Is It Ethical To Eliminate Estate Taxation? The Consequences of an Unfair and Inequitable Tax System in the United States

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Some people believe, "only the little people pay taxes," and the tax system is written to favor the wealthy and large corporations. Many educated members of the media and academia believe that a tax system favoring the rich, at the expense of the middle class, threatens our economic growth and survival. According to journalists D. Bartlett and J. Steele, "Over the last three decades, America's elected officials have turned a reasonably fair tax code into one crafted for the benefit of those who give the largest campaign contributions."

INTRODUCTION

The question being posed by many business leaders in today's socially aware environment is: "Is the elimination of the estate tax, or the 'death tax', merely tax relief for the rich?" [1] Many believe that the current estate tax system is punishing people for dying. It is also viewed as punishing an individual for prosperity, essentially, living the American dream. The IRS views the tax as a means of restricting the transfer of wealth from one generation to the next.[2] Society benefits as the tax is perceived as leveling the playing field for the less fortunate members of society.

There have been very few tax issues that have generated as much passion as the repeal of estate taxation. It has essentially created camps of the "haves" and the "have-nots." According to expert tax analysts, "The tax was never meant primarily as a revenue raiser." The tax was designed to prevent the creation of an aristocracy of wealth.[3] Should the government have the ability to control the amassing of wealth by members of society? Has the estate tax laws in existence today provided an incentive for charitable behavior among the wealthiest taxpayers? Does society have the right to "require" the most successful members of our society to essentially "give back" up to 55% of the wealth they have accumulated throughout their lifetime?

[1] Gates, W. & Collins, C. (2003). Tax the Rich? Sojourners Magazine, 3, Jan-Feb 2003, 36-39.
[2] Verschoor, C. (2005). Is Repealing the Estate Tax Unethical? Strategic Finance, June 2005.
[3] Steuerle, G. (2005) Estate Tax Reform-A Third Option. Tax Notes

Many opponents of estate tax elimination believe that if the wealth in this country remains in the control of top 1% of our population, the economic growth and our democratic system of government will be threatened.[4]

According to *New York Times* reporter David Johnson, "not since 1929, have so few people controlled so much of the wealth in the United States." The response to this situation has been disdain for the excessive accumulation of extreme wealth by a limited number of people. The solution to this problem is to boost public confidence in our current tax system by revising it to accomplish the original goal: equitable taxation for all. Would the elimination of an estate tax result in a reverse Robin Hood effect, by eliminating the tax for the rich and essentially creating more of a tax burden on the poor?[5]

HISTORY

According to Ben Franklin, nothing in life is certain except death and taxes and since the inception of our tax system, these two concepts have been incorporated into our federal death tax policy. Initially, the death tax was instituted to provide temporary revenue during periods of war. It would be repealed once the military action ceased. However, since World War I (1916) the death tax has been imposed on value transfers made at death. The tax has always been the subject of debate and controversy because in essence it acts as a deterrent to hard work and savings, the cornerstones of our economy. Opponents of the tax cite an "unfair, complicated and inefficient tax policy." [6] Winston Churchill called estate taxes an attempt to tax the dead instead of the living.[7] Supporters of the tax believe it provides equality because it eliminates unnecessary wealth accumulation and it is the only tax on wealth.

Estate taxes are truly progressive and the progressive nature of the tax serves as justification for collection. The belief, by many in society, deems a fair and equitable tax system is a progressive tax system. The death tax imposes the highest rates of any U.S. tax and one of the highest in the world. Opponents suggest that a more equitable tax would be a progressive consumption tax, which would fairly tax consumption instead of work or savings. The estate tax is viewed by constitutionalists as a tax on the transfer of property, which in essence is an "indirect" tax, not requiring apportionment under the Constitution.[8]

Historically, the inheritance tax was viewed as a fair and legitimate tax and the rate was a moderate 10%. There have been many revisions to the estate tax policy, the latest version being implemented in 2001. The plan calls for a gradual reduction in taxes and a complete repeal in the year 2010. This was a temporary adjustment, as the full estate tax will be restored effectively in 2011.

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[4]Woodard, C. (2004) Who Really Pays Taxes in America? Taxes and Politics in 2004.
[5] Weisman, J. (2005).House Passes Permanent Estate Tax Repeal. The Washington Post, April 14, 2005.
[6] Sexton, J. (2003).The Economics of the Estate Tax: An Update, Joint Economic Committee Study, June 2003
[7] Gale, W. & Slemrod, J. (2000). We Tax Dead People. Brookings Institution, June 2000.

[8] McCaffery, E. (2003).The Strangely Slow Death and Lingering Life of the U.S. Death Tax, The Cato Institute. November 2003.

DIE BROKE

The irony of the current estate tax system is that it rewards the spenders and punishes the savers. According to public opinion, there is a strong desire by the general public to pass their wealth to their children. It is upsetting to think that the federal government makes the act of dying a taxable event; or as Steve Forbes stated, "No taxation without respiration."[9] The only effective way to avoid the death tax is to spend all your money during your lifetime and, in essence, die broke.[10]

Creative methods designed to avoid the tax, essentially encourages intergenerational wealth transmission, the exact opposite goal of the tax at it's' inception. Society is penalizing hardworking, motivated savers and rewarding unnecessary consumption, which the tax was instituted to equalize.

The initial goal of the death tax was intended to prevent the transmission of enormous amounts of wealth from one generation to the next. We have failed miserably. There are so many loopholes in the current system that any experienced estate tax lawyer can easily negotiate a no tax resolution.

The estate tax has proven to serve as a deterrent to economic growth and financial conservatism. There are some estimates that conclude the existence of the tax has reduced the amount of savings by more than $500 billion.[11] The ultimate lesson learned by the current estate tax is not to work hard, do not save, spend freely and hopefully die broke, this mindset hurts our economy.

ALTERNATIVES TO CURRENT DEATH TAX

Only 2 percent of the estates filing returns are currently subject to the death tax and half of those estates are in excess of $5 million or more in wealth, but as the baby boomers age, that amount could dramatically increase. The estate tax in its' current form emphasizes the bizarre inconsistencies between equity and efficiency in our tax policy. The government has been assigned the role of redistributing wealth and providing equal opportunity to the economic disenfranchised members of our society.

Permanently increasing the tax free exemption to $5 million and reducing the top tax rate to 15% is a current compromise plan under debate.[12] There is a growing interest in an indexing solution of capital gains during a person's lifetime. This policy would coincide with the elimination of the stepped-up basis provision available under the current death tax.

The elimination of the stepped-up basis to the beneficiaries would resolve the issue of transferring property tax free. Once the property was sold by the beneficiary, the property would be subject to the capital gains tax at the rate in effect at the date of sale.

The final alternative would be the permanent elimination of the estate tax after 2011. The impact on charitable bequests as a result of the permanent elimination of the estate tax could be problematic. Many economists believe the incentive to give would be lost if the tax were to be eliminated. Currently, there is an unlimited deduction for charitable bequests that has been used

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[9]Gale, W. & Slemrod, J. (2000). We Tax Dead People. Brookings Institution, June 2000.
[10] McCaffery, E. (2003).The Strangely Slow Death and Lingering Life of the U.S. Death Tax. The Cato Institute, November 2003.
[11] Ibid
[12] Reed, J. (2006). Sen. Jack Reed's Floor Statement on Estate Tax Repeal 06-07-06.

primarily by the wealthiest taxpayers. There is a growing concern that the repeal of the estate tax would have a regressive impact on charities, with a potential loss of $15 billion per year. [13].

CONCLUSION

The question remains, "Is the estate tax an ethical tax?" The ultimate goal of the estate tax is to redistribute wealth which could serve to weaken the economy. It is realistically the only tax that intentionally reverses the accumulation of private wealth, but whether that is ethical must be dec

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[13] Burman, Gales & Rohaly, Options to Reform the Estate Tax. *Tax Policy Issues and Options* No. 10. The Urban Institute. March 2005.