
Discussion Topic:

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EXCERPT #17

The Case for Eliminating Estate Taxes

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Prepared by:

Craig Evans, President, Florida Stewardship Foundation, One Park Place, Suite 240, 621
N.W. 53rd Street, Boca Raton, Florida 33487. Email craig@us-farm.com

The Case for Eliminating Estate Taxes



“I worked with private forest landowners. We’ve put together just wonderful forest stewardship plans and they’ve done a wonderful job of implementing those plans and then because they did not do sufficient estate planing the whole thing went to pieces as soon as they died.”

**-- Al Sample, Pinchot Institute for Conservation,
Ames, Iowa, December 7, 1999**

An executive summary of five Private Land Conservation Forums held around the country in 1999 by the U.S. Department of Agriculture, in which more than 1000 people participated and submitted written comments, observed:

“There is consensus that estate taxes are a significant threat to the family farm and small private forests. Speakers state that estate taxes can force clear cutting, other costly means, or land sales that break larger parcels into smaller ones in order to pay the tax. These money raising methods often are done at the expense of good land management.” (“Financial and Tax Relief,” http://www.nhq.nrcs.usda.gov/CCS/Forum_al.htm)

This last point is underscored by the latest Natural Resources Inventory (<http://www.nhq.nrcs.usda.gov/NRI/1997/>), which indicates that soil erosion is once again increasing in the U.S. The Inventory states that on-farm improvements in this area have continued, but the amount of land that is now being converted from agriculture to urban and other uses has dramatically increased (up from 1.4 million acres per year between 1982 and 1992 to 3.2 million acres per year during the 1992-1997 period) and the very act of this conversion has led to greater soil erosion.

Every session of Congress for the past decade has had scores of bills introduced to eliminate or reduce estate taxes. Some of these bills have been designed to provide relief solely to family farms and small businesses; others have proposed a wholesale elimination of estate taxes.

In the summer of 2000, a bill to completely phase out estate taxes over a 10-year period finally passed both houses of Congress by large majorities. President Clinton vetoed the bill, which was sustained after the U.S. House of Representatives failed to muster the two-thirds majority necessary to override the veto in September 2000.

But one thing is sure: other bills to eliminate estate taxes will follow and, eventually, one

will prevail.

While public support for the elimination of estate taxes is strong and continues to grow in some segments of society, the concept still sparks controversy.

For example, Wayne Daltry, Executive Director of the Southwest Florida Regional Planning Council, and a member of the South Florida Ecosystem Restoration Working Group, is opposed to the wholesale elimination of estate taxes. He says:

“There are three issues:

“1. The proposal will not protect farm land. Eliminating the inheritance tax for farmers/farmland only increases what the heirs will receive. From that point on, they determine the property disposition. In other words, if the kids don't want to stay on the farm, they won't. Eliminating the tax just gives them more inheritance.

“2. The proposal will have unintended tax consequences. Many family farms are now ‘corporate’ farms, with the family being the Board of Directors and stockholders. Public tax responsibilities are met through corporate taxation. As in all corporations, a death of a stockholder will have tax responsibilities [that affect the stockholder’s heirs within the immediate family], but the success of the corporation usually isn't imperiled. Given the boon of an inheritance tax elimination, there will be a lot of corporate dissolutions, with impact upon the existing tax structure beyond that already in place

“3. The proposal is bad social policy. All taxation forms have social policy aspects. This proposal, to eliminate inheritance tax on landed millionaires (after all, the tax doesn't apply to estate recipients of less than \$600,000) eliminates a major component of the National commitment to upward mobility. Keeping holdings intact through generational change will mean that more and more land will accrue to fewer and fewer segments of the population. (After all, all other inheritances will be taxed, so put the money in land!) There has been no society in history that allowed AND GUARANTEED such behavior that did not eventually have violent social unrest.

“A Counter Proposal:

“Of course there are the mid sized farmers to whom the inheritance tax is the burden that breaks the family farm’s back. An appropriate response is

found in other tax code experiences. For federal inheritance tax purposes, farmland could be reassessed with low or no value at time of transfer, but the tax itself kept as a lien in case the property is sold - or the owner goes into the 'house is a crop' business. Through time, the tax lien could dissolve so that the next generation isn't double burdened at the next mortal turnover."

Wayne's views stimulated a spirited discussion about the merits – and social impacts – of eliminating estate taxes. In the end, consensus was reached on a compromise proposal. Here's the compromise:

There is a compelling social purpose to maintain small family farms, to maintain land in agricultural uses where agriculture is combined with and maintained in concert with natural and environmental values, and to discourage the conversion of productive agricultural land into non-farm uses. In other words, this is a "special interest group" that needs special attention – not just for their sake, but for the sake of our environment and our food supply.

So, if a family farm is to receive special treatment (from that of, say, a family owned hardware store), it is because the social purpose is there – which is a point Wayne does not contend.

“How do we get the heirs to commit to the same vision [of responsible land management] if there is no estate tax or no estate tax adjustments for social purposes?” Wayne asks.

The answer, of course, is a “tax adjustment tied to social purposes.” An heir may keep the additional “windfall” that is received through an estate tax abatement but, in return, must make a social commitment to carry out certain actions. If no social commitment is made, then the full amount of the estate tax becomes due.

The Concept Paper accommodates this viewpoint under Section 5, Priority Action 3, TAX ISSUES, paragraph A-5. It states: “**Emphasize the link between tax relief and keeping agriculture profitable and viable.** The purpose of tax relief is to prevent ‘unintended consequences’ such as forcing large tracts of land with native habitats from being converted into more intensive uses or carved into home sites, as a direct result of an estate tax liability; or increasing operating costs to the point that an agricultural operator decides to stop farming and convert his or her land to another more profitable use; or making it impossible for a landowner/operator to borrow sufficient capital to maintain an ongoing, viable farm operation and, thus forcing that owner/operator to stop farming.”

This doesn't advocate for total elimination of estate taxes. It advocates for recognizing the link and the social repercussions caused by a tax policy that doesn't acknowledge – and often works against – the need for a viable agricultural industry. Landowners will respond to economics. If there is an economic INCENTIVE to do one thing, chances are the landowner WILL DO IT. If there is an economic DISINCENTIVE to do another, chances are the landowner WON'T DO IT. Total elimination of estate taxes offers no incentives. Estate tax relief tied to keeping land in farms, with additional estate tax relief tied to carrying out stewardship activities on the land, provide incentives to accomplish positive social goals.

One of the programs described in the Concept Paper is a "Resource Conservation Agreement." This program has been developed with input by private landowners, environmental interests and government agency representatives to provide both financial incentives and federal tax incentives (including reductions in income, capital gains and estate taxes and a credit for local property taxes) in return for specific social “services” that can be rendered by landowners and operators. These tax incentives are tied – and, as Wayne says, “this is the tie which I want to nail down and have monitored” – to land management practices designed to ensure the maintenance of natural areas and ecological values and compatibility between agricultural operations and the environment..

The Resource Conservation Agreement offers Congress – and other politicians – an opportunity to provide tax reform to certain key groups, where each reduction can be demonstrated to be "in the national interest," without undermining the inheritance tax laws on large, non-farm holdings.

For example, tax abatements that are being proposed under the Resource Conservation Agreement include: ESTATE TAX REDUCTIONS of 25% if land remains in agriculture, 50% if the land has a Resource Conservation Agreement in place (plus an additional 1% per year for each year the agreement remains in place); and 100% if the land is subject to a permanent conservation agreement; and CAPITAL GAINS REDUCTIONS of 25% if the land remains in agriculture, 50% with a resource conservation agreement, 75% with a permanent conservation agreement and 100% if the land is sold to a government agency. Further details on these incentives can be viewed at http://privatelands.org/RCA_outline_rev.htm#Tax Incentives.

Wayne concurs with this approach:

“The family farm is the competition to the corporate farm,” he says, “and needs to be kept. On paper, speculative value of land for non-farm purposes is the unique factor facing farmers, and ‘tinkering with the assessment measure’ is appropriate.” Wayne even goes further to say: “Reactive tax policy is also appropriate when the land is taken by the owner from farming purposes.”

Not all landowners would agree with Wayne's last point. And some would like to see estate taxes eliminated, with no strings attached. That may happen. The bill that passed both houses of Congress in the summer of 2000 would do this. It embodies a political reality. That's one reason the Concept Paper and the Resource Conservation Agreement do not rely entirely on the elimination of estate taxes as an incentive for encouraging better stewardship, but combine together several incentives, of which the elimination or abatement of estate taxes is only one possible approach.

Other people remain opposed to any change in the estate tax. As Wayne points out, "Regretfully, it is the estate tax that provides for some of this country's upward mobility. It breaks up land holdings and businesses into smaller chunks so people of lesser means can get a piece of the action

"Sure, farms are being broken up and turned into subdivisions, but it is those subdivisions that are restoring the sense of 'yeomanry,' a sense of owning a piece of America, participation in its civic decisions, etc. that was being lost when all the family farms began going bust post-Civil War in the cycle of booms and busts that culminated in the Great Depression and contributed to the great urban migration from the latter part of the 19th Century through World War II. The post WWII housing support acts had a strong foundation of recognition that a 'renter' class had a different outlook than an 'ownership class.'"

Wayne continues: "I agree that large ownerships can allow habitat protection, etc. This is true, if the owner wants habitat. If the owner doesn't, it is gone. At estate transfer time, what is the current incentive to keep the land in preserve, with or without estate taxes? Well, with estate taxes, the tax code can be tinkered with to reward lands left in preserve – again remove the speculative value and replace with the current use value (or boon). Without such a system, it is the romanticist view of the owner (or undercapitalization) that keeps the habitat. Experience with greenbelt tax laws demonstrates the ephemeral nature of some habitat when there is a competing market price AND no incentive."

As Wayne notes there are "compelling social reasons to maintain land in agriculture."

For example, consider the following data.

Duke Hammond, a biological scientist with the Florida Fish and Wildlife Conservation Commission, undertook a research project in 1997 to document the impacts of federal estate taxes on the habitat of the endangered Florida panther.

The research resulted in two papers: "The Connection Between Federal Estate Tax Law and Panther Habitat Loss in South Florida" was completed in July 1998. This paper was the subject of the "Editor's Page" in the September 1998 issue of *Florida Trend Magazine*, the full text of which appears below. In addition, Hammond prepared a

second paper, “Protecting Panther Habitat on Private Lands in Southern Florida – A Current Assessment,” which was presented at the 63rd annual North American Wildlife and Natural Resources Conference in 1998.

Hammond said in a July 21, 1998 letter, “My hope is to use these papers to stimulate interest in ‘fixing’ federal estate tax law in a way that will forestall development on natural and low intensity agricultural areas on private lands. That is an odd task for a biological scientist working for a state game and fish agency. But, I have been directed to improve our relationship with private landowners and protect wildlife habitat on private lands. Reforming estate tax law has the potential of accomplishing both.”

Key points made in Hammond’s papers include:

- “Fifty percent of the habitat occupied by panthers in south Florida is privately owned. These lands are vulnerable to development, often as a direct result of the federal estate tax.”
- “The federal estate tax is linked to wildlife habitat in a predictable manner. Nine months after an owner’s death, the estate tax is payable in full at the time of filing by the heir. Often, a valuable piece of land in an estate precipitates a tax so large that the land must be sold just to pay the levy.”

Example: The original Bright Hour Ranch in central Florida, which stretched for 90,000 acres to the north and south of S.R. 70, was reduced to half its size by federal estate taxes. Another example: Dixie Hollins of Crystal River, Florida, was forced to sell all but 1,600 acres of a 4,800-acre property after his father’s death in 1992. The estate taxes also forced him to change his profession – from independent farmer to employee – since the parcel he retained was no longer of sufficient size for him to make his entire living from the land, without eliminating most of its native habitat, which he was unwilling to do.

- Hammond continues: “Large inherited properties almost always experience escalating land uses subsequent to being passed from one generation to the next in order to generate income to offset losses resulting from payment of the tax. And those who purchase the property usually intensify land uses or develop the property as real estate in order to derive a profit from land which was purchased at near market value. The predictable outcome is that wildlife habitat on the property deteriorates after the levying of the tax.”
- “The Golden Gate Estates calamity [in Collier County] is one example of the potential aftermath that can result from private lands being sold to pay federal estate taxes. While we lack the certainty to determine what might have occurred had the Golden Gate Estates land had been retained by the Collier family ... the

fact remains that in the case of Golden Gate Estates, land was sold by the family to pay an outstanding federal estate tax, and environmental havoc ensued.”

- “When agricultural land passes from one generation to the next at the owner’s death, an estate tax representing a substantial percentage (as much as 55%) of the estate’s value becomes due. Often, agricultural landowners are ‘land-rich and cash-poor.’ Assessment of federal estate taxes against these landowners frequently results in land use escalation, regardless of whether the land is retained or sold. This causal relationship ultimately engenders habitat loss, an avoidable injury that would not have occurred at that time had federal estate taxes not been assessed.” The tax also is a major factor in the loss of small, family farms and their consolidation into large, corporate agribusinesses.
- “Many private landowners treasure natural areas on their property as highly as many in what has come to be known as the environmental community, preferring to keep their current land uses in place in deference to those resources. It is often economic hardship that results in more intense land uses being considered by landowners. The situation is a bit ironic. Government desires to protect natural areas on private lands, lands that owners have little desire to develop, and levies a tax against the landowner that results in development of habitat both government and the landowner desire to protect. A simple way to protect natural values on private lands would be for government to allow deferment of payment of estate taxes on those private holdings where landowners agree not to escalate land uses in ways that would destroy valuable habitat. Another solution might be to repeal federal estate taxes altogether. If estate taxes were not assessed by the government, thousands of acres of privately owned land would be protected from development. Some of that acreage would most certainly be developed for other reasons, but the threat of development arising from the levying of estate taxes would be removed from all privately owned natural areas.”
- “Reform of the federal estate tax law carries with it a relatively low cost to society and government. The estate tax currently accounts for approximately 1% of federal tax revenues, with 21% of this amount derived from real estate. Some lesser portion (less than 2/10 of 1% of total tax revenues) relates to lands with wildlife habitats (Guest and Associates, L.L.C., Estate Tax Factbook, Price Waterhouse, Washington, D.C., 1996, 31 pp.). The loss of tax revenue that would result from estate tax reform would be negligible, yet the benefits to society in the form of habitat preservation would be significant.”

Hammond concludes one of the papers by saying:

- **“Many decisions which determine the survival of endangered species are made by those who have no interest in or understanding of population dynamics. It**

will be critical in the future that such decision makers become aware of the consequences of their actions. It is a certainty that senators and representatives in Congress who passed the current federal estate tax law in 1916 had no concept of its future adverse impacts on privately owned wildlife habitat. The future of the Florida panther may well depend on how quickly this concept can be grasped by lawmakers today.”

One of Hammond’s papers generated the following editorial by Mark R. Howard in *Florida Trend Magazine*, entitled “The Price of Panthers.” The editorial raises some excellent questions that are pertinent to the discussion of this issue:

“How do you put a price tag on a Florida panther? Ask most Floridians, or for that matter most U.S. citizens, if there's some inherent value in having the big cats roaming around south Florida, and we're inclined to say we like the idea. There's a little bit of the naturalist in all of us. In economic parlance, it's called 'existence value' – we don't want to buy a panther, may never even see one in the wild, but we attach some worth to knowing that they're out there.

“The follow-up question – ‘How much is it worth to you?’ – isn't so easy to answer. But we have to ask both questions because there are links between panthers and seemingly unrelated issues like taxes. And because the endangered panthers are symbols for a whole raft full of other ‘desirable’ things about Florida that we will be forced to put a price tag on over the course of the next 40 years – wetlands, other wildlife, agricultural land, clean water in our springs, even 'my unspoiled view' today vs. 'your high-rise condo' tomorrow.

“Consider the panther. It takes a lot of land to grow them – one cat can range over about 450 square miles. There are only about 40 or 50 left in the state, and 50% of their habitat in south Florida is privately owned farmland or rangeland mixed in with wilderness, according to Duke Hammond, a biological scientist with the Florida Game and Fresh Water Fish Commission.

“A number of big landowners haven't been in a hurry to develop their property, content to use a few acres to make a living and to let the panthers and other wildlife roam on the rest. But when the owners die, Hammond says, federal estate taxes frequently force their heirs to sell at least a piece of their inheritance. And the new owners usually are more interested in turning a buck than growing panthers.

“Hammond and an intern at his department, Selene Jacobs, collected case

histories of how panther habitat has eroded in this fashion, and have written an interesting research paper on the relationship between wildlife habitat and estate taxes. One example from their research involves the Hilliard family, which once owned 60,000 acres of mostly wild country in Hendry County. When Marlin Hilliard died in 1981, the government gave his heirs nine months to pay \$17.5 million in estate taxes. Ultimately they had to sell 17,000 acres to pay that tab. And since then, some 12,000 of those acres have been converted to citrus groves and sugar cane fields. Joe Marlin Hilliard, Marlin's nephew, told Hammond his family would have preferred to keep it undeveloped. And even after some hugely complicated estate planning, the next generation of Hilliards likely will have to sell more land. The panthers' habitat will erode farther.

“So how much is it worth to help the Hilliards keep panthers as part of Florida's landscape? Should we, for example, tinker with federal estate taxes to slow the loss of habitat? The landowners would like it. And no less a conservationist than Bernard Yokel, president emeritus of the Florida Audubon Society, thinks it's fair to compensate landowners who protect wildlife. Yokel told Hammond, ‘Wildlife is clearly an asset. But the farmer, and businessman, will not put himself out of business to protect that. It's a luxury, and good environment is expensive. There is planning and money involved if you want an environmental future.’

“But estate tax reform is problematic: Even conservationists, who tend to favor ways of saving habitat, might not support it. As Hammond points out, landowners often dodge part of their estate taxes by donating the development rights to their property to conservation organizations. Provide a tax break to the landowners, you may end up goring the conservationists' ox because landowners would probably stop giving.

“And what about you and me? If my taxes go up to pay for that landowner's tax break, my estimation of the ‘existence value’ of those panthers could change in a hurry. Panthers, in fact, may have already become too expensive to maintain as part of the natural landscape.

“But forget the panthers for a moment. Consider a hypothetical Florida a few decades from now in which competition from foreign growers and development pressures from population growth have substantially reduced the amount of agricultural land. How much will the existence value of the remaining farmland and groves be worth to us? Will a movement emerge to preserve some of Florida's ‘traditional agricultural character’ by subsidizing the remaining farmers? Will we want the state to buy development rights to their property, or to reform estate tax law so their

heirs can continue to grow fruit and vegetables?

“Pick your issue. Some of the state's purest springs now show signs of contamination, probably from agricultural chemicals and runoff. How much are we willing to pay – in regulation, bureaucracy, research, purchases of easements, etc. – to keep them pure? And do we want them 99% pure, as they were, or can we live with 90% pure, or maybe 80%, to balance all the interests involved?”

“Whether it's panthers or springs or zoning densities, the issue is always messy and we usually avoid meaningful discussion until a lot of our choices have been made for us. Hammond says that he wrote the paper in the first place because the panthers' fate happened ‘not because of a conscious choice, but because we haven't been talking about what we want to do.’ He wants us to be thinking about these issues all the time, and he's right. In talking about how many panthers to have or whether to have them at all, we're answering the question of who we are and what we see as fundamental to Florida's identity. We can't stand back and pretend the things we love about the state will endure because they're ‘priceless.’ Over time, the market has a way of putting a precise value on them, and at that point the price is often very high.”