

# The Future of Tax Law



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# Intro: The OBBBA Changes Things



*“But I know the truth. There’s no going back. You’ve changed things.”*

- Heath Ledger’s Joker, *The Dark Knight*

## Jeffries' Soliloquy

**July 3, 2025.** On the eve of passing the OBBBA, House Minority Leader Hakeem Jeffries delivers a passionate and 8-hour soliloquy on the bill.



**43,880 words** in total; **only 1,600 regarded taxes.\***

Tax emphasis primarily related to:

- **the highest marginal rate;**
- **the SALT limit;** and
- **green energy incentives.**

\* ACA premium tax credits underpin much of the non-tax discussion, but Jeffries expressly mentions them only once.



## Marginal Rates & the SALT Limit

## Jeffries' Soliloquy

### Highest marginal rate remains a dispute.



Jeffries uses the term “**massive tax breaks**” for “billionaires” or “the “wealthy” **15 times.**

Expressly mentions amendments to limit the extension of TCJA tax cuts offered by Representatives (i) Judy Chu for those earning more than \$10 million per year; (ii) Jimmy Gomez for those earning \$1 billion a year; (iii) Lloyd Doggett, for those making \$400,000 per year; and (iv) Gabe Amo and Seth Maziner who “had an amendment to provide a tax cut for the middle-class, paid for by increasing taxes on the wealthiest here in this country, taxes and a tax rate that had previously been at 39 percent [before TCJA]”.

# Marginal Rates

## Highest Marginal Rate: A Post-Cold War History



### Omnibus Budget Reconciliation Act of 1993

Sec. 13202. Surtax\* on High-  
Income Taxpayers  
\$39.6%

### Economic Growth and Tax Relief Reconciliation Act of 2001

2001	2002-2003	2004-2005	2006-2010
39.1%	38.6%	37.6%	35%

### Jobs and Growth Tax Relief Reconciliation Act of 2003

2003-2010  
35.0%

### Tax Relief Act of 2010

2010-2012  
35.0%

### American Taxpayer Relief Act of 2012

2013+  
39.6%

### Tax Cuts and Jobs Act of 2017

2018-2025  
37%

\* Compare with Sec. 11101 of the Omnibus Budget Reconciliation Act of 1990, titled, "Elimination of Provision Reducing Marginal Tax Rate for High-Income Taxpayers," which imposed a 31% rate above \$78,400. Prior to this, the 1986 Act's 28% rate governed.



## Jeffries' Soliloquy

### Disagreement about the SALT deduction.



"The state and local tax deduction was decimated, Mr. Speaker, by Donald Trump, House Republicans, and Senate Republicans in 2017 in connection with the GOP tax scam that callously and unnecessarily imposed a \$10,000 cap, wiping away thousands of dollars a year for hardworking American taxpayers. Republicans did that."

- House Minority Leader Hakeem Jeffries

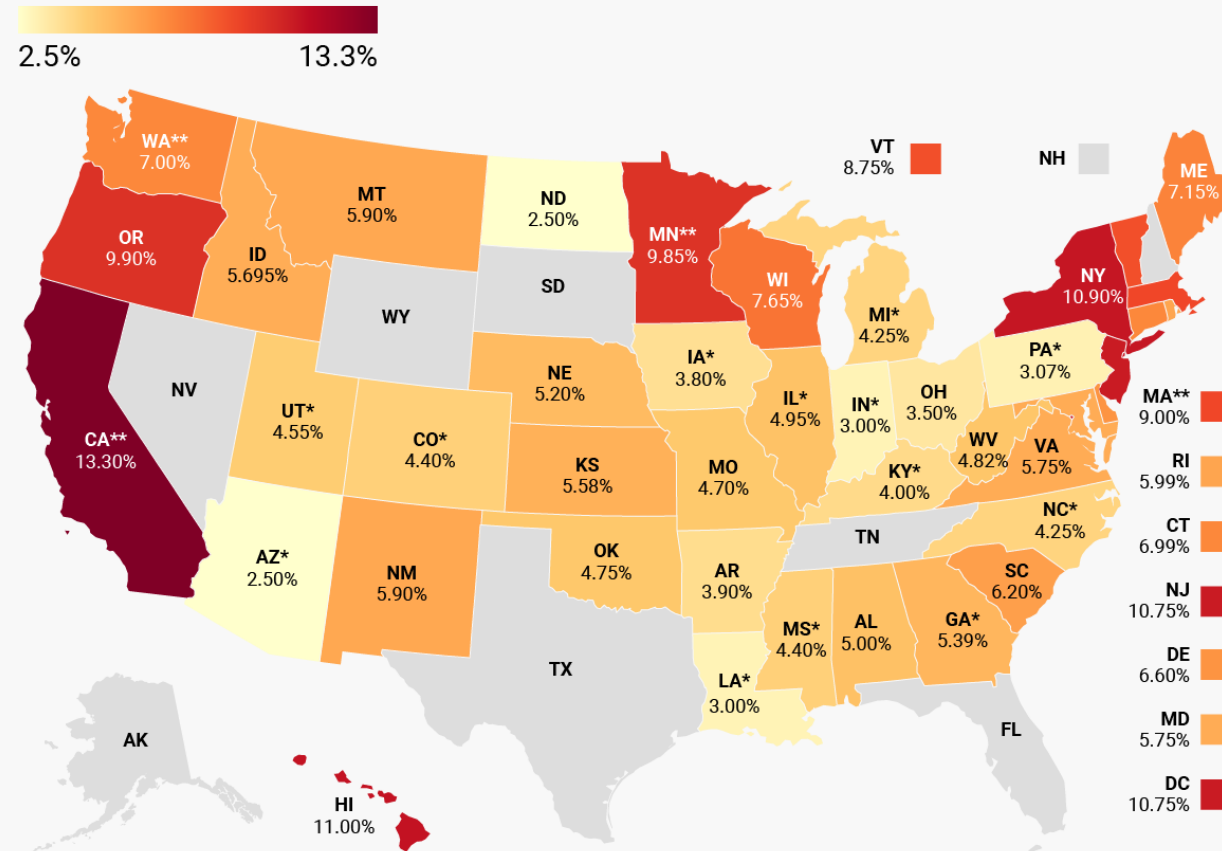
# SALT Deduction

**Effective Federal Rate.** Pre-TCJA, the only limit on the SALT deduction was the general 3% Pease limitation.

Thus, for residents of an income tax state following the Code, the effective federal rate was:

$$F(\text{eff}) = F(\text{rate}) \times (1.03 - S(\text{rate}))$$

## Top Marginal State Individual Income Tax Rates (as of January 1, 2025)



Note: Map shows top marginal rates: the maximum statutory rate in each state. This map does not show effective tax rates, which would include the effects of various tax preferences. Local income taxes are not included.

(\*) State has a flat income tax.

(\*\*) Washington's 7% rate only applies to high earners' capital gains income. Top rates exclude non-UI payroll taxes in CA (1.1%), MA (0.46%), and WA (0.58%), and a 1% high earners' capital gains surtax in MN.

Sources: Tax Foundation; state tax statutes, forms, and instructions; Bloomberg Tax.



## SALT Deduction (cont'd)

At today's state income tax rates, if the 39.6% rate returned and SALT was unlimited, residents of six states and the District of Columbia would have effective rates *lower* than OBBBA's permanent 37% rate.



	State Tax Rate	Effective Federal Rate (After SALT deduction)		
Fed		37%	39.60%	
CA	13.30%	33.19%	35.52%	
HI	11.00%	34.04%	36.43%	
NY	10.90%	34.08%	36.47%	
DC	10.75%	34.13%	36.53%	
NJ	10.75%	34.13%	36.53%	
MN	9.85%	34.47%	36.89%	
OR	9.90%	34.45%	36.87%	



# Uncertainties for Clean Energy Credits

## Jeffries' Soliloquy

### General Disagreement re: IRA Tax Credits



"It is an all-out and unnecessary assault on the clean energy tax credits, the clean energy tax credits that many of my Republican colleagues promised in letter after letter after letter that they would stand behind, but all chose to fold and abandon, fighting instead for special interests and opposing the ability for this country to stand up a cleaner energy economy, which means cheaper energy. . . .

Because of the attack on **clean energy jobs**, on the **clean energy economy**, and on the **economic development** that had already been set in motion, often in districts represented by our Republican colleagues and in Republican-led States, red States, by some estimates, millions of jobs are going to be lost."

- House Minority Leader Hakeem Jeffries

# Uncertainties

## New Uncertainties in the Tax Credit Space



**Begin Construction and Continuity** IRS eliminated a 5% cost safe harbor and provided detailed (but generous) guidance on when physical work begins and how it is continued.

**FEOC.** Foreign entities of concern (currently, China, Russia, Iran and North Korea) determinations pending IRS guidance. Note DoE has guidance for purposes of the Bipartisan Infrastructure Law.

Note while tax credit transfer rules remain the same, uncertainties above and bonus depreciation reducing tax appetite for buyers limits growth of that market.



# Navigating Uncertainty: Tax Insurance Demystified

# To Self-Insure or Tax Insure

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## The Problem:

Material (\$5MM+) tax position; that is probably correct (MLTN); and a stakeholder is still unsatisfied.

## The Solution:

Risk allocate (escrow, purchase price adjustment, tax indemnity); or risk transfer (to insurance syndicates).



# Sample Contract Language

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## Deflect cost:

[Counterparty] shall cooperate with [Client] and its affiliates in connection with obtaining one or more tax insurance policies related to the [Tax Treatment] for the benefit of [Client] and its affiliates as named insured thereunder.

The costs and expenses related to obtaining each such tax insurance policy, including total premium, underwriting costs, taxes, brokerage commissions, costs of any opinion of counsel delivered in connection therewith and other fees and expenses of such a policy shall be borne by [Counterparty].

# Sample Contract Language (cont'd)

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## Release escrow:

Within five (5) Business Days after the Tax Insurance Policy is bound, Buyer and the Seller Representative shall direct the Escrow Agent to pay to or as directed by the Seller Representative (for onward transfer to the Post-Closing Payees in accordance with the Post-Closing Payment Allocation), by wire transfer of immediately available U.S. funds in accordance with the Escrow Agreement.

# Tax Insurance Basics

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**Losses covered:** unpaid taxes, interest and penalties; contest costs (after a retention); and a tax gross up on the foregoing.

Tax audit claim can be made **up to 7 to 10 years from binding.**

**Defense led by insured and its tax counsel**, subject to participation rights, agreement not to prejudice insurer or settle without insurer's consent.

# A Bridge for Parties to Cross

**Bridge a risk tolerance gap** by suggesting tax insurance to grease the wheels where a deal (M&A, project development financing, etc.) is caught up on a **likely meritorious but uncertain** tax position.



**Tax Insurance (~\$0.03 to \$0.06)**

**You Are Here**

("probably" works or "more likely than not")

**Stakeholder Ask**

("will")



## **What's Not in the OBBBA: Corporate Income Taxes & Tariffs**



**James Chenoweth** ✓ • You  
Tax Insurance Texas (Not in order).  
1mo • Edited • 👤



How impactful are 10% reciprocal tariffs?

For every \$100B of trade deficit on tariff eligible goods, the fisc, in real time, collects 3 times the amount of tax Coca-Cola and the IRS have been disputing for tax years 2007-2009 without litigation costs.

Let that sink in.

# Fiscal Comparison

Tariffs (as of May 13, 2025)\*  
Total Effect: \$2,800 Billion



## Tariff Revenue

**2025-2035**

\$2,500.0B

## Debt Interest Savings

**2025-2035**

\$500.0B

## Lower Growth

**2025-2035**

\$(200.0)B

- Letter of the Congressional Budget Office to Hons. Schumer, Wyden and Merkley dated June 4, 2025 at 1-2.

# Fiscal Comparison (cont'd)

Recent Corporate Tax Proposals Generating \$100B+\*  
Total: \$2,435.2 Billion



## Corporate Tax Rate to 28%

**2025-2029**

\$632.6B

**2025-2034**

\$1,349.9B

## CAMT to 21%

**2025-2029**

\$63.3B

**2025-2034**

\$137.4B

## Excise tax on stock buybk

**2025-2029**

\$76.2B

**2025-2034**

\$165.9B

## Expand Sec. 162(m)

**2025-2029**

\$152.9B

**2025-2034**

\$271.8B

## Global Min Tax/Anti-Inv

**2025-2029**

\$169.4B

**2025-2034**

\$373.9B

## Undertaxed Profits Rule

**2025-2029**

\$66.7B

**2025-2034**

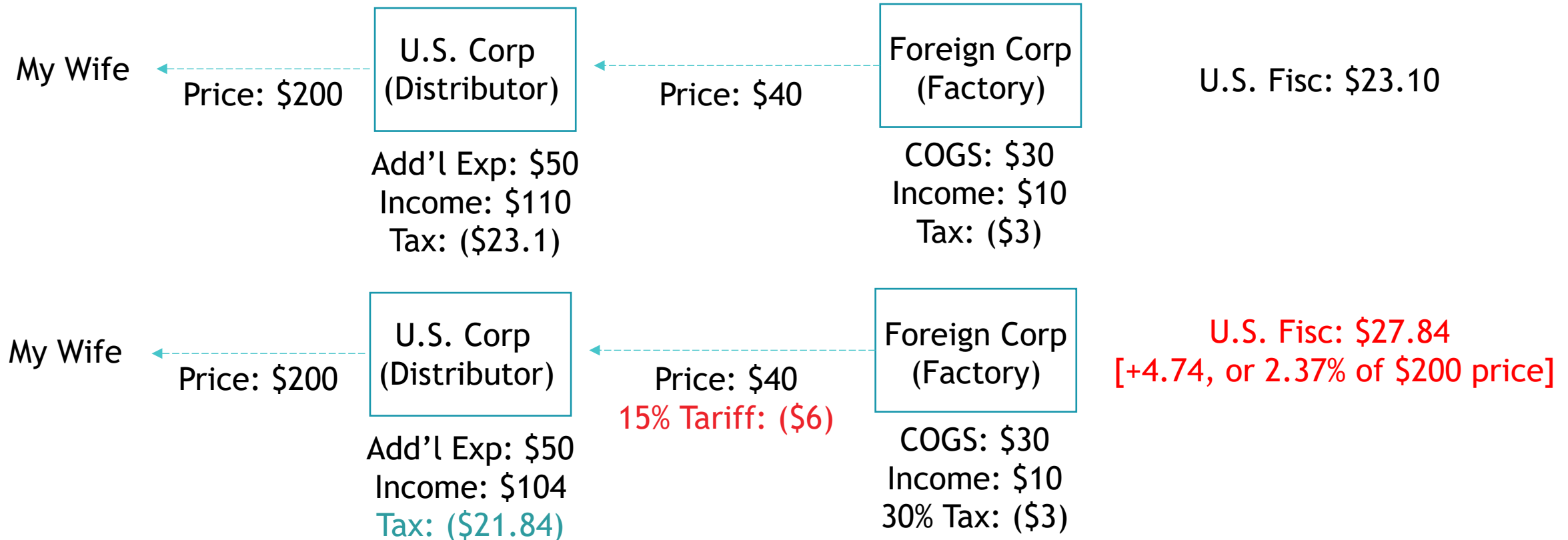
\$136.3B

\* Excludes FDII deduction (\$157.9B) repeal proposed to directly offset R&D expensing. See Treasury Green Book (2025) at p.239 (Reform Business Taxation; Reform International Taxation)



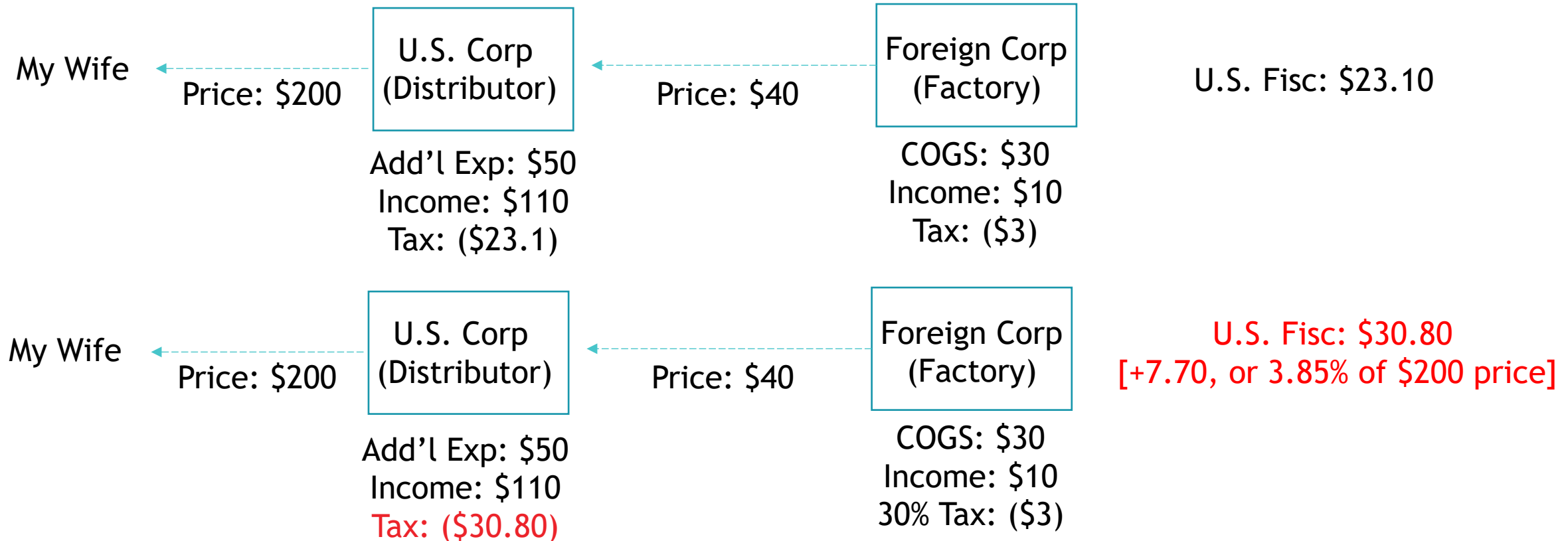
# Micro Comparison

## Example 1: Tariff Effect



## Micro Comparison (cont'd)

### Example 2: 28% Corporate Rate Effect



# Micro Conclusion

Assuming \$200 Retail Price; 15% Tariffs

## Private Sector Savings Relative to 28% Corp. Income Tax Rate



		Import Price		
		\$20.00	\$40.00	\$80.00
Add'l U.S.	\$10.00	\$9.53	\$5.76	(\$1.78)
Sourced	\$50.00	\$6.73	\$2.96	(\$4.58)
Expenses	\$100.00	\$3.23	(\$0.54)	(\$8.08)

Tariffs have a greater impact than corporate rate increases for low-margin businesses where (i) import price is high relative to retail price; or (ii) sufficient U.S. expense adds to COGS (and thereby reduces taxable income).

High margin import businesses (e.g., semi-conductors, luxury apparel), the corporate tax

# Carrots & Sticks

## Example 3: Onshoring at 150% Foreign Cost



My Wife

Price: \$200

U.S. Corp

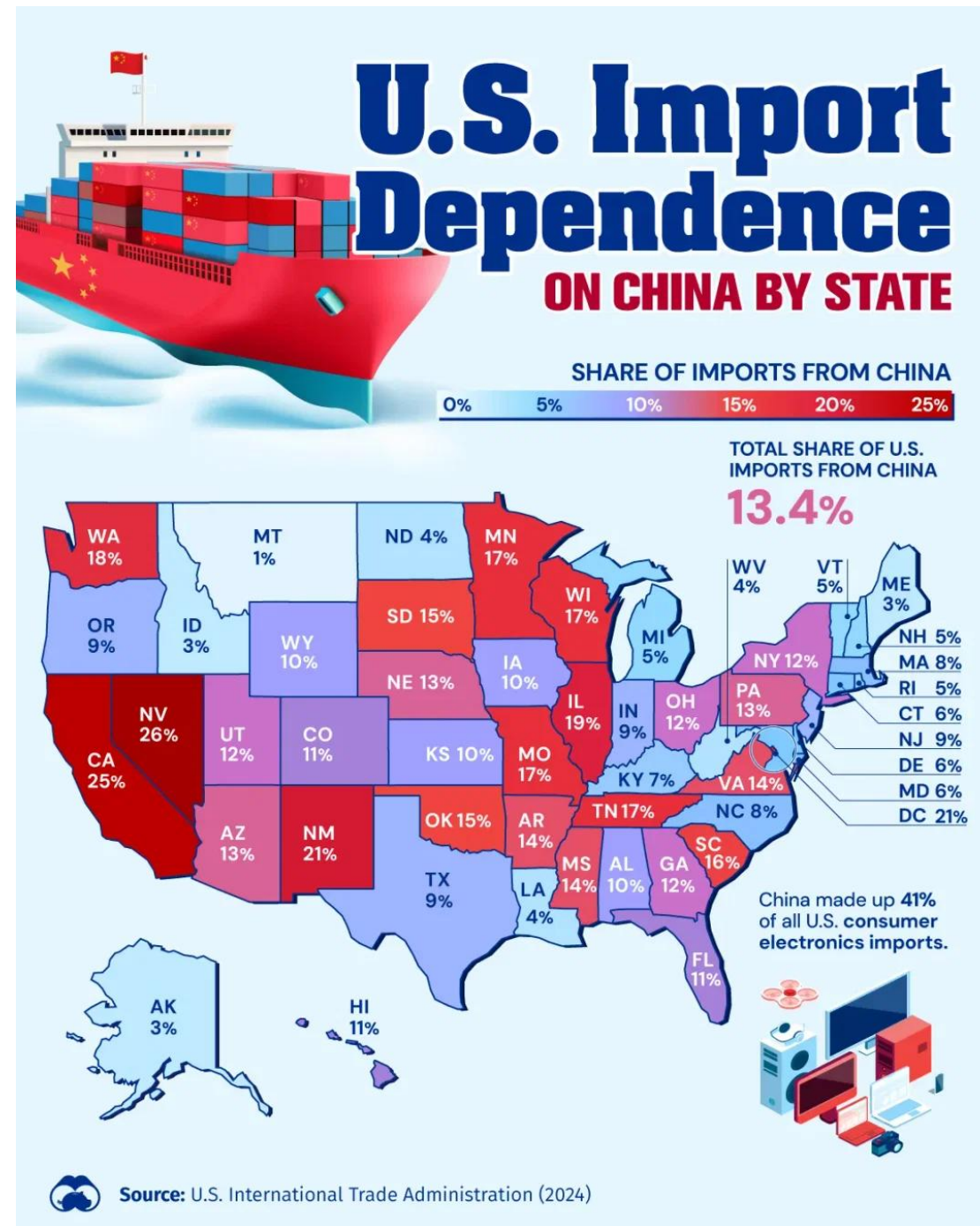
COGS: \$45  
Add'l Exp: \$50  
Income: \$105  
Tax: (\$22.05)

	Ex. 1	Ex. 2	Ex. 3	Ex. 4
	Pre-Lib Day	Aft-Lib Day	28% Rate	Onshored
Sale Price	\$200.00	\$200.00	\$200.00	\$200.00
Less COGS	(\$40.00)	(\$40.00)	(\$40.00)	(\$45.00)
Less Tariff		(\$6.00)		
Less Add'l U.S. Exp	(\$50.00)	(\$50.00)	(\$50.00)	(\$50.00)
Net Income	\$110.00	\$104.00	\$110.00	\$105.00
U.S. Corporate Tax	(\$23.10)	(\$21.84)	(\$30.80)	(\$22.05)
After Tax Profit	\$86.90	\$82.16	\$79.20	\$82.95
Compare to Ex. 1		(\$4.74)	(\$7.70)	(\$3.95)
As % of Gross		-2.37%	-3.85%	-1.98%

# Who Bears the Cost of Tariffs?

The U.S. economy is dependent on a sophisticated Chinese supply chain, but dependency varies by state and, of course, industry.

Further, many consumer goods have high marketing, branding and logistics (esp. last mile) costs (i.e., domestic costs) that make up a larger portion of the retail price than the import price.

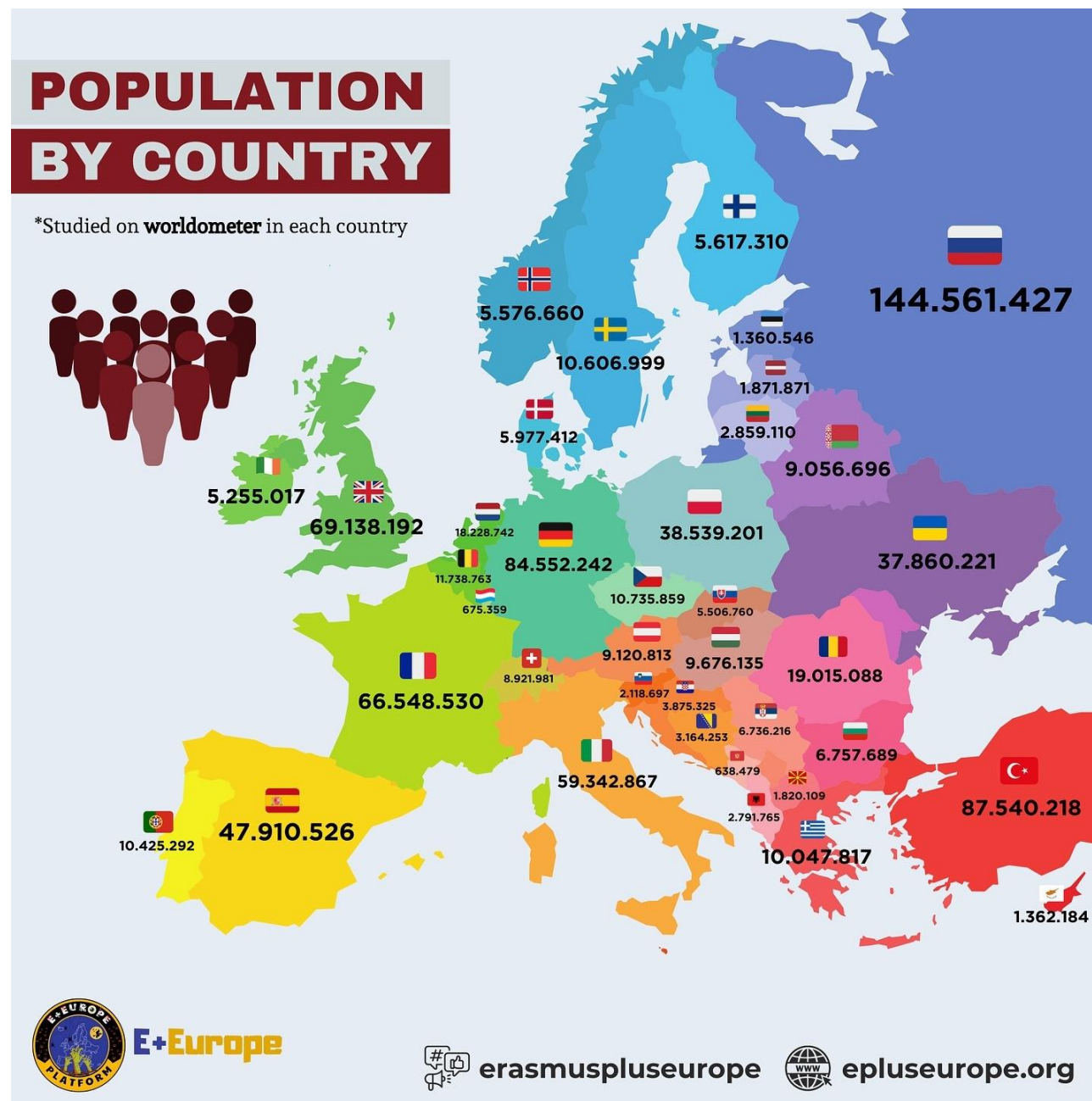




# Who Bears the Cost of Tariffs (cont'd)

**Population density matters.** The busiest port in Europe is Rotterdam in the Netherlands. A trucker driving 2,250 km can deliver goods to (i) Lisbon, Portugal, (ii) the boot of Italy or (iii) Kiev, Ukraine. With the same distance out of United States' busiest port (L.A.), the truck arrives in Austin, Texas.

If the boat went a little further to Europe's third busiest port (Hamburg, Germany), the truck arrives in Moscow.





Questions?



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