



March 9, 2006

Maryland's Wal-Mart Tax Likely to Hurt Wal-Mart's Workers

by Chris Atkins and Joseph Henchman

I. Introduction

In January, 2006, the Maryland General Assembly voted to override Governor Ehrlich's veto of the Maryland Fair Share Health Care Fund Act (better known as the "Wal-Mart tax"). The bill is designed to make Wal-Mart pay its "fair share" of employee health expenses and provide higher wages to its employees. The bill's proponents believe that Wal-Mart is purposely paying its employees low wages and low health benefits due to the availability of Medicaid, and that this constitutes a taxpayer subsidy of Wal-Mart's business model. Union activists want to introduce a similar bill in at least 30 states.^{[1](#)}

Maryland's Wal-Mart tax violates the principle of tax neutrality. According to that principle, tax laws should apply broadly throughout the economy, with no intention of manipulating the behavior of firms but merely of raising revenue for necessary government functions. The Wal-Mart tax is the antithesis of such a principled tax. By manipulating the language of the statute in arbitrary ways, the legislature cynically targeted the law so narrowly that only one firm will be hit by the tax.

By setting an arbitrary standard for health care expenses, the tax will lead to lower wages for Wal-Mart employees in Maryland and/or higher prices for consumers or lower dividends for shareholders. By applying only to corporations with more than 10,000 employees, the tax will distort Wal-Mart's investment in capital versus labor and depress hiring and wages in the short and long term. Finally, by mandating that Wal-Mart provide a certain level of benefits for its employees, the tax might run afoul of federal law on state regulation of benefits.

In the long term, Maryland lawmakers will undoubtedly be tempted to tweak the law's thresholds to bring in more revenue from other businesses or force them to overspend on health care. In fact, less than two months after passage of the Fair Share Act, a bill was introduced in the Maryland General Assembly to require employers with less than 10,000 employees to pay at least 4.5 percent of their wages in health care costs.^{[2](#)} Bills introduced in other states—like Washington—will also apply to corporations other than Wal-Mart. While it would undoubtedly be more fair to Wal-Mart if the tax applied more broadly, this would not mask the fact that the tax is poorly designed and will harm, not help, workers.

II. Description of the Maryland Fair Share Health Care Fund Act

Maryland's Fair Share Health Care Act requires any corporation with more than 10,000 employees to pay into the Fair Share Health Care Fund if that corporation does not spend at least 8 percent of its wages on health care for employees. The law defines health care as those expenses for employee health care that are deductible on the corporation's federal tax return, including payments for medical care, prescription drugs, vision care, medical savings accounts, and other costs.

There are two general exclusions from the calculation of wages: wages paid to employees who are eligible for Medicare, and wages that exceed the Maryland median household income.

After computing health care provided, the corporation divides this amount by wages paid (see Table 1 for an example of the calculation) and compares this ratio to the ratios required in the statute (8 percent for a for-profit corporation, 6 percent for a non-profit). To the extent that the corporation's percentage falls below the required percentage, the corporation must pay the difference into the Fair Share Health Care Fund.

Table 1. Calculating Wal-Mart's Hypothetical Payment to Maryland's Fair Share Health Fund

Steps
1. More than 10,000 employees?
2. If so, calculate total wages paid to employees.
3. Subtract wages paid to employees eligible for Medicare.
4. Subtract wages paid in excess of Maryland median household income.
5. Multiply wage base (attained in steps 2-4) by required statutory percentage (8 percent).
6. Calculate amount of money spent on employee health care (include only those expenses for which the firm is allowed a deduction against federal income).
7. Compare amount spent on health care to result obtained in step 5.
8. Remit difference to Maryland Fair Share Health Fund.

Source: Tax Foundation

In the short term, only four corporations in Maryland need comply: Wal-Mart, Northrop Grumman, Johns Hopkins University, and Giant Food. Of these, only Wal-Mart currently falls below the health care spending threshold required in the law.

Labor groups are working to introduce similar bills in over 30 states, hoping that Maryland's enactment will lead to enactment elsewhere. Many of the bills introduced in other states would apply more broadly than Maryland's (see Table 2).

Table 2. Summary of State Fair Share Health Care Legislation

State	Bill Number	Number of Employees/Mandate Percentage
Alaska	HB 449	10,000/8%
Colorado	HB 1316	3,500/11%
Florida	HB 813/SB 1618	10,000/9%
Kansas	HB 2579	10,000/8%
Kentucky	HB 98	10,000/8%
	HB 493	10,000/10%
Massachusetts	SB 695	99/-
	HB 4479	11/Payroll tax with credit for health expenses paid
Michigan	SB 734	10,000/8%
Minnesota	HF 2573	10,000/10%
Mississippi	SB 2684	10,000/8%
Missouri	SB 944	10,000/10%
New Hampshire	HB 1704	1,500/10.5%
New Jersey	SB 1320	10,000/8%
	AB 2513	10,000/8%
New York	SB 6472	500/\$3 per hour for health
	A 9776	500/\$3 per hour for health
	A 9534	10,000/8%
Ohio	HB 471	30,000/8%
	SB 256	10,000/8%
	SB 258	1,000/8%
Oklahoma	HB 2678	3,000/9%
Rhode Island	HB 6984	1,000/8%
	HB 6917	1,000/8%
	S 2201	1,000/8%
Washington	HB 2517	5,000/9%
	S 6356	5,000/9%
West Virginia	SB 147	10,000/8%
	HB 4024	10,000/8%
Wisconsin	AB 860	10,000/don't use %
	SB 440	10,000/don't use %

Source: Retail Industry Leaders Association

For instance, the bill in Washington State would apply to employers with more than 5,000 employees and require that the employer spend at least 9 percent of wages on employee health care. In Ohio , S.B. 258 would apply to all employers with more than 1,000 employees. In Massachusetts , lawmakers are going even further, levying a payroll tax (at varying rates) against all employers with more than 10 employees, with an offsetting credit for health care expenses paid for employees.³

Members of Congress even tried last year to pass a federal law requiring states to disclose the name of employers with more than 50 employees who receive health benefits from the state.⁴ This bill was undoubtedly designed to require disclosure of health benefit information in order to allow state lawmakers to craft Maryland-style legislation.

III. Analysis of the Maryland Fair Share Health Care Fund Act

The basic problem with the Maryland law is that it violates a fundamental principle of sound tax policy – that taxes should be designed to raise revenue for necessary government programs, not to micromanage people’s behavior. The Maryland law seeks to force one company to change its wage and benefit policy. The law is clearly labor policy masquerading as tax policy, and by any conventional economic analysis, it is bad labor policy.

American workers make a variety of demands on their employers, and so it is all to the good that employers offer a variety of different compensation packages. Some firms offer higher wages but have comparatively inflexible hours; some have disproportionately generous benefit packages but lower wages. Employers compete with location and transportation benefits, with vacation policies, with subsidized cafeterias – the list goes on and on.

Wal-Mart is providing a compensation package that obviously attracts many people. The firm seems to have little trouble finding job applicants or keeping employees. A law that applies a legal straightjacket to employers’ compensation packages can only hurt the labor market – the very workers it pretends to help. Maryland’s Wal-Mart tax is just such a law, and it will do Wal-Mart employees more harm than good.

Since the law is focused on how much Wal-Mart pays for employee health care, expressed as a percentage of wages, Wal-Mart can comply in a number of ways, none of which will increase the welfare of its employees in the long term (see Table 3).

Table 3. Actions Wal-Mart Might Take to Avoid Paying the Tax

Option	Impact
1. Increase health expenses with no immediate wage cuts	In the short term, prices rise for customers, and profits fall for shareholders. In the longer term, employees share burden with lower wages and fewer jobs. No guarantee that the increased health spending will go to Wal-Mart employees who are on Medicaid.
2. Shift wage expenses to health expenses (no lay-offs)	Health expenses will go up, but wages will go down. No guarantee that the increased health spending will go to Wal-Mart employees who are on Medicaid.
3. Increase health expenses by laying off workers	Workers lose their jobs.
4. Reduce employees to less than 10,000	Workers lose their jobs.

Source: Tax Foundation

First, Wal-Mart could simply increase the amount it spends on health care for its employees (see option 1 in Table 3). This is obviously one of the outcomes the bill's backers are expecting. However, someone has to pay for the increased spending. In this case, it is possible in the short term for the extra money to come from shareholders (in the form of lower dividends) and customers (in the form of higher prices). But in the long term, even the medium term, the need to attract customers with price and shareholders with profitability will dictate that employees share the burden of the tax, either in lower wages or fewer jobs.

Wal-Mart could also comply by simply shifting expenses from wages to health care (see option 2 in Table 3),⁵ or by spending more on the health benefits of its employees who are already covered (see option 3 in Table 3). Of course, both of these options will depress the wages of all of its employees, potentially leaving those without health insurance worse off than they were under previous law. In fact, this law could force Wal-Mart to fire employees without health insurance in favor of spending more on those who do have it. Finally, Wal-Mart could shift enough employees to other states in order to fall beneath the employee threshold in the law (10,000) (see option 4). In this case, millions in payroll would be shifted out of Maryland, along with the income tax payments of those workers.

Since Maryland's law puts downward pressure on wages and employment levels, however, it will damage the social safety net in other ways. Wal-Mart employs a number of senior citizens whose health care is covered under Medicare and who appreciate the flexible hours and extra income.⁶ If seniors who now work for Wal-Mart find themselves

with lower wages or out of a job altogether, they will increase the burden on publicly funded programs.

The Maryland law will have another unanticipated economic impact: it will distort the timing of Wal-Mart's choice to invest in capital or labor. Wal-Mart is investing money in developing RFID chips for use in its stores.⁷ These chips enable the firm to track inventory more quickly and with fewer employees, and the system may save an estimated \$6.7 billion in labor costs when fully deployed.⁸ Accelerating investment on capital like the RFID chip will reduce the need for labor and potentially allow Wal-Mart to stay below the employee thresholds that trigger Maryland's law.

Finally, Maryland's law might be in violation of the Employee Retirement Income Security Act (ERISA),⁹ which established a uniform national framework for sponsoring, administering, protecting, and regulating employee benefit plans. Enacted in 1974, ERISA intended to eliminate inconsistent state or local regulation of employee benefit plans, and contains a broad preemption clause against state laws that "relate to" ERISA's plans to accomplish this.

The Retail Industry Leaders Association (of which Wal-Mart is a member) recently filed suit in federal court to challenge the Maryland law on ERISA grounds. The lawsuit claims that ERISA forbids the state of Maryland from mandating how much Wal-Mart spends on health care for its employees.¹⁰

The success of the ERISA claim ultimately depends on how the Act is characterized. Maryland Attorney General J. Joseph Curran, Jr. (D) has opined that "[t]he Fair Share Act does not in any way regulate the benefits to be available through plans, the eligibility for them, or the administration of them. In short, it imposes no requirements that would interfere with uniform nationwide plan management or set up contradictory requirements between states."¹¹ On the other hand, the Court has consistently struck down "state laws that mandated employee benefit structures or their administration" and "state laws providing alternative enforcement mechanisms."¹²

IV. Conclusion

Maryland's Fair Share Health Care Fund Act will not have much impact on Maryland's business tax climate in the short term. However, if it is expanded to other companies, it will be an additional impediment to Maryland's ability to attract jobs and investment in the long term. Maryland already has the 17th highest state and local tax burden in the nation. The additional burden of the Wal-Mart tax will only worsen the state's current situation, and will do nothing to help the workers it is intended to help.

If lawmakers in other states want to support their working families, they will steer clear of the Wal-Mart tax.

Footnotes

1 See “AFL-CIO President John Sweeney Remarks on Fair Share Health Campaign,” AFL-CIO Press Release (1/5/2006), located at <http://www.aflcio.org/mediacenter/prspmt/sp01052006.cfm>.

2 See H.B. 1510, 421 st Sess., Reg. Sess. (Md. 2006).

3 See H.B. 4479, 184 th Gen. Court., Reg. Sess. (Ma. 2005).

4 See Amy Joyce, “Wal-Mart is focal point of Democrat’s health bill,” *Washington Post* (6/23/2005), located at <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/22/AR2005062202136.html>.

5 The Maryland bill does say that “an employer may not deduct any payment made (to the Fair Share Health Care Fund) from the wages of an employee.” It is unclear whether this section is meant to forbid Wal-Mart from lowering its wages to comply with the bill or if this merely means that Wal-Mart cannot specifically deduct the fee from its employees’ paychecks (akin to a health insurance premium), or if it means that Wal-Mart cannot subtract payments made to the Fund from its calculation of wages.

6 Approximately 17 percent of Wal-Mart’s associates are senior citizens. See “Diversity Fact Sheet,” located at <http://www.Wal-Martfacts.com/newsdesk/wal-mart-fact-sheets.aspx#a265>.

7 See Mark Roberti, “Analysis: RFID - Wal-Mart’s Network Effect,” *CIO Insight* (9/15/2003), located at http://www.cioinsight.com/print_article/0,3668,a=61672,00.asp .

8 Id.

9 See 29 U.S.C. § 1144 *et seq.*

10 See “Retail group files challenge to Maryland’s Wal-Mart law,” *Associated Press* (2/7/2006).

11 Opinion of Attorney General, dated January 9, 2006.
<http://64.62.135.175/images/uploads/curranERISA.pdf>.

12 *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 658 (1995).