

HOW THE ESTATE TAX ROBS WOMEN
BY PATRICIA M. SOLDANO

The estate tax, also known as “the death tax,” taxes the assets of the second-to-die spouse, in the case of a married couple, because the law provides for a marital deduction that allows the transfer of assets from one spouse to another without a tax being incurred. In other words, the marital deduction does not eliminate the death tax. It merely defers the tax until the second spouse dies, and since women typically outlive men, the children usually pay the tax from the assets of the wife.

The tax of 37—55 percent on all assets is due nine months after the date of death, when a Form 706 is filed with the IRS. To pay the tax, the children may have to liquidate businesses, terminate jobs, or sell personal assets. The first \$675,000 of assets for each spouse are not taxed if the proper estate planning is done while both spouses were alive, but once these lifetime exemptions are used, the tax rate graduates rapidly. Once the asset size reaches \$3 million, the tax rate is 55 percent.

If a family owns a small business, a home, and a car, the asset size can reach the \$3 million level very easily. Many small farms and businesses have land, equipment, inventory, and supplies that are illiquid and make it very difficult for the children to pay the tax without selling them. So, often the requirement to pay the tax causes an elimination of the family business and family legacy. It may also terminate the opportunity for the children to continue the business. The ownership structure, or type of asset or business does not change the requirement to pay the tax.

Homes, cars, furniture, stocks, bonds, pension plans, CDs, cash, and businesses are all subject to the death tax. Owners of assets, shareholders, partners, and individuals pay the death tax; corporations do not pay a death tax. So families are responsible for hiring attorneys and accountants, buying insurance, and spending thousands of dollars planning to pay the tax. As previously stated, since women typically outlive men, they are left to plan and prepare to pay the tax. Unfortunately, many women are unaware of the tax, or only become aware after the husband’s death, when planning becomes more difficult.

Not only is a tax due at death but, if you wish to gift these assets during life to anyone, including your children, the same tax on the value of the gift will be due from you. There is a provision that you may give \$10,000 per person per year without a gift tax and you can use your \$675,000 lifetime exemption either during life or after death, but the same rate of tax 37—55 percent must be paid in the year that you make the gift, if the gift exceeds the amount protected by the \$10,000 annual exclusion and the \$675,000 lifetime exemption.

In addition, if you wish to give to your grandchildren, during life or after death, you may pay an 80 percent rate above and beyond a \$1,000,000 lifetime exemption. The purpose is to prevent family members from passing their assets on to other generations or skipping a generation of estate tax.

There are 9.1 million women-owned businesses in the United States. They employ 27 million workers, more than all of the Fortune 500 companies in the world. Women are starting businesses at twice the rate of men and so they are becoming more aware of the death tax and the terrible effect it could have on their families, their employees, and their businesses. Women business owners are becoming more aware, as are members of the Black Chamber of Commerce, that it takes about three generations to create a standing in the community and to create a legacy for the family. The payment of the death tax can eliminate that legacy because the business must be sold to pay the death tax.

In March 2000, the Center for the Study of Taxation surveyed the National Association of Women Business Owners to determine how they were preparing and paying for the death tax. With 272 respondents, on average \$60,000 per year was spent for the planning and paying of the tax. Since 84 percent of the respondents were first generation business owners, only \$0,000 of the \$60,000 was actually spent on paying the tax. A full \$30,000 per year was spent on buying expensive life insurance policies that could be used to pay some or all of the tax, but the cost to purchase this insurance each year significantly impedes the growth of the business. As the owner of the business ages, the cost of the insurance gets more and more costly until sometimes the cost is so prohibitive that they cannot continue to pay for it.

This results in thousands of dollars of life insurance being paid for, from which no value has been derived, and the business is ultimately sold to pay the tax anyway. Even though 54 percent of the respondents had purchased life insurance to help pay the tax, 43 percent responded that the death tax would stop the expansion of their business and

43 percent said that they would actually have to sell their business to pay the tax. When asked how many jobs have been lost in the past five years due to the planning

and payment of the tax, the average response was 39 jobs. With 272 respondents, that equates to 11,000 jobs that have already been lost due to the cost associated with planning and paying the death tax in the past five years. When asked how many jobs will be lost in the next five years, the response was an average of 103, or 28,000 jobs just within these 272 businesses that will be lost, again due to the cost of planning and paying the death tax.

One woman businessowner in Louisville, Kentucky, wrote the following on her survey form: "This business provides income for 30 families. It provides tax income for the city, state, and federal government. Estate tax is a sweat tax on families. The more families sweat, the more they pay"

Various economists have concluded that the estate tax, in fact, does not generate any net revenue to the government. Because of the complexity of the tax, the cost of planning and complying is equal to the revenue raised. There are those who believe that the revenue is necessary for the operations of our government, but the current estate tax was conceived to pay for World War 1. It has never generated more than two percent of government revenue, less than customs duties.

The only country that has an estate or inheritance tax rate greater than that of the United States is Japan at a 70-percent rate, but this tax rate is not paid until the total assets to be taxed reaches \$7 million. Because American family businesses must prepare and pay an estate tax, it contributes to Americans' difficulty in competing in foreign markets.

Sixty-five percent of the public queried in a 1999 Luntz Research poll concluded that they will never be subject to the death tax, but 75 percent of them still believe that it is unfair. When asked how unfair, they were given a list of taxes and asked to rate them by fairness. The death tax was rated more unfair than the payroll, income, sales, property, gasoline, alcohol, and cigarette taxes; the taxes that they will probably pay. Others have conducted similar polls with similar responses. Many believe that the results suggest that the public thinks death should not be a taxable event at the highest rate in our tax system on assets that have already been taxed at least twice before.

The death tax affects women like Sylvia, founder and owner of Sylvia's, a Harlem soul-food restaurant. As described by Amity Shlaes in *The Greedy Hand*, "the restaurant is one of Harlem's success stories. It has grown to be a hot tourist destination and also sells a line of soul-food sauces." Sylvia's son is the manager and also an advocate for the elimination of the death tax, since Sylvia's handing down of the business to younger generations will trigger taxes so heavy that they will have to break up the restaurant and everything the family has built.

In July 2000 the House and the Senate voted on HR 8, The Death Tax Elimination Act. It passed the House by a vote of 279 to 136 and passed the Senate with a vote of 59 to 39. The passage of HR 8 was a historic achievement because support came from Democrats, Republicans, and many women and minority members of Congress. The supporters of the repeal included 60 percent of all of the women in Congress, 15 percent of the Black members of Congress, and 31 percent of the Hispanic members of Congress. As women and minorities have become knowledgeable about the destructive effects of the death tax on families, they have educated their fellow members of Congress.

Mrs. Ida Prichard of Seattle, Washington sums up the feeling of many Americans about the death tax, as quoted in testimony to the Ways and Means Committee on April 13, 2000:

I am 77 years old. My history of work, thrift, and efforts to save money is unbelievable. Here is my reward! All of my social security (plus more) goes for income tax. I live off my teacher's pension as I do not want to cash my investments. If I died today, I'd pay about \$200,000 in death tax. I am helping a great niece to go to college. I have two great nephews coming up. All are bright children. I would like to help them — not the IRS.

I had a newspaper route in college. I worked for 50 cents an hour doing office work under the program set up by President Roosevelt. I have lost money in investments. I went to work when I had a death sentence with lung cancer in 1967. I didn't miss a day when I was told I could only live three months at the most. I am still working. I have a tenant and

I tutor ESL students. I do almost all my own work and cooking. I have never had a bill I didn't pay on time.

The way things are now what the nursing home doesn't get (if I'm that unfortunate) the IRS will! What did I make all this effort for? Our laws need to be changed but I have no clout!

Millions of other Americans react the same way as Mrs. Prichard, once they learn about the potentially devastating impact of death taxes. They realize how unfair and terrible it is to work hard your whole life and not be able to pass on to your family, without a 55-percent tax. the rewards for those years of hard work.

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