Nebraska's Destructive Inheritance Tax

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By Dick Clark

When a loved one dies, the loss felt by family and friends can be difficult to take. In Nebraska, that loss may also come with a county tax bill. Nebraska is one of six states that taxes heirs on their inheritance. While spouses are spared, children, nieces and nephews, cousins, and others who receive a gift when a loved one dies are potentially liable for a tax of up to eighteen percent of the amount gifted. Close relatives, such as siblings, children, or grandchildren, are taxed at a modest rate of one percent after the first $40,000.[1] Nieces and nephews are not so fortunate—they are taxed at thirteen percent after the first $15,000.[2] Cousins and other, more distant relations are hit the hardest of all, with an eighteen percent tax assessed after the first $10,000.[3]

Several proposals have been fielded in the Legislature in recent years to tackle the inheritance tax. In every case, the inheritance tax relief bills were opposed by counties, who protested that inheritance tax revenue is important to their bottom lines. Most recently, Senators Hansen and Carlson introduced bills to eliminate[4] or reduce[5] the tax during the 2014 legislative session. Senator Hansen, in the hearing on his bill, proposed taking a look at state spending mandates on the counties in order to offset the reduction in county revenue from the cut, but neither his bill nor the more moderate bill from Senator Carlson were able to get the votes necessary to be advanced to the full Unicameral for debate on the legislative floor.

The inheritance tax is chiefly a tax on families. It is a double tax, since the assets to be inherited were undoubtedly acquired with after-tax income. In the case of real property, it is appropriate to describe the inheritance tax as a triple tax, since the decedent must have also been paying the requisite property taxes in order for the land to be inheritable. Although lineal descendants do not suffer from the punitive rates applied to more distant relatives, a one percent tax on something for which a parent has already paid tax year after year is an insult. For nieces and nephews, the thirteen percent tax after the first $15,000 is more than an insult—it may be a barrier to carrying on a family business, because the heir may have to liquidate the inherited property in order to pay the tax. Similarly, a cousin or an unrelated person who has to pay nearly one-fifth of the market value over $10,000 may find it virtually impossible to actually receive the intended benefit of their loved one's property, receiving dollars instead. Once one factors in the fees paid for the assistance of accountants and tax attorneys in completing the required filings, that benefit is diminished further still.

Besides disrupting family businesses and taxing what has already been taxed, the inheritance tax punishes property owners for giving testamentary gifts to individuals who are not on the State's "approved" list of recipients. If a niece or nephew was there to support a person during their declining years, why should state law prevent that faithful relative from receiving the full benefit intended by a grateful aunt or uncle? Likewise, while a spouse is spared the indignity of inheritance tax liability, an unrelated, life-long domestic partner is not recognized as a legal spouse by the State, and this means that the county is legally entitled to eighteen percent of the decedent's gift over $10,000, potentially forcing that unprivileged loved one out of the family home. Rather than letting a property owner leave gifts for those who are nearest and dearest to his or her heart, the inheritance tax penalizes anyone who leaves substantial gifts to someone who is not on the government list of acceptable heirs.

The tax on inheritance is not merely the price one pays for memory-filled bits of a friend or family member's life. It is a tax on capital. It disrupts enterprises by imposing a cost that is not directly tied to the rate at which the decedent or heir has used public services, or any other rational measure for that matter. And because people do not die on a regular schedule, the tax is not a particularly reliable revenue source for counties. In Lancaster County, which has substantially higher concentrations of wealth and population than most Nebraska counties, inheritance tax receipts have recently varied by more than twenty percent from one year to the next.[6] Inheritance tax revenue is so unreliable that some counties set inheritance tax dollars aside to cover unforeseen shortfalls rather than count on them as a regular component of each budget cycle's expected revenue.[7] Yet, while inheritance tax revenue cannot be counted on at budget time, counties still insist that it would be untenable to spare grieving families this added tax burden.

Nebraska has the dubious honor of being named by *Forbes* as a place "not to die."[8] This warning has not gone unheeded by Nebraska retirees, with adults ages 55 and older moving out of the state more rapidly than any group other than young college graduates.[9] While out-migration of young workers can largely be attributed to the more business-friendly tax climates and consequent availability of high-wage jobs in other states,[10] the loss of individuals over 55 may have more to do with the threat to past earnings posed by the inheritance tax. In a state where out-migration poses a significant obstacle to economic growth, lawmakers should insist on a tax policy that makes Nebraska more attractive as a haven for retirees, instead of leaving the Cornhusker state on the short list of places where prudent people would not be caught dead.

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[1] Neb. Rev. Stat. § 77-2004

[2] Neb. Rev. Stat. § 77-2005

[3] Neb. Rev. Stat. § 77-2006

[4] Legislative Bill 812. 103rd Nebraska Legislature, second session. 2014. [URL: http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=21836]

[5] Legislative Bill 960. 103rd Nebraska Legislature, second session. 2014. [URL: http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=22067]

[6] Letter to Governor Dave Heineman. Lancaster County Board of Commissioners. October 9, 2012. [URL: http://lancaster.ne.gov/clerk/agenda/2012/121009/gov.pdf]

[7] Discoe, Connie Jo. "County board opposes ending inheritance tax." *McCook Gazette*. January 24, 2012. [URL: http://www.mccookgazette.com/story/1808139.html]

[8] Ebeling, Ashlea. "Where not to Die in 2014: The Changing Wealth Tax Landscape." *Forbes.* November 1, 2013. [URL: http://www.forbes.com/sites/ashleaebeling/2013/11/01/where-not-to-die-in-2014-the-changing-wealth-tax-landscape/]

[9] Drozd, David. Data compiled for the Retiree Friendly Coalition. University of Nebraska–Omaha. 2014.

[10] "State Taxation and Migration." Platte Institute for Economic Research. January 15, 2014. [URL: http://www.platteinstitute.org/research/detail/state-taxation-and-migration]