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★★★★★ WB · WEDNESDAY, AUGUST 2, 2000 · A17

It's Impossible to Avoid Death, But You Might Avoid Taxes

By Michael B. Allmon

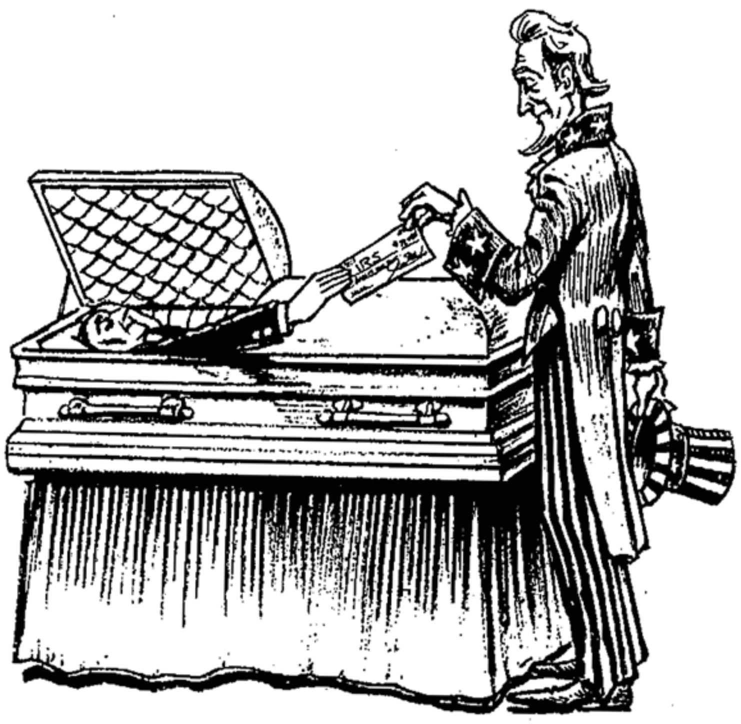
FOR THE RICH, the price of dying has always included a substantial tribute to Uncle Sam. But in recent years, a growing number of middle-class Americans is finding that their demise could also bury their estates under a heavy tax burden.

The U.S. Congress, encouraged by popular sentiment, tried to separate death and taxes by voting to repeal the estate tax in July. President Clinton has promised to veto that legislation and while an override by Congress appears unlikely at this time, there is no doubt this tax is bound for change and, if George W. Bush is elected president, likely annihilation.

Once a nonissue to the vast majority of taxpayers due to its focus on upper echelon society, the dreaded estate tax – which ranges from 37 to 55 percent of the value of an estate upon death – is now a startling reality for many more who might be considered average or middle-class Americans. This change is most acute in California, where merely owning a home for a few years can put you in the same estate tax bracket as professional athletes, movie stars and CEOs. The debate over the estate tax, which was established by Congress in 1916, has intensified dramatically over the past year as Americans' attitudes toward wealth have changed.

We live in a land that is occasionally at odds with itself and this tax has always been a good example of that. I view the estate tax as legalized confiscation – a "success" tax on hard-earned assets that have already been taxed.

Saving is the primary way to build an estate and the estate tax directly contradicts the ideal of wealth building through saving, which should never be discouraged by punitive taxation. On the other hand, sincere progressive thinkers believe it is legitimate. Checking and curbing the powerful is a practice with roots in our decisive break with the Old World, the English crown and decadent family dynastics.



JIM MEEHAN / *Special to The Chronicle*

> *The simplest and fairest way to bring the estate tax back to its original intent, to tax the super wealthy, is to raise the current exemption of $1.35 million per married couple to $10 million per couple.*

There are also side effects that have to be considered in a society that is as interlocked and complex as ours. For example, if the estate tax were to be repealed, what would be the impact on generosity? It might penalize charitable giving because there would be no cause other than pure altruism to make donations and gifts to nonprofits to avoid the estate tax. Treasury Secretary Lawrence Summers estimated that if the estate tax were repealed, charitable giving would be cut by $6 billion a year.

My sense is that the fix is easy. The simplest and fairest way to bring the estate tax back to its original intent, to tax the super wealthy, is to raise the current exemption of $1.35 million per married couple to $10 million per couple – indexed for inflation – and to reduce the complexity of the law as it is currently proposed.

Regardless of whether it is repealed or not, the estate tax is certain to undergo changes and many Americans will have to make adjustments in planning as a result. Here are some devices for that can help people who are doing estate planning or are concerned about the disposition of their assets at death:

■ Form a family business – Actually, a family partnership or legal entity of some type, just like a business partnership. Family members own an interest in a partnership or other legal entity, such as an S Corporation, and the parents contribute assets to the entity as gifts to family members. Proper use of this device allows you to potentially avoid the estate tax in the event of your demise. Many parents who have established family partnerships to avoid the estate tax don't realize they can also get all their assets back in the event the estate tax is repealed because children in the partnership could then pass assets back to parents as tax-free gifts.

■ Place your trust in the living A living trust, that is. Families who place their assets into a living trust avoid probate, the takeover of the estate and the disposition of the assets by county government. Probate is expensive, causes delay of payment to heirs and breaches privacy by making the value of the estate public. The key is to understand the trust and be absolutely certain you transfer the assets of your estate to the trust, otherwise it is useless to your heirs.

■ Where there's a will – Make a will. Even a handwritten will, known as a "holographic will" has legal validity. It doesn't protect you from probate, but a will, if authenticated, will receive consideration from court appointed probate officers. At a minimum, if you have children, name their guardians in the will, or the court will do it for you.

■ Who do you trust? – Name a trustee. Naming family members as trustees (executors) of your estate can work, but isn't advisable. In the handling of money and transactions on behalf of your estate, it is usually better to name someone with money savvy and experience. This places an objective third party at the helm of your estate and trustees are bound by very strict rules of conduct with regard to your assets.

Whether the estate tax is killed or modified, people in states like California should consider the possibility that it could impact them.

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