

A Declaration of Independence from Death Taxation, by Edward J. McCaffery and Richard E. Wagner

On America's first birthday of the new Millennium, we stand on the brink of an historic moment: the death of the gift and estate or so-called death tax. An increasingly bipartisan coalition in Congress supports repealing the dreaded tax that has haunted the American landscape since 1916. This is good news, for our new economy needs new laws. Yet certain recurring arguments stand in the way of much-needed change.

We two scholars reflect different American political traditions. Professor Wagner is a conservative libertarian. Professor McCaffery is a progressive liberal. We are united by a common interest in tax policy. We are also united in opposing the death tax. We recently sat down to write a report setting aside the most common arguments for retaining this deadly tax. Here is a quick summary of what we found:

1. The death tax affects only the wealthy, and so the rest of us shouldn't care about it.

This just isn't true. Although only two percent of decedents' estates now pay the death tax, countless more have taken steps to avoid the tax - and these steps are typically costly, complicated, and inefficient. The new economy is generating new potential victims of the death tax's sting every day. All of society pays a price for the resources devoted to death tax avoidance. Death taxes discourage savings and can lead to the breakup of family businesses. The resulting harms are felt widely throughout local communities and the nation as a whole. The death tax tolls for us all.

2. The death tax raises much-needed revenue for the government.

Again, not true. The death tax raises relatively little net revenue: \$20-25 billion annually, about one percent of government revenues. But the indirect impact of the death tax reduces other forms of taxes by a like amount. This is both because the death tax encourages income-tax minimizing planning techniques and because the tax lowers the base for all taxes. The death tax is penny-wise and pound foolish.

3. The death tax helps to break up large concentrations of wealth.

A libertarian sees a death tax as an attempt to make the state and not individuals the recipients of estates: an effort to collectivize the ownership of wealth that has historically reduced the pace of economic progress. A liberal should think that the death tax is a limited, porous and ultimately counter-productive way to address even legitimate concerns about the concentrations of wealth. Under the current tax, planners are setting up "dynastic trusts" that will last forever, grow enormously in size, and generate little if any tax. This kind of thing is what the death tax has wrought. Far better progressive tax alternatives are available.

4. The death tax furthers equal opportunity.

Even if we accept equal opportunity as a legitimate state goal, the death tax is a poorly chosen means to it. Because the easiest way to avoid the death tax's bite is to spend it all before one dies, death taxation rewards big spenders and punishes frugal, entrepreneurial conduct. This can make life seem less equal for those who cannot keep up with the spendthrifts, while denying opportunity to those who would otherwise benefit from greater productive activity.

5. The death tax promotes wealth and income equality.

If not equal *opportunity*, perhaps a death tax promotes equal *wealth*. But it doesn't. To a libertarian, equal wealth as of any one moment in time is a sterile, static way of characterizing a society. An alternative, dynamic characterization would conceive a good society not as one where no one receives an inheritance, but as one where everyone does from the greater social wealth. A liberal should see that the death tax is a poor means to equality, because it leads to more unequal spending and less savings by the rich. What a liberal should want the wealthy to do is to save their good fortune, which is what a death tax encourages them not to do.

6. The death tax benefits private charitable giving.

We both agree: The death tax is at best a costly, coercive, inefficient and unfair way to subsidize charitable giving. Its is generally not sensible to induce one good activity (philanthropy) by penalizing other good activities (thrift, intergenerational altruism, entrepreneurialship).

Our joint conclusion is clear: Under any light, it is time to kill the death tax. What a nice birthday present that would be for America and our collective future.

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