

Essay

Tax Talk and *Taxing Sugar Babies*

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Tax is pervasive. It shapes our lives and decisions. But how do we talk about tax and how is that talk undergirded by our perceptions of what tax law requires of us?¹ Bridget Crawford's piece *Taxing Sugar Babies* takes a deep dive into another set of perceptions and talks about tax in an unusual area. What it reveals is that our perceptions and our tax talk are sometimes clouded by other matters outside coming into the world of taxation. That in turn raises questions about how taxpayers interact with the tax system that has grown to cover more areas of policy and what it means for our discourse in a democracy. Sugaring is one example of many that exemplifies how non-experts discuss tax concepts in real life.

Professor Crawford's article shows that sugar babies, and to a lesser extent sugar daddies, tend to treat payment, both cash and in-kind, as gifts rather than compensation. On the one hand, there are tax benefits to gift treatment, as sugar babies would not owe federal income and payroll taxes on the exchange.² But most tax experts would say sugar babies and daddies should characterize these payments or exchanges as compensation, even if it does lead toward heightened tax liabilities for sugar babies. While sugar babies may avoid tax now, this treatment as a gift rather than compensation could harm sugar babies because they are not paying payroll taxes for Social Security. Thus, the gift treatment seems to be off, and there are negative long-term personal finance problems with this treatment.

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1. One example of misperceptions of taxation come from Emily Cauble's survey work. Emily Cauble, *Taxing Composite Transactions*, 77 SMU L. REV. 349 (2024) (noting that people misjudge composite transaction taxation, often with poor results).

2. Bridget J. Crawford, *Taxing Sugar Babies*, 109 MINN. L. REV. 737 (2024).

But Crawford shows that something else animates the “gift” treatment. It is the idea that there is something icky about calling these exchanges a transaction or compensation. People want to view sugaring as an intimate relationship, even though it almost always requires the provision of sex in exchange for the sugar. Relatedly, those in a sugaring relationship also want to avoid the stigma of sex work. Professor Crawford shows that this reasoning is part of what pushes people away from the likely treatment of compensation. Paying for companionship and sex feels wrong.

The article reveals how our conceptions of taxation are often clouded. Reasoning is often instrumental. But instrumental reasoning is not always focused on reaching the best tax or financial outcome. Instrumental reasoning instead often serves other goals, like self-perception and expression. Social pressures and influence also play a role in this instrumental reasoning and how we think about taxes.³ In the instance of sugaring, Professor Crawford shows that those involved in sugaring seek this gift treatment to maintain the expressive goal of having an intimate relationship and avoid the scarlet lettering of sex work.

What these complex perceptions and discourses reveal is that numerous other non-tax social factors muddle our understanding and discussion of tax issues. In some ways, we cannot escape how we wish to perceive ourselves and our own goals that are not related to tax or financial well-being. As Professor Crawford shows, in the sugaring relationship, sugar babies not treating the sugar allowances and payments as taxable income works in harmony with the idea that sugaring is not sex work. Yet, this very view works against financial well-being because these sugar babies then are also not receiving future benefits from escaping tax, like Social Security later in life based on this sugaring income. The problem, of course, is that not only does this way of speaking about tax affect our conceptions and engagement with important issues of tax policy in our democratic society, but it also intrudes on other areas of policy as well. That is because tax policy is often the locus for numerous other areas of policy too, from housing to income support to health care. Muddled reasoning and discourse, as shown in Crawford’s article, could

3. See, e.g., Bridget J. Crawford, *Pink Tax and Other Tropes*, 34 *YALE J.L. & FEMINISM* 88, 94–95 (2023) (discussing a taxonomy of tax phrases including “pink tax”).

create some significant problems when we use taxation to affect other areas of policy.

For example, there is an endowment effect that many people have regarding key tax breaks and incentives. For example, through taxation, the federal government subsidizes state and local government taxes, mortgages for housing, and employer-sponsored health insurance through various deductions and exclusions. But people see these not as some sort of grant from Congress, but more akin to a right that they have. Taking them away often causes a firestorm. One need only look at the continuing desire to reinstitute a full state and local tax deduction to see this effect.⁴ The problem, of course, is that such endowment effects limit the range of possibilities for better policies. Thus, it becomes much harder to address fiscal federalism appropriately, reform health insurance markets, or even address key housing policy issues.

Similarly, while there is no endowment effect here, Professor Crawford shows that part of the resistance to having people treat these payments and transfers as compensation is because of the stigma around sex work. In this way, the tax talk here reinforces some of that stigma creating a positive feedback loop that entrenches certain ideals and prevents us from taking those matters head on. The similarity then between the stigma of sex work and something like the state and local tax deduction mentioned above is that outside perceptions infect tax talk and tax talk then helps reinforce and prevent reform or re-ordering.

The other problem too is that our misunderstandings on even basic tax issues and the tax talk around it harms our overall democratic discourse. Taxation funds the state, which serves as the key coordinating force in a society, and in a democratic society, the operation of the state requires both deliberation and eventual decision rules that resolve through majority rule. Tax thus is required and an important shaping tool for a democratic society.

But when we have misguided tax talk or misunderstandings that are clouded unintentionally by other factors, it undermines our ability to deliberate or aggregate preferences coherently. Professor Crawford's piece raises some concerns on that

4. See Andrew Duehern & Catie Edmonson, *How Trump's Tax Cuts and Tariffs Could Turn into Law*, N.Y. TIMES (Nov. 19, 2024), <https://www.nytimes.com/2024/11/19/us/politics/trump-tax-cuts-congress.html> (last visited Nov. 22, 2024).

dimension. Reading it, there may be a tendency to say, “Let’s have the tax experts decide everything.”

That said, Professor Crawford does show some signs of hope, at least in deliberation and discourse. The Reddit subreddits on sugaring show some thoughtful discussions of the tax implications of sugaring. While motivated reasoning in avoiding treatment as compensation for sex work still reigned, some of the people on the subs did realize at least that their reasoning pressed against the likely correct tax outcome when they got pushback from those with greater expertise.⁵ The positive thing is that while sometimes misguided and muddled, tax talk can sometimes get clarified in some deliberative forum.

Thus, what this shows is that misunderstandings and problematic tax talk may be rife. But we can also improve. What is necessary is a proper vessel for deliberating and discussing tax issues for most people. People then start to understand the stakes and see what is going on clearer, even if sometimes begrudgingly because they do not like some of the results and what it expressively says about them.

In revealing this hidden glimmer, the article requires us to rethink how we involve people in the development of tax policy. Rather than ignoring people, we may want to engage them in constructive ways. There is still a role for expertise to help people understand issues and complexities, but we also need to allow people to discuss the matters and provide their own insights. This move should enrich our tax system, provide more information, and even support some additional buy-in in taxation. Additionally, there is an educative effect that arises as people learn more about how the system works, and even if they do not understand every form of complexity, it becomes less mysterious.

Having such spaces or means for more people to deliberate in this way too could have not only benefits for taxation itself, but also in other areas of life that tax touches. A more robust and crafted deliberative space, with some experts to help, could have more than just tax effects. Because, as noted, taxation has specific programs aimed at shaping social outcomes and also is mass and touches so many things in our lives, it can also spur thoughts

5. See Crawford, *supra* note 2, at 790–94 (showing a Sugar Baby post to a subreddit asking for advice on treating her payments as gifts of income, getting some significant pushback from more tax professional types, and then editing the original post in a way that suggested she saw the sugar allowances as taxable income).

and potential rethinking of other areas of law, society, and culture. To return back to sugaring, if framed properly, discussions on the tax treatment of sugaring in a proper deliberative space could also help us rethink and reimagine our notions of sex work not only legally but also culturally.

Fundamentally, what Professor Crawford's article does for me is raise the pitfalls and the potential of tax talk among the broader public. What is important is trying to find ways to have the proper holding space to deliberate, learn, and clarify. And when that space arises, it can help us learn and change our society and, in some ways, our own conceptions of self. And ultimately, that is a major goal of living in a democratic society.