to share positive information. Decades of evidence suggest that people's support of taxation is related to their confidence that tax dollars are being spent wisely.[387] Social media stories also suggest people care about where their tax dollars go, so there is an opportunity to build support for revenue-raising by increasing knowledge about how tax dollars are spent.[388]

Further, tax administrators should consider the insights discussed above in Part II.B. from the psychology of fake news literature when thinking about how to disseminate tax information to the public. Although the purpose of much of this literature is to document what makes untrue stories particularly believable or popular, it is, more broadly, a study of what makes people believe *any* news story to be true and what makes them pay attention. In other words, the literature can be viewed more broadly as the psychology of *perception* of news stories.[389] Viewed in this light, tax administrators should frame their messaging according to what we already know makes people believe stories.

Recall that studies of social media suggest that repetition matters.[390] As a result, messaging that supports tax compliance cannot be one-and-done. Instead, the stories need to be repackaged and rereleased continuously. The fake news literature also reveals that format matters, with pictures and/or infographics impacting the believability of stories, as well as willingness to share.[391] Further, explicitly shifting attention to accuracy appears to influence whether people will share false news stories.[392] All of these observations from the psychology literature should inform how we think about messaging tax information. Messages should be succinct—containing an illustration or photo—as well as repetitive. Common myths should be repeatedly debunked in

387. *See supra* Part I.

388. *See supra* Part I.

389. Indeed, much of the phenomena observed in the literature applies to both true stories and false stories. *See supra* Part II.B.

390. *See supra* Part II.B.1.

391. *See supra* Part II.B.2.

392. *See supra* Part II.B.5.

this manner, encouraging the reader to consider the accuracy of tax information.

For example, the IRS has a comprehensive webpage addressing frivolous tax protester arguments.[393] These are the old chestnuts that are unlikely to disappear on social media, like advice that income tax can be avoided by declaring yourself a non-citizen.[394] While the text-heavy webpage might be useful for accountants and for putting taxpayers on notice that they are taking frivolous positions for penalty assessment purposes, this is not enough to address these rumors. The IRS already works to publicize prosecutions of tax protestors.[395] But the IRS could also engage social media to remind taxpayers that these arguments are ludicrous and, moreover, to remind taxpayers that most people do comply with the law.

Consider, as another example, the widespread fake news stories about CARES Act stimulus payments.[396] As discussed in Part III, social media was awash with posts warning taxpayers that the payments, delivered through the tax system as credits, would have to be repaid on one's next tax return.[397] The government was aware of this rumor and engaged in efforts to correct inaccurate information.[398] An IRS website even lists frequently asked questions about the payments and addresses repayment.[399] However, the repayment issue is at the bottom of a text-heavy page, and the page itself was not easy to uncover through a search engine.[400]

393. *The Truth About Frivolous Tax Arguments*, IRS (Mar. 2022), https://perma.cc/28BT-34EQ [hereinafter *The Truth*].

394. *See* Payne, *supra* note 325.

395. *See The Truth, supra* note 393.

396. *See* Ramos, *supra* note 307.

397. *Id.*; *see also* Alex Kasprak, *Will Your Coronavirus Stimulus Check Count Against Your 2020 Refund?*, SNOPES (Apr. 7, 2020), https://perma.cc/8PNW-Z7MX.

398. *See Questions About Economic Impact Payments*, IRS (Apr. 22, 2020), https://perma.cc/GTS8-9WA7 (last updated Feb. 26, 2021).

399. *Id.*

400. *See id.* It took one of us over ten minutes to track down this IRS webpage when googling "IRS.gov Do CARES Act payments have to be repaid?" However, given that the search was run two years after the relevant checks were sent to taxpayers (in 2020), the search results and online information might be different now than it was in 2020.

What if, instead, the IRS had created its own meme and attempted to circulate it widely and frequently (for example, several times a day over many days) on social media? The Office of the Taxpayer Advocate might be particularly well-suited for this communication role, as that office is designed to assist taxpayers, not enforce tax law. Imagine, for example, a graphic of a check and an arrow pointing in one direction, from the Treasury building to a taxpayer. Further, imagine that in large text over the image were the words "Your Economic Impact Payment Does Not Need to be Repaid!" Under the image, the text might read something like, "Be wary of misinformation spreading on social media; reports that stimulus checks must be repaid are false." Of course, how such messages would spread would depend on whether the public was willing to share them; the IRS cannot make such messages go "viral" on its own. But considering the current baseline—information on a text-heavy website that the taxpayer must actively seek out—such marketing would be a vast improvement. Further, we believe tax professionals, academics, and other informed citizens may be willing to share and help publicize such "truth" campaigns if viewed in the public interest. Our recommendation here is not that the IRS try to game an algorithm, but to create content that is worth sharing.

In some sense, this is the same lesson that so clearly emerges from Michael Graetz and Ian Shapiro's account of the collapse of support for the estate tax in both public and political opinion.[401] What has changed is not the need to get out in front of negative messaging but the speed at which such messaging can shape opinion. Ultimately, messaging on social media likely resembles the frequency with which some parents expect calls from their adult children: there is no number of posts or calls that will be sufficient. The IRS is not currently well-positioned to engage in such messaging. Despite several redesigns over the years,[402] their website has never managed to look current. Its current blue and white motif and text-heavy pages suggest a design suited for an era of much slower

401. *See supra* notes 114–120 and accompanying text.

402. *See* Linda Rosencrance & Heather Havenstein, *IRS Hopes for Happier Returns with Redesigned Web Site,* COMPUTERWORLD, (Jan. 6, 2006, 12:00 AM), https://perma.cc/G6BF-AZ3H.

internet connections.[403] The Treasury Department's webpage is much better and its homepage even tracks Department tweets, suggesting it is possible for the government to improve its internet presence.[404]

But is it unrealistic to expect government agencies to compete with the private sector on the marketing and social media front? We don't believe so. As an example, consider the Transportation Security Administration (TSA), which boasts a following on Instagram (the popular photo-sharing app) of over 1 million people and a stunning 54 million unique Instagram visitors in 2021.[405] The agency's page is full of photos and videos with captions, many of which are humorous.[406] For example, a video of an airport escalator captioned, "Known as the brightest spot on Earth . . . and the keeper of all your secrets. What airport am I?"[407] Others are informative. For example, a photo of a car seat with a large knife tucked in the side is captioned as follows:

> We'll get straight to the point. Our sharp-eyed officers @flylogan made this very edgy discovery in . . . wait for it . . . A BABY CARRIER! By now, you should know that knives of any kind can NEVER go in a carry-on. But, if you simply must travel with your butcher knife, consider checking it in instead.[408]

As the *New York Times* recently reported, "Recent T.S.A. posts have been featured on The Tonight Show and The Today Show and shared by the well-known leadership expert and

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403. Separate from the website design, the IRS has historically struggled to implement new technology. *See generally, e.g.*, GOV'T ACCOUNTABILITY OFF., INFORMATION TECHNOLOGY: COST AND SCHEDULE PERFORMANCE OF SELECTED IRS INVESTMENTS (2021), https://perma.cc/DB3W-MTV4 (PDF) (documenting IRS efforts to update its legacy data systems and the challenges it has faced).

404. U.S. DEP'T TREASURY, https://perma.cc/N9K2-4PK9.

405. *See* TSA (@tsa), INSTAGRAM (Jan. 22, 2023), https://perma.cc/H4UY-8FU5 (PDF); Cassandra Brooklyn, *The Funniest Travel Account on Instagram Is Run by the TSA. Seriously.*, N.Y. TIMES (Mar. 25, 2022), https://perma.cc/6K57-ZQFX.

406. *Id.*

407. *See* TSA (@tsa), INSTAGRAM (Mar. 16, 2022), https://perma.cc/W6BB-28H8 (PDF). So as to not keep our readers in suspense: the comments overwhelmingly suggest the video is of Las Vegas McCarran Airport.

408. *See* TSA (@tsa), INSTAGRAM (Mar. 29, 2022), https://perma.cc/T6UR-QFTZ (PDF).

motivational speaker Simon Sinek who has cited the agency 'as a great example of how government can have a good relationship with the public on social media.'"[409]

We acknowledge it may sound trite to simply suggest that the IRS do a "better job" of marketing.[410] But this suggestion must be understood in the context revealed by this Article: taxpayers are constantly subject to a barrage of false tax information on social media, where more than half of them get their news. Thus, we cannot overemphasize how serious and urgent the need to effectively communicate information to taxpayers is—specifically using social media. Further, we believe the return on investment could be immense. In the push to reform and improve IRS customer service, the opportunities for using social media to engage taxpayers and message reforms are inexpensive and may be more cost-effective than other solutions. Social media campaigns, for example, do not require extensive technology upgrades or high numbers of employees.

2. Lessons for Policy Design

Social media can amplify opposition quickly or provide a groundswell of support for policies, so policymakers need to understand how tax policies can be framed (and reframed) on social media. But the lessons about social media framing may require a more significant response from policymakers. It may not be sufficient to use social media to explain policies already designed. Rather, politicians may be wise to think about the ways policies will be framed on social media as part of their design considerations.

Consider, for example, the heavy emphasis in fake tax stories on "new" taxes. The evidence here suggests framing matters more than policymakers, especially non-politicians involved in policy design, may appreciate. Simply put, policymakers looking to raise revenue may have to consider

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409. Brooklyn, *supra* note 405.

410. We also acknowledge that there are other challenges and additional costs affecting IRS communications with the public that are beyond the scope of our analysis. Professors Joshua Blank and Leigh Osofsky document the potential costs of the IRS simplifying complex tax rules for the public in *Simplexity: Plain Language and the Tax Law*, 66 EMORY L. J. 189 (2017).

raising it from a pre-existing source rather than enacting a new tax. This might mean a choice to raise rates over implementing a new tax. Where that's not possible or desirable, policymakers should consider framing taxes as "fees." Policymakers should also remember that the more confusing and unintuitive a tax policy proposal is, the more easily such proposal will be misconstrued online.

The aversion to new taxes creates a particular challenge for policymakers interested in addressing income and wealth inequality through a wealth tax.[411] The "new tax" aversion we observe in our dataset may prove to be a powerful political obstacle to a wealth tax, particularly given how quickly a negative campaign against such a tax could be spread on social media.[412] On the other hand, taxes that are less easily framed as "new" may be less subject to new tax aversion.[413]

Because a wealth tax also faces other obstacles beyond new tax aversion (including a likely constitutional challenge), tax experts have already made efforts to design alternatives that would target the wealthiest taxpayers.[414] Some scholars have proposed a mark-to-market tax on appreciated property held by wealthy taxpayers, which would technically be an *income tax* (not a wealth tax) on unrealized gains.[415] For such a tax, both our dataset and the Washington State study

411. *See, e.g.*, *Ultra-Millionaire Tax*, WARREN DEMOCRATS, https://perma.cc/T8WX-2LZP; Emanuel Saez & Gabriel Zucman, *Progressive Wealth Taxation*, *in* BROOKINGS PAPERS ON ECONOMIC ACTIVITY 437 (BROOKINGS INST. Fall 2019).

412. Survey data indicates widespread support for a wealth tax. *See* Gabriela Schulte, *Poll: Two-Thirds of Voters Say Billionaires Should Pay a Wealth Tax*, THE HILL (Feb. 26, 2020), https://perma.cc/S5VZ-368A ("Sixty-seven percent of registered voters surveyed in the poll . . . said billionaires should be targeted and have to pay a wealth tax . . . ."). However, if a wealth tax were to gain serious political traction, it is hard to imagine opponents could not conjure up a highly effective social media campaign to spread misinformation about the tax, including its scope, as we have already seen with the Billionaire Minimum Income Tax proposal. *See supra* notes 297–299 and accompanying text.

413. *See supra* Part I.B.1.

414. *See generally, e.g.*, Brian Galle et al., *Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE L.J. 1257 (2023) (proposing that "governments should take payments from the wealthy in the form of notional equity interests").

415. For a discussion of various mark-to-market proposals, see Galle et al., *supra* note 414, at 59–63.

illustrate how crucial appropriate messaging is. A new mark-to-market tax on publicly traded assets should be framed as *an income tax on people who own securities*, not a *new tax on securities*.[416]

However, even positive framing might not be enough to counter fake tax news coverage of a novel revenue source that is not widely understood. Consider how the recent Billionaire Minimum Income Tax proposal (a mark-to-market tax on liquid assets held by the richest taxpayers) was wrongly portrayed by a story in our dataset as "[a tax] on our equity gains on our homes."[417] It may be that *any* new tax on unrealized gains—a potentially powerful tool in tackling wealth inequality—may not be viable in this current misinformation era. This may similarly point towards a carryover basis rule to reform the "step up in basis" rule of I.R.C. § 1014, rather than a deemed realization rule advocated by many scholars and policymakers.[418] To be clear, this is not an argument that "new" taxes should never be enacted, but rather simply an acknowledgement of evidence suggesting that the fake news ecosphere make may make messaging around "new" taxes even more difficult.

Finally, considering the susceptibility of complex tax rules to fake news, policymakers should consider carefully weighing the costs of tax complexity when enacting new policies. We encourage them to think hard about whether a more tailored or accurate rule is really the best policy option if such a rule is likely to be inaccurately framed for the public. A simpler, less

416. *See supra* Part I.B.1.

417. *See* Dillard, *supra* note 297.

418. The "step up in basis rule" is found in § 1014 of the Code and operates to forgive capital gains taxes on appreciated property held by taxpayers when they die. *See* I.R.C. § 1014. The Biden Administration has recently advocated for a deemed realization rule to replace § 1014 for wealthy taxpayers, which would subject appreciated assets to tax on the date of a taxpayer's death, as if the asset had been sold. *See* Samantha Jacoby, *Biden Proposal Would Eliminate Tax-Free Treatment for Much of Wealthiest Households' Annual Income,* CTR. ON BUDGET & POL'Y PRIORITIES (May 6, 2022, 1:10 PM), https://perma.cc/3BDJ-CZKV. A carryover basis rule, on the other hand, would defer tax on those assets until they were sold by the heir, thus not imposing any tax at the time of death. For a discussion of a carryover basis rule versus a deemed realization rule, and why a carryover basis rule may be more viable, see Richard Schmalbeck et al., *Advocating a Carryover Basis Regime*, 93 NOTRE DAME L. REV. 109 (2017).

targeted, yet harder to misconstrue rule may be superior for this reason alone.

CONCLUSION

In this Article, we have sought to connect the burgeoning literature on fake news to coverage of the tax law. Because the public's understanding of the tax system is both inaccurate and shaped by cognitive biases, we think tax policy is particularly suspectable to the manipulation of information on social media.

To explore the ways social media is misconstruing tax policy, we developed a unique dataset of fifty-six stories about U.S. federal taxation that have been flagged as false or mostly false by third-party fact-checkers. This dataset allowed us to explore tax trends in the social media misinformation landscape and provide data about the problem upon which solutions can be built.

Misinformation about tax is an old problem, but social media exacerbates existing pressure points on tax morale and public misinformation about tax policy. We think it is important for tax policymakers to understand these trends and formulate policies that proactively address them. We hope this Article will inspire further research into ways that tax misinformation on social media can be combatted to create a more informed public and, hopefully, improve tax policymaking.

APPENDIX

Fake news stories[419] listed in reverse chronological order

1. Anna Mock, *Did Alexandria Ocasio-Cortez Propose a Bill to Tax White People?*, CHECKYOURFACT (Apr. 12, 2022, 9:13 PM), https://perma.cc/A3QE-AH5Z.

2. Christiana Dillard, *Fact Check: Government Did NOT Propose Taxing Unrealized Gains for Most Americans—Just Top Earners*, LEAD STORIES (Mar. 31, 2022), https://perma.cc/VBX3-BUK4.

3. Jill Terreri Ramos, *Misleading Post Links Unemployment Benefits and Reduced Tax Refunds*, POLITIFACT (Mar. 3, 2022), https://perma.cc/H75E-V82D.

4. Christiana Dillard, *Fact Check: There Is NO '$600 Tax Rule' for Personal Payments on Cash App, PayPal, and Other Peer-To-Peer Payment Organizations*, LEAD STORIES (Jan. 3, 2022), https://perma.cc/NAP8-PYJV; Rob Lever, *US Stimulus Did Not Include New Tax on App Payments*, AFP FACT CHECK (Oct. 12, 2021, 1:40 PM), https://perma.cc/392Z-LCNW.

5. Ed Payne, *Fact Check: You Can NOT Simply Declare Yourself Not A US Citizen to Avoid Income Taxes*, LEAD STORIES (Dec. 9, 2021), https://perma.cc/M6Z7-WVAT.

6. Ed Payne, *Fact Check: Post Does NOT Show a Legal Way to Avoid Income Taxes on Tips*, LEAD STORIES (Nov. 16, 2021), https://perma.cc/7FHJ-GFGD.

7. Dan MacGuill, *Does 2021 Infrastructure Bill Include 'Methane Tax' on Cattle, Pigs?*, SNOPES (Nov. 2, 2021),

419. We counted as one "story" any meme, Facebook post, tweet, etc., even if it was fact checked by multiple third-party websites (e.g., both Snopes and PolitiFact) and thus appeared multiple times in our search. *See, e.g.*, stories no. 4, 8, and 9.

https://perma.cc/6N3P-46FS; Louis Jacobson, *Social Media Posts Wrong About "Cow Fart Tax"*, POLITIFACT (Oct. 8, 2021), https://perma.cc/RTP8-NE3T.

8. Christina Dillard, *Fact Check: Congress' Infrastructure Act Does NOT Include 61% Death Tax on Wealth, Estates for Every American*, LEAD STORIES (Oct. 14, 2021), https://perma.cc/RZN3-6PUS; Tom Kertscher, *A 61% Federal Tax That Would Have Been Rarely Applied Is Not Under Consideration*, POLITIFACT (Oct. 13, 2021), https://perma.cc/Z2HE-LN43.

9. Joseph A. Gambardello, *Infrastructure Bill Proposes Voluntary Pilot Program for Per-Mile Vehicle Fee, Not 'Driving Tax'*, FACTCHECK.ORG (Oct. 13, 2021), https://perma.cc/L7CG-VW5T; Daniel Funke, *Fact Check: Infrastructure Bill Wouldn't Impose 'Driving Tax' of 8 Cents Per Mile*, USA TODAY (Sept. 30, 2021, 5:32 PM), https://perma.cc/MKC5-8GH4 (last updated Sept. 30, 2021, 9:55 PM); Tom Kertscher, *Per-Mile Fee Would Be Tested, But No Proof Plan Is Aimed at Making Cars Obsolete*, POLITIFACT (Aug. 12, 2021), https://perma.cc/FK9K-H58B; Sheila James Spurlin, *Infrastructure Bill Contains Pilot MBUF*, FACEBOOK (Aug. 4, 2021, 12:05 PM), https://archive.ph/AHJaN/image.

10. Tom Kertscher, *Taxing Churches Would Not Add Enough Revenue to Lower Rates for Individuals*, POLITIFACT (Sept. 28, 2021), https://perma.cc/8K7M-RL8Y; Claire Savage, *Facebook Posts Exaggerate Impact of Taxing US Churches*, AFP FACT CHECK (Sept. 24, 2021, 12:19 PM), https://perma.cc/8CRX-YX29 (last updated Sept. 27, 2021, 11:20 AM); Christiana Dillard, *Fact Check: Taxing Churches Would NOT Mean Everyone Would Only Pay 3% of Their Taxes*, LEAD STORIES (July 15, 2021), https://perma.cc/Y6T6-R7YD.

11. Tom Kertscher, *Biden Plan to Require More Bank Account Reporting to IRS Is Still a Proposal*, POLITIFACT (Sept. 15, 2021), https://perma.cc/29Y3-LTA3.

12. Christiana Dillard, *Fact Check: AOC Did NOT Spend Thousands on Her 'Tax the Rich' Dress Nor on Her*

Ticket to the Met Gala 2021, LEAD STORIES (Sept. 15, 2021), https://perma.cc/G3DK-MFTJ.

13. Ella Lee, *Fact Check: False Claim That Income Tax Was Intended to Be Temporary in 1913*, USA TODAY (Sept. 14, 2021, 10:25 PM), https://perma.cc/U9E4-KWBY.

14. Tom Kertscher, *A Rip on AOC's Dress Misses with Claim That the Top 1% Pay 90% of Income Taxes*, POLITIFACT (Sept. 14, 2021), https://perma.cc/6PVB-M3FF.

15. Ryan King, *Fact Check: Was Donald Trump Cleared of All Charges in the New York Tax Investigation?*, CHECKYOURFACT (Sept. 13, 2021, 12:58 PM), https://perma.cc/A8PH-3M8V.

16. Jon Greenberg, *Paying Taxes Is Not Voluntary*, POLITIFACT (July 23, 2021), https://perma.cc/73JE-4YYV.

17. Bethania Palma, *No, Walmart Isn't Writing Off Your Checkout Donations*, SNOPES (June 29, 2021), https://perma.cc/R39X-PLC5.

18. Christiana Dillard, *Fact Check: U.S. Citizens Do NOT Pay a Percentage of Their Taxes to the Queen of England*, LEAD STORIES (June 24, 2021), https://perma.cc/LKF7-R74Q.

19. Tom Kertscher, *No Sign That Tax Moves by Trump or Biden Affected Ford Car Plans in Ohio, Mexico*, POLITIFACT (Apr. 6, 2021), https://perma.cc/TFF8-PSSB.

20. Gabrielle Settles, *No, This Year's Tax Deadline Is NOT April 18*, POLITIFACT (Apr. 1, 2021), https://perma.cc/SG3C-4VRZ.

21. Madison Czopek, *Facebook Post Misleads About Tax Bill Breakdown*, POLITIFACT (Feb. 19, 2021), https://perma.cc/WA4J-D5FR.

22. Tom Kertscher, *No, Biden Has Not Signed a 45% Capital Gains Tax or an Inheritance Tax Increase*, POLITIFACT (Feb. 16, 2021), https://perma.cc/4QVQ-8E2R.

23. Louis Jacobson, *Social Media Post Misrepresents Analysis of Trump Tax Law*, POLITIFACT (Feb. 5, 2021), https://perma.cc/4ZUA-ZCE6.

24. David Mikkelson, *Has Biden Proposed Taxing 401(k) Plans?*, SNOPES (Oct. 28, 2020), https://perma.cc/H3H9-62ST.

25. David Mikkelson, *Is Biden Proposing a 3% Federal Property Tax?*, SNOPES (October 27, 2020), https://perma.cc/7TJJ-PWUL; Daniel Funke, *No, Joe Biden Doesn't Want to Impose a Federal Tax on Homes*, POLITIFACT (Sept. 8, 2020), https://perma.cc/CHV8-XMH7.

26. Daniel Funke, *Biden's Tax Plan Would Not Impose 40% Capital Gains Tax on Most Home Sales*, POLITIFACT (Oct. 16, 2020), https://perma.cc/M67D-B49A.

27. Jessica Lee, *Is Biden Proposing 'Biggest' Tax Increase in US History?*, SNOPES (Oct. 15, 2020), https://perma.cc/XG9Q-ANGE.

28. Anna Staver, *Fact Check: No Law Prevents Donald Trump from Releasing His Tax Returns*, USA TODAY (Oct. 14, 2020, 4:24 PM), https://perma.cc/C5FW-BLWJ (last updated Oct. 14, 2020, 4:25 PM).

29. Tom Kertscher, *No Evidence Kamala Harris Backs Tax to Pay for Slavery Reparations*, POLITIFACT (Oct. 7, 2020), https://perma.cc/3WC2-XK35.

30. Monique Curet, *No Evidence of Claims Trump Paid Millions in Taxes in Recent Years*, POLITIFACT (Oct. 7, 2020), https://perma.cc/N69N-NHC4; Kim LaCapria, *Leaked 2013 Trump Tax Return Shows He Paid Over 40 Million in Taxes*, SNOPES (Oct. 12, 2016), https://perma.cc/K9EA-MB8D.

31. Ciara O'Rourke, *No, Merrick Garland Isn't Investigating Donald Trump for Tax Evasion*, POLITIFACT (Sept. 29, 2020), https://perma.cc/F573-ME84.

32. Bill McCarthy, *Another Widespread Facebook Post Spreads False Claims About Joe Biden's Tax Plan*, POLITIFACT (Aug. 26, 2020), https://perma.cc/HVK6-SZT5.

33. Angelo Fichera, *Posts Distort Impact of Biden's Tax Plan on Middle-Income Earners*, FACTCHECK.ORG (Aug. 25, 2020), https://perma.cc/JX2F-AW4U; Bill McCarthy, *Facebook Post Wrongly Claims Biden Would Hike Tax Rates for Family Earning $75,000*, POLITIFACT (Aug. 20, 2020), https://perma.cc/QWR3-QMFB.

34. Louis Jacobson, *Debunking (Again) a 14-Year-Old Post on Immigrants in Los Angeles*, POLITIFACT (July 29, 2020), https://perma.cc/29RJ-XR7L.

35. Louis Jacobson, *No, You Don't Have to Pay Back Your Stimulus Check*, POLITIFACT (Apr. 15, 2020), https://perma.cc/44FR-DJRZ; Alex Kasprak, *Will Your Coronavirus Stimulus Check Count Against Your 2020 Tax Refund?*, SNOPES (April 7, 2020), https://perma.cc/P3LS-YQPE.

36. Tom Kertscher, *Not Enough Data to Judge Impact of Sanders Tax Plans on Student-Loan Debtors*, POLITIFACT (Mar. 6, 2020), https://perma.cc/M8NY-Q5AG.

37. Aaron Sharockman, *A Second Viral Post Pops Up About Bernie Sanders' Minimum Wage, Tax Plans. It's Just as Wrong*, POLITIFACT (Feb. 29, 2020), https://perma.cc/G3AT-5GBZ.

38. Dan Evon, *Did Sanders Propose Raising Taxes to 52% on Incomes Over $29,000?*, SNOPES (Feb. 21, 2020), https://perma.cc/2B9R-GNMD (last updated Feb. 23, 2020); Daniel Funke, *Viral Post Criticizes Bernie Sanders' 'Math' on Health Care, Taxes. It's Wrong*, POLITIFACT (Feb. 21, 2020), https://perma.cc/GH99-6W4Q.

39. Tom Kertscher, *Two-Pronged Attack on Democrats Over Social Security Wrong on Both Counts*, POLITIFACT (Jan. 29, 2020), https://perma.cc/5VUD-DVYZ.

40. Dan Evon, *Does Facebook 'Write Off' Your Birthday Donations?*, SNOPES (Nov. 6, 2019), https://perma.cc/U2QG-MAR3.

41. Dan Evon, *Did Democrats Unveil a Plan for a 42% Sales Tax to Pay for Medicare for All?*, SNOPES (Oct. 30, 2019), https://perma.cc/CE3M-QC8E.

42. David Mikkelson, *Does This Meme Demonstrate Racial Bias in Tax-Evasion Prosecutions?*, SNOPES (Mar. 15, 2019), https://perma.cc/P7LL-XW35.

43. Saranac Hale Spencer, *Meme Spreads Bogus Tax Information*, FACTCHECK.ORG (Feb. 28, 2019), https://perma.cc/TN4H-NGGR (last updated Mar. 1, 2019).

44. Bethania Palma, *Did the IRS Admit It 'Encourages Illegals' to Steal Social Security Numbers for Taxes?*, SNOPES (Jan. 16, 2019), https://perma.cc/E36Z-3ELG.

45. Louis Jacobson, *Did the U.S. Have a Record Tax Haul After Trump Tax Cuts Spurred Economic Growth?*, POLITIFACT (Aug. 17, 2018), https://perma.cc/9FJC-3K6J.

46. Dan MacGuill, *Did Education Secretary Betsy DeVos Register Her Yacht in the Cayman Islands?*, SNOPES (Aug. 17, 2018), https://perma.cc/C3QK-LCAP.

47. Louis Jacobson, *Are Most of Our Taxes Spent on the War on Terror? No*, POLITIFACT (Apr. 24, 2018), https://perma.cc/JM7M-QDLB.

48. Bethania Palma, *Is the KKK Tax-Exempt as a Religious Organization?*, SNOPES (Apr. 12, 2018), https://perma.cc/5FEQ-6MBV.

49. David Emery, *Does the 2017 Tax Reform Bill Eliminate Small Business Deductions?*, SNOPES (Dec. 4, 2017), https://perma.cc/CA2B-XXNU.

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