Testimony on Estate Tax Proposals
Senate Committee on Finance and Revenue
February 13, 2019

Chair Haas and members of the committee:

My name is Bennett Minton, and I moved to Portland last year, captured by the Oregon vibe. Until then I'd spent my life in the nation's capital, where I was a congressional reporter/aide/lobbyist/analyst, mostly in tax policy. For three decades I watched budget debates and the virtual elimination of our historic tax on wealth transfers. I offer a summary of the changes I witnessed and some observations about this obsession with a tax that affects only a tiny number of extremely wealthy taxpayers, including one in my family.

Federal provisions

In 1997 Congress raised the estate tax unified credit (for the estate, gift and generation-skipping transfer tax) from $600,000 to $1 million in increments over 10 years. For estates with family farms and other closely held businesses that accounted for at least half the estate's value, the law generally created additional benefits:

- A $1.3 million exemption (including the unified credit)
- Installment options for payment of liabilities at reduced interest rates, and
- A recapture provision for heirs who ceased participating or sold their interest within 10 years.[1]

The 1997 law did not change the tax rates, which ranged from 18 percent to 55 percent for estates of more than $3 million (with a 5-percent surtax that effectively phased out the graduated rates on estates of more than $17,184,000). Nor did the law affect the credit provided for state estate taxes.

Explaining the rationale, the Joint Committee on Taxation wrote:

> *The Congress believed that a reduction in estate taxes for qualified family-owned businesses would protect and preserve family farms and other family-owned enterprises, and prevent the liquidation of such enterprises in order to pay estate taxes.*[2]

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[1] "The benefit of the exclusions for qualified family-owned business interests are subject to recapture if, within 10 years of the decedent's death and before the qualified heir's death, one of the following "recapture events" occurs: (1) the qualified heir ceases to meet the material participation requirements (i.e., if neither the qualified heir nor any member of his or her family has materially participated in the trade or business for at least five years of any eight-year period); (2) the qualified heir disposes of any portion of his or her interest in the family-owned business, other than by a disposition to a member of the qualified heir's family or through a conservation contribution under section 170(h); (3) the principal place of business of the trade or business ceases to be located in the United States; or (4) the qualified heir loses U.S. citizenship." *General Explanation of Tax Legislation Enacted in 1997, JCS-23-97, p.69*

[2] JCS-23-97, p.65

Democratic senators who advocated the small-business exemption represented rural states – and a few familes who controlled the stock of multi-billion-dollar corporations, either privately held or publicly traded. I watched the National Federation of Independent Businesses and other proponents of these families scour the country for taxpayers who fit their desired PR profile: farmers forced to sell because of the estate tax. I don't recall one appearing before Congress.

The NFIB wasn't finished, because the exemption wasn't its target; the rate was. In 2001, the JCT explanation was simpler: Congress decided the tax was "unduly burdensome" and that it was "inappropriate to impose a tax by reason of death."[3] And so it phased it out, raising the unified credit to $3.5 million and lowering the top rate to 45 percent by 2009 and eliminating the tax altogether in 2010. It also provided free transfers between spouses, effectively doubling their unified credit. To meet congressional accounting rules, the law in 2011 was to snap back to its 1997 parameters: a 55-percent rate and $1 million unified credit.

In the waning hours of the Democratic Congress in 2010, the estate tax was restored to a maximum 35 percent rate with a $5 million exemption (twice that for couples under portability rules). That was the best deal the lame-duck House Democrats could get without a filibuster-proof Senate; Republicans made it a priority, and President Obama did not.

Two years later, Obama and the Republican Congress agreed to a New Year's Eve deal in which the top rate was raised to 40 percent and the unified credit was indexed to inflation, beginning at $5.25 million – twice that for couples.

Of course, that wasn't the end of it, because in tax law nothing is ever the end of anything. The 2017 tax law doubled and indexed the unified credit, and in 2019 the credit is $22.8 million for couples.

Of course, Oregon took these changes into account in rewriting its own law, and it has not followed Congress's approach. But some legislators still seek repeal of the wealth tax on Oregonians – I assume that's why this hearing was called.

State bills

SB 304 includes no limitation on the value of the estates. If Oregon were to subsidize heirs who retain ownership of a family business, it might consider the limitations of the federal 1997 provision with respect to value and payment regime. But any largesse should be considered in the context of any other public benefits, such as that extended to natural resource property and provisions affecting trusts.

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[3] JCS-01-03, p. 63.

For small businesses generally affected by potential state liabilities, it seems that owners who had heirs dedicated to the enterprise would have distributed equity or restructured otherwise to take that into account. I question whether these heirs need special relief from taxes on assets they had little part in creating.

SB 188 has no policy rationale. Whether a taxpayer stays in a deceased parent's home is not a circumstance deserving a public subsidy.

The other three bills – 319, 674 and 701 – are gifts from the rest of us to rich heirs. Or not-so-rich, like me.

My experience

My Great Aunt Grace was the youngest of 10 children, born in poverty on the plains of northern Texas. She built a ranch with her hands in Parker County, and grew wealthy through hard work and smart investing. She had no children but a ton of nieces and nephews who had kids, of whom I'm one. Eventually she sold the ranch. In her declining years I visited her on occasion. One time when I walked in, she turned her head to me and said, weak but furious, "I hate the estate tax." She knew my business. I went a gentle round with her, my bequest at stake. (She did not cut me out of her will.)

From my parents, my siblings and I received bequests totaling about a million dollars. Some of Mom's money had come from Aunt Grace. We got it tax-free. From Dad we got some tax-free life insurance (because inside buildup is never taxed) and decedent IRAs. I take required withdrawals each year. Despite cash-outs of a third of its original value, that IRA is worth a third more than it was when I received it in 2012.

I did nothing for any of this money, except happen to be born well, under a Congress with a fetish for the already well-off.

At a time of desperate needs in education and housing, with unstable state revenue, in a country with a chasm between the very rich and everyone else, I cannot understand any support for additional benefits for fewer than 2,000 of our wealthiest citizens.

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