

Will the Corporate AMT Turn Norwalk Into a Booming Metropolis?

by Libin Zhang

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In this article, Zhang considers whether the location of the Financial Accounting Standards Board in Norwalk, Connecticut, could transform the city into a center of political power, using the rise of Constantinople as a historical comparison.

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The federal government has enacted a 15 percent corporate alternative minimum tax on the financial statement income of large corporations. For most U.S. corporations, their financial statement income is determined under generally accepted accounting principles as promulgated by a private nonprofit organization, the Financial Accounting Standards Board, based in Norwalk, Connecticut. Norwalk is the sixth largest city in Connecticut but might become a significant new locus of American political power.

A Tale of Two Cities

The history of Constantinople as the second capital of the Roman Empire is instructive as precedent. The Senate and the executive leadership in Rome during the early fourth century had some issues: There were geopolitical tensions with the Persians, undocumented workers kept crossing the river frontiers, and inflation at approximately 3.6 percent per year had debased the denarius's spending power by 200 times after a century and a half.¹

¹ Federal Reserve Bank of St. Louis, "Inflation and the Fall of the Roman Empire" (2018) ("From AD 150-AD 300 the price of one modius of wheat increased from 2 sesterces to 400 sesterces. This is a 200-fold increase in a century and a half.").

The country revived after Emperor Constantine I (who reigned from 307 to 337) shifted imperial power to the small port city of Byzantium — a "new Rome" and the site of the empire's second capital, which was renamed Constantinople. Constantinople's many successful later emperors included Anastasius I (r. 491 to 518), who ascended to the throne at the young age of 61 and is renowned among tax scholars for his effective tax reforms.

The Senate and the executive leadership in Washington may have had similar motivations when they delegated the federal government's taxing powers over the largest corporations to FASB, located in another small port city — Norwalk. It and Constantinople have many parallels, as shown in the table.

Norwalk doesn't have the famous walls built by Emperor Theodosius II (r. 408 to 450), which were mostly successful at keeping people out for 1,000 years. But it has some advantages over Constantinople. Emperor Valens (r. 364 to 378) was killed at the nearby Battle of Adrianople by the invading Goths, while the Goth scene in southern Connecticut does not appear to be as dangerous.

Constantinople was close to the vibrant and diverse Christian communities in the Eastern Roman Empire, which held many local ecumenical councils to resolve theological disagreements. The seven members of the FASB board can be viewed as a council of leaders from different accounting communities. Historically, the weekly FASB board meetings have received only a few hundred views online. At the June 15, 2022, meeting, the board decided to suspend a project to amortize goodwill, which occurred before the corporate AMT and didn't draw much attention. A new FASB ecumenical council about

Parallel Lives of Constantinople and Norwalk

	Constantinople	Norwalk
Year of founding	657 B.C. (as Byzantium)	1649
Strategic location	Overlooking the Bosphorus Strait	Overlooking the Long Island Sound
Military history	Destroyed by imperial forces during a rebellion in 196	Destroyed by imperial forces during a rebellion in 1779
Religious landmark	Church of Hagia Sophia	St. Mary's Church on the corner of West Avenue and Chapel Street
Water source	Aqueduct of Valens	Silvermine River reservoirs
Austere nearby institution of higher learning	Monastery on Mount Athos	Yale Law School ^a
^a See Molly Worthen, "Why Universities (and Law Schools) Should Be More Like Monasteries," <i>The New York Times</i> , May 25, 2023.		

the true nature of goodwill may be even more controversial than the Christological debate at the First Council of Nicaea (325), since any amortization deduction can greatly reduce the largest corporations' corporate AMT liability.

A Tax for the Ages

Studies show that the average American man thinks about the Roman Empire on a weekly basis.² Tax law professors and members of Congress are mostly American men and undoubtedly have similar experiences on campuses and in the Capitol (named after Rome's Capitoline Hill), such as thinking about the tactical mistakes of Emperor Manuel I Komnenos (r. 1143 to 1180) at the pivotal Battle of Myriokephalon (1176) or the codification of civil law under Emperor Justinian I (r. 527 to 565). The analogues with Constantinople appear to be too obvious to be coincidental.

Politicians and tax law professors lobbied for the new corporate AMT regime because its financial statement income base contains fewer

adjustments than the regular tax system for special interest groups³ — putting aside the adjustments for mark-to-market income,⁴ tax cooperatives,⁵ Alaska Native corporations,⁶ tax credits,⁷ mortgage servicers,⁸ defined benefit pensions,⁹ depreciation,¹⁰ wireless spectrum purchased between the dates of January 1, 2008, and August 15, 2022 (inclusive),¹¹ insurance companies,¹² and discharge of indebtedness income.¹³ Lobbyists may end up redirecting their

³ See, e.g., Sens. Elizabeth Warren, D-Mass., Angus King, I-Maine, and Senate Finance Committee Chair Ron Wyden, D-Ore., "Updated Proposal to Prevent the Biggest and Most Profitable Corporations From Paying Nothing in Federal Taxes" (Oct. 26, 2021); David Gamage, "Creating Opportunity Through a Fairer Tax System: The Case for Taxing Extreme Wealth Holdings and 'Real' (Book) Corporate Profits and for Improving IRS Funding," Testimony Before the United States Senate Committee on Finance (Apr. 27, 2021); Reuven S. Avi-Yonah, "The Case for Reviving the Corporate AMT," *Tax Notes Federal*, Nov. 8, 2021, p. 795; Avi-Yonah, "Taxing Book Income: A Response to the Critics," *Tax Notes Federal*, Nov. 22, 2021, p. 1128; David Kamin, "Why Book Minimum Taxes? Taking Politics Seriously," *Tax Notes Federal*, Oct. 10, 2022, p. 193; Darien Shanske and Gamage, "Why States Should Conform to the New Corporate AMT," *Tax Notes State*, Feb. 13, 2023, p. 601.

⁴ Section 56A(c)(2).

⁵ Section 56A(c)(7).

⁶ Section 56A(c)(8).

⁷ Sections 55 and 56A(c)(9).

⁸ Section 56A(c)(10).

⁹ Section 56A(c)(11).

¹⁰ Section 56A(c)(13).

¹¹ Section 56A(c)(14).

¹² Prop. reg. section 1.56A-22.

¹³ Prop. reg. section 1.56A-21.

² Leo Sands, "How Often Do Men Think About Ancient Rome? Quite Frequently, It Seems," *The Washington Post*, Sept. 14, 2023.

attention and dollars northward to Norwalk¹⁴ so that Congress can work seriously, free from distracting lunches and campaign contributions, and focus on more important matters, like the centralized partnership audit rules as enacted by the Bipartisan Budget Act of 2015.

Constantinople, now Istanbul, is among the largest cities in Europe. Washington was the small river village of Georgetown until Congress in Philadelphia chose it as a site of political power. Tax advisers, influencers, and real estate investors could have a similarly historic opportunity to get into the new Washington of Norwalk before it becomes America's newest metropolis and second city for the next 1,000 years. The corporate AMT may be one of the enduring legacies of President Biden, Vice President Kamala Harris, and Sens. Kyrsten Sinema, I-Ariz., and Joe Manchin III, I-W.Va.¹⁵ ■

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¹⁴ See Michael Rapoport, "Companies Poised to Lobby Accounting Boards Harder Over Tax Pact," *Bloomberg Tax*, Dec. 6, 2021.

¹⁵ But see Chandra Wallace, "Repeal of Corporate AMT and Buyback Tax May Soon Be Possible," *Tax Notes Federal*, Nov. 11, 2024, p. 1258. Sinema and Manchin were members of the Democratic Party when the corporate AMT was enacted as part of the Inflation Reduction Act.

Timing and Guidance Considerations for the Corporate AMT

by Libin Zhang



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In this article, Zhang explores the status of the corporate alternative minimum tax that was due in April and considers other potential sources of guidance.

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On August 16, 2022, the federal government enacted a new corporate alternative minimum tax (CAMT) for certain large corporations, set to take effect for tax years beginning after December 31, 2022.¹ The CAMT was intended to raise \$35 billion in 2023, \$34 billion in 2024, and so on.² While the four-month window between enactment and effectiveness may seem short to those outside the federal government, Treasury and the IRS had a nine-month head start in writing guidance because the CAMT was previously included in the Build Back Better Act, which was passed by the House on November 19, 2021.

Treasury and the IRS issued several notices about the CAMT in 2023 and early 2024 but did not release any proposed regulations. On June 7, 2023, Treasury allowed corporations to ignore the

CAMT in determining their 2023 estimated tax payments.³

As the 2024 first quarter estimated tax payment due date approached, questions arose about whether Treasury would continue to provide CAMT estimated tax relief. On April 4, Sen. Elizabeth Warren, D-Mass., said “that corporations do not need a waiver from the IRS for the 15 percent book tax. . . . The tax is not too complex for large corporations, with their tax lawyers, to comply with while paying quarterly estimated taxes.”⁴ She also urged Treasury and the IRS to “hurry up; this money belongs to the U.S. Treasury.”

On April 15 Treasury decided that corporations could ignore the CAMT in determining estimated tax payments due that same day.⁵ That notice may be less helpful for corporations that voluntarily chose to make their April 15 estimated tax payments in advance. Also, some corporations’ tax computation processes may need more than a few hours to recalculate their billion-dollar incomes and tax liabilities, especially if the tax department had other tasks on April 15.

Treasury did not provide any relief for the substantive 2023 CAMT tax liability, which was also due on April 15, 2024, as part of a Form 7004, “Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns,” extension or tax return filing. The CAMT waiver for the April 15 estimated tax payment may have been driven by concerns that taxpayers might calculate their CAMT tax liabilities incorrectly, given the absence of

¹ Inflation Reduction Act.

² Joint Committee on Taxation, “Estimated Budget Effects of the Revenue Provisions of Title I — Committee on Finance, of an Amendment in the Nature of a Substitute to H.R. 5376, ‘An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14,’ as Passed by the Senate on August 7, 2022, and Scheduled for Consideration by the House of Representatives on August 12, 2022,” JCX-18-22 (Aug. 9, 2022).

³ Notice 2023-42, 2023-26 IRB 1085. Different dates apply to fiscal year taxpayers.

⁴ Stephen K. Cooper, “Companies in Limbo as IRS Mulls Waiver for 15 Percent Book Tax,” Law360 (Apr. 4, 2024).

⁵ Notice 2024-33, 2024-18 IRB 959.

guidance 20 months after the Inflation Reduction Act's enactment of the CAMT and two and a half years after the Build Back Better Act's inclusion of the CAMT. It is unclear why the same reasons did not justify a CAMT waiver for the April 15 extension payment.

On June 13 Treasury decided that corporations can ignore the CAMT in determining estimated tax payments due on June 17, 2024.⁶

Treasury should consider other modes of CAMT relief. For comparison, the IRA also enacted a 1 percent tax on stock buybacks to take effect for buybacks occurring after December 31, 2022. On June 29, 2023, Treasury announced that all stock buyback tax payments can be postponed until the Form 720, "Quarterly Federal Excise Tax Return," tax filing deadline of the first full quarter after finalization of the buyback tax's procedural regulations, which was on June 28, 2024.⁷ As a result, all the taxes on buybacks occurring from January 1, 2023, through June 30, 2024, are due on October 31, 2024.

A similar approach can be applied for CAMT purposes so that the CAMT payments for 2023 and later are only due by the first tax return deadline after the finalization of the CAMT regulations. Not only would actual CAMT guidance be helpful for taxpayers as they file their CAMT tax returns, but that approach would reduce the IRS's administrative cost, burdens, and complexity by providing it with tax returns that follow a single and well-understood set of CAMT rules.

Both the CAMT and the stock buyback tax were written in the IRA to apply "after December 31, 2022."⁸ Under the canon of statutory interpretation that Congress intended the same words in the same statute to have the same meaning,⁹ both the CAMT and the stock buyback tax can be due after the finalization of their

respective Treasury regulations sometime after December 31, 2022. The statutory language is ambiguous, as it doesn't say immediately or right away after December 31, 2022, which means that under the longstanding *Skidmore* doctrine, Treasury can write a regulation based on its "specialized experience" with tax effective dates, to which the courts would defer as a "body of experienced and informed judgment" due to Treasury's "thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."¹⁰

The federal government's flexible regulatory interpretation of effective dates was evident with the Infrastructure Investment and Jobs Act, which enacted on November 15, 2021, certain digital asset broker reporting provisions for transactions occurring in 2023 and later. On December 23, 2022, Treasury and the IRS announced that the digital asset broker reporting rules would not apply until after the issuance of final regulations.¹¹ Regulations then repealed the reporting rules for two years.¹² While the stock buyback tax delay is merely a postponement of a tax liability, the two-year broker reporting cancellation is a permanent change in the law — brokers will never have to file the 2023 and 2024 forms.

A similar creative flexibility can be found in the regulatory guidance for Form 1099-K reporting. The American Rescue Plan Act of 2021 required the form for payments over \$600 starting in 2022, which Treasury and the IRS have interpreted as applying only to payments over \$20,000 in 2022 and 2023 and payments over \$5,000 in 2024.¹³

The digital asset broker reporting rules were intended to raise \$4.4 billion in the first two years,¹⁴ while the Form 1099-K rules were

⁶ Notice 2024-47, 2024-27 IRB 1.

⁷ T.D. 10002.

⁸ IRA section 10101(f), section 10201(d).

⁹ See, e.g., *Roberts v. United States*, 572 U.S. 639, 643 (2014) ("Generally, identical words used in different parts of the same statute are . . . presumed to have the same meaning.") (quoting *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 86 (2006), which in turn was quoting *IBP Inc. v. Alvarez*, 546 U.S. 21, 34 (2005)) (internal quotation marks omitted).

¹⁰ *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-140 (1944).

¹¹ Announcement 2023-2, 2023-2 IRB 344.

¹² REG-122793-19; T.D. 10000.

¹³ Notice 2023-10, 2023-3 IRB 403; Notice 2023-74, 2023-51 IRB 1484; IR-2023-221.

¹⁴ JCT, "Estimated Revenue Effects of the Provisions in Division H of an Amendment in the Nature of a Substitute to H.R. 3684," JCX-33-21 (Aug. 2, 2021).

intended to raise \$2 billion in the first three years.¹⁵ If the CAMT is similarly repealed in the regulations for 2023 through 2025, the federal revenue loss may be less significant. A lack of information reporting would lead to permanent federal revenue loss because the reports would have revealed income that would otherwise never be reported as taxable income. In contrast, the CAMT is mostly a timing difference. Any CAMT paid in early years can eventually reduce the regular income tax in later years because of the section 53 minimum tax credit with its unlimited carryforward.

Guidance Considerations

In the event that Treasury and the IRS do not provide timely guidance for taxpayers to determine their 2023 CAMT liabilities with accuracy, taxpayers may have to seek other sources of guidance. The legislative history of the CAMT is sparse. For example, section 56A(c)(8) provides adjustments on how the CAMT applies to all the Alaska Native corporations with more than \$1 billion in gross revenues, which are merely repeated verbatim in the Joint Committee on Taxation's blue book.¹⁶

Fortunately, the CAMT did not spring into existence as an entirely new idea thought up by the Biden administration. In the Tax Reform Act of 1986, Congress enacted an alternative minimum tax provision called the business untaxed reported profits (BURP) adjustment that similarly imposed a CAMT on book income. BURP was scheduled to be effective for three years, 1987 through 1989, to "increase both the real and the perceived fairness of the tax system."¹⁷ Temporary and proposed BURP regulations were issued six months later, on April 28, 1987,¹⁸ and final BURP regulations were issued on August 17, 1990.¹⁹

The final BURP regulations were issued over seven months after BURP had already expired, but they can be more useful guidance for taxpayers subject to the current CAMT. BURP and CAMT have many similarities, including section 56A(c)(8) and former section 56(f)(2)(G), both containing the same special rules for Alaska Native corporations. Some contemporary corporations may have tax advisers who were practicing tax law in the late 1900s, and they can find their old BURP WordPerfect memos and Lotus 1-2-3 spreadsheets on floppy disks that can provide useful analysis for the CAMT. (For younger readers, a floppy disk is a type of physical token that looks like Microsoft Word's Save File icon and stores digital assets on a local cloud.)

BURP was invented by Yale Law School tax law professor Michael Graetz. The Boris I. Bittker and James Eustice treatise says, "Professor Michael Graetz has been credited with the original suggestion that Congress could deal with the perception of unfairness created by high-reported, low-taxed corporate income by taxing the otherwise untaxed portion of book income, thus confirming the maxim: 'When Big Mike burps, Wall Street trembles.'"²⁰

According to one account of the mid-1980s legislative process:

Creative minds in and out of government began dreaming up theoretical situations under the House-passed bill where companies could potentially show economic income yet not pay Federal income taxes. Senator [Robert] Packwood [R-Ore.], clearly worried over this prospect, became intrigued by an idea promoted by Yale University Professor Michael Graetz linking a company's financial income to its taxable income. Packwood, convinced this was the airtight solution he was seeking included as a preference item in the minimum tax 50 percent of the excess of the taxpayers

¹⁵JCT, "Estimated Revenue Effects of H.R. 1319, the 'American Rescue Plan Act of 2021,' as Amended by the Senate, Scheduled for Consideration by the House of Representatives," JCX-14-21 (Mar. 9, 2021).

¹⁶JCT, "General Explanation of Tax Legislation Enacted in the 117th Congress," JCS-1-23, at 169 (2023).

¹⁷S. Rep. 99-313, at 520 (1986).

¹⁸T.D. 8138.

¹⁹T.D. 8307.

²⁰Bittker and Eustice, *Federal Income Taxation of Corporations and Shareholders*, para. 5.08[4] n.346 (2023).

pre-tax book income over alternative minimum taxable income.²¹

Surprisingly for an airtight idea that originated from an Ivy League institution, BURP turned out to be burdensome and impractical.²² Still, like other ideas that lost popularity around 1989, a book income minimum tax continued to have its true believers in America's academic institutions who believed that the idea was simply not implemented properly.

In enacting the CAMT in 2022, Congress decided to draw on the more practical real-world financial accounting experience of state school tax law professors outside the Ivy League, such as Indiana University tax law professor David Gamage,²³ University of Michigan tax law professor Reuven Avi-Yonah,²⁴ and University of California Davis tax law professor Darien Shanske. The CAMT has improved on BURP's complexity with fewer special rules that favor taxpayers, other than the tax-reducing adjustments for mark-to-market income,²⁵

cooperatives,²⁶ tax credits,²⁷ mortgage servicers,²⁸ defined benefit pensions,²⁹ depreciation,³⁰ and any wireless spectrum purchased between January 1, 2008, and August 15, 2022 (inclusive).³¹ Gamage and Shanske have built on the CAMT's success at the federal level and are lobbying for states to also tax book income.³² The CAMT has received some criticism from accounting professors at technical schools like the Massachusetts Institute of Technology, without the same combined expertise in tax law and financial accounting.³³

Just like someone interested in climbing Mount Everest would seek help from the Sherpas in Nepal, a corporation can ask tax law professors its CAMT questions, such as those concerning the CAMT treatment of section 467 loans under Accounting Standards Update 2016-02 or how the section 56A(c)(2)(D) CAMT partnership adjustment is affected by the centralized partnership audit rules as enacted by the Bipartisan Budget Act of 2015. Law professors are fortunate in that they can supplement their university activities with paid outside consulting. Stanford Law School tax law professor Joseph Bankman gained renown by advising startup companies on tax-free executive and consultant compensation. Elizabeth Warren helped many corporations when she was a professor at Harvard Law School,³⁴ and similar levels of industriousness can be expected from other experts in tax law and financial accounting to help with CAMT issues. ■

²¹ Peggy Duxbury and Rick Grafmeyer, "The Minimum Tax and Adjusted Current Earnings," *Tax Notes*, July 11, 1988, p. 195. See also Senate hearings 99-246 Part XXVI, 99th Cong. 1st Sess., at 36 (Oct. 9, 1985).

²² See, e.g., Arthur I. Gould, "The Corporate Alternative Minimum Tax: A Search for Equity Through a Maze of Complexity," 64 *Taxes* 783 (1986); Sandra G. Redmond Soneff, "The Book Income Adjustment in the 1986 Tax Reform Act Corporate Minimum Tax: Has Congress Added Needless Complexity in the Name of Fairness?" 40(5) *Sw. L.J.* 1219 (1987); John M. Janiga, "The Corporate Alternative Minimum Tax: A Critique and Exploration of Alternatives," 20 *Loy. U. Chi. L.J.* 21 (1988); Mindy Herzfeld, "Taxing Book Profits: New Proposals and 40 Years of Critiques," 73(4) *Nat'l Tax J.* 1025 (2020); Michelle Hanlon, Stacie Kelley Laplante, and Terry Shevlin, "Evidence for the Possible Information Loss of Conforming Book Income and Taxable Income," 48 *J. L. Econ.* 407 (Oct. 2005); Shiing-wu Wang, "The Relationship Between Financial Reporting Practices and the 1986 Alternative Minimum Tax," 69(3) *Acct. Rev.* 495 (1994).

²³ Gamage, "Creating Opportunity Through a Fairer Tax System: The Case for Taxing Extreme Wealth Holdings and 'Real' (Book) Corporate Profits and for Improving IRS Funding," Testimony Before the United States Senate Committee on Finance (Apr. 27, 2021).

²⁴ Avi-Yonah, "Taxing Book Income: A Response to the Critics," *Tax Notes Federal*, Nov. 22, 2021, p. 1128; Avi-Yonah, "Taxing the Right Book: Arguments for the Corporate AMT," *Tax Notes Federal*, Nov. 27, 2023, p. 1645.

²⁵ Section 56A(c)(2).

²⁶ Section 56A(c)(7).

²⁷ Section 56A(c)(9).

²⁸ Section 56A(c)(10).

²⁹ Section 56A(c)(11).

³⁰ Section 56A(c)(13).

³¹ Section 56A(c)(14).

³² Shanske and Gamage, "Why States Should Conform to the New Corporate AMT," *Tax Notes State*, Feb. 13, 2023, p. 601.

³³ Letter from 264 scholars regarding corporate profits minimum tax to Senate Finance Committee Chair Ron Wyden, D-Ore.; then-House Committee on Ways and Means Chair Richard Neal, D-Mass.; Finance Committee ranking member Mike Crapo, R-Idaho; and then-Ways and Means Committee ranking member Kevin Brady, R-Texas (Nov. 4, 2021).

³⁴ Annie Linskey and Elise Viebeck, "While Teaching, Warren Worked on About 60 Legal Matters, Far More Than Previously Disclosed," *The Washington Post*, May 23, 2019.