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COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

ESTATE AND GIFT TAX HEARINGS

STATEMENTS OF PUBLIC WITNESSES
TESTIFYING INDIVIDUALLY AND
IN PANEL FORM



MARCH 17, 1976

Printed for the use of the Committee on Ways and Means

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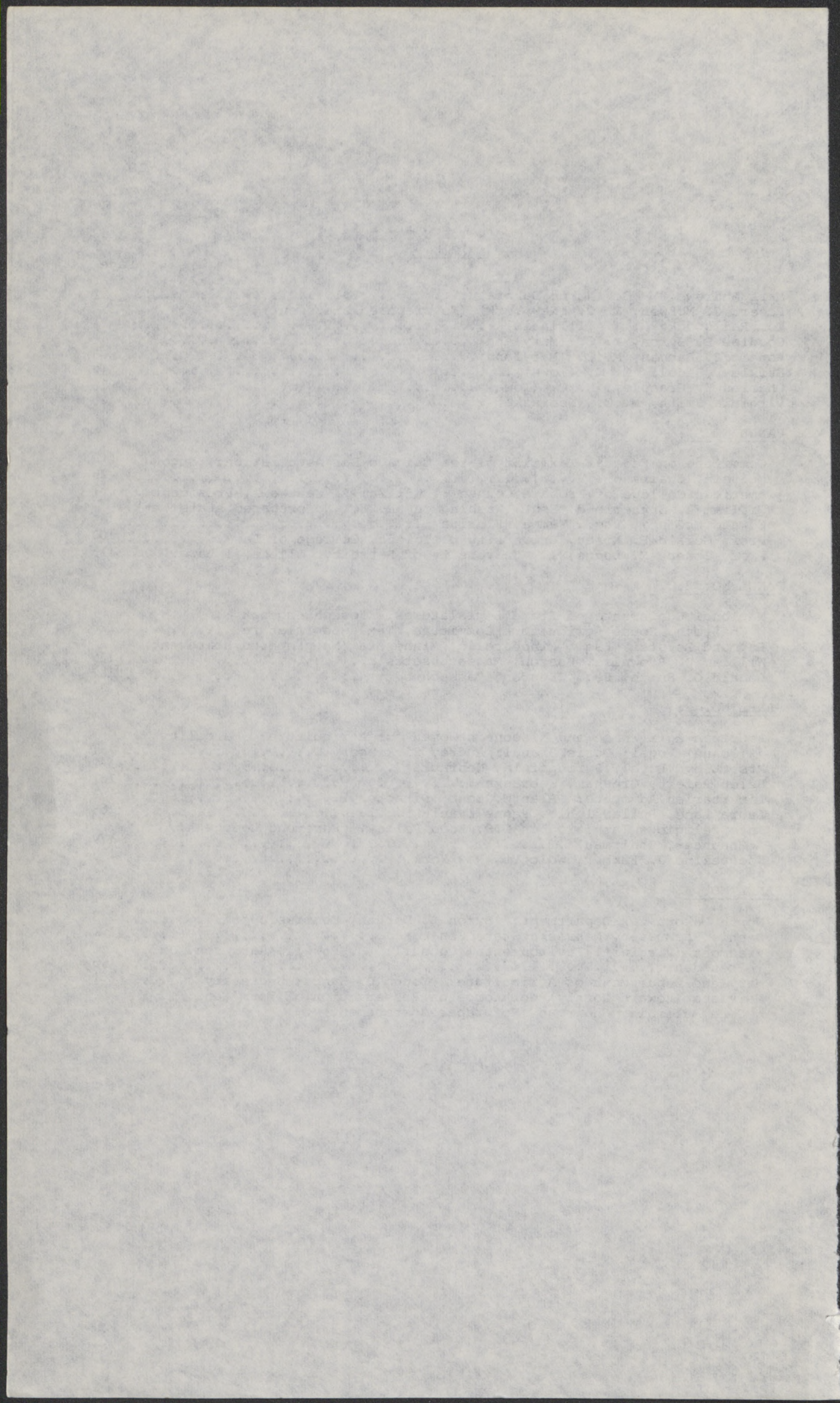
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COMMITTEE ON WAYS AND MEANS
STATEMENT OF CONGRESSMAN MARK ANDREWS OF NORTH DAKOTA (AL)
HEARING ON ESTATE TAX

March 17, 1976
Main Hearing Room

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to make a brief statement on the need to rewrite our estate tax law.

As the law now stands, it seriously endangers the future of our whole system of farm family agriculture -- the most efficient and most productive type of agriculture in the world.

The \$60,000 exemption is completely unrealistic -- and has been for years -- in a period of soaring farmland prices.

In my state of North Dakota, for example farmland prices have more than doubled, overall, since 1967 -- and in many areas, land prices have more than tripled. In the year 1974, average farm real estate in my state jumped 39 percent in one year.

As one farmer told me recently, "Mark, I can't afford to die under these estate taxes -- my death would absolutely wreck my farm unit for my two sons and widow."

Unless a farmer has figured out some way to avoid owning anything by the time he dies, anywhere from 25 to 40 percent of the farm or ranch may have to be sold to pay for the Federal and State death taxes on the estate, plus administration costs. All you have to do is check the probate record in the county courthouses in my state, to believe me.

Estate taxes under the existing law can be brutal if you own farmland worth \$250,000 or up -- which is not unusual in North Dakota.

For example, if your taxable estate is \$200,000, Federal and State estate taxes and administration costs can run over \$50,000 and when the widow dies the tax bill could run as high as an additional \$90,000.

Most farmers these days, do not have huge cash savings for quick payments of amounts running into five or six digits. The average farmer today is land-rich and cash-poor and under the present estate tax formula, the family has no alternative but to sell off a substantial part of the farm to pay for the taxes. In time, this concept of estate taxes will completely wreck our family farm type of agriculture -- which would be a national tragedy.

It will be suggested, I know, that by raising the estate tax exemption we are just creating another tax loophole. This is a specious argument. All we are asking is comparability with other businesses. I would like to point out that, using USDA's own figures, investment in farmland returns about two percent, whereas investment in business property normally returns up to ten percent and more. An inheritance tax formula, for farmers, then should be based on income-producing ability, rather than on speculative land prices. This would put family farms on a basis of comparability with family city businesses.

It is for this reason, Mr. Chairman, that I, and a number of my colleagues in this House, have introduced, over the past three years, a variety of bills to correct and reform the estate tax laws. I think a minimum and realistic level of exemption should be raised from \$60,000 to \$200,000 and I hope this committee will give serious and favorable consideration to this and other long overdue changes. Thank you.

Statement of Honorable Tom Railsback (R.-Ill.)
Before the Committee on Ways and Means
March 17, 1976

RAISING THE ESTATE TAX EXEMPTION

Mr. Chairman, and Members of the Committee. I am here today to urge you to amend the Internal Revenue Code of 1954 to raise the estate tax exemption from \$60,000 to \$185,000.

Between 1949 and 1969 the number of farms decreased by over 2 million. A significant factor it is believed is the high cost of the federal estate tax.

On February 6, 1975, I introduced H. R. 5612, which would raise that exemption to \$185,000. This figure was based on the Consumer Price Index of November 1974. However, we all know that land costs have continued to escalate. Therefore, I would be willing to go along with some of my colleagues who would set the limit at \$200,000. Under existing law the first \$60,000 of an estate is exempt from estate tax. While the exemption has remained unchanged for the past 34 years, prices have increased 224%. Inflation and economic growth have rendered the estate tax structure obsolete. This legislation is truly needed, especially by farmers and small businesses, and indeed anyone who would leave a family to carry on.

In the last decade farm value has soared due to inflation and land costs. This growth in values has resulted in a corresponding escalation in the farm family's degree of estate tax liability. A situation is then created where the cost of the estate taxes are often as much as the original purchase price

of the farm. If it is to be kept as a farming unit, capital must be borrowed to maintain the farm as an efficient business.

I have heard from hundreds of families in the 19th District of Illinois crying out for change in the tax structure. Farm Journal and other farm industry related publications have recently taken up the issue. It is well know in the heartland of America that upon the death of the farm's owner, heirs are often forced to sell their land and lose their livelihood because of the "death tax." Farming by its very nature precludes for the average farm family, liquidity. According to the U. S. Department of Agriculture seventy to ninety percent of typical farm assets are in land, buildings, and machinery. Only on rare occasion does an operation on the scale of the family farm have the cash reserves to pay the estate tax due.

There is general recognition that there are many, many people in this world who are hungry. There is evidence that there are many Americans who are undernourished. It is for that reason, and perhaps that reason alone, that there is a national policy to encourage all-out agriculture production. American farmers have met that challenge despite the great risk involved...the risks which have always been a part of farming...not in the least fluctuating prices. When the inevitable result is a forced sale of a farm, or part of a farm, in order to raise cash to pay an enormous estate tax, our national policy of encouraging all out production is often times frustrated. This is true despite the fact that it is the desire of the heirs, or successors, to continue farming. Instead the land is sold to developers or other investors.

Recently a family in my District had to sell two farms that had been in the family since the prairie soil was broken. Obviously, it is becoming increasingly difficult for the owner to will land to spouses or children with enough financial reserves to maintain a farm's or the business's operation.

This is a subject not only of great concern to me, but to many people in my District. One such person is Lee Lohman of Geneseo, Illinois. Mr. Lohman has been an estate planner, a farm owner, active in the Quad Cities area of Illinois and Iowa since 1956. He has been on the board of a bank, the advisory board of a college, and a life insurance company. Mr. Chairman and Members of the Committee, in addition to my statement, I am submitting testimony given to me by Mr. Lohman for your consideration. I ask that it be included in the hearing record. As Mr. Lohman has stated, "the \$60,000 exemption puts the farmer in the seemingly unusual position of having to purchase the farm for its original purchase price a second time if it is to be kept as a farming unit or viable business."

If it was socially and economically desirable that a fairly modest family farm or business, or simply a home and its furnishings could pass from one generation to another in the early 1940's, when Congress last acted on the estate tax laws, it should be equally desirable in 1976.

Let us now take a step in the direction of allowing a family's heritage to pass from one generation to the next. Mr. Chairman, I again thank you and your colleagues for letting me testify today, and I would hope that what I have said will be helpful in your consideration of pending corrective legislation.

TESTIMONY
OF
HONORABLE GOODLOE E. BYRON, M.C.

COMMITTEE ON WAYS AND MEANS
MARCH 17, 1976

H.R. 3832, ESTATE TAXATION

Mr. Chairman, I thank you for the opportunity of testifying today on behalf of H.R. 3832, the agricultural land estate taxation bill I introduced in the last Congress and this Congress.

H.R. 3832 has broad support. It has 55 co-sponsors at the present time in the U.S. House of Representatives representing a wide mixture of urban and rural constituencies as well as a diverse spectrum of states and districts.

H.R. 3832 is designed to address the problem of disappearing open space and agricultural land in this country. We have all been following closely the vicissitudes in the world production of food. The U.S. exports 73% of its wheat, 50% of its rice, and 21% of its corn each year. Eighty percent of the world's soybean supply comes from the United States. The average American farmer produces enough to feed 53 people. But his mighty productivity in the agricultural sector will not be enough if land is destroyed or irrevocably lost.

The situation in Maryland regarding agricultural land is instructive. According to the 1945 Census of Agriculture, the total area in Maryland farms stood at more than 4.2 million acres, or 67 percent of the State's land area. By 1969 this farm acreage had decreased to 2.8 million acres or 44 percent of the total land area. The 1974 report by the Maryland Committee on the Preservation of Agricultural Land estimated that the investment per farm in the 11,590 commercial farms included \$131,378 in real estate, \$12,914 in machinery and equipment, and \$8,717 in poultry and livestock for a total of \$153,009 per farm excluding inventories of feed and supplies. By 1986 total investment per farm will reach an estimated \$438,000. The impact of inflation and population pressures on land is obvious from these figures. The real estate component of farm values is rising in absolute terms and as a percentage of overall farm value. Incidentally, in 1969 about 87 percent of

the commercial farms in Maryland were operated as individual or family organizations. Only 11.5 percent were operated as corporations including family-owned corporations.

There has been a continuing decrease in the percentage of land in farms. The state study projected that by the year 2000, the total land in the State in farms will be approximately 1.0 to 1.3 million acres or 19.6 percent of the State's area -- a highly significant decrease from the 67 percent in 1945.

The states have moved on the question of preserving agricultural land in the past two decades. Use value assessments are in effect in Connecticut, New Jersey, Washington, and Oregon. Other plans have been considered in Vermont, New York, Michigan, and Hawaii.

I would like to make a brief comparison between the bill, H.R. 1793, introduced by Congressman Burleson and H.R. 3832. The first difference is obvious. H.R. 3832 does not include any increase in exemptions for estate tax purposes, nor does it increase the estate tax marital deduction.

In the section dealing with alternate valuation, the first major difference is in the definition of qualified real property. The first three categories of qualified real property are essentially the same; however, H.R. 1793 omits the fourth category -- namely properties listed on the National Register of Historic Places. H.R. 1793 also allows the avoidance of taxes after 5 years should the property be sold or converted, and it does not require the payment of interest on the additional taxes based on revocation. These are important differences which I feel should be considered.

In closing, I would like to say that I cannot imagine a higher priority than preserving our agricultural land. The present federal estate tax structure has done much to hasten the sale and conversion of agricultural land in every corner of the country. This cannot continue for long. If it does, we will all be the poorer -- not just the citizens of this country but the entire world. Land is our most precious heritage. We have an opportunity in this Congress to rectify this situation and to show the American family farmer that his plight is recognized in Washington and that the warning signals are being heeded. I urge your favorable consideration of this landmark legislation, and I would hope that the House also will have an opportunity to consider such a bill in this Session.

TESTIMONY OF CONGRESSMAN
ROBERT E. BAUMAN
BEFORE THE COMMITTEE
ON WAYS AND MEANS

MARCH 17, 1976

RE: FEDERAL ESTATE AND GIFT TAX REFORM

Mr. Chairman:

I would like to thank you and the other distinguished Members of the Ways and Means Committee for this opportunity to testify on behalf of two bills I have co-sponsored, H.R. 3831 and H.R. 11770 which are both before your Committee.

These bills and related legislation reform the present tax system by increasing the standard estate tax exemption to reflect the effects of inflation since the \$60,000 exemption was first set, and provides for the valuation of farmland and open spaces at levels reflecting their current use rather than the so-called "fair market value," an arbitrary synonym for "highest possible use."

Obviously, Mr. Chairman, I feel that such reform is necessary. The present system is hopelessly outmoded. The laws covering taxation of estates and gifts have not been materially changed since 1942, while the rates of inflation and sky-rocketing landcosts have. The resulting problems have become burdensome to us all, and no combination of plagues and droughts equal the disastrous effect inflation has had on the American farmer, effects which are all too visible.

Within the last two decades, our nation has lost more than two million farms. The American farmer is the most knowledgeable, efficient and industrious agricultural producer in the world. Four percent of our population feed all Americans and much of the world beyond. Farmers spend more time and more money replenishing the earth than all the independent and federal environmental agencies combined, and yet our system is forcing him to become an endangered species.

The present tax system forces a farmer's heir to sell his land and lose his very livelihood in order to pay the estate tax liability. Increased interest rates on deferred payments and increasingly shortened deferral periods only work to fully secure his misery and guarantee his extinction or at the very best, guarantee his impressment by a federally supported lending company.

How perfect for the bicentennial! Serf-farmers in what we like to call primitive societies have rebelled against their own government for less, but it is out of character for the American farmer to act so disloyally. Against an ancient tax system and what has the image of being an ineffective or careless Congress, the farmer is left with no other recourse but to fade away. As the figure I have cited indicates, this is what they have done. And this is what they will keep on doing unless estate tax reform is put in tune with times.

Some have contended that this is not as great a problem as it seems, and until the early 1960's they were right. Until only recently, federal estate taxes were not large enough to pose a significant

problem for owners of family-size farms. However, over the last decade farm assets have increased on an average scale from \$42,585 to \$163,503 - and this is just the mean average for a family farm. The cause, one must seek? An unprecedented increase in wealth or real income for the farmer? Wrong. Every farmer knows the cause.

Inflation. Inflation has distorted the actual income base and assessment level and results in a most serious impediment to the orderly transfer and operation of farms which is why I and many other Members who are closest to the citizens engaged in agriculture are here. Farmers are not asking for a hand-out. They are simply asking for the moderate level of reform included in the bills I have described. It is moderate because it is reasonable.

By permitting the \$60,000 exemption to be raised to \$200,000 we are only re-establishing the basic exemption level to what it was in 1942, before the effects of inflation. That is, under current economic conditions, \$200,000 has a little less than \$60,000 worth of purchasing power had back then. Moreover by valuing farm property according to existing use rather than the so-called "fair market value," we are able to put a stop to the practice of penalizing a young farmer who wants to continue the profession of his ancestors. Rather than developing ulcers, as farmers must, over liquidity worries, over the desperate search for cash to pay the taxman when all of a farmer's wealth is invested in machinery or buildings rather than stocks and bonds; instead of continuing this unfair system, the legislation I

have co-sponsored would make it possible to inherit and run a farm without having to file bankruptcy.

As a final word, Mr. Chairman, I want to state my belief that this legislation certainly benefits farmowners, but it also stands in accordance with the principles on which our government was founded. Property rights are among the human rights essential to the preservation of a free society. If we really believe this, if we really hold that every American is afforded the opportunity to save, invest, spend and convey his earnings to his heirs as he so chooses, we will see instituted the kinds of reforms I have described to you this morning.

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STATEMENT
OF
CONGRESSMAN BERKLEY BEDELL
Before the
COMMITTEE ON WAYS AND MEANS
March 17, 1976

Mr. Chairman, I am grateful for this opportunity to appear today before the committee to discuss the need for reforms in our current estate tax laws as they affect family farms and small businesses.

I have come here today primarily because I am one of a growing number of people deeply concerned by the decline of the number of small, family owned and operated farms in America. Parallel with this decline is a pronounced trend toward increased dependency upon large-scale, corporate entities for our food production.

It is estimated that some 200,000 to 400,000 farms will be lost over the next twenty years. According to a USDA study, the United States could be reduced from a current level of 2.8 million producing farms to 1 million units by the turn of the century. In my State of Iowa, in just two years from 1973 to 1975, the number of producing farms dropped by 2,000 (from 139,000 to 137,000), while the land in farms remained steady at 34.3 million acres.

At question here is not only the centralization of vital food production within a fewer number of hands, but the very preservation of a way of life. For too long, the federal government has overlooked the needs of the family farm, and we are now seeing the signs of this neglect. Since the early 1940's, when the current \$60,000 estate tax exemption was set, the number of farm operators has fallen from 6.35 million to 2.82 million in 1974.

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This displacement of farm population does not benefit the American consumer nor future generations of rural youth who will not have the opportunity of farming on their own. In spite of all our technological advances in agriculture, we must still rely on the care and commitment which only the independent farmer can bring to his farm. Time after time, the family sized farm has been shown to be a more efficient means of production than larger corporate enterprises.

The family run farm is in great jeopardy today, in part due to the failure of federal tax law to keep pace with inflated agricultural land values. Due to the illiquid nature of farm estates, sizeable estate taxes have forced farms out of family hands.

According to the USDA, in 1972 there were 1 million farms with assets in excess of \$200,000. Of those, 600,000 farms were worth over \$250,000 and 240,000 over \$350,000. On the surface, these appear to be sizeable estates. Closer examination reveals that the real value of most such farms is in the soil, and reflect the dramatic nationwide rise in farm land prices over the past 30 years. Just in the last 12 month period ending November 1, 1975, prices for Iowa farm land rose an average of 30.8 percent to \$989 per acre. I think it would be correct to say that most farmers live poor and die rich.

Clearly if we are to maintain family sized units as a basis of our agricultural production, we must remove the burdens placed upon heirs who wish to maintain the farm. At the same time, we must be very careful not to create another loophole available to the wealthy, or the gentleman farmer. I am one who believes that generally our estate and gift taxes are among the most progressive on the books, and should be maintained at current levels except for the legitimate family-sized farm or small business.

That is why I have co-sponsored legislation, along with many of my colleagues, which would raise the current exemption from the current \$60,000 to a level of \$200,000, which more accurately reflects today's agricultural land

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values. However, this exemption would be available only to those heirs who either personally farm or operate the family business for a period of at least five years. Under this proposal, an heir must reside upon the inherited farm, and maintain it as a working farm for that time period.

Under this proposal, HR 6306 "The Family Farm Inheritance Act", other assets of an estate not directly related to the actual family farming operation, would not qualify for the increased exemption.

The five year provision and the limit on qualifying assets will, in my view, discourage wealthy non-farmers from using such an increased exemption as a shelter from estate taxes. I believe it also effectively prevents corporate farming operations from taking advantage of it.

I believe that such an increase in the exemption should be allowed for small, family owned businesses, with similar provisions limiting qualification to family-run businesses of a limited size in terms of assessed valuation and number of employees.

Congress included the estate tax exemption with these specific goals in mind, and through the years economic conditions, primarily agricultural land values, have greatly diluted the exemption's impact upon our society. I am pleased that the committee is looking into this problem, and it is my hope that we can act on new legislation which achieves the original Congressional intent in light of today's economic realities.

Thank you, Mr. Chairman, and members of the committee. Again, I appreciate your courtesy in hearing me today, and I would be more than happy to answer any questions you may have.

Testimony in support of Estate Tax Reform by Congressman Chuck Grassley, before the House Ways and Means Committee, March 17, 1976.

Small farms and businesses have played an important role in American history and in the American economy. They have induced the tremendous economic growth that America has experienced since its inception. They have ensured that our economy be competitive. And they have given millions of Americans the opportunity to utilize their own initiative and intelligence to build meaningful lives for themselves. In short, almost all that has made America the strong and prosperous nation that it is, can be directly attributed to small American farms and businesses. And today, with more than 5 million businesses and about 3 million farms, many of them small, they are continuing to play this important role.

Unfortunately, though, the very existence of these farms and businesses is now threatened by the Federal estate tax. This tax imposes such enormous burdens on the heirs of estates, that in many cases it can only be paid by selling part or all of the estate. The impact of this tax is alarming: In 1950 there were 5.6 million American farms; in 1959, 4 million; and today, only 2.8 million. Similarly, the number of businesses has drastically declined. The estate tax has been responsible for a large part of this development.

What these cold facts mean, is that millions of Americans have been forced to abandon their farms and businesses - to seek entirely new ways of life - simply because they cannot afford to pay this tax.

Precisely how does the estate tax impose its burden? First, only \$60,000 of an estate is exempt from the tax. While this amount might seem to be very generous, it is grossly unfair in light of changing economic conditions. The \$60,000 exemption was established in 1942 - 34 years ago. Simply accounting for inflation, a farm or business that was worth \$60,000 in 1942 would now be valued at \$210,000. As a result, the proportion of estates paying the estate tax has increased from 1% in 1942 to 11% today. Each year more and more farm and business estates are subject to this burdensome tax.

And these farms and businesses are not simply the wealthy estates. Farmers and businessmen who have never earned more than four or five thousand dollars a year could easily accumulate an estate worth much more than \$60,000. This is especially true of the farmer. With land values skyrocketing, a very modest farm - 160 - acres - very likely will be worth \$200,000 or more. And, in fact, the average farm today is worth more than \$200,000. Thus, the \$60,000 exemption hurts all farmers and businessmen, not just the wealthy ones.

Second, in the case of property passing from the deceased to his lawful spouse, a marital deduction is allowed of up to 50% of the value of the estate. But when the estate is relatively modest, and especially when the surviving spouse has dependents, the estate tax imposes undue hardship, forcing the spouse to sell part or all of the estate to meet the taxes. The marital deduction in such cases simply does not provide sufficient protection.

Third, if real estate is part of the estate, it is assessed at market value rather than current use value. Since market value is frequently inflated or exaggerated relative to use value, due to land speculation and the demands of urban sprawl, this type of assessment penalizes the farmer or businessman whose property might be worth substantially more for another purpose. Again, this forces many heirs to dispose of their property.

Finally, when farmers and businessmen hold their property in joint tenancy, the entire value of the estate will be taxed, unless the surviving tenant can prove that she or he contributed part of the money for the purchase of the property. Obviously, this provision discriminates against housewives and other persons who might very well have contributed to the purchase by providing services, but since they never worked for a wage, they cannot demonstrate their eligibility for a smaller taxable estate. This has also contributed to the decline in the number of farms and businesses.

These four factors have resulted in farms and businesses being abandoned, split up, sold to other farmers and businessmen, or to third parties. This effect has been substantiated by at least four studies in the past 20 years. In 1957 a survey of 76 Iowa farm landowners revealed that, if each of the landowners were to die on the day of the survey, 91% would not have sufficient liquid assets to pay the estate taxes. In 1963, Brown University published the results of a study of firms that were sold or merged from 1955 to 1959. It concluded that estate taxes were responsible in 60% of the cases. A 1974 study of Iowa farm estates generated a similar conclusion. And a recent United States Department of Agriculture

study indicated that 25% of all estates containing real estate were sold at the time of the owner's death to pay the estate taxes.

The cost of this effect is enormous. For the farmers and businessmen who are forced to sell their estates, it is especially costly - economically and emotionally. For all Americans, since these economic units are generally efficient, any change in their size will be translated into higher consumer prices. And, since many farms and businesses are completely eliminated, the resultingly smaller supply of goods and services also creates higher prices.

To eliminate this cost, I have proposed (in HR 12424) that:

1. the exemption be increased from \$60,000 to \$200,000;
2. that the marital deduction be increased to \$100,000 plus 50% of the value of the estate;
3. that certain estates, including farms, be assessed on a "current use" rather than a "market value" basis.
4. that services - such as those of housewife - be regarded as a monetary contribution in determining the taxable portion of an estate.

These reforms will substantially ease the burden that the estate tax imposes on the heirs of farms and businesses.

But it should be pointed out that these reforms have not been arbitrarily fashioned simply to provide a tax break for farms and businesses; instead, they reflect a genuine concern to make the estate tax an equitable tax. Consideration of inflation during the past 30 years demands that the exemption be \$200,000, not \$60,000. If the needs of surviving spouses with dependent children are noted, then the marital deduction should be increased. That all other property taxes use current use value and not market value for tax assessment is an important reason for changing the estate tax's

basis for assessment. And, of course, it is about time that the worth of housewives and other unpaid service workers be recognized by the tax laws.

Thus, if my proposal (HR 12424) is adopted it will change the estate tax in two fundamental respects: first, it will reduce its burden on farms and businesses, and, second, it will make it more equitable. These changes will ensure that the small farms and businesses that have played such an important role in our history and in our economy will continue to have an opportunity to endure and prosper. This will benefit all Americans.

STATEMENT BY HON. VIRGINIA SMITH, THIRD DISTRICT, NEBRASKA,
ON ESTATE TAX REFORM BEFORE COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES, MARCH 17, 1976

Mr. Chairman, Members of the Ways and Means Committee: I am grateful for this opportunity to testify in support of the need to make significant reforms in our estate tax laws.

During the time I have served in Congress, no other area of tax reform has generated as much interest and concern in the Third District of Nebraska as the estate tax. I have received hundreds of letters and petitions from my constituents asking that legislation be adopted as soon as possible to update the laws and make them more equitable.

These letters are from people who own and operate family farms and ranches - many of them handed down from generation to generation.

Their owners want to continue to keep them in the family and pass them on to their children, but under present estate tax laws, it is getting more difficult for the inheritors to keep a family farm intact. It is often necessary to sell part of the estate or deplete savings in order to pay the inheritance taxes.

Because I agree that reforms must be enacted, early last year I introduced H.R. 4808, a bill which would amend the Internal Revenue Code to increase the Federal estate tax exemption; to increase the estate tax marital deduction; and to provide an alternate method of valuing certain real property for estate tax purposes.

This bill is identical to, or similar in language to, other bills pending before the Committee. Specifically, it would increase the present exemption of \$60,000 to \$200,000. It would also increase the marital deduction from its present rate of 50% of the net taxable worth to \$100,000 plus the 50% of the total value of the adjusted gross estate. The third provision of the bill I introduced would assess farm, woodland, or scenic open space property for estate tax purposes on the basis of current use rather than higher potential uses.

Based on what I hear from farm families in my District and from my own study of the estate tax laws, these are the inequities which need to be addressed. I think this is why, Mr. Chairman, so many of the bills before your Committee carry provisions to make specific

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Estate Tax Reform

changes on the order of what H.R. 4808 recommends.

Mr. Chairman, the economics of these proposed changes have been and will continue to be documented by witnesses in these hearings. I could cite the same figures and give the same justification for correcting these serious inequities. Permit me, however, to present some of the actual examples of how the present estate tax laws work hardships because they are so out of date, and do not take into account the degree of inflation we have suffered and its effect on spiraling land values.

The son of a farm couple states in his letter to me: "My parents have 480 acres of land which they purchased in the 1940's for a total of \$13,700. The value of this land is now estimated to be between \$193,000 and \$240,000. We have been told by an attorney that at the present time the estate tax would amount to upwards of \$40,000. Now, with our parents in rapidly failing health, we face the unpleasant probability of having to sell enough of the farm to make it an effective unit just to pay the inheritance tax."

A mother writes: "This quarter of land we live on was bought in the 1930's by my father-in-law for \$7,000. We paid \$28,000 for it in 1949 when the estate was settled. Now, we don't dare quote \$160,000 as it would be sold at once. We would like to have our son have the farm some day, but with inheritance taxes so high in this time of inflation, he doubts he could hold on to it."

Another landowner expresses the problem this way: "In my case, I acquired my farm of three sections in Custer County during the years from 1941 to 1947 for \$35,500 and it is presently worth \$355,000. The \$60,000 inheritance exemption was established in 1942-\$60,000 is to \$35,500 as \$600,000 is to \$335,000."

From a retired couple, I hear: "My husband and I are retired but still maintain an active interest in the ranch I was born on and grew up on. Our son and daughter-in-law and a single daughter 36 years old still live on and maintain and work this ranch - and we hope it can continue as it has for the past three generations in the name of these heirs. The everyday problems of the ranchers

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Estate Tax Reform

are knotty enough without the anxiety over who is to carry on the work at hand when the original owner passes on."

These are just examples I picked at random from hundreds of letters I received. A recent issue of the GRAND ISLAND INDEPENDENT cited yet another. This one involved three sons who ended up paying 24 per cent of the value of the land they inherited in inheritance taxes. On a net estate value of \$378,000, the three paid a total of \$115,016 in taxes to the Federal, State and county governments. After taxes, the three sons, who inherited the estate equally, each had \$88,000 portions of the estate, an individual amount less than the total inheritance tax paid to the Federal government.

Taken all together, these examples put the problem in sharp focus - our estate tax laws are woefully out of date and need to be revised. Dealing with this problem is the purpose of these hearings, and we should expect, Mr. Chairman, that the preponderance of evidence placed before this Committee will result in a tax reform bill going to the House of Representatives to correct inheritance tax inequities.

I need not remind the member of this committee that the failure to enact changes in our inheritance tax laws will place the future of family farm operations in jeopardy. Our family farms have long been considered the heart of America's free enterprise system, symbolizing the best of our heritage and independence. They must be preserved if America's agriculture is going to continue to carry out its vital role of producing food and fiber for our needs as well as the needs of others beyond our shores. Revising the estate tax laws so that the farms can be passed on from generation to generation without an oppressive tax burden appears to me to be the least we can do. I trust this Committee will agree.

Before I conclude my remarks, Mr. Chairman, it behooves me, as a Representative from Nebraska, to recognize a farm wife from my state who has done as much or more than any one individual to call attention to the inequities in our estate tax laws. She is Mrs. Doris Royal of Sarpy County, Nebraska. When our estate tax laws are changed, she will deserve a share of the credit.

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I am sure that members of this committee, and my colleagues who are active in this area of tax reform, know about Mrs. Royal. An article reporting on her efforts appeared in the September, 1975, FARM JOURNAL under the title, "Lets Get Rid of the Widow's Tax." She was featured in a front page article in the Sunday NEW YORK TIMES for February 15 under the headline, "Death Taxes Compelling Heirs to Sell Farm Land."

I am grateful to Mrs. Royal for all she and her close associates have done to bring this problem to the forefront and generate needed support for changes.

Thank you for this opportunity to appear in behalf of estate tax reform in general and the adoption of my own bill, H.R. 4808, in particular.

#

COMMENTS ON ESTATE AND GIFT TAX REFORM PROPOSALS

Submitted to the
Committee on Ways and Means
by the
Committee on Federal Taxation of the
Chicago Bar Association

The following comments are submitted on behalf of the Federal Taxation Committee of the Chicago Bar Association concerning certain major proposals presently being considered by the Committee on Ways and Means. (The Chicago Bar Association has not yet taken an official position on these matters.)

As may be anticipated when dealing with a large group of lawyers, we disagree sharply within our Committee on political philosophies. Nevertheless, we believe we can be of help to the Congress because our collective experience enables us to provide practical reasons why certain solutions appear either appropriate or unworkable to a given proposal, regardless of how many of our members approve or oppose the merits of the proposal itself.

In the course of our work in the field, we have counseled with hundreds of taxpayers as they determined whether a gift should be made outright or in trust; whether and at what times assets should be distributed to a beneficiary; and whether and to what extent some family member or advisor should be given control over the disposition of those assets in his capacity as a trustee or as the donee of a power of appointment. When death occurs, we know first-hand the job of obtaining information from families of decedents, some of whom were meticulous record keepers and others who were not.

We have seen the actual problems that have arisen as we have consulted with families when cash was needed to meet death taxes, where the assets that gave rise to those taxes were tied up in the family business. We have learned something of the large amount of time that is required to educate lawyers about new tax legislation, notably in 1954, 1962 and again in 1969. We know that many wills and trusts, probably the vast majority of these instruments, are not drawn up by tax experts, but, rather, by general practitioners, lawyers who know the common law well enough, but whose knowledge of the tax law relates primarily to those general provisions which have been a part of the estate and gift tax law for 40 years or more.

Out of the body of our individual experience has come adherence to the shared principle we urge upon your Committee today. That unifying principle is the need for stability, simplicity and certainty in the creation of any new legislation in the area of estate and gift taxation. I am here today on behalf of several hundred lawyers primarily and essentially to emphasize the overarching importance of these factors in this area of tax law.

In our judgment, even an admitted improvement may not be sufficient to warrant a change achievable only by adoption of complex law. Complexity generally means uncer-

tainty; and uncertainty means not only difficulty of administration for the Government, but difficulty in achieving understanding and certainty in planning wills and trusts for the thousands, perhaps millions, of people whose greatest desire is to be sure they know who will inherit their estates and at what cost.

Complexity is admittedly a relative factor in evaluating a new tax law. Your Committee may believe that complexity should not be a strong adverse factor when you are considering certain proposed changes in the income tax area which appear to affect only those taxpayers who can afford to engage tax experts to help them navigate through any new cross current you may introduce into the Internal Revenue Code. In our experience, we would agree that a taxpayer who is considering a significant tax-sheltered investment likely will hire a tax expert. But, we would emphasize, this is precisely because that taxpayer knows he has serious tax issues to consider. Compare the case involved in the drafting of a will or a trust, however, where the typical client most likely will be dealing with a general practitioner and neither lawyer nor client will be aware of a sophisticated tax trap, particularly in the thousands of situations where the drawing of the instrument is not motivated by tax minimization considerations.

To cite one example, more than 5 years have passed since the Revenue Act of 1969, but we still see new wills being drawn giving a life estate to the spouse and the remainder to charity. We know your Committee is already aware of this lingering problem, since you reported out only two weeks ago H.R. 9889, to extend the time within which to cure documents affected by this 1969 change in the law. This leads our Committee to emphasize to you that revision of instruments is a slow process and, for that reason, to urge that ample time be given to enable lawyers to become familiar with any changes and to advise their clients what to put in their wills and trusts.

If simplicity is needed to help lawyers who are not tax experts understand the new law, simplicity is also needed to help the taxpayer understand the alternatives that are available. Effective communication with our clients is a major part of our work. Some may tartly suggest that a taxpayer intelligent enough to seek our advice needs nothing more. Sadly for our egos, we have seen it happen that a client confronted with too much complexity may throw in the sponge and select a simpler, but patently inferior, alternative. For example, if the use of a trust appears appropriate--and trusts may appear appropriate whenever a family

situation indicates the desirability of separating management of assets from their beneficial enjoyment--we urge your Committee not to adopt a change that will lead a general practitioner to hesitate in suggesting the use of a trust because the tax consequences have then gone beyond the comprehension of the lawyer or his client. To this concern we reserve our most urgent caution: In our view, the Congress cannot afford to disrupt existing patterns of wills and trusts unless there is substantial agreement that the changes sought will represent an essential and major improvement in the tax system.

Accordingly, turning to our specific comments, we ask your Committee to keep this principle in mind while you are still at the stage of determining whether to favor any tax on unrealized appreciation at death, or to tax generation skipping transfers, or to expand the marital deduction, to cite just three of the major proposals discussed in the American Law Institute Report (1968), the Treasury Studies (1969) and American Bankers Association Commentary (1972 and 1976). We have sought neither to favor nor oppose these proposals, nor have we sought to list all the reasons your Committee might use to support or reject any of them. Rather, we have purposely restricted our comments in order

most effectively to highlight those relevant to the application of the tests of simplicity, certainty and stability.

1. Unrealized Appreciation at Death; Basis

We first note that both the "capital gains at death" and "carry-over basis" proposals have significant disadvantages:

(1) Under both proposals, record keeping (particularly the decedent's historical cost records) would always be an administrative headache and could easily become a major source of dispute in practice. (Proof of the gravity of this problem is already too much with us. Difficulties arise in tracing a decedent's contributions whenever we have the job of determining the extent to which joint property should be taxed at death.)

(2) Under both proposals, failure to provide a "start up" date would be criticized as unfair, yet to create one would require a national appraisal date, involving an enormous number of appraisals, imposed at large cost and without any guarantee of adequate retention even of those records in the future.

Under the capital gains at death proposal, there is the additional complexity stemming from the fact that in-

terrelated computations will be required to determine the amount of tax arising at death (federal estate and federal income tax). Your Committee may also be concerned that the resulting estate tax deduction for the tax paid is regressive in effect, imposing tax at higher effective rates on small estates than on large ones; and your Committee should be aware of the effect that an income tax at death will have under those State income tax systems which are coordinated with the Federal tax system.

Under the carry-over basis proposal, there are the further complications of basis allocation, namely, determining the appropriate method by which the carry-over basis should be increased for death taxes paid and then determining how such increased basis should be allocated among the assets of the decedent, some of which go to make up a marital or charitable gift. In all taxable estates there will be a delay in knowing the basis of particular assets until the computations are finally approved; this delay will impede sales from being made promptly after the decedent's death and will thereby add to the administrative costs of executors. Further, any differential in basis between assets having equal fair market value will render difficult the distribution of assets within the family. Finally, to

the extent post-death sales are required to meet liquidity needs, such sales will in turn generate further income tax, making the carry-over basis proposal more like the capital gains at death proposal.

We note that the alternative reluctantly suggested by the American Bankers Association provides for taxing unrealized appreciation without as much complexity as the other proposals we have studied. Keeping in mind that the ABA favors retention of the present system and that their "Additional Estate Tax" technique is complicated by the record-keeping requirement already described, at least the "AET" tax is computed without undue complication and the proposal does not disturb the stability of the existing basis system.

2. Generation Skipping

The members of our Committee encounter in our daily practice a wide variety of family needs and goals wholly unrelated to tax minimization. The frequency with which we turn to the use of some form of trust to solve those problems has long since demonstrated that the trust is probably the single most effective legal tool we have in our estate planning tool box. We also draw trusts that combine family goals with tax minimization, most commonly the type of trust that pays income to the surviving spouse for life

and then distributes the assets to the children, free of estate tax at the death of the surviving spouse.

Our concern is that the Congress might inadvertently throw the baby out with the bath water. Knowing that some trusts do involve tax minimization goals, we nevertheless urge your Committee not to adopt any legislative solution, worthy as it may appear in theory, if you believe the solution, by its inherent complexity, will have the effect of discouraging the general use of trusts in estate planning.

If your Committee proceeds to draft a group of new Code sections under which tax is imposed upon some generation skipping transfers, we can only urge that those provisions relating to excluded transfers, the time of imposition of tax and the identity of the taxpayer or taxpayers upon whom the tax is imposed be crafted with caution so that they will not discourage the use of trusts as legitimate instruments of family financial planning.

We have studied the efforts of the American Law Institute, the Treasury Department and the American Bankers Association to create a workable system of taxing generation skipping transfers. Respect is owed each of these proposals for their considerable ingenuity; but all of these proposals

demonstrate such a high degree of complexity that even lawyers experienced in dealing with the Internal Revenue Code have found them particularly difficult to analyze and comprehend. If those regularly engaged in tax work find it difficult to comprehend these proposals, is it reasonable to expect that a general practitioner confidently will be able to advise clients as to the operation and effect of such proposals within the foreseeable future?

3. Marital Deduction

Both the American Law Institute (1968) and the Treasury Studies (1969) proposed an unlimited marital deduction. The American Bankers Association later proposed an intermediate idea, under which the marital gift could be the greater of the present limit of 50% of the adjusted gross estate or \$250,000.00.

We note that increasing the marital deduction may lead to substantial revision of existing documents, but should simplify administration of estate tax collections, since there will be fewer taxable estates to audit; and that the planning and administration of certain estates will be made simpler, to the extent taxpayers conclude to abandon the complexity of existing marital formula gifts in favor of transferring the entire estate to the surviving spouse.

If there is a caution to be noted, it is in the fact that an increased or unlimited deduction, because of the attraction of immediate tax savings, may subject the estate of the survivor to a greater total tax than under the present system. The liquidity crisis may be postponed, but by postponement the taxpayer may make it worse. This may result in unexpected burdens on surviving children and others.

4. Unification of Estate and Gift Taxation

In our experience, few taxpayers make significant lifetime gifts, even after they have been advised that such gifts may avoid estate taxation. The perceived horror of becoming dependent in old age is a powerful deterrent.

The proposals relating to "grossing-up" taxable gifts and gift taxes paid would add complexity to the present system and discourage lifetime transfers. Accordingly, it would seem that such a proposal should be adopted only if your Committee concludes it is appropriate to accept the dampening effect this will have upon your present policy of encouraging lifetime gifts.

The proposal to make gifts "easy to complete" adds complexity and new uncertainties without that type of readily perceived essential benefit that warrants doing away with the existing system of gift taxation and likely would do little to encourage lifetime giving.

If your Committee should conclude that some form of unification of estate and gift taxation is desirable, our concern for simplicity leads us to recommend adoption of a "stacking" method similar to that suggested by Senator Nelson. This would have the virtue of retaining the existing separate gift and estate tax systems, with which we are familiar, and then, for the purpose of computing the federal estate tax, adding the value of taxable gifts made during lifetime to the gross estate.

Conclusion

We have for many years sought to aid the Congress in the evaluation of proposed tax legislation by means of detailed comments on the specific language of bills reported out by your Committee. Currently, we have also studied a number of matters that warrant your consideration at a later date, following your evaluation of major reform proposals.

Our dominant concern today for the need to retain simplicity and certainty in any bill that may emerge requires that our initial comments be made in general terms. However, we want explicitness to confirm our desire and willingness

to provide detailed comments as the occasion may arise in the future.

THE COMMITTEE ON FEDERAL TAXATION
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March 12, 1976

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ESTATE AND GIFT TAXES
HEARINGS, COMMITTEE ON WAYS AND MEANS

Dear Mr. Martin:

This letter follows up on the telegraphic request that a representative be permitted to appear before your Committee on behalf of the American College of Probate Counsel in accordance with the press release February 20, 1976. This will supplement that request to be heard and supply the information requested by the press release.

1. CAPACITY IN WHICH I WILL APPEAR.

William P. Cantwell, 2900 First of Denver Plaza,
633 - 17th Street, Denver, Colorado 80202, (303) 893-2900.
I will appear as President of the American College of Probate Counsel, an organization described in the supplementary materials attached to this letter.

2. REPRESENTATION.

I will represent the American College of Probate Counsel, whose address is 10964 West Pico Boulevard, Los Angeles, California 90064 (213) 475-1200. Attached as Exhibit A is a statement of the Object of the American College of Probate Counsel, a Forward written by me, which is a part of the Roster of the College, a list of the Members Emeritus, who are Past Presidents of the organization, a list of the State Chairmen for the 1975-1976 business year of ACPC, and a list of the Board of Regents for the 1975-1976 business year and a list of the American College of Probate Counsel Honorary Fellows. You will note that among the Honorary Fellows of the College are three Supreme Court Justices. The membership of the College exceeds 1700 estate planning and estate administration specialists, organized on a nationwide basis, which will be described below.

3. CONFLICTS OF INTEREST.

I will be making a statement on behalf of the American College of Probate Counsel. I am a member of the law firm of Dawson, Nagel, Sherman & Howard of Denver, Colorado, but to my knowledge neither I nor my law firm has specific clients who have an interest in the subject, other

than the interest of all citizens seeking a sound tax system, and I am not representing any client having an interest in the subject which I will be discussing.

4. PROVISIONS OF THE ESTATE AND GIFT
TAX LAWS ON WHICH I WILL TESTIFY.

My testimony will be aimed at overall estate and gift tax reform in the sense that I do not at this time propose to discuss specific tax reform proposals that have been considered by past Congresses. My objective in discussing estate and gift tax reform is to bring to the Committee a new perspective, one which will be directed toward what, in the opinion of Estate and Gift Tax Reform Committee of the American College of Probate Counsel, is much-needed reform. In this connection, however, on behalf of the American College of Probate Counsel, I request that the record may be held open so that if the hearings during the week of March 15 through March 19 disclose specific proposals which we of the American College of Probate Counsel believe require discussion, we wish an opportunity to submit for the record an analysis or reaction to some of the proposals. This presentation to you, however, is made in the light of the special nature of our organization. Attached as Exhibit B to this analysis is a July 1973 analysis

"State Inheritance or Estate Taxation of Non-Resident Estates" compiled by H. Bradley Jones, Los Angeles, California, a Fellow of the American College of Probate Counsel, with the assistance of the 50 state representatives throughout the United States. In connection with the question of estate and gift tax reform, one of the basic issues is the integration or relationship between state inheritance or estate taxation and federal estate and gift taxation. Essentially, we are learning from throughout the country that the lawyers in the several states are finding that many consumers, many beneficiaries of estates, and many fiduciaries are complaining that the probate process and the delays of probate and the costs of probate arise not out of antiquated systems of probate about which much has been heard but rather from the administrative problems caused by the federal estate and gift tax, and the administrative problems caused by state inheritance or estate tax. There is much need for a closer intergovernmental relationship and for leadership from the federal government to persuade states to alter their systems of death taxation to procedures which will, by a simple administrative means, tie into the federal estate tax so that estates do not have two separate, independent and often inconsistent tax returns, two separate tax audits, two separate tax determinations, and two separate crises with respect to the liquidity problems of estates.

Attached as Exhibit C to this letter is a 1970 analysis by Fellow Richard H. Pershan of New York, "Applicability of United States Estate Tax and Gift Tax to Non-resident Aliens," again a subject which is the summary of studies that were made by the American College of Probate Counsel with respect to the practical types of problems that the probate practitioner is discovering throughout the country. In this case there was put together information for all of the 50 states so that those states would have a better idea of what were the situs rules in estate tax conventions with respect to foreign governments.

It is my opinion that the American College of Probate Counsel through its statewide resources and its expertise can be of assistance to the Congress in its deliberations in connection with estate and gift tax reform. As President of the American College of Probate Counsel, I am offering those resources.

In connection with current consideration of estate and gift tax reform, it is not my position at this time to comment upon the social objectives of whether or not there should be a different incidence of tax and an accompanying shifting of wealth or changing tax burdens. However, we

have numerous members of the College who are prepared to discuss such social objectives. Neither is it my objective in this particular presentation to discuss such things as the technical problems with a generation-skipping transfer tax or the technical problems with an additional estate tax on appreciation at death or the basis problem if in lieu of some taxation of appreciation at death there is a carryover basis. Again, I am not proposing in this paper to discuss such technical matters, although numerous members of the College have written extensively as lawyers representing committees studying estate and gift tax reform for the American Bar Association or for their state and local bar associations. In other words, our members on a nationwide basis are prepared to submit to the Congress in a very short period of time an analysis of the nationwide impact on a state-by-state basis of any significant tax reform proposal that Congress receives or is seriously considering.

My presentation today will be aimed at giving to Congress our perception of the thrust of the concerns of our clients who are the beneficiaries of estates and who are the fiduciaries who must cope with the tax administration process, both federal and state. Thus, it will be my role to pose to the Congress some relatively basic questions

which might best be wrapped up in the concept that it is the belief of our Estate and Gift Tax Reform Committee and of the President of the American College of Probate Counsel, based upon conversations with members and clients, that we have reached a point where there is need for a "Taxpayers Bill of Rights" in the field of estate and gift tax reform. Putting it another way, the American College of Probate Counsel has been one of the leaders in the development of the Uniform Probate Code which has sought to simplify probate procedures and to speed up probate settlement processes and to reduce the costs of the probate settlement process. Notwithstanding those efforts which are achieving respectable success, a persistent obstacle to even more effective probate reform has been the federal estate and gift tax laws and the state inheritance and estate tax and gift tax laws. It is our hope that through the actions of Congress looking toward estate and gift tax reform that it will not only be possible to accomplish what may be the revenue objectives or other objectives of a sound federal estate and gift tax system but that the system will also accomplish a number of the other desirable attributes of a sound tax system. We include among these a contribution toward simplification of probate procedures, a contribution toward speeding up the probate process, a reduction of the cost of the probate process, and a contribution to the simplification and

understanding of the estate and gift tax laws as they apply to the citizens of the United States.

A resort to the Socratic technique may be helpful and in that spirit, to point up our concerns, I pose for the committee a series of questions:

1. We presently have a committee of representatives of the 50 states of the United States working on a state-by-state basis preparing an analysis of the economic effect of the state death tax credit. That report will be ready within one month and will be submitted to the House Ways and Means Committee for its consideration in connection with its deliberations. One question that the authors of this report have posed is whether the Congress is willing to reconsider the questions relating to intergovernmental relations. For example, is the federal government, having encouraged states to get into the state death tax field, now prepared to consider abandoning the death tax field to the states (as has been done recently in Canada) and abandoning the gift tax (as has been done recently in Canada), or is the federal government willing to consider as a matter of policy some procedure which may involve the federal government collecting the estate and gift taxes and then paying a subvention back to the states. If that alternative is not

available then would a change in the federal credit to the states for the state death tax credit in such a way as to reduce the number of state death tax returns which must be filed be possible? At a minimum, it would be extremely helpful to encourage the states which presently have an inheritance tax requiring separate complicated calculations to shift to an estate tax in the nature of a "pickup" tax as a percentage of the federal estate tax which will then make for simplification of calculations of the tax and speed up the settlement of estates.

2. How can we simplify the valuation of assets in order to reduce the costs and delays inherent in valuation of assets and the disputes that traditionally arise in the asset valuation process?

3. How can we simplify the determination of the bases of assets if there is going to be an additional estate tax at death or a carryover basis?

4. How can we simplify the taxation of jointly-held property or property held as a tenancy in the entireties in such a way as to eliminate the problems of tracing? Tracing can involve going back for many generations to determine whether the decedent or the survivor has contributed

to the acquisition price of property held jointly at the time of death.

5. How can we avoid the serious problem of nonfiling in gift tax returns where people have made taxable gifts or reportable gifts over their lifetime and do not discover that they have gift tax obligations until they consult an attorney who advises them that what they have been doing over the years have constituted taxable gifts?

6. How can we solve the tracing problems in community property states to determine what is separate property and what is community property, or is there some way to reduce the problems of proof of title to property for purposes of calculation of death taxes?

7. How can enforcement of the estate and gift tax laws avoid uneven administration of matters subjective in nature or not susceptible of accurate ascertainment, such as contemplation of death motives, valuation of assets, contribution to jointly-held property?

8. How can we conveniently deal with contemplation of death so that we don't have the administrative and

litigative problems at the time of death? For example, could we at this time shift from the three-year presumption in IRC Section 2035 to a two-year conclusive presumption in which if a transfer has occurred within two years of the date of death it will be included in the estate of the decedent, and as some offset to the possible adverse effect of that, how do we work out the exemption for small gifts, Christmas or otherwise, prior to death, and what other adjustments should be made to the concept of contemplation of death gifts to achieve administrative simplicity?

9. How can we be more objective on the tracing of the acquisition of jointly-held properties so that the probate process and the settlement of the estate need not be delayed because of the existence of jointly-held properties which may not even be a part of the estate, even though the tracing and the dispute add to the cost of administration?

10. How can we avoid the whipsawing problem between state and federal death tax agencies in which each agency refuses to close its file or settle its case until the other has done so, and where each agency will take its best shot at the estate or taxpayer but hold open the statute of limitations for the purpose of determining whether there

can be a higher tax imposed because the other agency imposes a higher valuation with respect to a particular asset?

11. How can we reexamine and further the objectives of the 1948 Act adopting the marital deduction which was aimed at equalizing community property states with common law states?

12. How can normal, frequent, and persistent interspousal property transactions be effectively and permanently removed from the estate and gift tax area, particularly for the purpose of more perfectly accomplishing the purpose of the Revenue Act of 1948?

13. How can we reduce the number of tax returns which must be filed by estates of decedents? For example, what is the revenue effect and is it desirable to raise the minimum exemption to \$150,000 for an estate since the ravages of inflation have caused a \$150,000 estate to be less than the \$60,000 exemption in terms of true dollars?

14. How can we solve the problems of delinquent gift tax returns and the avoidance of the implications of tax fraud or penalties where there are innocent violations of the gift tax for filing requirements?

15. Why can't the reform of the estate and gift tax laws set up a law in which compliance is perfunctory, as income tax withholding statements are perfunctory, when someone gets a job and is paid a salary?

16. Why can't we turn the question of estate and gift tax reform into a question of probate reform aimed at benefitting the beneficiaries of estates who look to the system now as one which victimizes them because of the complexity and costs of determination?

17. If a unified tax is adopted, even more emphasis on proper reporting of inter vivos transfers will be required for even enforcement--what techniques for objective and reliable reporting requirements will be present?

18. How can an "actual use by the decedent at death" concept of valuation be effectuated to avoid very heavy liquidity demands in estates with land having potential for other higher uses, but no historical basis for valuation for such higher uses?

19. Could not an "historical use" by a decedent or his ancestors over a long period of time be useful in difficult land valuation matters?

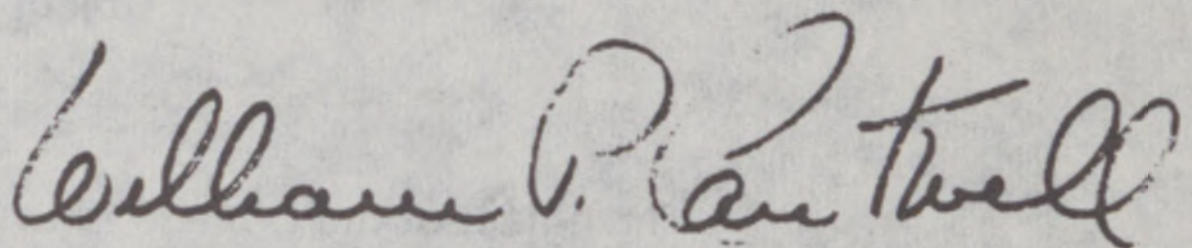
Beyond this series of questions, we believe there is one overriding consideration, central to the thought of a taxpayer's bill of rights I have suggested. We would hope that the estate and gift tax reform process would become an outstanding opportunity to give to the taxpayer as part of his bill of rights a freedom from continually increasing administrative burdens. We do not honestly believe that attempts at theoretically perfect solutions to abstract and infrequent problems or apparent abuses contribute to the objective we are discussing. In our view, the objective can best be attained if the Congress carefully defines its concepts and limits the proposed solutions to the minimum necessary to accomplish its goals. It should avoid the imposition of a "national probate system" (and corresponding national drafting standard) through the tax system.

Thus, in areas such as taxation of capital gains at death, generation-skipping, and the like, Congress could define its result and leave to the client and the practitioner maximum flexibility in planning the client's affairs (i.e., the tax differentials of various approaches should not be so severe as to force clients to adopt methods of disposition which are unnatural under the circumstances). The basic philosophy of such a taxpayer's bill of rights

would be to keep the estate and gift tax laws essentially neutral in order to avoid forcing one disposition or another through tax impact or drafting requirements.

I have appreciated the opportunity to present these matters and I request the opportunity to present written replies or analyses to any questions which may be presented to me when I make my appearance Wednesday, March 17.

Yours very truly,



William P. Cantwell

President

WPC/nf



THE AMERICAN COLLEGE OF PROBATE COUNSEL



Object

The object of the College is to establish and maintain as an integrated group, lawyers skilled and experienced in the preparation of wills and trusts and the probate and administration of the estates of decedents, minors and incompetents; to improve and enhance the standards of probate practice, the administration of justice and the ethics of probate practice of the profession. To accomplish these aims, the purposes of this College shall be, among others: (a) To bring together members of the profession thus qualified and who, by reason of their character, personality and ability, will contribute to the accomplishments, achievements and good fellowship of the College; and (b) To cooperate and consult with the various bar associations of the several states and subdivisions and such other groups and organizations devoted to similar attainments, including governmental agencies.



FOREWORD

The Roster of the College is a list of some seventeen hundred lawyers from every state and several foreign countries. Our charge to ourselves is to admit to fellowship outstanding probate practitioners who have demonstrated exceptional skill and ability.

It would seem, then, that being a Fellow is itself a form of recognition of accomplishment and so most of us view it. Yet, on the opposite page you may read that the association of ourselves into this grouping is only the threshold of our objective. Being associated, we have an obligation. We have adopted as our polar star the object of improving our field of law, across the board. We do so in an honorable tradition, long impressed upon me by these words of the great Elihu Root spoken in 1904:

"He is a poor-spirited fellow who conceives that he has no duty but to his clients and sets before himself no object but personal success. To be a lawyer working for fees is not to be any the less a citizen whose unbought service is due to his community and his country with his best and constant effort. And the lawyer's profession demands of him something more than the ordinary public service of citizenship. He has a duty to the law. In the cause of peace and order and human rights against all injustice and wrong, he is the advocate of all men, present and to come."

As another year in College history opens, I hope each of our Fellows can respond to the demand for "something more." The opportunities are legion. If we are truthfully persons of exceptional skill and ability, we fit into a natural alliance to improve the law in our field by seizing such opportunities.

William P. Cantwell
President

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(Revised July 1973)

THE AMERICAN COLLEGE OF PROBATE COUNSEL

10964 W. Pico Boulevard
Los Angeles, California 90064

**STATE INHERITANCE OR ESTATE
TAXATION OF NON-RESIDENT ESTATES**

Real and Tangible Personal Property Owned Solely by a Non-resident Decedent

COMPILED BY

H. BRADLEY JONES

Los Angeles, California

FROM OPINIONS OF FELLOWS OF THE COLLEGE IN ALL FIFTY STATES

THE AMERICAN COLLEGE OF PROBATE COUNSEL
10964 West Pico Boulevard * Los Angeles, California 90064

STATE INHERITANCE OR ESTATE
TAXATION OF NON-RESIDENT ESTATES

REAL AND TANGIBLE PERSONAL PROPERTY OWNED SOLELY BY A NON-RESIDENT DECEDENT

The full value of real and tangible personal property within its borders solely owned by a non-resident decedent is taxed by all the States and the District of Columbia except that New Hampshire does not tax real property passing to a surviving spouse, lineal descendent or parent; New York does not tax estates of non-residents consisting of real property situated and tangible personal property having an actual situs in the state, the gross aggregate value of which is less than \$2,000.00; and Nevada has no state inheritance tax of any kind.

REAL and TANGIBLE PERSONAL PROPERTY OWNED BY A NON-RESIDENT DECEDENT AND ANOTHER AS TENANTS BY THE ENTIRETY OR AS JOINT TENANTS.

	No.		No.		No.		No.		No.
Alabama	2	Hawaii	13	Massachusetts	2	New Mexico	2	South Dakota	16
Alaska	26	Idaho	5	Michigan	10	New York	2	Tennessee	2
Arizona	2	Illinois	3	Minnesota	2 & 23	North Carolina	13	Texas	18
Arkansas	2	Indiana	6	Mississippi	1	North Dakota	15	Utah	2 & 17
California	2 & 5	Iowa	2	Missouri	10	Ohio	2 & 20	Vermont	2
Colorado	3	Kansas	7	Montana	3 & 11	Oklahoma	2	Virginia	2
Connecticut	11 & 22	Kentucky	25	Nebraska	2	Oregon	19	Washington	15
Delaware	2	Louisiana	8	Nevada	10	Pennsylvania	9	West Virginia	21
District of Columbia	3 & 4	Maine	22	New Hampshire	15	Rhode Island	2	Wisconsin	24
Florida	2	Maryland	9	New Jersey	12	South Carolina	15	Wyoming	14
Georgia	2								

1. Full value taxed.
2. Full value taxed except to the extent that the survivor can establish that he contributed to the consideration for the acquisition of the property. Nebraska makes an exception for that part, amount, or proportion of the property originally owned by the survivor and which the decedent did not pay full consideration.
3. Taxed proportionately according to the number of owners.
4. "Movables" such as automobiles and boats are not taxed; "Non-movables" such as cash, jewelry and furniture are taxed.
5. Tenancies by the entirety are not recognized; Community property passing to the surviving spouse is not taxable: Joint tenancies are taxed to their full value except such part as may be proved by the surviving joint owner or owners to have originally belonged to him or them and never to have belonged to the decedent.
6. Real property owned by the entireties is not taxed unless title was changed from the decedent to title by the entireties in contemplation of death or if one of the tenants by the entirety devised the real property by will to one other than the surviving tenant by the entirety and the surviving tenant does not elect to take by law; Joint tenancies are taxed in full against the surviving joint owners except to the extent that they can establish that the property originally belonged to him or them and had never belonged to the decedent.
7. Tenancies by the entirety are not recognized. Joint tenancies in full except to the extent proven to have been contributed by the survivor.
8. Tenancies by the entirety and joint tenancies are not recognized. Immovable property situated in Louisiana acquired in the name of either of the spouses or in the name of both none the less becomes "community property" and upon the death of either of the non-resident spouses the survivor would own one-half and the decedent's estate one-half.
9. Tenancies by the entirety are not taxed; Joint tenancies are taxed proportionately according to the number of owners.
10. Not taxed.
11. Where joint tenancy is created within three years prior to the death of a grantor without fair consideration, the entire value is taxed to the decedent.
12. Tenancies by the entirety are not taxed; Joint tenancies are not tax exempt; but property held in more than one name is taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquisition of the property.
13. Tenancies by the entirety are taxed as to one-half; Joint tenancies are taxed in full except to the extent that the survivor can establish that he contributed to the consideration for the acquisition of the property. In Hawaii, surviving spouse in either type of tenancy is granted an exemption of one-half, survivor also, regardless of relationship to decedent, receives exemption to the extent he can establish that he contributed to the cost of acquisition.
14. Property held by husband and wife is not taxed. In Wyoming, the rule applies to both types of tenancies of husband and wife.
15. Tenancies by the entirety are not recognized; Joint tenancies are taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquisition of the property. In New Hampshire, if survivor is spouse or lineal descendant of father or mother of decedent, property is exempt from tax. In North Dakota, as between spouses, there is a presumption that each spouse contributed equally to acquisition cost.
16. Tenancies by the entirety are not recognized; Joint tenancies are taxed proportionately according to the number of owners except that where property is held in joint tenancy by husband and wife, the accrual to one by the death of the other shall be deemed a transfer taxable at one-half of the value of the whole property and as to joint owners other than a spouse, the accrual of rights shall be deemed a transfer taxable proportionately, except that each beneficiary is not taxed on the part thereof he may prove originally belonged to him or never having belonged to the decedent.
17. When surviving tenant is either spouse or children of decedent, one-half of the property, but not to exceed \$40,000.00 is tax exempt. This provision is in the alternative to the exclusion provided in footnote 2 above, and may not be claimed when any exclusion has been made in favor of such surviving spouse or children under footnote 2. Property received by gift or inheritance by decedent and spouse as tenants by the entirety is taxed as to one-half. Property similarly received by decedent and others as joint tenants is taxed proportionately.
18. Decedent's interest in community property is taxable (even if to surviving spouse); tenancies by the entirety are not recognized; value of decedent's interest in joint tenancy is taxable.
19. Tenancies by the entirety are taxed as to one-half; Joint tenancies, as such, in real property have been abolished; other than holding real property as tenants by the entirety, holding of property in more than one name with rights of survivorship is recognized under some circumstances, in which event the property is taxed in full except to the extent that the survivor can establish he contributed to the consideration for the acquisition of the property.
20. In Ohio, when the surviving joint owner is the surviving spouse, one-half of the total value of the property is taxed.
21. Tenancies by the entirety and joint tenancies, as such, have been abolished, but holding of property in more than one name with right of survivorship is recognized when expressly provided for in the instrument, in which event the property is taxed in full except: (a) for first \$2,500.00 of bank accounts and shares or savings accounts in Federal Savings and Loan Associations with surviving spouse, descendant or parent; (b) for 50% in case of surviving spouse; and (c) to entent survivor (including spouse) can establish contribution of consideration for acquisition of the property.
22. Tenancies by the entirety are not recognized. Joint tenancies are taxed proportionately according to the number of owners.
23. Tenancies by the entirety are not recognized in Minnesota.
24. Full value taxed except to the extent that the survivor can establish that he contributed the property or consideration for its acquisition. If acquired by gift, bequest, devise or inheritance by decedent and any other person jointly, the property is taxed proportionately according to the number of owners unless the instrument creating such ownership creates interests in a different proportion. Tenancies by the entirety are not recognized in Wisconsin.
25. Kentucky taxes the full value of real and tangible personal property owned by a non-resident but does so in the case of tangible personal property only if it has acquired a situs in Kentucky and is not taxable elsewhere.
26. Alaska's tax is the proportion of the allowable credit from Federal tax that the gross value of the Alaska property bears to the entire gross estate wherever situate, and gross estate is defined by direct reference to Section 2031 (c) of the IRC, with the result that Federal contribution rules apply in determining how much, if any, of jointly held assets fall into the gross estate of the decedent.

INTANGIBLE PERSONAL PROPERTY

All States of the United States and the District of Columbia either have laws prohibiting taxation or provide for reciprocal exemption therefrom with respect to intangible personal property not having a business situs within their borders belonging to a person who died a resident of another state of the United States, except:

1. Kansas taxes such intangible personal property if it is not taxed or submitted for taxation in the state of domicile of the decedent.
2. Texas taxes intangible personal property except where (1) state of domicile of decedent does not tax intangibles of residents of Texas or (2) such state has a reciprocity statute.
3. The States of California, Florida, Massachusetts, South Dakota, Utah and Washington tax such intangible personal property when owned by a non-resident of the United States.
4. The District of Columbia taxes intangible personal property when owned by an alien, whether resident or not, of the United States.
5. Mississippi has repealed its reciprocity statute and now taxes intangible personal property of a non-resident (House Bill 265-Regular Session 1956).
6. Colorado's reciprocity statute extends to intangible personal property having an actual or business situs within the State owned by a resident of the United States.
7. Arkansas does not distinguish between tangible and intangible personal property and taxes all property of a non-resident of the state located in Arkansas except if another state exempts Arkansas, in which case the exemption is reciprocal as to the tax on all property.
8. Wisconsin does not tax a non-resident decedent's personal property not having an actual situs in the state if a like exemption in favor of Wisconsin residents is allowed at the time of decedent's death by the state of his residence.
9. Kentucky taxes intangible personal property owned by a non-resident decedent if it has acquired a business situs in the state.

WAIVERS

Waivers for the transfers of stock of a domestic corporation owned by non-resident decedents are required in the following states and application therefor should be addressed as indicated:

Alabama	Commissioner of Revenue State Department of Revenue Estate Tax Division Montgomery, Alabama	Mississippi	State Tax Commissioner Jackson, Mississippi
Alaska	Department of Revenue Juneau, Alaska	New York 4	Department of Taxation Miscellaneous Tax Bureau Transfer and Estate Tax Section Building 9, Campus Site Albany, New York 12226
Arizona	Arizona Estate Tax Commissioner State Capitol Building Phoenix, Arizona	New Mexico	Bureau of Revenue Succession Tax Division Santa Fe, New Mexico
California	Inheritance Tax Attorney State Controller's Office Sacramento, California	North Carolina	Commissioner of Revenue Raleigh, North Carolina
Dist. of Columbia	Finance Office Revenue Division Inheritance and Estate Tax Section Municipal Center Washington, D.C. 20001	Oklahoma	Estate Tax Division Capitol Building Oklahoma City, Oklahoma
Hawaii	Director of Taxation State of Hawaii Honolulu, Hawaii	Pennsylvania	Department of Revenue Inheritance Tax Division Harrisburg, Pennsylvania
Idaho	State Tax Commission Inheritance Tax Division Post Office Box 36 Boise, Idaho 83707	South Carolina	Director of Estate Tax Division South Carolina Tax Commission Post Office Box 125 Columbia, South Carolina 29202
Illinois 1	Attorney General 160 North La Salle Street Chicago, Illinois 60601	South Dakota	Commissioner of Revenue Inheritance Tax Division Pierre, South Dakota
Indiana	Inheritance Tax Administrator Department of State Revenue State Office Building Indianapolis, Indiana	Tennessee	Commissioner of Revenue 226 Capitol Blvd. Nashville, Tennessee 37219
Kansas	Director of Revenue State Commission of Revenue and Taxation Topeka, Kansas	Texas	State Comptroller of Public Accounts Austin, Texas
Michigan	State Department of Revenue Inheritance Tax Division Lansing, Michigan	Utah	State Tax Commission Capitol Building Salt Lake City, Utah
		Washington 5	Department of Revenue Inheritance Tax Division Olympia, Washington 98504
		West Virginia	State Tax Commissioner Capitol Building Charleston, West Virginia
		Wyoming	Inheritance Tax Commissioner Department of Revenue 2200 Carey Avenue Cheyenne, Wyoming 82001

Waivers ARE NOT required in the following States: Arkansas, Colorado (1), Connecticut, Delaware, Florida, Georgia, Iowa, Kentucky (7), Louisiana, Maine, Maryland, Massachusetts, Minnesota (3), Missouri (8), Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Rhode Island, Vermont, Virginia, Wisconsin (6).

1. Waivers are NOT required in Colorado UNLESS the stock has a business situs or actual situs in the state.
2. In Illinois, stock of domestic corporation is exempt unless it was "used or employed in carrying on a business in the State of Illinois"; affidavit of non-residency, Form #43, can be obtained from the Illinois Attorney General's Chicago office; in 1965 Illinois repealed its general requirements for waivers for transfer of securities, bank accounts and intangible personal property belonging to non-residents.
3. Minnesota no longer requires a waiver for transfers of stock of a Minnesota corporation. However, an affidavit of non-residency on a form obtained from the Commissioner of Taxation, must be filed in duplicate as provided in Minn. Stats 291.19 subd. 5.
4. Waivers are NOT required in New York except where the interest in any one domestic corporation exceeds \$2,000 in value under Section 249-p of the New York Tax Law.
5. Washington inheritance tax is imposed only on estates of persons who are not residents of any state or territory of the U.S.A. (this does not necessarily eliminate all administrative requirements of a waiver).
6. Wisconsin DOES require a waiver or "consent to transfer" from the Department of Revenue where the decedent is a resident of a state which does not impose a death tax.
7. Kentucky no longer requires a waiver but an affidavit must be filed with a transfer agent stating that the non-resident decedent had no property subject to Kentucky inheritance and estate tax. The affidavit is filed by the personal representative and a copy is furnished to the Department of Revenue.
8. Missouri requires that the corporation in which the decedent owned stock be provided an affidavit of decedent's non-residency on a form approved by the Attorney General of Missouri, which may be obtained from the Bureau of Inheritance Tax, Department of Revenue, P. O. Box 27, Jefferson City, Missouri 65101

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(Revised January, 1970)

THE AMERICAN COLLEGE OF PROBATE COUNSEL

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Los Angeles, California 90064

APPLICABILITY OF UNITED STATES ESTATE TAX AND GIFT TAX TO NONRESIDENT ALIENS

Compiled by
Richard H. Pershan, F. A. C. P. C.
New York, New York

ESTATE TAXProperty Subject to Tax

Subject to the death tax conventions summarized in Appendix A, the following property of a nonresident alien has a situs in the United States and therefore is subject to the United States estate tax:

1. Real property located in the United States.
2. Tangible personal property located in the United States except works of art on loan for exhibition in a public gallery.
3. Shares of stock issued by a domestic corporation, regardless of the location of the certificates.
4. Debt obligations, including bonds, issued by a United States person or corporation or by the United States (except currency and, if the decedent was not engaged in business in the United States at the time of his death, obligations issued before March 1, 1941) or a State or political subdivision thereof or the District of Columbia, regardless of the location of any evidence of indebtedness, except items 6, 7 and 8 described below under "Property Not Subject to Tax".
5. If the decedent dies after December 31, 1969, deposits with a United States branch of a foreign corporation if the branch is engaged in commercial banking.
6. Interests in estates or trusts to the extent that they consist of property having a situs in the United States.

Property Not Subject to Tax

The following property of a nonresident alien has a situs outside the United States and therefore is not subject to the United States estate tax:

1. Real property located outside the United States.
2. Tangible personal property located outside the United States.

Property Not Subject to Tax (Continued)

3. Works of art on loan for exhibition in a public gallery in the United States.
4. Shares of stock issued by a foreign corporation, regardless of the location of the certificates.
5. Amounts received as insurance on the decedent's life.
6. Deposits with a foreign branch of a United States corporation or partnership if the branch is engaged in commercial banking.
7. Debt obligations of a domestic corporation if any interest thereon which the decedent were to receive at the time of his death would be treated, for income tax purposes, as income from sources without the United States.
8. If the decedent dies after November 13, 1966 and before January 1, 1976, deposits with corporations or partnerships carrying on the banking business, deposits or withdrawable accounts with savings and loan associations, and amounts held by an insurance company under an agreement to pay interest thereon, if any interest thereon which the decedent were to receive at the time of his death is, for income tax purposes, not effectively connected with the conduct of a trade or business in which the decedent was engaged within the United States.
9. Debt obligations, including bonds, issued by a foreign corporation or government, regardless of the location of any evidence of indebtedness.

Miscellaneous Provisions

1. For estate tax purposes "nonresident" means "non-domiciliary".
2. The gross estate of a nonresident alien is made up in the same way as the gross estate of a citizen or resident but is confined to property which is

Miscellaneous Provisions (Continued)

situated in the United States. Thus, it can include jointly-owned property, general powers of appointment, revocable trusts, etc.

3. Property of which a nonresident alien made a transfer taxable under Int. Rev. Code §§2035--2038 (transfers in contemplation of death, with retained life estates or taking effect at death, and revocable transfers) is subject to tax if situated in the United States either at the time of transfer or at the decedent's death.
4. The estate of a nonresident alien is allowed an exemption of \$30,000 or, in the case of Switzerland and all the countries listed in Appendix A except Canada, Ireland, South Africa and the United Kingdom, the larger of \$30,000 or that proportion of \$60,000 which the value of the gross estate situated in the United States bears to the entire gross estate wherever situated.
5. Charitable deductions are allowed only for transfers to American beneficiaries.
6. Deductions for funeral and administration expenses, claims against the estate, unpaid mortgages, losses, and death taxes on charitable transfers are allowed only in the proportion which the value of the gross estate situated in the United States bears to the value of the entire gross estate wherever situated. It is immaterial whether the amounts to be deducted were expended or incurred within or without the United States. Where a nonresident alien owns property situated in this country which is security for a debt for which he is liable, the full value of the property, not merely his equity, is taxable, but the debt can be deducted only proportionately. City Bank Farmers' Trust Co. v. Bowers, 68 F. 2d 909 (2d Cir.), cert. denied, 292 U.S. 644 (1934). However, where he is not liable for the debt, only the equity is taxable. Estate of Harcourt Johnstone, 19 T. C. 44 (1952).
7. No marital deduction is allowed to the estate of a nonresident alien except that the convention with France provides for a proportionate deduction.
8. The option to have taxable property valued as of a date or dates subsequent to the decedent's death (alternate valuation) is available to the estate of a nonresident alien.
9. The amount of tax on the taxable estate of a nonresident alien is:

<u>Taxable Estate</u>	<u>Tax</u>
Not over \$100,000	5% of the taxable estate
Over \$100,000 but not over \$500,000	\$5,000, plus 10% of excess over \$100,000

Over \$500,000 but not over \$1,000,000	\$45,000, plus 15% of excess over \$500,000
Over \$1,000,000 but not over \$2,000,000	\$120,000, plus 20% of excess over \$1,000,000
Over \$2,000,000	\$320,000, plus 25% of excess over \$2,000,000

10. The credits against the estate tax for (a) state death taxes, (b) the gift tax and (c) the estate tax on prior transfers which are allowed to estates of citizens or residents are equally available to estates of nonresident aliens, except that the maximum credit for state death taxes cannot exceed an amount which bears the same ratio to the credit (computed without regard to this limitation) as the value of the property upon which the state death taxes were paid, and which is includable in the gross estate, bears to the total gross estate for federal estate tax purposes. No credit is allowed for foreign death taxes.
11. A preliminary notice and an estate tax return must be filed if the part of the gross estate situated in the United States exceeds \$30,000 on the date of death.

GIFT TAXProperty Subject to Tax

A gift of the following property by a nonresident alien is subject to the United States gift tax:

1. Real property located in the United States.
2. Tangible personal property located in the United States.

Property Not Subject to Tax

A gift of the following property by a nonresident alien is not subject to the United States gift tax:

1. Real property located outside the United States.
2. Tangible personal property located outside the United States.
3. Intangible personal property, wherever located.

Miscellaneous Provisions

1. For gift tax purposes "nonresident" means "non-domiciliary".
2. The \$3,000 annual exclusion is available to nonresident aliens, but the \$30,000 lifetime exemption is not, except as provided in the conventions with Australia and Japan.

Miscellaneous Provisions (Continued)

3. Charitable deductions are allowed only for gifts to American beneficiaries.
4. Except as provided in the convention with Australia, no marital deduction is allowed to a nonresident alien donor.
5. Gifts to third persons may not be split between husband and wife if either is a nonresident alien.
6. The rate of tax is the same for nonresident aliens and for residents or citizens.

SITUS RULES IN ESTATE TAX CONVENTIONSAPPENDIX A

<u>COUNTRY</u>	<u>ACCOUNT RECEIVABLE</u>	<u>BANK ACCOUNT</u>	<u>BILL OF EX- CHANGE AND PROMISSORY NOTE</u>	<u>BOND (CORPORATE)</u>	<u>GOVERNMENT SECURITY</u>	<u>JUDGMENT DEBT</u>	<u>SHIP AND AIRCRAFT</u>
Australia (Gift and Estate Taxes)	Debtor's residence ¹	Location of bank	Debtor's residence	Debtor's residence ¹	Location of government	Where originally obtained ²	Place of registration
Canada	Debtor's residence	Location of bank	Debtor's residence	Place of incorporation	Physical location of certificate if in bearer form; place of registration, if registered	Where recorded	Place of registration
Finland	Debtor's residence	Location of bank	Debtor's residence	Place of incorporation	Debtor's residence	Debtor's residence	Place of registration
France	Decedent's domicile	Decedent's domicile	Drawee's residence ³	Decedent's domicile	Decedent's domicile	Decedent's domicile	Place of registration
Greece	Decedent's domicile	Decedent's domicile	Drawee's residence ³	Decedent's domicile	Decedent's domicile	Decedent's domicile	Place of registration
Ireland	Decedent's domicile	Decedent's domicile	Location of document ⁴	Decedent's domicile	Decedent's domicile	Where recorded	Place of registration
Italy	Debtor's residence	Debtor's residence	Debtor's residence	Debtor's residence	Debtor's residence	Debtor's residence	Place of registration
Japan (Gift and Estate Taxes)	Debtor's residence	Debtor's residence	Debtor's residence ⁵	Debtor's residence ⁵	Debtor's residence ⁵	Debtor's residence	Place of registration
Norway	Debtor's residence	Location of bank	Location of document	Same as bill of exchange	Same as bill of exchange	Debtor's residence	Place of registration

SITUS RULES IN ESTATE TAX CONVENTIONS

(Continued)

South Africa	U. S. if domiciled in U. S. ;S. A. if ordinarily resident in S. A.	Same as account receivable	Location of document ⁴	Same as account receivable	Same as account receivable	Where recorded	Place of registration
United Kingdom	Decedent's domicile	Decedent's domicile	Location of document ⁴	Decedent's domicile	Decedent's domicile	Where recorded	Place of registration

-
1. Business debts situated in state where business is located if donor or decedent is domiciled there.
 2. No provision in gift tax convention.
 3. For negotiable promissory note, the residence of maker.
 4. If nonnegotiable, at domicile of decedent.
 5. Bonds and other negotiable instruments in bearer form excepted.

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January, 1970

STATEMENT OF A. EDWARD MCGINTY, TAMPA, FLORIDA

TO THE COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

ON PROPOSED LEGISLATION TO PREVENT THE FEDERAL

ESTATE TAX FROM COMPELLING THE DESTRUCTION

OF AGRICULTURAL AND OPEN SPACE LANDS,

The purpose of my testimony is to discuss the major reasons why certain proposed legislation should be enacted to effect changes to the estate tax provisions of the Internal Revenue Code of 1954 to provide for a method of valuation, for estate tax purposes, of farm land and other agricultural lands and open spaces which would be lower than "fair market value" as presently required. In recent years, much has been said and written about the continuing decline in acreage devoted to the production of food and to continued existence as open-space or greenbelt. The preservation of such productive agricultural lands and open spaces has been much touted as a national goal to which the efforts of various federal and state agencies, as well as a number of non-governmental organizations, are devoted. I do not have the statistics presently available to me to document the extent of this problem. However, I am sure that the Department of Agriculture and other concerned federal agencies can provide some data in this regard. As a lawyer in Tampa, Florida, practicing in the fields of tax and estate law, and having represented clients

in the real estate development and agricultural fields, I do know that agricultural and open space land is indeed being converted to more intensive uses.

THE URGENT NEED FOR FEDERAL ESTATE TAX RELIEF
FOR AGRICULTURAL AND OPEN SPACE LANDS

One of the factors contributing, unwittingly, I believe, to the continuing conversion of agricultural and open space lands to more intensive uses is the federal estate tax. Why? While the federal estate tax rate structure (which is a progressive rate, rising from 3% to 77% as the value of the estate increases) and the "fair market value" system of valuation for federal estate tax purposes are generally fair and desirable, complex tax and regulatory laws can produce unfair and undesirable results as applied to specific types of situations when changing circumstances have precipitated unforeseeable results. Just such a situation has occurred with respect to a large amount of the nation's agricultural lands and open spaces. Much of this land is located near cities and towns, resorts, major government and industrial installations or simply in a beautiful area with a good climate, such as my home state of Florida. Consequently, such land has become presently or potentially susceptible to more intensive uses, such as commercial, industrial or residential, which yield a much greater return on invested capital. There is a fixed supply of land, and as more and more of it is

developed, there is less of it available for present and future development. For these reasons, such land is aggressively sought by those persons and companies who make their living developing and using developed land. The developers and speculators bid up the "fair market value" of the land. "Fair market value" means the dollar amount that a willing buyer will pay to a willing seller for the asset (See news articles by David A. Andelman in the New York Times of May 14, 1972, by Gail Bronson in the Wall Street Journal of May 15, 1974, by Michael Burns in the Baltimore Sun of May 19, 1974, by Isaac Rehert in The Baltimore Sun of February 19, 1974 and by Steven Norwitz in the Baltimore News American, all of which were made a part of the Congressional Record, 94th Congress, January 15, 1975, Volume 121, No. 2 and which are attached to this statement for convenience of reference). A two tier valuation is thus created for the same parcel of land, a low-tier value for agricultural and open space uses and a high-tier value for the more intensive uses of our industrialized society. This two-tier valuation problem literally forces the family of a deceased farmer to sell the farm to a developer, speculator or other intensive land user. Let me give you an example:

Assume a farmer owns an 800 acre farm which earns him about \$30,000 per year, averaging the good and bad years. At strictly farm prices, his farm may be worth, say \$300 per acre or \$240,000.

In addition to this asset, he has a home on the farm worth \$35,000, \$50,000 in farm machinery, \$6,000 worth of cars and trucks, \$15,000 in savings, \$5,000 in miscellaneous personal assets and a \$50,000 life insurance policy with \$5,000 cash surrender value. If we assume that he has no debts, our farmer has a gross estate value of \$406,000. Upon his death, his estate tax picture will work out about as follows:

Gross Estate	\$406,000.00	
Administrative expenses	<u>-5,000.00</u>	
Leaving (adjusted gross estate)	\$401,000.00	
Maximum marital deduction	<u>-200,500.00</u>	(assuming he is survived by his wife)
Estate tax exemption	<u>\$200,500.00</u> <u>-60,000.00</u>	
Taxable estate	\$140,500.00	
Federal estate tax	\$ 32,850.00	

The deceased farmer's family can afford to pay estate taxes of \$32,850 and continue to own and operate the farm. Now, let's assume that the farmer's 800 acre farm is situated so as to be well-suited for a major community development. The fair market value of such land may well be in the neighborhood of \$3,000 per acre or \$2,400,000 for the 800 acres. He now has a gross estate value for federal estate tax purposes of \$2,516,000.

Gross Estate	\$2,516,000.00	
Administrative expenses	<u>-5,000.00</u>	
Leaving (adjusted gross estate)	\$2,511,000.00	
Maximum marital deduction	<u>-1,255,500.00</u>	(assuming he is survived by his wife)
	1,255,500.00	
Estate tax exemption	<u>-60,000.00</u>	
Taxable estate	\$1,195,500.00	
Federal estate tax	\$ 403,750.00	

The deceased farmer's family cannot pay \$400,000 in estate taxes except by selling the farm to a developer or speculator.

This example is typical of the classic farm family problem of low liquidity and high land values with concomitantly high estate taxes. How many times can this scenario be repeated before our agricultural production is inadequate to provide enough food for domestic production and to require us to import food to survive, as we now import oil to survive? What are the economic, political, ecological and social implications if the continuing loss of agricultural and open space lands is not halted?

It has been said that our farmers are wealthy. But the sad fact of the matter in most cases, as in the example I have used, is that the farmer is only wealthy if he sells the land to a more intensive user. Do we want him to sell his land to more intensive users? We are forcing him to do so now through the estate tax.

The purpose of the proposed legislation, as illustrated by the various bills that have been filed to effect a lower valuation than "fair market value" for agricultural and open space lands, is to change the estate tax law to make it possible for the survivors of deceased agricultural and open space land owners to hold onto the land and continue to use it for the production of food, other agricultural commodities and greenbelt purposes.

Why is such estate tax relief necessary only for farmers and ranchers and open space land owners? Would not such estate tax relief discriminate against heirs of other property, such as a family business? The answer is that the problem is unique to the owners of farm and ranch land and open space land. The "fair market value" of a going business, is generally determined by capitalizing the earnings of the business. This is because the buyer of a going business is interested in how much he can earn from the business rather than how much he can make by terminating the business and selling off the assets or converting the business to a different or more intensive use. When estate taxes are based upon values determined by capitalization of earnings, the resulting taxes will be an amount which can be amortized from the earnings of the business, so it will not be necessary to sell the business to pay the estate taxes. The proposed legislation seeks to apply to the owners of farm, ranch and open space lands, a valuation determined by capitalization

of earnings or some other equitable method of determining value on the basis of the continuing use of such property for farming, ranching or open spaces.

TECHNICAL ASPECTS OF THE PROPOSED LEGISLATION

I do not have the time in this statement to go into all of the technical aspects of the proposed legislation. But I do want to make some comments concerning certain technical aspects of legislation addressed to the resolution of the estate tax problem of agricultural and open space land.

ESTATE TAX CREDIT OR ALTERNATIVE METHOD OF VALUATION?

There are two methods to effectuate a change to the Internal Revenue Code of 1954 (hereinafter the "Code") to provide an alternative method of valuing agricultural and open space lands for federal estate tax purposes. Most of the bills that have been filed would create a new subsection to Section 2031 of the Code providing an election for estates with qualifying property to value the land at its value according to its qualifying use. At least one bill, Senator Stone's bill, S. 2267, would create a new section of the Code, Section 2017, which would provide an elective estate tax credit for estates with qualifying property equal to the difference between the estate tax on the fair market value of qualifying property and the estate tax on the value of such land according to its qualifying

use (See also the attached proposed bill which we have prepared). Either method produces the exact same formula for determining the value for federal estate tax purposes so that the amount of estate taxes payable would be the same under either method.

We prefer the latter method, the tax credit method, however, for technical reasons. It is important that the fair market value be finally determined at the time the estate tax return is accepted because the amount of deferred estate taxes subject to future payment under the recapture provisions is determined by the fair market value at the time of the decedent's death or on the alternate valuation date. The amount of estate taxes due should not be affected by appreciation or depreciation in the value of qualifying property subsequent to the estate tax value determination date. In the event of the inability of an estate and the Internal Revenue Service to settle any differences of opinion concerning the fair market value of qualifying property subject to the election, it would be necessary for a court to decide the matter. In the case of the first method of effectuating this change, the addition of a new subsection to Section 2031 of the Code, we are concerned that the federal courts may determine that the question does not present a justiciable controversy at the time the return is accepted because the question of fair market value would not affect the amount of estate taxes payable at that time but would only affect a contingent future controversy in the event of recapture, an event that may never occur. See Golden v. Zwickler,

394 U.S. 103 (1969); Toilet Goods Ass'n v. Gardner, 387 U.S. 136 (1967). Under the second method, however, in which the adjusted valuation is determined through the device of an estate tax credit equal to the difference between the estate tax on the fair market value and the estate tax on the qualifying use value, a justiciable controversy clearly exists because it is necessary to determine both the fair market value and the qualifying use value in order to determine the amount of estate taxes to be returned at the time of filing the estate tax return itself.

WHAT KIND OF INTEREST IN QUALIFIED REAL PROPERTY WILL QUALIFY FOR THE ELECTION?

None of the bills that we have read define the kinds of interests in qualified real property that will qualify for the favorable qualifying use values. For example, it is not clear under these bills that the corporate shares of stock in an incorporated family farm would qualify, or that a partnership interest in a family farm or a beneficial interest in a living trust would qualify. Since the family corporation, family partnership and family trust are methods that have been used for many years for family ownership of farms and ranches, it should be clearly provided that such interests in qualified real property will qualify for the election. We have prepared a proposed bill with a provision that satisfactorily resolves

this matter, and we recommend that the provision be included in the Committee bill (see attached proposed bill).

HOW IS THE VALUE OF LAND TO BE DETERMINED ACCORDING TO ITS QUALIFYING USE?

Senator McGovern's bill, S. 2875, is the only bill which provides a specific valuation formula for determining the qualifying use value. We have used this formula to compute acreage values in several hypothetical cases with results very close to current estimated agricultural values. We find Senator McGovern's valuation formula preferable to leaving the question of how the qualified use value should be determined to the Internal Revenue Service, the taxpayers and the courts. Accordingly, we recommend the valuation formula contained in S. 2875.

THE RECAPTURE PROVISIONS

At least two of the bills that have been filed, S. 2267 and S. 80, provide for perpetual recapture, S. 2267 with perpetual interest accruing and S. 80 with interest accruing only for the first 10 years. We are opposed to a provision for recapture in perpetuity. With recapture accruing in successive generations, the total amount of recapture, especially with continually accruing interest, could conceivably equal or even exceed the fair market value of the land after two or three generations.

Perpetual recapture would also largely destroy the ability of the farmer and rancher to finance the business by borrowing, which is essential to modern farm operation requiring large capital investment in machinery and buildings, as well as large periodic investments in fertilizer, seed, feed, et cetera. If the land will always be subject to a lien, in an increasing amount, which is prior in dignity to any lien a bank may place upon the land as security for loans it may make for farm improvements or for the purchase of farm equipment or supplies, most banks will refuse to make any loan. National Banks will not make second mortgage loans and very few state banks will make second mortgage loans. Inability to properly finance farm operations will result in lower crop yields which means a smaller food supply for the nation and inadequate income for the farmer to sustain his farm business and family.

Perpetual recapture would certainly cause serious administrative problems for the Internal Revenue Service, as well as for the heir and his heirs. The books could never be closed.

Finally, the combination of successive generations and successive perpetual tax liens would play havoc with real estate titles.

The other bills we have studied all provide for a recapture period of five years, and we believe this to be a reasonable period of time.

HOW CAN WE PREVENT ABUSE OF THE ESTATE TAX ADVANTAGES OF THE PROPOSED LEGISLATION BY PERSONS NOT INTERESTED IN PRESERVATION OF AGRICULTURAL LAND AND OPEN SPACES BUT WHO DESIRE ONLY TO BUY AND HOLD SUCH LAND TEMPORARILY AS A SHELTER FROM ESTATE TAXES?

A law that would solve the estate tax problem of the farmer, rancher and owner of open space land without opening the door to extensive abuse by wealthy people seeking only a temporary depository to shelter substantial capital from the estate tax is the goal of many who understand the problem of high values, low liquidity and high estate taxes facing owners of agricultural land and open spaces. How is the goal to be achieved? What safeguards can be employed which would prevent abuse and, at the same time, eliminate the estate tax-compelled sale of farms, ranches and open spaces?

Experience as a tax adviser and estate planner has taught me that this is a relatively simple task. It is only necessary to discourage individuals who have no intrinsic interest in agricultural land and open spaces from purchasing such land to hold for the briefest possible time in order to shelter from full estate taxation the passage of substantial sums to their heirs. Such discouragement can be effectively achieved in several ways without damaging the relief provided to the legitimate farmer, rancher and open space landowner.

First, all of the bills I have studied provide that in order to qualify for the special valuation treatment, the

land must have been devoted to one of the qualified uses for a period of five consecutive years prior to his death. Virtually no one can predict that he will live for at least five more years but not much longer. Thus, if the requirement were altered to provide that the decedent must have either inherited his interest in qualified real property or owned such interest for five years prior to his death, it would effectively frustrate the planning of an investment in qualified real property solely as an estate tax shelter. If an individual buys such property and dies within the five year period, the favorable valuation is unavailable, and he has destroyed the liquidity of his estate, creating very serious problems for his heirs. If he lives much longer than five years, he has tied up substantial capital in an illiquid, low yield investment during the non-earning years of life when he is likely to need, and want to enjoy, a good income from his investments.

Thus, the provision that the election can only be made with respect to an interest in qualified real property which has either been inherited by or owned by the decedent for the five years immediately preceding his death should be adequate to prevent abusive employment of the election. However, a further step can be taken which should fully foreclose the possibility of abusive employment of the election. This can be very simply accomplished by providing that the value under the election shall be the higher of either the value of such land according to its qualified use or the adjusted basis of such land in the hands of the decedent immediately prior to his death.

An example of such a provision is contained in our attached proposed bill.

Such a provision would have the effect of making the valuation under the qualified use election little different than fair market value for short-time investors in such property who seek to gain an estate tax break and who believe they can accurately predict their death in five or six years. The combination of the two provisions described above should be sufficiently discouraging to foreclose abusive uses of the special valuation election without damaging the intended relief for legitimate agricultural and open space landowners. If, however, still more protection is desired, say, to insure that the special valuation election is not used solely to gain a tax break by heirs who have no intention of keeping the land, the recapture provisions could be gradually phased out over an extended period. For example, after the first five years, recapture could be reduced by 10% per year for the next succeeding 10 years (see attached proposed bill). We believe such terms would be effective because Americans just do not think in terms of time periods as long as 15 years in the future, especially in connection with money and investments. Fifteen years is longer than Americans are willing to hold a substantial, illiquid, low-yield investment, unless they are in fact dedicated to agriculture and open spaces.

Such a lengthy recapture provision would, however, be damaging to legitimate farming and ranching heirs in that

their ability to finance farm operations would be impaired and may result in low crop yields. We believe, therefore, that the provision requiring the decedent to have either held his interest in the qualified real property for the five years immediately prior to his death or inherited it, plus the provision computing the value under the election as the higher of the qualified use value or the adjusted basis of the property in the hands of the decedent immediately prior to his death constitute adequate safeguards to prevent abusive use of the special valuation election.

CONCLUSION

This statement, together with other statements and data available to the Committee, conclusively demonstrates the urgent need for immediate passage of the remedial legislation to prevent the federal estate tax from compelling the destruction of agricultural and open space lands. Furthermore, this statement conclusively demonstrates that such legislation can be enacted without creating a loophole for abusive use of the law by briefly holding agricultural and open space lands in order to shelter from the full measure of the federal estate tax the passage of substantial funds from generation to generation.

Only Congress can prevent the federal estate tax from destroying these lands because Section 2031 of the Internal Revenue Code of 1954 requires that all property included in the gross estate be valued according to its full value at the

time of the decedent's death. A spokesman for the Internal Revenue Service admitted that the IRS had been aware of the problem for several years, but pointed out that the tax law required the Service to assess the tax on the basis of the value for which the land could be sold rather than on the value according to its use (see article by David A. Andelman, New York Times, May 14, 1972, copy from Congressional Records, Vol. 121, No. 2, January 15, 1975 attached).

The Treasury itself has estimated that a change in the tax law to permit agricultural land and open spaces to be valued on the basis of current use rather than "fair market value" would result in a loss in tax revenues of only 20 million dollars per year (see 94th Congress, 2d Session, Committee on Ways and Means, U. S. House of Representatives, Background Materials on Estate and Gift Taxation 62 (March 8, 1976). Surely 20 million dollars per year is a small price to pay to preserve our agricultural lands and agricultural production capacity. In fact, when measured against the cost of other government aid to agriculture, 20 million dollars is a nominal sum indeed to protect this critical resource and industry.

The task remaining is for Congress in our Bicentennial Year to enact this law to put an immediate halt to the presently continuing destruction of our agricultural and open space lands by means of determining the federal estate taxes on such lands according to the value of such lands for commercial, industrial and residential uses.

COMMENT UPON CERTAIN OTHER
PROPOSALS FOR CHANGES IN THE
ESTATE AND GIFT TAX LAWS

I. Income Taxation of Unrealized Gain on Appreciated Property
at Death.

I am opposed to the imposition of an income tax on the unrealized gain on appreciated property at death as an additional tax superimposed on the estate tax. I believe that most lawyers practicing in the estate planning and estate administration field are opposed to such a tax. The most serious problem in the administration of estates today is insufficient liquidity to pay the death costs, of which the federal estate tax is usually the largest and most troublesome. The federal estate tax is a steeply progressive tax, and inflation has pushed many estates into significant estate tax brackets. Only a decade ago, estate taxes would not have been a great burden for many of these estates. Inflation is, in effect, visiting upon our citizens an automatic annual increase in income and estate and gift taxes.

Let's look at a fairly typical example of a decedent who started his own business thirty years prior to his death. The fair market value of his incorporated business at the time of his death may be \$400,000.00, but his adjusted basis, immediately prior to his death, for his stock in the business may be only \$30,000.00 if he built up the business over the years from retained earnings.

He will probably have a house worth about \$65,000.00, but he may have paid only \$30,000.00 for it. He may have other assets worth \$50,000.00 for which he paid \$25,000.00. For the sake of simplicity, if we assume he has no personal debt, the gross estate of this decedent is \$515,000.00, and his adjusted basis for such property immediately prior to his death is \$85,000.00. If his estate obtains the maximum marital deduction, it will pay estate taxes of about \$68,000.00, a little more than the value of his home and amounting to about 13 1/3% of his gross estate. \$68,000.00 is a great burden on this estate, especially if there is also a state estate tax in excess of the federal estate tax credit, but one which can probably be financed out of the business over a period of years. But if we add a capital gains tax of 25% on the \$430,000.00 in unrealized appreciation, then we add another \$107,500.00 in federal taxes due at death, to make a grand total of \$175,500.00, or 34% of the gross estate. Few such families could finance this kind of debt from the business, and, hence, would be required to sell the business to pay the taxes. Needless to say, the same scenario would hold true for farmers, ranchers and open space landowners.

The very concept of imposing an income tax on unrealized gain is foreign to our system of income taxation. It seems inequitable on its face. It imposes an income tax on an involuntary but inevitable event. Furthermore, determination of unrealized profit or loss will generally not be an exact computation of the

profit or loss that would actually be realized on a sale. Finally, such a tax would reward the virtues of industry, thrift, wise risk taking, and sacrifice to help the younger generation by forcing the sale of such investments and taxing away a very large part of the proceeds.

In essence, imposing an income tax at death on unrealized gain is nothing more than a cheap trick to increase federal death taxes which, because of inflation, are presently too high. I am unimpressed with the two arguments advanced in favor of imposing such a tax: (1) that the present system locks people into their present investments until they die and (2) that the present system discriminates against those who sell during lifetime. In my experience the lock-in factor influences only the very elderly and the very infirm, and, in such cases, the lock-in period is relatively brief. Others will sell if they are of a mind so to do when the price is right. As for the supposed discrimination against those who sell, most lifetime sales are usually voluntary and made after weighing all the factors, including the income tax. Just about every aspect of tax law can be construed as discriminating against some person or class of persons who choose to do or not to do something or who cannot meet the requirements of some provision bestowing favorable treatment. But this does not mean that our entire body of tax law is unfair or a poor system for allocating the burden of supporting the government.

If both the proposed legislation to prevent the federal estate tax from compelling the destruction of agricultural and open space lands and legislation to impose an income tax at death on unrealized gain were passed, the net effect would be that families would still be forced to sell agricultural and open space lands to pay death taxes.

II. Elimination of the Step-up in Basis at Death

I am opposed to a carry-over basis for estate assets. It seems to me only plainly equitable to step-up to fair market value the basis of assets which have been subjected to taxation on fair market values at the steeply progressive estate tax rates. I see no merit to a carry-over of basis for assets qualifying for the marital deduction because it seems to me that the marital deduction was a consideration in establishing the present estate tax rates and estimating the actual impact thereof in most cases.

III. Increasing the Estate Tax Exemption and Providing for a Minimum Marital Deduction.

I am in favor of increasing the estate tax exemption from \$60,000.00 because I think an upward revision of this specific dollar amount exemption to take into account the effects of inflation is long overdue. Such a provision would largely eliminate the estate tax in a large number of cases in which no estate tax should be applicable, such as the death of young men with young families and

estates, including life insurance, of about \$300,000.00 to \$350,000.00. Inflation has put these estates into a position of owing substantial estate taxes, and I believe it is time to rectify this situation.

IV. Increasing the Gift Tax Annual Exclusion and the Lifetime Exemption and Integration of the Gift and Estate Taxes.

The gift tax must be the most unintentionally violated of the federal tax laws. Most people are unaware that taking title to shares of stock in joint names with their spouse or children, or that giving their wife a new car or a diamond ring are taxable events. Moreover, such gifts by those who are ignorant of the law generally go untaxed because the IRS does not discover that a gift tax return should have been filed. Thus, lack of knowledge on the part of the public at large and lack of adequate methods of enforcement discriminates against those few conscientious taxpayers who are knowledgeable and who file gift tax returns accordingly.

I don't have any answers to the problem, but I think that raising the annual exclusion will help eliminate many of the innocent violations. Increasing the annual exclusion and the lifetime exemption is appropriate in view of the extraordinary inflation since the present amounts were established.

Unless something can be done to adequately enforce the gift tax law, integration of the gift and estate taxes would only compound the inequity of present conditions. I would proceed

cautiously with any changes here, and I would not disturb arrangements made under existing laws. In any event, if the gift and estate taxes are ultimately integrated, the estate tax rates, which are too high now, should be revised downward to equal the present gift tax rates.

Respectfully submitted.

A. EDWARD MCGINTY

(From the New York Times, May 14, 1972)
ESTATE TAXES DRIVE FARMERS OFF LAND
 (By David A. Andelman)

Thousands of American farmers are being driven off their lands—forced to sell their farms to real estate speculators, some of them say, because of the method used by the Internal Revenue Service to assess inheritance taxes.

Such taxes are assessed on what the land could be sold for, rather than what it is worth as farmland. Thus, many people who have inherited farms have had to sell them to developers simply to pay the taxes.

As a result, the revenue service is being termed partly responsible for destroying a segment of American agriculture and, at the same time, accelerating the spread of the suburbs to the rural areas of the United States.

Over the last decade, the value of agricultural lands in wide sections of the nation within easy access to metropolitan areas has skyrocketed as land speculators have bought up every available piece of property. The value of this land for agriculture, however, has largely remained constant or has declined.

The Internal Revenue Service insists on assessing all agricultural land at the "price at which property would change hands between a willing buyer and a willing seller."

The result has been that farmers holding property whose value for development is five to 10 times its agricultural worth have been forced to sell their property to the waiting speculators simply to pay their inheritance taxes, which run as high as 25 per cent. Children who would have remained on the land are being forced off.

Most of this pressure has been focused on the spreading areas on the fringes of the suburbs where metropolitan America is pushing out to meet rural America—areas such as the farther reaches of Suffolk County, L.I.; suburban Phoenix, Ariz.; the extreme northwestern part of Cook County in Illinois, and the Sierra Foothills region of California.

"Once farmland is given to the speculators, that's the final step as far as agriculture is concerned," said James E. Cross, a farmer in semirural Cutchogue, L.I. "You're taking land that took 25,000 years to develop, an amazing land that is rich and fertile, and overnight you bring in bulldozers and sock houses on it. We all pay for it in the long run."

Another Cutchogue farmer, John Wickham, cited the situation of a neighbor with a 60-acre farm in one of the best potato-producing areas in the United States.

The neighbor, who had asked not to be identified by name, inherited the farm from his mother two years ago upon her death. The farm was worth about \$800 an acre if used for agriculture. But the revenue service valued it at \$3,500 an acre, which Mr. Wickham noted "is the fair development value," and the tax alone came to about \$1,200 an acre.

CALLS SALE "FORCED"

"This means that this chap is a very good farmer," he added, "but he had to take out a tremendous mortgage to pay the inheritance taxes, a mortgage with 9 or 10 per cent interest, and he simply can't pay it off—not with today's price of potatoes. So he has to sell it. In actuality, they [the Federal Government] forced its sale, very simply."

In Barrington, Inn., Xaver Schmid, a 72-year-old farmer who is worried about the problem that will arise when he dies, cited the case of a 90-year-old neighbor who died and left a 500-acre farm to his wife.

"They haven't sold the farm yet," Mr. Schmid said, "as the estate is still in probate. But his wife is nearly 90, and when she dies taxes will be levied all over again and the sons will have to sell the farm for sure to pay taxes."

That the situation became most acute very recently is largely attributable to the newly developing pattern of change in suburban America.

GROWTH ON FAR FRINGE

The 1970 census revealed that the fastest growing segment of the United States was the suburbs and the fastest shrinking was the rural areas. But of even greater significance was the evidence that the fastest growing segment of the suburban population was in the so-called "exurban areas"—those counties on the far fringe of the suburbs, between suburbs and countryside.

It is here that the real estate speculators are most busily at work and where the pressures on the remaining farmers are the strongest.

There are no statistics to show how many farms are going to speculators. Many are quietly sold but continue to be farmed for several years, even decades, under "lease-back" arrangements, until the land becomes so valuable that the speculator finally moves in and puts a halt to the farming.

NEED FOR LEGISLATION SEEN

A spokesman for the Internal Revenue Service, Edward Work, said, "We've been aware of the problem really for several years and, of course, what it boils down to is that under the law we have no alternative but to set the tax on the value the land sells for rather than on the value the property would be used for."

"It would take legislation to change the practice."

The legislation on which the current revenue service practices are based dates to the Revenue Code of 1916, Section 203.1, of which says that property must be valued at its fair market value. A service spokesman said, "It has been applied consistently since that date."

There have been numerous attempts at reform. Representative Graham Purcell of Texas, sixth-ranking Democrat on the House Agriculture Committee, has introduced each year for the last four years a bill providing for a change of the valuation criteria.

At last count, there were six bills before the House Ways and Means Committee and one in the Senate, all waiting for action that their sponsors generally believe will probably never come.

"Each year they get buried in the hearings on general tax reform," Mr. Purcell said in a recent interview. "Ways and Means just happens to like the extra revenue the law pulls in the way it stands."

The extent of the problem and the concern it has aroused in agricultural America is indicated by the search for the methods to circumvent the revenue regulations.

In the Dade County area surrounding Miami, almost all farms have by now been incorporated. The corporate farmer is able each year to transfer a small amount of stock—up to \$3,000 apiece is tax-exempt under gift tax statutes—to his children as gifts, easing the final impact of inheritance taxes when he dies.

A few states, including New Jersey, California and Maryland, have either set up or given serious consideration to establishing agricultural land use districts. They require farmland under regulation to remain in farming for a certain period of years, usually at least 10, or indefinitely. But in many areas, the revenue service has not chosen to recognize these districts for estate tax purposes.

ACCEPTED BY GOVERNMENT

In California, the Land Conservation Act of 1965 enables a farmer to contract with the county government not to put farmland up for sale for at least 10 years, enabling the state to assess the land at agricultural rates. And, state officials said, the Federal Government has accepted the state assessments for Federal purposes.

But a new and more recent law may change this. It provides that if not enough of this restricted land is sold in an area, the county assessor may use the income of the land as a means of determining its value for assessment purposes.

Joseph A. Janelli, governmental affairs specialist of the California Farm Bureau Federation, is concerned that "the I.R.S. just might say this new law is a temporary expedient and we do not have the right to do it this way."

ARRANGEMENTS ARE URGED

Mr. York, the revenue service spokesman, said "there is a possibility" that an agricultural land use district "could affect the valuation—in effect discounting the valuation in some situations." But he said, even so, the value would never reach the agricultural value.

So, the California federation has begun to advise members to make their proper arrangements well in advance of death—giving land or corporate shares in land to their children over the years to take advantage of the gift tax exemption.

"All this is fine," said Mr. Wickham, the Long Island farmer. "But I can't do this. I need cash loans on my property each year in order to operate. If I go to a bank and say I've given shares to my children, that I don't have clear title, they'll throw me right out."

Dean F. Tuthill, a professor of agricultural economics at the University of Maryland, said that there were only a handful of states that had been able to figure out any method of easing the burden of estate taxes for their farmers.

COAST LAW CITED

Most special agricultural taxing districts set up to help farmers are applied only to local property taxes and not to federally administered estate taxes.

Professor Tuthill cited, as one attempt to ease Federal taxes, California's statute, which he said was a prototype for other methods of "preventing intensive development of farmland," including a bill in Maryland last year that would have allowed farmers to sell their development rights to the local county,

farming it themselves but paying considerably lower taxes.

Systems such as this or one newly instituted in Suffolk County, L.I.—where the county plans to purchase, at the start, some 3,000 acres of prime farmland at speculative prices from the farmers, then lease it back to the owners—are other solutions proposed by agricultural economists in place of changes in the revenue law.

"There are so few ways open to preserve this valuable resource," Mr. Wickham concluded. "If the I.R.S. continues to follow this policy, it will put all agriculture out of business on Long Island within a generation. And who knows what will happen everywhere else in this country?"

[From the Wall Street Journal, May 15, 1974]
THE 251-YEAR-OLD MANSION PROVIDES FEELING OF "ROOTS" BUT DOMINATES THEIR LIVES

(By Gall Bronson)

SHIRLEY PLANTATION, Va.—To walk inside the venerable brick mansion here with its paneled rooms and its oil portraits of long-dead ancestors, is to enter into the measured pace of the 18th Century.

It is easy, in the shadowy half-light of a fading afternoon, to envision a style of life two centuries removed from the busy world outside—to imagine squires with powdered wigs gathered around the Chippendale dining table, drinking sherry from graceful crystal glasses. Thomas Jefferson dined at Shirley. Robert E. Lee's mother was born here.

But C. Hill Carter, the 20th Century owner of Shirley, is not a squire, and he doesn't have a powdered wig. He has a crew cut, and should you visit his 251-year-old mansion 25 miles east of Richmond in the Virginia tidewater country, you may find him in paint-spattered shoes and baggy overalls, touching up an outbuilding. He often does such work himself—to save money.

Nor do Mr. Carter, his wife, Helle (rhymes with Nellie), and their three children dine very often at that splendid table of polished mahogany on the main floor. They usually eat at a picnic-type table in the basement, seated on folding chairs beneath the bare pipes that service their 1910 sink. They eat in the basement because they want to maintain the main floor in all its 18th Century elegance, full of valuable antique furniture and American art.

RUINOUS TAXES

That is the commitment that has shaped the lives of Hill and Helle Carter—a commitment to maintain and preserve an 18th Century mansion on a 20th Century income. More than that, they are committed, despite rising expenses and the threat of ruinous taxes to pass Shirley on to their children and their children's children. They intend to keep Shirley in the Carter family, where it has remained for nine generations.

"In our society nobody has any roots," Mr. Carter draws. "Everybody's mobile. When people come here and tell me how lucky I am to own Shirley, I'm right proud. We're determined to stay and keep these things."

Plenty of folks come to see Shirley. To help offset expenses, Mr. Carter opened Shirley to tourists some years back, posting a billboard near Williamsburg and distributing brochures locally. Last year, more than 10,000 people visited the plantation, often getting a guided tour by Mr. Carter himself, who clearly relishes the opportunity to take time off from endless odd jobs around the plantation to recall his family history and the glories of the past.

The white porticoed mansion dates back to 1723, but Shirley Plantation itself is even older. It was founded in 1613, only six years after the colonists arrived at Jamestown. While the land belonged to tobacco farmer Edward Hill, the Shirley mansion wasn't built until his daughter Elizabeth married John Carter, the son of a giant in colonial Virginia, William Robert (King) Carter.

RANDOLPHS, LEES, AND BYRDS

Contemporaries called him King because he owned a huge chunk of what is now the state of Virginia. King Carter amassed his wealth by deeding defaulted land to himself as land agent for Lord Fairfax and England. He lived quite comfortably on another plantation, cultivating tobacco with the help of 1,000 slaves. Over the years, his descendants intermarried with such leading Virginia families as the Randolphs, Lees and Byrds.

By comparison, King Carter's ninth-generation descendant has come down in the world—although, on paper at least, Hill Carter is a wealthy man.

"I reckon I'm worth \$1.5 million," he mutters bashfully. "But I still feel like I'm scrambling to pay the grocery bills." Despite his assets, Hill Carter barely nets \$15,000 a year, mainly from his tourist trade and some land he rents to a gravel company. To convert his assets to spendable cash he'd have to do the one thing he is committed not to do: sell Shirley Plantation.

The problem of maintaining a large estate isn't unique to the Carters. Many families find the financial burden too much or the way of life unappealing; usually, they sell their property for development or for some sort of institutional or foundation use. In Britain, the National Trust accepts country estates from owners who provide endowments to maintain the property in perpetuity for public access. In return the family may live there rent-free. The National Trust for Historical Preservation in the United States accepts property gifts with endowments, and Colonial Williamsburg buys land for the tourist trade. But Hill Carter wouldn't consider passing Shirley out of strict family control.

As a result, Hill and Helle struggle hard to keep Shirley both livable for the family and attractive to tourist. For Hill, life is a

walls that need spackling and plumbing that needs fixing; currently, he's trying to complete some formal gardens around the house and build a driveway to the main highway. Helle opened a gift shop last year in one of the outbuildings and also hopes to start a small restaurant operation in another building.

Shirley Plantation mirrors much of Southern history in its evolution from tobacco plantation to wheat farms to the homestead that Hill Carter inherited. "My grandfather was wounded at Chancellorsville and was forced to quit working around 1884," says Hill, "so my dad started farming when he was 10. He never got an education, and financial things weren't easy for him. He spent all his time farming just to feed his family through the Depression."

Hill inherited the estate in 1952 through an elaborate plan to keep Shirley in the family; soon, the farmland was leased to others, a gravel mining company had leased several hundred other acres, and the Carters were seeking to build up tourist traffic to the house itself. "When other people are out on Sunday drives, I'm showing people around the house," says Hill.

Still, life at Shirley has its compensations. Hill and Helle enjoy sitting out back watching the historic James River roll by; many evenings are spent entertaining friends in Shirley's stately and ornate dining and drawing rooms. Though the family usually eats in the basement, the children, Charles, 11, Randy, 10, and Harriet, 9, are allowed the run of the house and property. "I don't want to turn this place into just a museum," says Helle.

Whether Hill Carter will succeed in his

ambition to keep Shirley intact for his children—and whether they will want to stay at Shirley—is open to question. Hill figures the inheritance tax alone on Shirley would be about \$650,000 at present rates.

But Hill and Helle figure it's worth the effort. "If money was the only thing in the world, I'd leave," says Hill. "But it's not. Most of the important things in the world can't be bought and sold," Helle adds. "It's gratifying when people come and appreciate this as part of their heritage."

[From the Baltimore Sun, May 19, 1974]

DISAPPEARING FARMS

(By Michael K. Burns)

In the years of agriculture abundance, not so long ago, United States farm policy was aimed at moving land out of production. That policy did not seem to work so well then but its effects are being felt today when the nation is realizing it might be better off with more farms and farmers.

Rising prices at the supermarket reflect the world's demand for more food. And the environmental movement has inculcated a reverence for open space and a revulsion against the devastation of suburban sprawl. Expansion of the domestic farm system seems to answer these non-farmer needs of society.

Forces are at work to create a coalition between the farmer and the environmentalist to preserve farmland as a privately held public heritage. But the alliance is still in the formative stage. Farmers distrust the conservationist who would freeze the value of his land under land-use laws, and chafe at his efforts to restrict uses of chemical and pesticides. Conservationists and consumers are wary of the producers of ever-more-expensive food and the owners of large spreads of high-priced rural real estate.

Land speculators have perhaps been the key element in the forging of the common interest. Population pressures and the ever-growing highway system created new fortunes for property holders who stood in the path of progress. Farmers did not create the boom, but they were quick to appreciate its possibilities for a windfall. A glut of reckless, shotgun speculation in farms throughout the state followed. And those farmers who sold out made it even harder for their neighbors to resist.

Some 2.7 million acres in the state, or 40 per cent of the land, are in farm production. By one estimate, that amount will dwindle to 1 million acres by the year 2000. Recognizing this undesirable trend, the Maryland Senate last year ordered the Secretary of Agriculture, Y. D. Hance, to make a study of means to preserve farmland. Mr. Hance appointed an 18-member commission with Frank L. Bentz, Jr., University of Maryland vice president for agricultural affairs, as chairman.

The commission has set as a goal the preservation of 2.5 million acres of agricultural land. Members are uncertain how fast farmland will be eaten up in the future: one subcommittee suggests 35,000 acres a year, another 62,000 acres. But they seem to agree that speculation, or investment, is a greater factor than the immediate demand for housing or commercial development. "Agricultural and commercial forest land acreage will decrease more than three times as much as urban-related land commitments will increase" by 2000, the group said in an interim report. Some of that land will be granted a temporary reprieve, as speculators rent it to farmers, but its fate is sealed. This despite the fact that there will be 50 per cent more people living on an acre of Maryland in 26 years than there are today.

As a commission subcommittee noted, preserving agricultural land can only be based in part on the actual demands of future population growth. Unrelated economic factors

influence a number of individual decisions to give up farming and to take advantage of the speculator's offer. Farm prices are expected to increase and provide a return of about 15 percent on capital (exclusive of land), the commission reported. But a shortage of labor, heavy indebtedness and taxes may encourage all but the dedicated to give up.

Farm prices have shot up all over the state with little relationship to productivity and food prices. Farms that sold for \$200 an acre in Frederick county 15 years ago are now worth \$30,000 an acre by the new shopping mall. Even residential lots, minus sewer and water, are selling at \$4,500 an acre.

In Anne Arundel county, developers are paying \$3,000 an acre for average farmland as they leapfrog over sewer-connection bans in Montgomery and Prince Georges counties.

Partially influenced by the expanding Black & Decker power-tool plant, land in the Hempstead area of Carroll county is selling for an unheard of \$7,000 an acre. "A couple of years ago, \$1,000 was high for land in this area," recalled Paul R. Albaugh, a dairy farmer. "Now, I don't know of any land sold that's going to other farmers . . . they can't afford it."

"I don't think you can talk to a farmer who hasn't lost ground over the last five years," said Carroll Leister, whose grandfather bought the land he farms today. The small parcels of land a farmer rents for \$15 to \$20 an acre are sold off each year as land values rise, he explains. "The by-pass is going through 25 acres of our land and that will bring more houses," Mr. Leister said. "I guess in five years after the road is built we'll be out of here."

Developers and farmers covet the same type of land, Mr. Leister added. "That's the thing that hurts: they're buying good flat, cleared land, not the woods or the hilly areas," he said. According to the state, more than 20 per cent of Maryland's "prime" farmland has been lost to urban use.

The commission headed by Dr. Bentz is to make final recommendations on legislation to Mr. Hance next month. So far, the group has explored several possibilities which have been discussed at a series of hearings in the state. The revision of federal estate taxes and state inheritance tax is one promising idea. Senator Charles McC. Mathias Jr., (R., Md.) and Representative Goodloe E. Byron (R., 6th) have introduced bills to change the estate tax, so that heirs are taxed on the agricultural value of farmland instead of on "fair market value." The lower valuation

would make it easier for heirs to pay the taxes without selling the farm; if they did or if they developed the land, they would be subject to a retroactive higher levy. The chairman of the Maryland Environmental Trust and the Maryland Historical Trust support the measure as a valuable open-space tool.

The loss of farmland due to the estate tax valuation has not been extensive. Many heirs are all too willing to sell and farmers do the same thing to create their retirement annuity. But it does help to keep farms in the hands of those families who want to continue at it, and they are becoming more rare. Herbert and John Wisner of Mt. Zion worked their father's farm since they were children, but had to form a corporation to save the land with a mortgage when it was inherited as an estate. "They should have done something to help the farmer in a situation like this," Herbert Wisner said.

Other plans considered by the agricultural land preservation commission include variations on programs in New York and New Jersey. New York permits farmers to create agricultural districts with powers to prohibit certain local ordinances that interfere with farming, to bar the use of public funds for utilities installation and to receive favorable tax assessment treatment.

The New Jersey plan, which is only a proposal made to the governor, calls for each municipality to set aside a certain percentage of prime farmland for preservation. A state tax on real-estate transfers would pay farmers for the loss of their development rights by having the land use frozen in preservation. Under the New Jersey plan, farmland owners could claim their development-right payment today, or wait on the chance that their rights will appreciate in the future. Speculation could continue in these rights or easements and investors could become richer. But the public would not be the poorer.

Maryland was the first state to pass a preferential farm property tax assessment law, taxing farmland at a lower rate than residential or commercial property. Economists claim the law has helped to keep land in production, though the evidence is tenuous. There is a tax recapture provision penalty if the use is changed, but that is a weak restraint against development.

This year the legislature enacted a law permitting farmers to give the development rights to the state. In exchange for freezing the use of his land in farming, the owner would reduce his local property taxes and reduce the value of his estate for federal taxes upon his death. Without any purchase agreement, however, its chances of success are slim.

From this mix of interests, and of economic incentives, the attrition of farms and farmers may be stemmed. The benefits of open space will be shared by all. Phillip Alampi, New Jersey's agriculture secretary, recently explained how self-interest can work constructively in this field. "Farmers have a selfish interest in preserving open space," he said. "Without it, they will go out of business. Urban and suburban people have a selfish interest in preserving open space. Without it, they may exist, but they will not live."

[From the Baltimore Sun, Feb. 19, 1974]
ENDANGERED LABEL ON EAST COAST FARMS
(By Isaac Rehert)

The East Coast farmer has been changing to a rare and endangered species just when a crowded congested society has come to need him most.

For decades, while built-up concrete areas have been growing around big cities like warts, farmers, caught in the crunch of fast-rising costs and shrinking profits, have been abandoning agriculture.

The old-timers are carrying on, expanding and consolidating their holding, but with the increased capitalization, it becomes almost impossible for a youngster to break in unless he inherits. And increased valuation of land for development purposes is a continuing temptation to the farmer simply to sell his holdings for the building of supermarkets and retire from the field.

As if crowding by urban areas, skyrocketing capitalization and the cost-price squeeze were not enough, certain government tax policies have also tended to pressure farmers into getting out; and now, land-use legislation, one version of which has already been introduced into the Maryland General Assembly, has farmers worried. They fear that by legislative fiat, their equity, their security, their retirement bank account that they keep deposited in land, may be wiped out.

The extinction of the East Coast farmer, like the extermination of other rare and endangered breeds, is more a problem for the public than it is for the breed. Quite aside from the production of food (which for the first time in memory is becoming increasingly critical), quite apart from nostalgia for "old time rural values" and a way of life that keeps looking better the further we pass from it, farms—at least green open spaces—are essential to ecology, to keeping a balanced environment, to maintaining an esthetic harmony.

Whereas in other areas real estate taxes are based on the highest market value of land—which usually would be its speculative value for development—in Maryland, farm land is taxed as farm land—which means lower rates, commensurate with its lower earning ability when used for growing crops.

But the federal government has not seen fit to follow a similar practice. There are no federal real estate taxes, but there is a federal estate inheritance tax, and the Internal Revenue Service insists on assessing all agriculture land at the "price at which property would change hands between a willing buyer and a willing seller."

Any land within easy access to metropolitan areas can attract numerous willing buyers eager to acquire all they can for speculative purposes. The result has been that in some areas, land values have skyrocketed to five to ten times what they would be for agricultural land.

And so, when parents die and their children inherit the land, they find themselves billed for a federal inheritance tax—which may run as high as 25 per cent—that is so high they are forced to sell the land to speculators in order to pay it.

In one instance, land that was worth \$800 an acre for agricultural purposes was valued by the IRS at \$3,500 an acre, which was its "fair development value." The tax alone came to about \$1,200 an acre, and the farmer had no choice but to sell it for development in order to pay. In fact, the federal tax laws had simply forced the farmer off the farm and the land out of farm production.

It is not merely IRS administrative policy but explicit legislation that says that property must be valued at its fair market value, and so it will take new legislation to make a change.

This year, Senator Charles McC. Mathias, Jr. (R., Md.) introduced a bill that would change the practice, bringing it into line with that used in Maryland and other states, so that the IRS, in considering the value of land for tax purposes, would use its value as an actual earning resource rather than its market value.

In a Senate statement, Mr. Mathias pointed out that without such legislation, everytime a farm passed to an heir, the heir would be paying most or all of the income he could

earn from his farm land just to pay the taxes. The situation is impossible, and "the effect of this (IRS) policy is to force many farm families to sell their farms in order to pay the estate tax—regardless of their attachment to the land or to the occupation of farming. And the result of such forced sales is, in the end, a grave and immeasurable cost to the community."

His bill includes safeguards that prevent land held by speculators from qualifying at the lower rate of tax, namely that the property must have been used as farm, wood or open scenic land for at least five years prior to and must continue to be used that way for five years after the estate tax return is filed.

One of the interesting developments in the farm land picture is that because of the world-wide food shortage and the energy and fertilizer shortages, farm commodities have been increasing in value so rapidly that with next year's harvest the value of farm land may nearly equal its value for development.

From the public's point of view, at least one aspect of the situation has become perfectly clear. Despite the name "agribusiness," farms are not merely business; they are a natural and esthetic resource of the entire community, and the East Coast farmer, who is their steward, as a rare and endangered species, needs some help to be saved.

[From the Baltimore News American]
FEDERAL TAX GRAB COUNTERED: STATE ACTS TO SAVE FARMS
(By Steven Norwitz)

In upper Harford County, John Brown (not his real name) tills a 650-acre farm he'd like to turn over to his children when he dies.

But farmer Brown estimates that when he passes on, his family will face a federal estate (inheritance) tax of \$400,000.

As a result, the Brown family will be forced to do what the Johnson family did with their 100-acre farm in Havre de Grace a few years back—sell it to developers.

The federal estate inheritance tax, which often amounts to a third of the development value of a farmer's land, is one reason why Maryland loses an estimated 35,000 acres of farmland a year to development, according to the state Department of Agriculture.

In 1969, the latest year for which figures are available, 44 percent of Maryland's land areas, or about three million acres, was devoted to agricultural use.

It is projected that the amount of farmland in the state will drop to 2.4 million acres, or 38 percent of the state's land area, by 1986.

To help slow the trend, the Maryland legislature this year passed a bill designed to aid the farming family that wants to pass its farm down from one generation to the next.

For farmers who agree to permanently turn over the development rights of their land to the state, the bill provides that the farms would be assessed at their agricultural value, about \$600 an acre, instead of potential development value, now ranging from \$2,000 to \$3,000 an acre.

The aim is to significantly cut the federal estate tax on the property, enabling the family to keep the land for its agricultural use.

"This would help people who have had farms that have been in the family for generations and want them to be kept in the family," says T. Allan Stradley, president of the Maryland Farm Bureau.

The state, meanwhile, would preserve some of its open spaces and maintain a \$425 million a year industry.

While the bill is considered a good concept, its effective implementation hinges on two unknowns.

"First," says state Sen. James Clark, Jr., D-Howard, a co-sponsor of the bill, "we're not absolutely certain the IRS (Internal Revenue Service) will recognize this."

The federal government does its own assessing of property when calculating the estate inheritance tax.

"Second," Clark adds, "if you give up the development rights to your property and the property all around you is turned into subdivisions, the plan won't work."

If these roadblocks are worked out, however, Clark feels "there are a good many people who will go for it." Clark himself would be one of them.

The senator runs a 500-acre farm on Rt. 108 across the road from Columbia. "The estate tax on this would definitely cause us to lose the land," he says.

"But I wouldn't hesitate a minute (to give up the development rights to the property) if I was assured I wouldn't have development all around me. Agriculture is all we've ever done; that's all we want to do."

While many farmers will be leery of giving away the huge profit potential of their property, Sen. William S. James, D-Harford, co-sponsor of the bill and president of the Maryland Senate, says the bill is "just a start" in the state's effort to preserve its agricultural land.

Eventually, James notes, Maryland may adopt a plan similar to one in New Jersey which authorizes the state to purchase outright the development rights to a farmer's land.

"The New Jersey green acres program," James says, "has permanently preserved one million acres (of its 1.4 million acres of farmland) by this approach."

This summer a state Commission on the Preservation of Agricultural Land is to offer sweeping recommendations on steps the state should take to accomplish this purpose.

A BILL

To amend the Internal Revenue Code of 1954 to provide for the deferral and transfer of liability for the payment of a part of the Federal estate tax on certain real property the fair market value of which exceeds the value of such property for continued use as agricultural land, undeveloped land, or historical sites.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 That (a) part II of subchapter A of chapter 11 of the In-
4 ternal Revenue Code of 1954 (relating to credits against
5 estate tax) is amended by adding at the end thereof the
6 following new section:

7 "(a) IN GENERAL. -If the executor of an estate so
8 elects, the tax imposed by section 2001 shall be credited with
9 the amount of the excess, if any, of the tax imposed by section
10 2001 over the amount of the tax which would be imposed by section
11 2001 if the value of any interest in qualified real property
12 included in the gross estate is determined by the higher of
13 either its value for the use under which it qualified in
14 accordance with the provisions of subsection (b) of this section
15 or its basis in the hands of the decedent (immediately prior to
16 the death of the decedent).

17 "(b) QUALIFIED REAL PROPERTY. -For the purposes of this
18 section, the term 'qualified real property' means real property
19 substantially all of which is and, for the 60 months preceding
20 the date of death of the decedent, has been devoted to-

1 "(1) farming (the production of agricultural
2 commodities),

3 "(2) ranching (the raising of livestock),

4 "(3) woodland (including land used for the
5 commercial production of trees and land publicly
6 used for undeveloped scenic or outdoor recreational
7 purposes),

8 "(4) being maintained substantially in its
9 natural state (being undeveloped for agricultural or
10 other purposes),

11 "(5) maintenance of historic values and is listed
12 in the National Register of Historic Places, either
13 separately or as part of a district so listed.

14 Such real property shall include residential buildings and
15 related improvements occupied on a regular basis by the
16 owner or lessee of such property or by persons employed
17 by such owner or lessee for the purposes of operating or
18 maintaining the real property and improvements described
19 in this subsection (b), and roads, buildings, and other
20 structures and improvements functionally related to the
21 uses listed in this subsection (b).

22 "(c) INTEREST IN QUALIFIED REAL PROPERTY. -For pur-
23 poses of this section, the term 'interest in qualified
24 real property' means-

1 "(1) beneficial interest in the fee ownership
2 of such property as sole owner thereof or as a joint
3 tenant with the right of survivorship, a tenant in
4 common, or otherwise.

5 "(2) any interest in such property or in voting
6 stock of a corporation described in paragraph (5) of
7 this subsection, the value of which is includible in
8 the gross estate of the decedent by reason of any one
9 or more of sections 2033, 2035, 2036, 2037, 2038 or
10 2041 of this chapter.

11 "(3) beneficial interest in a land trust which
12 holds the fee ownership of such property, if-

13 "(A) such trust had 10 or less beneficiaries
14 and

15 "(B) such property comprised at least 80% of
16 the value of all property owned by such land trust

17 "(4) an interest as a partner in a partnership
18 which holds the fee ownership of such property, if-

19 "(A) such partnership had 10 or less partners
20 and,

21 "(B) such property comprised at least 80% of
22 the value of all property owned by such partnership.

1 "(5) voting stock in a corporation which
2 beneficially owns the fee ownership of such
3 property, if-

4 "(A) such corporation had 10 or less share-
5 holders and

6 "(B) such property comprises at least 80%
7 of the value of all property owned by such
8 corporation.

9 For purposes of this paragraph, determinations shall be
10 made as of the date of the death of the decedent.

11 "(d) BENEFICIARY. -For purposes of this section, the
12 term 'beneficiary' means that person or those persons to
13 whom any interest in qualified real property included in
14 the gross estate of the decedent passes or has passed from
15 the decedent.

16 "(e) TIME AND MANNER OF ELECTION. -The election provided
17 for in this section shall be exercised by the executor on
18 the return required by this chapter if filed within the time
19 prescribed by law or before the expiration of any extension
20 of time granted pursuant to law for the filing of the return,
21 and shall contain the name, address and taxpayer identifica-
22 tion number of the beneficiary or beneficiaries.

1 "(f) REVOCATION OF ELECTION. -The election made under
2 this section shall be revoked with respect to the whole or
3 any part of such qualified real property which is-

4 "(1) converted to a use other than one or more
5 of the qualified uses described in subsection (b) of
6 this section; or

7 "(2) removed from the National Register of His-
8 toric Places or maintenance of the historic values is
9 discontinued if such property qualified for the election
10 only pursuant to subsection (b)(5) of this section; or

11 "(3) sold or otherwise transferred.

12 "(g) RECAPTURE OF CREDIT. -Upon revocation of an
13 election made under this section with respect to any interest
14 in qualified real property or upon the disposition of any
15 interest in qualified real property with respect to which
16 an election under this section has been made, the credit allowed
17 by this section shall be decreased by 100%, minus 10% for each
18 twelve month period that such interest in qualified real prop-
19 erty was held after the date that such interest in qualified
20 real property was held for 60 months from the date of the death
21 of the decedent, of the amount of the credit attributable to
22 the interest in qualified real property with respect to which

1 the election has been revoked or with respect to which
2 a disposition has occurred.

3 "(h) LIABILITY FOR PAYMENT. -If the amount of any
4 credit claimed under this section is recaptured pursuant to
5 the provisions of subsection (g) of this section, the execu-
6 tor, if such recapture occurs during the administration of
7 the estate and prior to distribution of the interest to
8 which such recapture is attributable, or the beneficiary
9 or beneficiaries of the interest to which such recapture is
10 attributable, if such recapture occurs subsequent to the
11 distribution of such interest, shall give notice to the
12 Secretary or his delegate of the event causing recapture of
13 any part or all of such credit pursuant to the provisions of
14 subsection (g) of this section, such notice to be given at
15 such time and in such manner as may be required by regula-
16 tions prescribed by the Secretary, and the Secretary or his
17 delegate shall (the provisions of section 6501 notwithstanding)
18 redetermine the amount of the tax under this chapter and the
19 amount, if any, of the tax due on such redetermination, plus
20 any interest due thereon, shall be paid by the executor or
21 the beneficiary or beneficiaries, as the case may be, upon
22 notice and demand or upon the expiration of any extension of
23 time granted pursuant to law for the payment thereof.

1 "(i) CROSS REFERENCES. -

 "For lien against property where credit is
claimed under this section, see section 6324(a)(4).

 "For interest payable on amount of any credit
allowed under this section which is recaptured under
subsection (g) of this section, see section 6601(j)".

2 (b) Section 6324(a) of such Code (relating to liens
3 for estate tax) is amended by adding at the end thereof the
4 following paragraph:

5 "(4) UPON SECTION 2017 PROPERTY.

6 "(A) Lien imposed. -If the executor of an es-
7 tate elects to claim the credit against the estate
8 tax allowed by section 2017, the amount of such
9 credit shall be a lien for a period of 15 years
10 (unless sooner released as provided in subparagraph
11 (B)) from the date of death of the decedent upon
12 the property (as defined in section 2017 (b)) with
13 respect to which the credit was claimed. If the
14 credit relates to more than one parcel of section
15 2017 property, a lien is imposed under this para-
16 graph on each parcel of such property in an amount
17 which bears the same ratio to the total amount of
18 the credit allowed under section 2017 as the value
19 of that parcel of such property (for purposes of

1 chapter 11) bears to the value of all the property
2 to which the credit relates.

3 "(B) RELEASES OF LIEN. -The lien imposed by
4 subparagraph (A) on any parcel of section 2017
5 property shall be released by the payment to the
6 Secretary or his delegate of the amount of the
7 credit subject to recapture from time to time
8 under the provisions of subsection (g) of section
9 2017 plus any interest due thereon.

10 "(C) CROSS REFERENCES. -

"For interest payable on amount of any credit
allowed under section 2017 which is recaptured
under subsection (g) of section 2017, see section
6601(j)."

11 (c) Section 6601 of such Code (relating to interest on
12 underpayment, nonpayment, or extensions of time for payment,
13 of tax) is amended by redesignating subsection (j) as (k),
14 and by inserting after subsection (i) the following new
15 subsection:

16 "(j) INTEREST ON RECAPTURE OF CREDIT ON SECTION 2017
17 PROPERTY. -If the executor of an estate elects to claim the
18 credit against the estate tax allowed by section 2017, interest
19 shall be paid at the rate of 4 percent per annum on the amount
20 of any credit recaptured under subsection (g) of section 2017,

1 computed from the date of the death of the decedent to the
2 date of the event causing the recapture. The interest shall
3 run from the date prescribed by section 6151(a) for the payment
4 of the tax imposed by chapter 11 on the transfer of the estate,
5 without regard to any extension of time for such payment under
6 section 6161(a)(2), 6163, or 6166. The interest shall be paid
7 by the person or persons paying the amount of the credit re-
8 captured under subsection (g) of section 2017 at the time such
9 amount is paid."

10 (d) The table of sections for part II of subchapter A
11 of chapter 11 of such Code is amended by adding at the end
12 thereof the following new item:

 "Sec. 2017 Credit for part of value of certain real
 property."

13 SEC. 2. The amendments made by this Act apply to the
14 estates of decedents dying after the date of enactment of
15 this Act.

March 17, 1976

Before the Ways and Means Committee
Hearings on Estate and Gift Tax Revision

Statement of Gerald P. Moran
Associate Professor, University of Toledo
College of Law

Gentlemen:

I am pleased to have this opportunity to share my views concerning estate and gift tax reforms and my professional experiences in observing the operation of the present structure, particularly on such a grand date as that of March 17 for a third generation Irish American.

For approximately seven years, I was employed by the Internal Revenue Service in several different capacities: as estate tax examiner, as a tax law specialist in the Exempt Organizations Branch of the Commissioner's Office, and finally as a trial attorney for four years in Regional Counsel's Office. I left government in 1970 and entered into private practice where I also specialized in income and estate tax matters for four and one half years. Presently, I am in my second year of teaching at the University of Toledo College of Law. Obviously, I speak from the perspective of both government and private practice.

This Committee throughout its history has held long and difficult hearings on many tax proposals. I like my predecessors and successors have a defined set of values as to my personal feelings as to how "ought" the tax structure be modified, if indeed, at all. I do not, of course, represent any views of former clients or groups.

As applied to the estate and gift tax structure, the most important question I have of myself and this Committee relates to the purpose of the estate and gift tax structure. It amazes me to see how a lawyer's training prepares a man to tinker with a set of statutes without establishing at the

outset the underlying objective of those statutes. In what way can we reform a statute without considering its purpose? Apart from that, is there any method to determine whether the present statutes are successful? What are the precise results of the present estate and gift tax structure and why? What do we want to accomplish and how? Unfortunately, either by ignorance or training, lawyers, whether professor or practitioner, jump into the boat without a star for aiding in direction.

Assuming a precise objective of the estate and gift tax structure is formulated, then the proposed reforms can be judged from a consideration of the following factors:

- (1) Quality of equitable allocation of the tax burden;
- (2) Quality of efficiency in allocation of economic resources
(clearly such changes should not inhibit economic growth); and;
- (3) Non-interference with an individual's private choices as to the beneficiaries of his property.

The countervailing limitation as to the enactment of such reforms relate to the resulting complexity, both as to its ability to be administered by the Internal Revenue Service and the public's ability to understand the changes as they affect present wills and trusts without incurring an unreasonable legal cost in responding to such reforms.

Many have assumed or recommended reforms without directing sufficient consideration as to the purposes of the estate and gift tax structure nor how it relates to our total tax policy. Basic reliance on its continuation and reform is posited upon the fact that it may be one of the most important "progressive structures" in our present tax system. But is this progressive feature of the estate and gift tax structure sufficient to support its existence in view of the nominal revenues it generates?

It shocks me to observe that the estate and gift tax revenue has been such a small part of our total revenue. For example, the percentage of estate and gift tax to total revenues for four out of the last six years (1970 through 1975 inclusive) has been less than 2% and the estimates of 1.7% for 1976 and 1.6% for 1977 do not disclose a reversal of this situation.

Comparison of Total Revenue to Estate and Gift Share of Revenue (In Billions)								
	1970	1971	1972	1973	1974	1975	1976 (est.)	1977 (est.)
Total Revenue	193.7	188.4	208.6	232.2	264.9	280.9	297.5	351.3
Estate & Gift Tax	3.6	3.7	5.4	4.9	5.0	4.6	5.1	5.8
Estate & Gift Tax	1.8%	1.9%	2.6%	2.1%	1.8%	1.6%	1.7%	1.6%
Customs	2.4	2.6	3.3	3.2	3.3	3.6	3.8	4.3
Customs	1.2%	1.3%	1.5%	1.3%	1.2%	1.2%	1.3%	1.2%
Social Security	39.1	41.7	46.1	54.9	65.9	75.2	80.1	96.0
Social Security	20.2%	22.1%	22.1%	23.6%	24.9%	26.7%	26.9%	27.3%

Source: The Budget of the United States Government

The above clearly discloses that estate and gift tax are not a significant part of our total revenues. When one considers the time and effort of lawyering services in providing estate planning, the numerous courses in our law schools and the increasing number of planning conferences by Bar Associations, some consideration should be given to the cost and allocation of lawyering services for such a small part of the revenue system. Compare the extent of those efforts and resources to those expended by the legal community on the present social security tax system, which produces nearly 30% of the total federal tax

revenues of this nation. Yet the Social Security tax structure, as opposed to the estate and gift tax structure, is regressive. This country will likely face the hard choices of funding social security before the end of this decade--possibly from either current income tax revenues or from the creation of a progressive tax rate imposing social security tax.

In any event, it becomes particularly incumbent upon this Committee to set out the objectives of the estate and gift tax and how the enacted reforms will carry out those objectives.

Estate and Gift Tax Objectives: Revenue?

The estate and gift taxes have never produced significant revenue since its enactment in 1916. Yet, as the well respected tax economist Joseph A. Pechman noted, "One can only guess why the estate and gift taxes have not been more successful. A possible explanation is that equalization of the distribution of wealth by taxation is not yet accepted in the United States."¹ I believe it is fairly obvious that we do not look to estate and gift taxes as a means to redistribute wealth. Therefore, its primary purpose simply should be to raise revenue in an equitable and economic fashion.

Perhaps another way to demonstrate the insignificance of the revenue of estate and gift taxes is to consider the Tax Reduction Act of 1975 and the present proposals concerning H.R. 10612. President Ford in his annual message on the State of the Union (January 15, 1975) proposed a one year tax reduction of 16 billion dollars which was enacted, with modifications increasing the amount of reduction to 24.8 billion, by this Congress last March 26, 1975. That one year reduction was more than 4.5 times the entire amount collected from estate and gift taxes. The rebate (maximum of (\$200)

¹Pechman, Federal Tax Policy, Brookings Institute, 187 (1971).

to each taxpayer) cost the U.S. an estimated 8.1 billion dollars. The refund of 1974 taxes, the \$50 one time payment to social security recipients, and temporary increased unemployment compensation cost \$10 billion. While the income reduction of 1975 was tied toward other concerns such as stimulation of the economy in a manner comparable to the Revenue Act of 1964, there still must be some serious concern as to the total amounts collected. H.R. 10612 which passed the House last year and is pending before the Senate Finance Committee carries the income tax reduction even further into future taxable years. The additional credit allowance proposed for dependency exemptions to a maximum of \$240 (2% of \$12,000 of taxable income) will cost \$5 billion. This latter amount alone equals the present yield from estate and gift tax. Need I say more?

Perhaps the present "real" function of the system is not collection of revenues but rather a socio-political compromise that allows the uninformed middle class to believe the rich pay more in estate and gift taxes and the corollary illusion of the rich that they pay excessive estate and gift taxes. If the amount of estate and gift taxes further decrease, one reasonably would ask this Committee whether such continuation and reform is worth the dual cost of (1) dealing with the complexities inherent in such reform modifications, and (2) the immense amount of resources that estate and gift taxation and planning commands in our society. While I hesitate to advocate its repeal, I do urge that this Committee consider what increase in revenues from the estate and gift tax structure is reasonable for us to recommend either its continuation or reform. The Treasury Proposals of 1969 did not suggest an increase nor did the former Administration in 1973 when hearings were held before this Committee. A statement by former Secretary George P. Schultz on April 30, 1973 is exemplary of a very prominent view regarding estate and gift tax revisions:

. . . First, we urge that whatever changes are made in estate and gift tax laws, they be balanced in a way which does not change the overall revenue from these taxes. (emphasis added).

There seems to be a consistent avoidance of the hard question of the underlying purpose of the estate and gift tax structure, and a strong resulting proclivity toward statutory tinkering with a rather ineffective tax system.

Specific Proposals

Being a product of lawyering training and tax tinkering, let me offer my views as to the proposals:

1. Increase Exemption:

This is a Presidential campaign year. The President and some of the contenders, if the course of history runs true, will propose tax reforms which will invite substantial political support for their candidacy. See, e.g., President Ford's State of the Union address on January 19 of this year recommending further income tax reduction and proposed ". . . estate tax changes so that family businesses and family farms can be handed down from generation to generation without having to be sold to pay taxes."

An increase in the estate tax exemption would further weaken the undefined revenue objectives of the estate and gift tax structure, as discussed above. If the Committee is inclined to support such an increase, I would suggest that the increase be allowable in full for estates having a taxable estate less than \$500,000 and then such increase phased out as taxable estates exceed \$500,000 to \$1,000,000.

2. Valuation of Farm Lands

As to farm land exemptions, one can fully appreciate the problem of inflation causing the termination of farming operations which cannot generate sufficient income to pay estate tax obligations.

However, what are the precise figures to support the proposition that many farms are in fact being sold to pay estate taxes? I feel it is important for the Committee to explore the dimensions of the problem before it enacts specialized relief for valuation of farm lands at less than fair value.

Despite the apparent logic and quality of the argument concerning a special exemption for the valuation of farm land, I am reasonably certain that individuals outside the scope of bona fide objectives of the statute will attempt to qualify under its exceptions. See, eg, H.R. 1973 providing exemption for farm land, "woodland," or "scenic open spaces." The latter two ideas are wide open for obvious abuse.

3. Installment Payout for Farmers and Others

The proposal to increase time for payout sounds responsive to the needs of those estates which are not sufficiently liquid to pay the tax without incurring economic losses through forced sales. However, there presently exists a limited procedure for installment payout under Section 6166 of the Internal Revenue Code. President Ford's proposal of a 5 year moratorium and then a 20 year payout of the estate tax liability is staggering. The revenue loss, I suspect, from the delay will be in the millions of dollars and the possibility of the tax never being paid must be considered a possibility. In addition there will be increased governmental cost in monitoring such a program. The present installment system, if slightly liberalized, should be sufficient.

4. Unified Transfer Tax

Treatment of one transfer tax makes sense, with the rates being lower and slightly progressive for transfers up to 200,000, with a significant increase in progressive rates for transfers over 200,000. A maximum rate of 50% to 60% would be high enough. I also believe the failure to gross up gifts is a technical omission that should be rectified in the unified rate structure.

Any retention by the transferor of an interest in connection with a transfer should delay the transfer tax to the date of death. Here I speak precisely as to retention of voting rights which under the Supreme Court's view in Byrum and more recently by the Tax Court in Gilmore are not sufficient to cause inclusion in the gross estate under existing law. It is my view that retention of any rights should delay the transfer tax until death.

5. Annual Exclusion

It's surprising to observe the quantity of litigation concerning the \$3,000 annual exclusion for the gift of a present interest. I suspect the government and taxpayer alike may be incurring legal fees in excess of the amount of tax in issue. I recommend an annual exclusion only for outright transfers of property to adults. I would recommend an annual exclusion for transfer in trust for benefit of minors only if "both income and corpus" are required to be distributed to them at majority (now 18 in most states). The creative techniques of brilliant practitioners have destroyed the limitations imposed on the qualification for the annual exclusion on many transfers in trust which in substance are transfers of a future interest.

6. Unlimited Marital Deduction

Many believe there exist substantial reasons to allow an unlimited (100%) marital deduction for outright transfers of property to the surviving spouse. However, an unlimited marital deduction for amounts, for example, of \$10 million dollars is completely unjustified. The unlimited spousal

transfer should be allowable only to the extent necessary to have corpus of a sufficient size, so that the income therefrom would be sufficient for the support and maintenance of the surviving spouse. A corpus of \$500,000 in most circumstances should be sufficient to accomplish this objective. I would recommend the continuation of the present system concerning the allowance of the marital deduction for amounts in excess of \$500,000.

7. Capital Gains Tax on Appreciation at Death or Transfer

Many feel that there is a serious inequity in allowing assets includible in an estate to qualify for a stepped-up tax basis without a corresponding imposition on an income tax. The imposition of an income tax on appreciation at death would further exacerbate liquidity problems of estates (despite the fact it would be treated as a debt of the estate). I believe the complexity of the reform and the ensuing liquidity problem would be so great so as not to justify enactment of such a proposal. Perhaps I would support a minor flat income tax on the appreciation in value of assets includible in estates as a cost of the increase in basis. Such tax should not qualify as a debt of the estate.

I also do not favor income tax realization upon inter vivos transfers of property, since such tax would unnecessarily hinder lifetime transfers.

Alternatively, if estate and gift taxes were repealed, the complete imposition of an income tax on property transferred by will or gift would be very reasonable and appropriate. Although estate and gift taxes are different from income taxes, the same "act" resulting in the imposition of two separate taxes is just too difficult a burden to support in practice as distinguished from theory. That is why I would recommend a nominal payment (5/10%) for the increase in tax basis.

8. Generation Skipping Transfers

The idea on the basis of equity of imposing a generation tax is outstanding but the procedural statutory delivery is too complex. I suggest there be another flat tax of 5-10% for inter vivos or testamentary transfers which constitute generation shipping devices. I would also suggest a separate generation tax on every trust which fails to distribute its corpus outright every 25 years.

The combination of taxing either the donor on a percentage of his rate or an electing donee would be very difficult to understand for both the public and many practitioners. It invites comparison to the unlimited throwback rules pertaining to accumulated income of a trust. Some are only now understanding the rules concerning deductibility of charitable remainders.

9. Post Death Payments to Former Spouse

I believe all post death obligations to former spouses should be deductible by the estate. It is unrealistic to consider transfers of this nature like transfers to a present wife for release of marital rights which are not adequate consideration pursuant to Section 2043(b). I recommend a statute comparable to Section 2516 be enacted as Section 2043(c), allowing such transfers to be considered for adequate consideration and/or allowed as a deduction as a debt of the estate under Section 2053.

10. Redemption of Stock of Closely Held Corporation

Because liquidity is a real concern I would recommend increasing non-taxable redemptions by the estate or heirs of non-listed stock if

- (1) all such stock owned by the estate and/or heir is redeemed and
- (2) the value of such stock is not in excess of 1 million. My concern

here is that the benefits of Section 303 may not be sufficient and the complexities of Section 302 so great that heirs not interested in participation in a closely held business or an estate in need of cash may not be able to pass a Section 302 redemption because of attribution. My recommendation would allow the estate and/or heir to sell all of the stock without fear or concern with respect to Sections 302 or 303.

11. Charitable Deduction

I recommend continuation of a 100% deduction for outright transfers of property to qualifying charitable organizations. Depending on changes in the marital deduction, I recommend the charitable deduction be applied to reduce the adjusted gross estate for purposes of computing the marital deduction. I see no reason why the marital deduction should be increased by one-half the amounts going to a charity.

Summary

It is important to identify the social and economic objectives of the estate and gift tax structure. The past freely discloses no real intention to redistribute wealth through estate and gift tax. Therefore, the sole concern is the issue of what amount of revenue should be collected through this structure without unduly interfering with economic investment and savings needed for investment. Most believe that estate and gift taxes have less adverse effects on incentives and investments than do income taxes. Except for the situation whereby the family business and/or farm might have to be sold, the principal important quality of such estate and gift taxes is that they are fully progressive taxes imposed upon those who are reasonably able to pay the tax.

Finally, your experience with the limitation imposed on charitable remainders, and demands for extensions of time before such charitable limitation became effective, suggest a modest and slow change in the system. Perhaps the reforms should be phased in over a five year period (particularly those that impose tax). I would specifically grant the Commissioner additionally defined powers to allow for resolution of the transitional problems which are not fully anticipated by the statute and require the Joint Committee to review those decisions which affect a reduction of tax in excess of \$100,000.

If we add further exemptions and increase deductions without regard to results, we may see within the next 10 years the quiet death of such taxes. On the other hand, a review and significant statement as to purpose and method to achieve such objective by this Committee with subsequent adoption by Congress may reverse the current state of dying suspension. At the present time we lawyers are creating more smoke and discussion than the fiscal fires of estate and gift tax structure deserve.

STATEMENT OF JOSEPH M. DODGE,
FOR COMMITTEE ON
WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES

The goals of estate and gift tax reform should be the attainment of equity, neutrality, and intelligibility. The latter term is akin to, but distinct from, the idea of simplicity. Intelligibility here refers to the possibility of the scheme of taxing gratuitous transfers being based upon understandable and acceptable principles. I propose that one such principle be that of substantial ownership, which is familiar in the income tax area from *Helfring v. Clifford*, 309 U.S. 1(1940), and its judicial, administrative and statutory progeny.

It is self-evident that much of estate and gift tax doctrine is based upon ownership and the transfer thereof. The doctrine of substantial ownership has long been the foundation for the estate tax rules in the area of inter-vivos transfers with retained rights, powers, and interests, which are deemed to be testamentary in nature according to Code sections 2036, 2037, 2038, 2039, 2040, and 2042. In many, but not all, of such cases the transfer is also deemed incomplete for gift tax purposes. One of the tasks of reform is, I think, to apply this principle consistently in order to eliminate needless overlap between the gift and estate taxes. This task can proceed in the presence or absence of the (structural) integration of the rate, base and exemption structure of the two taxes.

INTEGRATION

In the reform area referred to as integration, the issue, with respect to inter-vivos transfers with retained substantial ownership, is whether to impose the tax at the time of transfer or at death (including the transfer or release of substantial ownership rights). Under either a unified or dual tax system, the revenue gained by subjecting the transfer to tax at the earlier time should approximately equal the additional revenue due to appreciation and accumulated income since the time of gift to be obtained by taxing the same transfer at death. Under the present dual tax system, there are various incentives for effecting completed gifts, but the rub is that the donor must part with the property. Evidence suggests that such incentives have not been sufficient to induce the effecting of inter-vivos transfers on a widespread basis. Since there exist equitable problems, particularly to recipients, of taxing gifts and bequests differently, such disparity should probably be removed. Similarly, the existence of incentives in this area violates the principle of neutrality. Said principle is double violated by the rule of section 1014 which provides an incentive for retaining property until death. In any event, the policy factors favoring encouragement of inter-vivos transfers do not seem sufficiently weighty in their own right to support implementing the same through use of the tax system. Finally, doctrinal unification on a systematic and thorough basis is achievable if the disparity should be eliminated. Of particularly desirability would be the elimination of section 2035 (transfers in contemplation

-3-

of death) and its attendant wasteful factual disputes. In sum, I favor structural unification of the gratuitous-transfer taxing scheme.

On the doctrinal level, the choice is between an easy-to-complete rule, i.e., impose the tax when the transfer is made, and the hard-to-complete rule, i.e., impose the tax when the transfer becomes completed (which is usually at the death of the donor). I favor the hard-to-complete rule. First, it retains the core principle of existing estate tax sections, so that accumulated administrative and judicial interpretation need not be completely thrown out. Such core principle, of course, is that the donor of an incompleted gift should be taxed on appreciation and accumulated income which he enjoys and/or controls. Second, on the practical side, adoption of the hard-to-complete rule does not assume structural unification, insofar as the Treasury would generally gain revenue overall with respect to this category of transfer. Third, there are difficulties with the easy-to-complete rule in regards to joint-tenancies and transfers of life insurance. Finally, the burden of enforcement and collection seems greatly eased when transfers are taxed at death rather than during life; the public consciousness of the gift tax seems very low, again particularly in the area of joint tenancies and life insurance.

My concrete proposals follow; in some respects they follow the 1969 Treasury and American Law Institute proposals, but they lean more in the direction of the more recent American Bankers

Association draft statute.

Section 2036(a)(1)

Transfers with retained beneficial enjoyment should be subject to the hard-to-complete rule. The gift tax treatment of this type of transfer under present law is particularly unwieldy and results in overlap because it adopts a property-law interest approach involving the use of actuarial tables. The idea of retained enjoyment should be broadened to include actual, as well as "rights" to enjoyment. This would eliminate problems, such as that posed by *Comm'r v. Vander Weele*, 254 F.2d 895 (6th Cir. 1958), where the result may turn on (1) the possibility of inferring an implied agreement between the grantor-beneficiary and the trustee of a sprinkle trust or (2) the status of creditor's rights against such trust.

In addition, the "transfer" and "retained-interest" requirements should be clarified. Cases such as *Goodnow v. United States*, 302 F.2d 516 (Ct.Cl. 1962), and *United States v. Byrum*, 408 U.S. 125 (1972), seem misguided insofar as they require a retention at the same time as the transfer. Section 2038 does have this requirement. The transfer requirement should only refer to the fact that the economic source of the property was the decedent and not some other person. The "retention" requirement should be eliminated in its present form; it should suffice that the right possessed by the transferor have its source (a) in his own prior act (usually the transfer) or (b) in a property arrangement established by another but knowingly utilized by the transferor (the "empty shell" situation).

Section 2037

This section is usually triggered by a contingent reversionary interest which expires at the decedent's death. Such an interest is insubstantial, since it represents neither (vicarious) enjoyment nor control. Moreover, since a reversion by operation of law may presently qualify, this section is a trap for the unwary. At the same time, the application of this section involves technicalities that are difficult to understand even for the sophisticated. In short, this section should be eliminated.

Section 2037 currently applies to retained rights to corpus (as opposed to income) of a trust. See Estate of Klauber, 34 T.C. 968 (1960). This category of transfer should be subject to section 2036; the problem can be solved by amending said section to provide that any amounts payable (or actually paid) to a grantor-beneficiary shall be deemed to come first out of trust accounting income.

Sections 2036(a)(2) and 2038

Powers over transferred property should be treated together in one section. I believe that a power to alter, amend or affect beneficial enjoyment is a substantial power, but I would not so characterize a mere power to terminate or affect the time and manner of enjoyment.

Section 2039

Section 2039 was enacted in 1954 to apply the principles of sections 2036 (and 2037) to (employer) annuities. The problem

of integrating the "transfer" (death benefit) and "retained interest" (amounts payable to the decedent) elements was dealt with through the "contract or agreement" device. Compare Montgomery v. Comm'r, 458 F.2d 616 (5th Cir. 1972), with Fidelity-Philadelphia Trust Co. v. Smith, 356 U.S. 874 (1958) (prior law). Unfortunately, the contract requirement has often defeated inclusion under section 2039. E.g., Estate of Bogley v. United States, 1975-1 U.S.T.C. para. 13,068 (Ct.Cl. 1975). It seems proper that all employee death benefits should be includible where the source of such payments was the employee's employment status as opposed to the employer's benevolent or charitable impulse towards the recipient, regardless of whether the employee's rights were non-forfeitable or otherwise vested.

Section 2040

The creation of a joint tenancy is a form of testamentary transfer with a retained right (to rents), power (of severance) and interest (contingent reversion). The gift tax treatment of such creation is complex because such rights vary depending on local law and the type of tenancy. Accordingly, section 2515 was enacted in 1954 to treat the creation of such tenancies among spouses with respect to real estate as being incomplete for gift tax purposes. This rule would be in effect preserved and expanded under a proposed unlimited marital deduction, but in other situations it has been suggested that the creation of a joint tenancy should be taxed one-half when made and one-half upon death. I believe that the principle of section 2515 should

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be extended to cover all cases. First, it best accords with the notion of substantial ownership; the creator of a joint tenancy has not surrendered much in the way of economic enjoyment or control. Second, it seems arbitrary in this area to urge different rules according to the type of property involved, or whether the joint tenants are spouses. Third, many persons probably do not presently comprehend the gift or estate tax implications attendant upon the creation of joint tenancies. The general approach of section 2040 should be retained. If an unlimited marital deduction were enacted, the tracing problem under present section 2040 would become moot with respect to joint tenancies involving spouses.

Section 2042

With respect to life insurance, Congress in 1954 eliminated the premium-payment test, under which the insured was taxed on that portion of the proceeds as the premiums paid by him bore to all of the premiums paid, even where the insured possessed no incidents of ownership with respect to the policies at his death. The reason for this change was to enable an insured, like a trust grantor, to avoid estate inclusion by cutting the strings with respect to the property. Since 1954, two problem situations have arisen with respect to life insurance: (1) a transfer away by the insured of incidents of ownership followed by the payment of premiums in contemplation of death, compare *Bel. v. United States*, 452 F.2d 683 (5th Cir. 1971), with *Inez G. Coleman*, 52 T.C. 921 (1970), and (2) the acquisition by the in-

sured of incidents of ownership but in a fiduciary capacity, see, e.g., *Rose v. United States*, 511 F.2d 259 (5th Cir. 1975). Both of these problems have inadvertently arisen from the deletion of the premium-payment test, since said deletion eliminated the "transfer" requirement from section 2042 which is present in sections 2036 through 2040 and also in section 2035.

I believe that transfers of insurance should prima facie be taxed at death because: (1) insurance is inherently testamentary, (2) the amount transferred is the face amount, which is greater than the gift tax value, and (3) the matured policy provides a source of funds to pay the transfer tax. Under present law, includibility of the proceeds results in some cases pursuant to a "transfer" theory under section 2035, without regard to section 2042; but the subjective aspect of that section is undesirable and the three-year cut-off period is arbitrary in this type of situation. A preferred approach, along the lines of section 2040, would be to presume that the face amount is includible at the insured's death; however, the insured should be permitted to prove that he did not transfer the face amount. For most policy types, the portion not transferred by him would be the excess of the face amount over the cash-surrender value at the time the insured ceased paying premiums. (Such cash surrender value, plus premiums paid by the insured, would have been taxed earlier). In the case of pure term or accident insurance, the result would hinge entirely on who paid the (last) premium which in effect created the entire proceeds. The foregoing in effect amounts to a modified "negative" premium-payment test.

Life insurance premiums are the economic source of the proceeds, and therefore the proposed scheme is appropriate. Such is not a disguised return to the pre-1954 premium-payment test; the pro-rata approach of said test bore no relation to economic or any other reality.

Since the identity of the premium-payer is crucial, it would be desirable to adopt a rule wherein payments by the insured's spouse would be deemed to be by the insured. Cf. §677 (a)(3). On the other hand, under an unlimited marital deduction, the tracing problem would not be that important.

The reverse premium-payment approach would also help to solve the problem where the insured held incidents of ownership in a fiduciary capacity: the proceeds in such a case would prima facie not be includible in the insured's estate since he did not pay premiums in his personal capacity. This result would be overcome only where the powers held by the insured were equivalent to those constituting a general power of appointment. In other words, the enactment of a transfer requirement for life insurance would suggest a revision of the incidents-of-ownership aspect of section 2042 to accord with the principles of section 2041. Said incidents-of-ownership test would come into play only if the proceeds would be excludible under the premium-payment test.

Taxation of Generation-Skipping Transfers

The present transfer tax system contains a gap insofar as it does not cover the termination of an interest of a trust beneficiary which necessarily involves the shifting of enjoyment to

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another. This gap results from adoption of a basic principle of the law of future interests, i.e., the successor interest (or remainder) was transmitted by and from the person creating the trust and not the preceding interest. Such doctrine need and should not be controlling for a system of federal transfer taxation.

The arguments against reform in this area, and the replies thereto, follow:

First, it is said that taxing such shifts in enjoyment would entail a radical departure from present law. Such argument has force if present law is satisfactory. Unfortunately, present law results in significant revenue loss and violates the principles of neutrality and equity. It violates neutrality because there is an incentive to employ generation-skipping trusts in order to save death taxes when such is not called for by the family and property situation. As to equity, different members of the "grandchildren" generation might ultimately receive varying amounts even though the amounts passing from the ancestor to the "children" generation were equal. Also, wealthy individuals are uniquely able to afford to create such trusts and to subsist on the income of long-term trusts.

The second anti-reform argument is that it would be unfair to tax the full value of property where only "part" of it was enjoyed by the preceding interest. The existence of the substantial ownership doctrine in the inter vivos transfer area is concededly not a compelling rebuttal insofar as there all interests

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have their source in the same person and the issue is simply when to impose the tax rather than whether to impose it. Nevertheless, substantial ownership concepts provide a theory on which the reform may be instituted. Moreover, under present law, a tax is imposed by reason of an unlimited testamentary power of disposition (general power of appointment by Will). It is submitted that current beneficial enjoyment of property is equally or more significant for the parties concerned than a mere power to control future enjoyment. Also, it is of course misleading to speak of a tax upon the current beneficiary; any tax resulting from a reform should be designed to be a tax imposed on the property, by reason of a shifting of enjoyment in the property, borne by the successor interests therein. It is equally misleading to speak of a reform in this area as being a "penalty" on transfers which may have a legitimate non-tax-avoidance purpose. The goal, rather, is simply to eliminate the undue tax advantages which such transfers currently entail. Finally, if Congress accepts the partial-interest argument, it can enact the reform but with a different rate schedule applicable thereto. I personally would not favor a separate rate schedule, however.

Perhaps the greatest stumbling block to reform is the notion that it would inevitably be unworkable and overly complex. I believe that the Treasury and American Law Institute proposals contain serious flaws of this nature. The problem lies with the following reasoning: (1) generation-skipping transfers are

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bad, (2) this loophole should be plugged, and (3) the best way to do this is to penalize transfers in this form by imposing an additional tax thereon. First of all, generation-skipping trusts may be motivated by sound family and property management needs. The problem, rather, is simply the skipping of a tax with respect to a shifting of enjoyment. Secondly, it is inappropriate to introduce the concept of penalties and disincentives into the estate tax area. There is no reason to penalize something which is not demonstrably harmful to the economy or society, and even if such harm could be shown I would not favor using the tax system in the first instance to remedy it. Thirdly, there is no reason to tax outright generation-skipping transfers: an additional tax on the same would create inequities among different donees depending on their relationship to the donor. There are further equitable and technical problems raised by this type of approach which I shall only list: 1) defining what constitutes a skipped generation, 2) the possibility of exempting from the additional tax skips of one generation (an idea which I find totally illogical), 3) computing the additional tax on the basis of arbitrary assumptions, and 4) the provision of elections whose mechanics are complex and whose ramifications are obscure.

The substantial ownership concept provides, I think, an intelligible basis for dealing with the generation-skipping problem. A tax would be imposed by reason of a shifting of enjoyment away from a current beneficiary by reason of death, expiration of a specified period, transfer, forfeiture, corpus

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distribution, or whatever. Current enjoyment would be defined as a right to current enjoyment or actual enjoyment, whichever yields the greater amount. (This modification could also be plugged into a revised section 2036). The concept of actual enjoyment is required to deal with discretionary trusts: the amount subject to tax would be that portion of the corpus which the income of the trust paid or payable to the beneficiary bears to the entire income of the trust.

The foregoing formula entails certain technical rules: First, "income" refers to trust accounting income. Second, all distributions and payments should be deemed to be first out of trust accounting income, then out of accumulated trust accounting income, and finally out of corpus. Third, the numerator and denominator of the fraction could for the sake of record-keeping be computed on the basis of a relevant period, such as the period up to and including the termination event measured from the beginning of the (e.g.) tenth preceding full trust accounting year. These rules would conceptually resemble some aspects of Subchapter J but with far fewer technical difficulties.

Permanent accumulations could avoid tax under this proposal. I believe, however, that the problem of accumulations is overrated, since (1) accumulations (except in the case of minors) do not normally serve family purposes and (2) the income tax throwback rules severely limit their appeal. In any event, distributions of accumulated income would enter into the numerator of the fraction. Also, accumulations to which a beneficiary has a vested

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right could be considered as having been paid to him. If accumulation trusts become widely utilized as a tax-avoidance device, Congress can deal with it separately, perhaps by imposing an income surtax.

Other technical matters which can be adequately dealt with are listed below:

1. Separate annuities and accumulation trust arrangements by a settlor or decedent would be combined on an objective basis.
2. Trusts with low-income yields, which are similar economically to accumulation trusts, would be heavily taxed under this proposal. To compensate, if such is thought desirable, the denominator of the fraction could be defined as (e.g.) five percent of the corpus rather than actual trust accounting income.
3. Distributions in excess of current and accumulated income would be treated to the extent thereof as a pro-rata termination for all current beneficiaries.
4. The problem of over-taxing the trust upon the termination of interests in close temporal succession can and should be dealt with by liberalizing section 2013 to better accord with the idea of a generation.
5. The tax should prima facie be borne by the property, and hence the successors in interest thereto, unless otherwise apportioned.

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The fact that tax-avoidance devices might conceivably be developed in the future is no reason to withhold reform presently: Congress can anticipate some such devices and deal with others if and when they arise. Significant complexity would evolve mainly with respect to the unusual situations; the more common ones would be treated with relative simplicity and on a comprehensible basis.

TESTIMONY OF

JOSEPH A. HUBENAK
CHAIRMAN, AGRICULTURE AND LIVESTOCK COMMITTEE
HOUSE OF REPRESENTATIVES
TEXAS

MEMBER, TASK FORCE ON FOOD SUPPLY AND AGRICULTURE
NATIONAL CONFERENCE OF STATE LEGISLATURES

MR. CHAIRMAN, MY NAME IS JOSEPH HUBENAK, AND I SERVE AS CHAIRMAN OF THE AGRICULTURE AND LIVESTOCK COMMITTEE OF THE TEXAS HOUSE OF REPRESENTATIVES. I AM APPEARING BEFORE YOU TODAY ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, THE OFFICIAL ORGANIZATION REPRESENTING THE NATION'S 7600 STATE LEGISLATORS AND THEIR STAFF.

NCSL HAS LONG SUPPORTED REVISION OF THE FEDERAL ESTATE TAX LAWS AND HAS RECOMMENDED THAT THE PRESENT EXEMPTION LEVEL OF \$60,000 BE INCREASED SUBSTANTIALLY. HOWEVER, AFTER FURTHER STUDY, WE EXTENDED OUR POSITION AT A MEETING LAST WEEK TO INCLUDE THAT:

(1) THE PRESENT \$60,000 EXEMPTION BE INCREASED TO \$200,000 FOR ALL ESTATES;

(2) THE MARITAL DEDUCTION FOR ALL ESTATES BE INCREASED TO 50% OF THE ADJUSTED GROSS ESTATE, PLUS \$100,000; AND

(3) FARM PROPERTY BE ASSESSED AT ITS VALUE FOR CURRENT AGRICULTURAL USE, AND NOT AT ITS MARKET VALUE.

WHILE RAISING THE EXEMPTION LEVEL SHOULD HAVE THE HIGHEST PRIORITY WHEN CONGRESS REVISES THE LAW, THE OTHER TWO PROVISIONS ARE ESSENTIAL FOR REINFORCING THE POSITIVE EFFECT ON SMALL BUSINESSES AND FARMS. CHANGES IN THIS LAW WILL HAVE MAJOR RAMIFICATIONS, BOTH FOR THE FINANCIAL STABILITY OF THOSE WHO INHERIT SMALL ESTATES, AND, MORE IMPORTANTLY, FOR THE FABRIC OF AMERICAN AGRICULTURE ITSELF.

STATISTICS SHOW THAT THE SMALL FARM IS DISAPPEARING AT AN ALARMING RATE. SOME ESTIMATES INDICATE THAT THE UNITED

STATES WILL LOSE BETWEEN 200,000 AND 400,000 FARMS OVER THE NEXT 20 YEARS. EVEN THE U.S. DEPARTMENT OF AGRICULTURE PROJECTS THAT AMERICA WILL HAVE A MILLION FEWER FARM UNITS BY THE TURN OF THE CENTURY.

ONE STUDY CONDUCTED BY THE DEPARTMENT OF AGRICULTURE INDICATES THAT THE SMALL FARM, MANAGED AND OPERATED BY 1 TO 3 PEOPLE, IS THE MOST EFFICIENT UNIT FOR AGRICULTURAL PRODUCTION. THIS 1968 STUDY POINTS OUT THAT EFFICIENCY REACHES A PLATEAU WITH THE SMALL UNIT AND REMAINS CONSTANT THROUGH THE LARGE-SIZE RANGE. AGRICULTURE IS JUST NOT SUBJECT TO THE SAME OPPORTUNITIES FOR ECONOMIES OF SCALE THAT INDUSTRY IS.

LOSING THESE UNITS, THEN, WILL HAVE SERIOUS REPERCUSSIONS FOR THE PRODUCTIVE CAPACITY OF AMERICAN AGRICULTURE. AT A TIME WHEN THE WORLD IS DEMANDING MORE FOOD FROM THE AMERICAN FARMER AND WHEN AGRICULTURAL EXPORTS ARE MAINTAINING A HEALTHY BALANCE OF TRADE FOR THIS COUNTRY, LOSS OF THESE UNITS CANNOT BE TOLERATED.

THE PRESSURES OF URBAN DEVELOPMENT ARE ALSO TAKING THEIR TOLL ON THE AVAILABILITY OF PRIME AGRICULTURAL LAND. SUCH URBAN GROWTH CONSUMES ABOUT 2.2 MILLION ACRES OF FARMLAND EACH YEAR - AND 20% OF ALL FARMS IN THIS COUNTRY ARE ALREADY WITHIN METROPOLITAN AREAS.

IT IS ON THE RURAL-URBAN FRINGE, THOUGH, WHERE THE SMALL FARM SUFFERS ITS GREATEST DEMISE. THE PRESSURES OF DEVELOPMENT FORCE UP LAND VALUES IN THIS MARGIN. LAND THEN TAKES

ON A "SPECULATOR'S VALUE", AN ARTIFICIALLY HIGH AMOUNT. TO AGGRAVATE THE PROBLEM, AN HEIR TO FARM PROPERTY IN THIS FRINGE AREA DISCOVERS THAT THE HIGH PROPERTY VALUE CAUSES HIS ESTATE TAXES TO BE EXHORBITANT. UNFORTUNATELY, A FARM'S PRODUCTIVE CAPACITY DOES NOT INCREASE WHEN ITS MARKET VALUE INCREASES. THEREFORE, TO AFFORD THE PAYMENTS, AN HEIR MUST SELL THE LAND, EVEN IF HE DESIRES TO KEEP IT IN AGRICULTURAL USE. THE UNFORTUNATE RESULT IS THAT MORE ACRES OF PRODUCTIVE AGRICULTURAL LAND ARE SURRENDERED.

IN RURAL AREAS, THIS PROBLEM IS ALSO ARISING AS THE PRESSURES FOR DEVELOPMENT, PARTICULARLY FROM SECOND HOME AND OTHER RECREATIONAL COMMUNITIES, ARE INCREASING. FARM PROPERTY IS ESPECIALLY ATTRACTIVE TO A DEVELOPER BECAUSE IT IS NEARLY FLAT, IS CLEARED OF TREES AND SHRUBS, AND GENERALLY HAS GOOD DRAINAGE.

ANOTHER PROBLEM IN RURAL AREAS IS THE GROWING INFLUENCE OF AGRIBUSINESS AND CORPORATE LANDHOLDERS WHICH FURTHER ERODE THE LAND AVAILABLE TO THE SMALL FARMER. MORE AND MORE OF AMERICA'S LARGE CORPORATIONS ARE BECOMING AGRICULTURAL LAND OWNERS. NATIONALLY, EIGHT OIL COMPANIES OWN ALMOST 65 MILLION ACRES - 13 TIMES THE SIZE OF NEW JERSEY. AND CORPORATIONS SUCH AS COCA-COLA, STANDARD OIL OF CALIFORNIA, AND RCA ARE INVOLVED IN AGRICULTURAL PRODUCTION.

STATE LEGISLATURES ACROSS THE COUNTRY ARE ALARMED ABOUT THE DISAPPEARANCE OF THE FAMILY FARM AND THE ACCOMPANYING DECREASE IN THE AVAILABILITY OF PRIME AGRICULTURAL

LAND. MANY LEGISLATURES ARE NOW ATTEMPTING TO RECTIFY THESE PROBLEMS. FOR EXAMPLE, SEVERAL STATES ARE CURRENTLY PROPOSING CHANGES IN THEIR OWN STATE ESTATE TAX LAWS. MOST ARE INCREASING THEIR EXEMPTION LEVELS, SUCH AS WYOMING, WHICH HAS RAISED ITS EXEMPTION TO \$60,000 FROM \$10,000. OTHER STATES, SUCH AS MINNESOTA AND SOUTH DAKOTA, ARE ATTEMPTING TO EQUALIZE DEDUCTIONS FOR WIDOWS AND WIDOWERS. WISCONSIN IS ALSO EXAMINING THE POSSIBILITY OF DEFERRING TAX PAYMENTS ON INHERITED PROPERTY. AND THE MINNESOTA LEGISLATURE HAS PROVIDED FOR AN ALTERNATIVE TAX VALUATION METHOD. IF THE ESTATE PASSING TO THE SURVIVING SPOUSE IS LESS THAN \$500,000 AND IF THE TAX COMPUTED ON 50% OF THE ESTATE, WITHOUT USING EXEMPTIONS, IS LESS THAN THE TAX COMPUTED WITH NORMAL EXEMPTIONS ON THE ENTIRE ESTATE, THEN THE LESSER TAX CAN BE PAID.

SEVERAL OTHER STATES, INCLUDING VERMONT AND MASSACHUSETTS, HAVE DEVELOPED STATE FOOD POLICIES THAT RECOMMEND, AMONG OTHER CHANGES, ESTATE TAX BENEFITS FOR FARMS WHICH ARE WILLED TO SUCCEEDING GENERATIONS AND REMAIN IN ACTIVE FARM PRODUCTION FOR A CERTAIN TIME PERIOD. VERMONT IS ALSO CONSIDERING THE FEASIBILITY OF EXEMPTING THE FIRST \$10,000 OF NET BUSINESS INCOME (INCLUDING THAT OF A FARM) FROM TAXATION. THE MASSACHUSETTS LEGISLATURE IS ALSO CONSIDERING A BILL TO VALUE FARM LAND AT ITS CURRENT USE FOR STATE ESTATE TAX PURPOSES.

OTHER STATE LEGISLATIVE ACTIONS TO PRESERVE THE FAMILY FARM INCLUDE REGULATION OF CORPORATE FARMING. NINE STATES

(IOWA, KANSAS, MINNESOTA, MISSOURI, NEBRASKA, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, AND WISCONSIN) HAVE ENACTED LAWS IN THIS AREA. KANSAS WAS THE FIRST TO DO SO IN 1931, AND NORTH DAKOTA FOLLOWED SHORTLY THEREAFTER. KANSAS LAW SPECIFIES THAT IF A CORPORATION IS ALLOWED TO FARM A SPECIFIC LIST OF CROPS, IT MUST HAVE 10 OR FEWER STOCKHOLDERS, THE INCORPORATORS MUST BE STATE RESIDENTS, STOCKHOLDERS CANNOT OWN STOCK IN ANY OTHER CORPORATION, AND THAT THE CORPORATION CANNOT OWN OR SUPERVISE MORE THAN 5,000 ACRES. NORTH DAKOTA PROHIBITS VIRTUALLY ALL CORPORATIONS FROM FARMING.

IN ADDITION, THE MAJORITY OF STATES HAVE LAWS ATTEMPTING TO PRESERVE PRIME AGRICULTURAL LAND. MOST TRY TO ACCOMPLISH THIS BY ALLEVIATING THE PROPERTY TAX BURDEN. THREE GENERAL APPROACHES HAVE BEEN USED: PREFERENTIAL ASSESSMENT, WHICH ALLOWS LAND TO BE VALUED AT ITS CURRENT USE, NOT AT ITS MARKET VALUE; DEFERRED TAXATION, WHICH ALSO ALLOWS LAND TO BE ASSESSED AT ITS CURRENT USE VALUE, BUT WHICH PROVIDES THAT IF FARMLAND IS USED FOR DEVELOPMENT, UNPAID TAXES ON THE VALUE ARE RECAPTURED; AND RESTRICTIVE AGREEMENTS, WHICH ALLOW STATE AND LOCAL GOVERNMENTS TO NEGOTIATE WITH A LANDOWNER TO RESTRICT DEVELOPMENT IN EXCHANGE FOR A TAX PREFERENCE.

AT LEAST NINE STATES HAVE PREFERENTIAL ASSESSMENT LAWS, ALTHOUGH REQUIREMENTS FOR PARTICIPATION VARY WITH EACH STATE. AT LEAST SEVENTEEN STATES HAVE DEFERRED TAXATION LAWS. AND STILL OTHER STATES ARE CONSIDERING THE USE OF DEVELOPMENT RIGHTS AND EASEMENTS. THE CALIFORNIA LEGISLATURE IS ALSO

CONSIDERING A BILL TO ESTABLISH AN AGRICULTURAL RESOURCES COUNCIL TO HAVE FINAL AUTHORITY OVER THE STATE'S PRIME AGRICULTURAL LANDS.

STILL OTHER LEGISLATURES ARE EXPERIMENTING WITH PROGRAMS TO ASSIST THE YOUNG FARMER. IN THE MINNESOTA HOUSE OF REPRESENTATIVES, FOR EXAMPLE, THERE IS A BILL TO AID YOUNG FARMERS IN OBTAINING CREDIT TO ACQUIRE FARM REAL ESTATE. THE LEGISLATURE HAS RECOGNIZED THE NEED TO ENCOURAGE THE YOUNG FARMER TO REMAIN IN AGRICULTURE; HOWEVER, FEDERAL ESTATE TAX LAWS FORCE HIM TO LEAVE.

STATE ACTIONS TO PRESERVE THE FAMILY FARM AND ITS ACCOMPANYING AGRICULTURAL LAND WILL NEVER NEVER RESULT IN SUBSTANTIAL SUCCESS, HOWEVER, WHILE THE FEDERAL ESTATE TAX IMPOSES SUCH AN EXHORBITANT BURDEN ON THE SMALL FARMER AND HEIRS TO FARM PROPERTY.

THEREFORE, NCSL RECOMMENDS THAT, FIRST OF ALL, THE EXEMPTION LEVEL BE INCREASED TO \$200,000 FOR ALL ESTATES. STUDIES SHOW THAT WITH THE CURRENT RATE OF INFLATION, AN EXEMPTION OF AT LEAST \$190,000 WOULD BE NECESSARY TO EQUAL THE 1942 PURCHASING POWER OF THE \$60,000 EXEMPTION. EXAMPLES ABOUND OF HOW FARMLAND PURCHASED IN 1942 AT \$50 PER ACRE IS NOW WORTH \$1000 OR MORE PER ACRE. AN ANTIQUATED EXEMPTION OF \$60,000 IS NOT NEARLY SUBSTANTIAL ENOUGH TO EASE THE TAX BURDEN ON AN HEIR.

SECOND, THE MARITAL DEDUCTION FOR ALL ESTATES SHOULD BE INCREASED FROM THE PRESENT 50% OF THE ADJUSTED GROSS

INCOME TO \$100,000 PLUS THE 50% RATE. CHANGES IN THIS PROVISION ARE NECESSARY TO RECOGNIZE THE PARTNERSHIP WHICH EXISTS BETWEEN HUSBAND AND WIFE AND TO ALLEVIATE THE DISCRIMINATION AGAINST WOMEN WHICH CURRENTLY EXISTS IN THE ESTATE TAX LAWS.

AND THIRD, NCSL RECOMMENDS THAT FARM LAND SHOULD BE ASSESSED AT ITS VALUE FOR CURRENT AGRICULTURAL USE AND NOT AT ITS MARKET VALUE. BY INCLUDING THIS PROVISION, AN HEIR TO FARM PROPERTY LOCATED IN AREAS PRESSURED BY URBAN DEVELOPMENT WILL NOT BE FORCED TO SELL LAND THAT HE WISHES TO KEEP IN PRODUCTION. NCSL ALSO SUPPORTS A PROVISION STIPULATING THAT LAND ASSESSED AT ITS CURRENT USE VALUE BE KEPT IN THAT USE FOR AT LEAST FIVE YEARS PRIOR TO AND FIVE YEARS FOLLOWING THE OWNER'S DEATH. THEN, IF THE LAND IS SOLD OR CONVERTED TO DEVELOPMENT, THE MARKET VALUE ASSESSMENT WOULD BE INVOKED. THIS CURRENT USE PROVISION COULD ALSO BE EXTENDED TO INCLUDE WOODLANDS AND SCENIC OPEN SPACE, AS WELL AS AGRICULTURAL LAND.

ALL OF THE PROVISIONS WHICH NCSL RECOMMENDS ARE INCLUDED IN A BILL SPONSORED BY REPRESENTATIVE OMAR BURLESON (D. - TEXAS), A RANKING MEMBER OF THE WAYS AND MEANS COMMITTEE. NCSL RECOMMENDS YOUR CONSIDERATION OF THIS BILL AND ITS SWIFT PASSAGE. THE CHANGES WHICH ARE PROPOSED IN THIS BILL WOULD HAVE THE FOLLOWING EFFECT ON THE FEDERAL BUDGET FOR FISCAL YEAR 1977:

- (1) INCREASING THE EXEMPTION LEVEL TO \$200,000 WILL

INCUR A LOSS OF \$2.2 BILLION;

(2) INCREASING THE MARITAL DEDUCTION WILL CAUSE A LOSS OF ONLY \$400 MILLION; AND

(3) VALUING FARM PROPERTY AT ITS CURRENT USE VALUE WILL CAUSE A LOSS OF \$20 MILLION.

IN SUMMARY, A COMBINED STATE AND FEDERAL EFFORT IS NEEDED TO MAINTAIN THE VIABILITY OF THE FAMILY FARM AND TO INSURE THAT PRIME AGRICULTURAL LAND IS PRESERVED FOR THE FOOD PRODUCTION SO ESSENTIAL TO THE AMERICAN CONSUMER AND OUR FOREIGN CUSTOMERS. THE STATES HAVE REALIZED THEIR ROLE IN RECTIFYING THE PROBLEM, BUT WITHOUT THESE RECOMMENDED CHANGES IN THE FEDERAL ESTATE TAX LAWS, STATE ACTIONS WILL BE GREATLY OVERWHELMED.

THANK YOU, MR. CHAIRMAN, FOR THIS OPPORTUNITY TO RECOMMEND LEGISLATION TO EASE THE BURDEN OF FEDERAL ESTATE TAXES ON THOSE WHO INHERIT SMALL BUSINESSES AND FARMS.

WILLIAM D. BROWNLIE

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United States House of Representatives
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Subject: DIRECT ORAL TESTIMONY OF WILLIAM D. BROWNLIE-PRIVATE CITIZEN
FEDERAL ESTATE & GIFT TAX HEARINGS - FOR WEEK OF MARCH 15, 1976

My testimony is specifically directed towards the Federal Estate Tax inequalities that presently exist and affect Keogh (HR-10) and Individual Retirement Account (I.R.A.) Plans.

I am William D. Brownlie, a full-time Boston life insurance salesman specializing in Self-Employed Retirement Plans.

I am appearing today as a private citizen. I am not representing any specific clients nor do I represent any associations or organizations.

However, during my business career, I have been responsible for the creation and design of over 1000 Self-Employed Retirement Plans -- most of them in the Keogh (HR-10) area.

I am here today to inform the Committee that millions of Americans who are investing their hard-earned dollars into either Keogh or I.R.A. Plans are not receiving the same tax considerations as those covered under Corporate Retirement Plans---particularly,
in the area of the Federal Estate Tax exemption.

Continued....

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Subject: Direct Oral Testimony of William D. Brownlie-Private Citizen
Federal Estate & Gift Tax Hearings - For Week of March 15, 1976

The beneficial tax provisions of Corporate Retirement Plans have served both the country and its citizens well over a period of years. It goes without saying that Corporate Retirement Plan assets -- amount to billions of dollars and are a constant source of revenue for investment in the economy of our country.

Unfortunately, these beneficial long-standing tax provisions available for Corporate Retirement Plans are not available for individuals utilizing either Keogh (HR-10) or I.R.A. Plans.

Specifically, Section 2039 of the Internal Revenue Code states that Corporate Retirement Plan assets are not subject to the Federal Estate Tax when a participant dies, if such plan assets are payable to a named beneficiary, meaning spouse, children, parents or personal trust.

The Federal Estate Tax exemption which is available for beneficiaries of Corporate Retirement Plan participants is NOT allowed for beneficiaries of Keogh and I.R.A. Plan participants.

Continued....

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Subject: Direct Oral Testimony of William D. Brownlie - Private Citizen
Federal Estate & Gift Tax Hearings - For Week of March 15, 1976

This is unfair and discriminatory, and I do not believe it was and is the intent of Congress to have it this way. A simple amendment to Section 2039 of the Internal Revenue Code would solve this severe inequity immediately.

Do you realize that if a 40 year old Self-Employed Individual invests \$7500 each and every year in a Keogh Plan for 25 years, and earns 8% compound interest, a retirement fund of \$592,158 will be created. However, if this individual should die at age 65, \$592,158 will be subject to the Federal Estate Tax under current law.

Conversely, not one penny of \$592,158 would be subject to the Federal Estate Tax if the same results were achieved as part of a Corporate Retirement Plan.

This severe Federal Estate Tax inequity is further compounded for non-incorporated individuals because most states in our country impose their own Inheritance Tax in addition to the Federal Estate Tax.

Continued.....

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Subject: Direct Oral Testimony of William D. Brownlie - Private Citizen
Federal Estate & Gift Tax Hearings - For Week of March 15, 1976

The total area of tax inequalities and inconsistencies pertaining to retirement plans was published in great detail in the Boston Herald-American on Labor Day 1975 entitled, "ADDED TAX REFORM URGED FOR THOSE UNDER NON-CORPORATE RETIREMENT PLANS."

A copy of the Boston Herald-American article is enclosed so that you will have a better frame of reference regarding other tax inequalities.

It is obvious that even with the liberalization of Keogh as to increased deductible amounts, and the creation of I.R.A. as part of The Pension Reform Act of 1974, Congress still has not given the Self-Employed and other individuals, not covered under a retirement plan, the BEST that is available under existing law.

I appreciate the privilege of appearing here today. I sincerely hope that my testimony will enable you, as a Committee, to recommend legislation to be introduced and passed, to end the severe discriminations and inequalities that affect Keogh and I.R.A. Plans.

Added Tax Reform Urged for Those Under Non-Corporate Retirement Plans

By RICHARD LAMERE

Severe tax inconsistencies and other inequities militate against various types of retirement plans as opposed to "favorable treatment" for corporate retirement plans, a Boston life insurance executive charged yesterday.

On the anniversary of the enactment of the Pension Reform Act of 1974 in Washington, William D. Brownlie called for additional tax reform because "the self-employed and other individuals are not receiving the same beneficial tax treatment as their counterparts who are covered under corporate retirement plans."

"There is still much to be done, and this can only be accomplished in tax reform legislation," Brownlie declared.

The legislation enacted last year allowed for the tax deductible contribution to an individual retirement plan to be increased from \$2500 to \$7500 annually in the tax-sheltered Keogh-type deferred-compensation plans.

It also, for the first time, allowed employed individuals, not covered under any pension plan to have their own Individual Retirement Account referred to as IRA, and to be able to contribute a maximum deductible contribution of \$1500 per year.

"Millions of Americans who are investing their tax-deductible dollars into either Keogh Plans or an Individual Retirement Plan for their own do-it-yourself retirement plan are not getting the same tax consideration as those covered under corporate-type plans," stated Brownlie.

"Now is the time for Congress to enact legislation to end discrimination and injustices that adversely affect millions of Americans each year."

Brownlie, who plans to testify as a private citizen at hearings before the House Ways and Means Committee in Washington, insists that severe discrimination and inequality exist among corporate retirement plans, Keogh and IRA plans in the following areas: federal estate tax treatment, federal income tax treatment, integration with Social Security and life insurance.

The first injustice, he said, occurs if a self-employed person such as an architect or pharmacist creates either a Keogh Plan or IRA Plan and dies before retirement "because the entire value of the plan is includable in his estate at the time of his demise."

On the other hand, Brownlie said not one penny of a corporate retirement plan is subject to the federal estate tax if payable to a named beneficiary, such as wife, children, parents, brothers, sisters or personal trust because of Section 2039 of the Internal Revenue Code.

This section provides federal estate tax exclusion for corporate plans, but does not provide it for the self-employed individual under the Keogh Plan or an IRA plan, Brownlie stressed.

Another inconsistency, Brownlie said, is that the employee of a self-employed individual, under a Keogh Plan, is entitled to federal estate tax exclusion. "What

makes it right for the employee and wrong for the boss?" he asked.

Life insurance proceeds, which could amount to many thousands of dollars, are exempt from the federal estate tax for corporate plans. This federal estate tax exclusion is not available for Keogh or IRA plans.

"Because a Keogh Plan could be worth hundreds of thousands of dollars, it is essential for additional life insurance to be purchased for the sole purpose of providing money to pay federal estate taxes," Brownlie said.

Another injustice, he said, is that corporate retirement plans also provide for a \$5000 income tax-free, death benefit, which is not available for either the Keogh or IRA plans.

A third injustice pertains to Social Security integration, said Brownlie, who for several years has stressed "tax inconsistencies in lectures and national conferences and in his monthly column, "Insurance Tips," written for the publication, "Massachusetts Physician."

"Simply stated," Brownlie said, "a corporate employer can reduce the amount of money he contributes to a corporate retirement plan for his employees because he is allowed to take into consideration the fact he is already contributing on their behalf to the Social Security retirement system."

"This also is not available under the existing rules for a vast majority of Keogh plans."

A fourth injustice, Brownlie contended, pertains

to the income tax treatment of life insurance premiums, which can be purchased on a tax-deductible basis as part of a corporate retirement plan, as well as part of a Keogh plan or IRA plan.

When life insurance is used in a retirement plan, a percentage of the premium is subject to federal income tax for all participants. This applies to corporate, Keogh and IRA plans.

However, under a purely corporate plan, when a participant retires, he gets an income tax credit on the total percentage of the premiums that were subject to federal income tax during the life of his plan, and his family gets the same income

tax credit when he dies.

"This income tax credit, unfortunately, does not apply to Keogh or IRA plans, either at retirement or at death — another inconsistency," Brownlie stressed.

"The most notable inconsistency pertaining to life insurance within retirement plans is found in the IRA plan, Brownlie said.

Under existing law, only an indowment type of life insurance policy can be used within IRA.

"This type of life insurance policy," contended Brownlie, "purchases very little insurance protection for the money spent. This is inconsistent with what is allowed for corporate and

Keogh plans, wherein these plans allow for the typical cash value ordinary life policy or the economic type policy, which purchases much higher life insurance protection for the same money spent.

"IRA plans should be changed to allow for the same type of life insurance protection that is permitted

for corporate plans and Keogh plans."

Two months ago, Brownlie spoke on the subject of Keogh plans at the insurance industry's "Million Dollar Round Table" annual meeting in San Francisco, outlining his experiences designing and servicing such plans.

Statement of Donald O. Smith
Boston, Massachusetts

on the

Federal Estate Tax Credit for State Death Taxes
and Related Matters

Introduction

The federal estate tax, under section 2011 of the Code, allows a credit for state inheritance, legacy, succession and estate taxes on the same estate. The credit is allowed in full, dollar for dollar, for the state death tax imposed. It can be said at the outset that a state death tax can be assessed without cost to the taxpayer: the Federal Government bears the entire burden up to the limit of the credit. It is not surprising that all the states - even those that are most conservative in their taxing policies - have imposed death taxes to the full extent of the federal credit.

The limit of the federal credit is determined under a separate table which applies at graduated rates to the taxable estate as defined for purposes of the federal estate tax. The rates and exemption of the credit were established in 1926: they have not changed since then, though the rates of the federal tax have since multiplied. We thus now have a 1926 adjustment for state taxes applied to a radically changed 1976 tax structure. It would be remarkable if the old credit and the new tax meshed with logic and fairness to all under these circumstances.

How the Federal Credit Works

As it existed in 1926, the federal credit was proportional to the federal estate tax imposed. As stated, the rates and exemption of the credit have not changed. Since 1926, the federal estate tax rates have increased, but not proportionately at every bracket. The increases at the lower brackets were far greater (4% to 30% or 7.5 times, for example) than those at the higher brackets (20% to 77% or 3.9 times). In addition, the exemption for the federal estate tax has decreased from \$100,00 to \$60,000.

As a result of the decrease of the tax exemption and other changes, many estates which now pay a federal estate tax produce no credit for state death taxes at all. As a result of the rate changes, smaller estates pay a much higher estate tax, but produce the same credit that they did in 1926. The same is true of the larger estates - but those estates now produce a much higher credit, in proportion to the estate tax, than the smaller estates.

The present variations in credit amounts and rates is shown by the annexed table. For example, the credit for an estate of \$250,000 is \$2,400 (column 3) against a federal tax before credit of \$47,700 (column 2). The effective credit rate (measuring the credit against the federal tax before credit, as it originally was) is 5% (column 4). The credit for an estate of \$5,000,000, on the other hand, is \$391,000, against a federal tax before credit of \$2,430,400, and the credit rate over 16%.

As column 4 of the table shows, the effective credit rate, still in terms of the credit measured against the federal tax before credit, ranges from 0% (because the exemption for the federal tax is \$40,000 less than the effective exemption for the credit) to 19.4% and up to a theoretical limit approaching 20.8%.

The variations in amounts and rates shown on the table for a marital deduction estate are even greater. The term marital deduction estate requires explanation. In 1948, to eliminate a tax advantage available to residents of community property states, the estate tax law was changed to allow a marital deduction that permitted the estate of one spouse to be treated in effect as if it was owned equally by both spouses. The estate of a married couple, passing to children or other persons, is therefore taxed with the exemptions and lower rates applicable to two separate estates, each of one-half the total. It is likely that a majority of the estates of married persons are taxed in this manner.

The marital deduction results in a much smaller federal tax on estates in the lower to middle brackets (compare the tax amounts shown in column 2 with those shown in column 7). The proportional effect on the largest estates is not as great. A similar pattern, magnified by a larger exemption and by the greater rate discrepancies at the lower brackets, occurs in the federal credit for state taxes. Consequently, a far broader range of estates now fall into the zero-credit and low-credit brackets, as shown by comparing column 9 with column 4. For example, the credit for a marital deduction estate of \$250,000 is \$400 (column 8) against a federal tax of \$21,800 (column 7), with an effective credit rate of 1.8%. On an estate of \$5,000,000, the credit is \$277,600, the federal tax is \$1,937,600 and the credit rate 14.3%.

A comparison of the credit with the taxable estate aids in identifying the estates that contribute significantly to state revenues under the credit. Columns 6 and 11 show that estates up to \$500,000, and marital deduction estates up to \$1,000,000, contribute 2% or less to state revenues by reason of the federal credit. Remembering that the federal estate tax usually exempts accumulations under qualified pension and profit sharing plans, it seems likely that the estates of most successful

executives, professionals and entrepreneurs contribute only token amounts to state revenues through the credit.

General Comments

In 1926, the federal credit for state death taxes bore a logical relationship to the federal estate tax: it was in direct proportion to the revenues received by the Federal Government. That may not have been the best method of revenue sharing; but it is difficult to see how the present method represents an improvement. Revenues are now shared in an increasingly disproportionate manner, according to the location of the largest estates. The credit thus favors those states which have or succeed in attracting the wealthiest residents. This tends to encourage the interstate competition for revenues which the credit was once expected to ameliorate.

The federal estate tax marginal rates on the largest estates and incomes are high enough to encourage heroic efforts in the avoidance of additions through state taxation. A state's addition, over the credit, of a 1% tax on assets in the highest federal estate tax bracket consumes over 4% of what remains after the federal tax. All state additions to the federal estate tax can be avoided by a change of domicile from one state to another, though the federal tax generally cannot be avoided even by emigration to a foreign country. A state which loses a large estate to taxation loses all of the federal credit, together with income taxes, property taxes and other benefits.

These considerations suggest that the higher credit rates on the largest estates may be more critical to the maintenance of sound state tax policies than are the rates on the smaller estates. But today, the owners of smaller estates are more sophisticated in tax matters and more able to shop for tax-haven domiciles than they once were. Federal aid to the states in collecting fair death tax revenues from all their citizens, through increase in the credit at lower brackets, is an increasing necessity.

Above all, the structure of the federal credit should be fair, and without discrimination among taxpayers or states that are not justified by clear and sound policy considerations. That does not appear to be the case.

Proposal

The effective rate of the federal estate tax credit for state death taxes should be restored to a single rate applied against the federal tax. A 25% rate would restore the credit to an appropriate level for the smaller estates, without producing a major revenue loss from the larger estates. Addition of a deduction for state taxes above the credit amount would eliminate the double tax which otherwise occurs.

The Federal Gift Tax and State Gift Taxes

There is no credit against the federal gift tax for gift taxes imposed by the states. It may be surprising that a minority of the states have gift taxes, despite the consensus that an effective death tax system requires a gift tax to prevent tax avoidance. Doubtless the federal gift tax has discouraged wholesale tax avoidance by gift, sufficiently to make state gift taxes unnecessary for that purpose; but the fact remains that gifts are an increasingly-used method of tax reduction.

Gifts contribute nothing to the revenues of most of the states, though they reduce taxable estates for federal purposes and, in turn, the federal estate tax credit for state taxes. Every consideration of symmetry and fairness calls for the allowance of a federal credit for state gift taxes.

Total Taxes and Credits										
(Marital Deduction Estates: (on Estates of Both Spouses										
1	2	3	4	5	6	7	8	9	10	11
Taxable Estate before Exemption	Federal Estate Tax before Credit	Credit for State Taxes	% of Credit to Federal Tax before Credit	% of Federal Tax after Credit to Taxable Estate	% of Credit to Taxable Estate	Federal Estate Tax before Credit	Credit for State Taxes	% of Credit to Federal Tax before Credit	% of Federal Tax After Credit	% of Credit to Taxable Estate
60,000	0	0	0 %	0 %	0 %	0	0	0 %	0 %	0 %
120,000	9,500	160	1.7%	7.8%	.1%	0	0	0 %	0 %	0 %
150,000	17,900	400	2.2%	11.7%	.3%	2,100	0	0 %	1.4%	0 %
200,000	32,700	1,200	3.7%	15.8%	.6%	9,600	0	0 %	4.8%	0 %
250,000	47,700	2,400	5.0%	18.1%	.9%	21,800	400	1.8%	8.6%	.2%
300,000	62,700	3,600	5.7%	19.7%	1.2%	35,800	800	2.2%	11.7%	.3%
400,000	94,500	6,800	7.2%	21.9%	1.7%	65,400	2,400	3.7%	15.8%	.6%
500,000	126,500	10,000	7.9%	23.3%	2.0%	95,400	4,800	5.0%	18.1%	1.0%
750,000	212,200	20,400	9.6%	25.6%	2.7%	173,000	12,000	6.9%	21.5%	1.6%
1,000,000	303,500	33,200	10.9%	27.0%	3.3%	253,000	20,000	7.9%	23.3%	2.0%
2,000,000	726,200	99,600	13.7%	31.3%	5.0%	607,000	66,400	10.9%	27.0%	3.3%
3,000,000	1,231,400	182,000	14.8%	35.0%	6.1%	1,006,000	128,800	12.8%	29.3%	4.3%
5,000,000	2,430,400	391,600	16.1%	40.8%	7.8%	1,937,600	277,600	14.3%	33.2%	5.6%
10,000,000	6,042,600	1,067,600	17.7%	49.8%	10.7%	4,860,800	783,200	16.1%	40.8%	7.8%
20,000,000	13,742,000	2,666,800	19.4%	55.4%	13.3%	12,085,200	2,135,200	17.7%	49.8%	10.7%

My name is Mrs. Marcellus Vogel (Jo Ann) we farm 275 acres in Manitowoc County, Wisconsin. We have 150 head of cattle of which 70 are milk cows. We have 4 children ages 16, 15, 14 and 9.

I am testifying here today representing American Agri-Women a National Organization of 2000 members concerned about the future of Agriculture. We as women are unjustly discriminated against by a law written in 1942. At that time the Consumer Price Index was 48.8 and in December of 1974 it was 155.4. Which means the purchasing power of the dollar has been reduced by 68¢. Agricultural land in our area sold for \$100.00 an acre, that same land today would sell for \$200.00 to \$1,000.00 an acre for agriculture.

Something must be done about this law it is archaic and derives from old English law. That looked upon a woman as a servant being owned by her husband. Once a woman signed a marriage certificate she became the property of her husband. In many respects women are still treated by law in this manner. I am not a woman "Libber". Farm women have always been liberated, we've always had the opportunity to do any work along side our husbands we would or could do. Whether we were bearing our children or not. All farm women help their husbands whether it's driving trucks hauling grain, apples, peaches, etc. or doing the bookwork and many other errands on a farm to numerous to mention.

To give you an idea of why I feel so strongly about changing this law. I would like to tell you about my life since I've been married. Seventeen and 1/2 years ago my husband and I were married. I have helped my husband every single day all day and many times far into the night. The only exceptions have been 4 or 5 days to have each of our 4 children and 7 other days for business. We have never had a vacation and we work 7 days a week. My day begins at 5:30. I make breakfast for our children and pack lunches, call them for school and then go to the barn. Feed and milk the cows, feed calves and heifers. Go to the house at 9:30 make breakfast clean the house and start supper. By 11:30 I must go back to the barn to do other chores and if everything goes all right with no breakdowns I will be in the house by 3:30 to finish supper. Supper at 4:30—do dishes and back to the barn at 5:30 until 8:30. Our children help us in the barn every night, every weekend and all summer. During harvesting and planting seasons all chores must be done plus all the field work. I will then help in the field—I must know how to drive every tractor and use every piece of machinery. Besides this I do all the book work and banking for our business. My sister-in-law laughingly ask, "How can you stand each other all day every day?" It ain't easy. Yes. I am indeed a partner in everyway possible—I know and feel all the grief, anxiety and disappointments of being stewards of the land and providing food for the world.

In the eyes of the law we women that work alongside our husbands are considered not contributing to an estate. The only way a contribution is recognized, if we had worked outside the home and could prove it. I am allowed \$60.00 plus 1/2 the Gross Estate—Why? When I've worked all my married life forsaking other employment to help my husband, if I did not we could not farm as efficiently as we do—therefore we would not pay as much in federal and state income taxes. It seems peculiar to me that I must pay estate taxes upon the death of my husband when we've paid for the farm by my labor as well as his besides paying interest, income taxes, state and federal, and property taxes every year. As I see it there is only one advantage to this law—The wife

JoAnn Vogel

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should die first--the husband could collect her Life Insurance, if she had any, and bury her in a mamure pile, if he had one and that would be the end of that. If my husband died tommarrow and let a taxable estate of \$300,000. The taxes would amount to \$36,700. Federal, state and other expenses would be another addition \$ 20,000.00. Beside this daily expenses must be met. Like most farmers we do not have a savings account, everything we make goes into our business. Therefore I would have to dispose of some property. I would have no choice. Estate taxes must be paid in 9 months we of American Agri-Women believe that it should be extended to 18 months because many crops cannot be harvested and sold in 9 months time. We also believe that the exemption should be raised to \$250,000. My personal feelings are that there should be no estate taxes between spouses.

The Durlson Bill HR 1793 has many good points. In particular the Elections of Classifing land and raising the martial deduction by 100,000. We think it's an excellent idea. Land used as agricultural land is only worth as much as it produces, it can not be or should not be acsessed as land that could be developed. We think it's very important to keep all agricultural land intact and this is one way of helping.

A sincere thank you for your kind attention and for the oppoxtunity to appear here today in behalf of American Agri-Women.

I am Mrs Harold Brandl (Doris). My husband and I own and operate a 220 acre dairy farm in Manitowoc County, Wisconsin. I am testifying in favor of the Burleson Bill HR 1793. All farmers and small businesses need the tax deductions contained in HR 1793. There hasn't been a change in the tax structure for these people for many years. Not since the 1940's. The present personal deduction hasn't been changed since 1942 when it was raised to \$60,000. The cost of land has risen as much as 500% since that time. In some instances more than that. The cost of keeping the farm up to proper production has also risen tremendously. Like 500% also, when we purchase farm machinery and supplies.

The most important part of this Bill to us, will be to enable my husband and I to keep our farm in our own family if it is the desire of one or more of our children to own and operate it. We do not, and what farmer does, have a savings account to adequately cover the price of an estate. By this I mean to have enough money to pay out their other children so one or two sons can own and operate the farm. To use my own family as an example, we have eight children, ages 4 to 25. Our farm is valued at about \$250000. Until the debts are paid and the children given a equal share I would have to sell our farm upon the death of my husband to settle the estate.

When we talked to our lawyer about a will and estate planning he said, "For tax purposes" even if a farm is in joint tenancy the husband is considered the proprietor. Now I would like to know what I have been working for along side of my husband for the last 27 years. I have worked in the fields, all day, did my housework at night when my children were small, took them along in the fields or rode them on the tractor. There has been very few times that I have missed milking. I have helped repair buildings and machinery when needed. I do bookkeeping and keep the records on cattle etc., etc.

Even if all farm women don't do all of these chores, they do know what is going on by helping with record keeping, doing errands such as getting parts for machines during harvest time and just by the general knowledge she has to have.

If the \$200,000 personal exemption is passed as in HR 1793 it will also help a woman to continue to farm if she desires to do so.

It is estimated that less than 2% of revenues come from estate taxes. I suggest closing other tax loopholes to make up this difference, some of which are deliberately made.

I also endorse the proposed Definition of Real Property and the 60 months preceding the date of death as it pertains to the use of farm lands. I would hope this will help keep land in farming and if it is not there would be back taxes or a penalty to pay.

The production of food is one of our country's most important industries. Farming is a part of America, it is a way of life. Let's help to keep it that way.

My name is Mrs. Jerome Sickinger (Audrey) and I reside at R. 1, Cato, Wisconsin with my husband and family. My family consists of seven children, 5 girls and 2 boys.

We farm 1300 acres in Manitowoc County growing corn, oats, alfalfa and some vegetable crops. Our Holstein dairy herd consists of 500 head with 275 of these being milk cows.

I am a member of the Outstanding Young Farmer Fraternity which has over 800 members in every state in the United States. We appreciate this opportunity to offer testimony and to be heard on our views of support for the bill HR 1793. The estate of these farmers run in excess of a million dollars.

The law passed in 1942 setting the general exemption of an estate at \$60,000.00 is we feel in need of change. The bill HR 1793 suggests a \$200,000.00 exemption which would be more realistic.

HR 1793 states that the marital deduction of 1/2 the estate be increased over and above this exemption by another \$100,000.00. This too would be a realistic figure.

We also would agree with the election methods stated in HR 1793 of appraising real estate property according to the use of this land. If the land is sold for another purpose within the five year period, we agree taxes should be paid on the value for which it was sold for.

We further feel that the time allowed (9 months) is not long enough to settle an estate in operations of this size and be able to continue efficient operation of the farm. We therefore suggest an 18 month period in which to pay taxes which are due.

I have been married 23 years to a farmer, starting my day at 4:30 each morning. Heading to the barn to milk and feed the cows and care for the baby calves before breakfast at 7 A.M. Our children must accompany us in order to get the work done and then hurry to be ready for school. Our cattle are housed in 5 different sets of farm buildings. The remainder of our day is spent traveling to each farm to feed and care for our animals. We have worked diligently and daily to increase our farm operation. Today, besides our family we do have hired hands. We like our work and feel we are doing a good job.

Our boys 15 and 14 would like to continue farming after school. At this time should their father die it would create many hardships and the possibility of farming could be negative. Much of the estate would have to be sold to settle the estate taxes.

The possibility of our daughters farming is quite probable, as their interest and knowledge of agriculture is there and instinctive. Sandy, 19, attends the U.W. Manitowoc Center as a sophomore in the Ag & Life Science College majoring in bacteriology. Debby, 17, graduates in June from high school. She plans to enter the Ag Life Science College of the University of Wisconsin majoring in dairy science with a strong interest and desire to be a Veterinarian.

I am a farm owner and operator in Manitowoc County in addition to being a farm wife. To continue the farm operation after my husband's death would not be

Audrey Sickinger

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an unreal situation. Therefore, I support the changes in the Burleson Bill HR 1793 on the point that the old law of 1942 discriminates against my ability to efficiently manage a farm operation because I am a woman.

The average Wisconsin farm of 185 acres with 41 cows and machinery is said to be worth \$185,000.00 according to the latest figures of our Wisconsin Department of Agriculture. This is figuring land at a value of \$451.00 an acre. Just last week two farms in our area sold for over \$800.00 an acre. This rate of inflation plus insurance policies of the average farmer in Wisconsin would put his estate far past the general proposed exemption of \$200,000.00.

As a member of American-Agri Women and Vice President of Wisconsin Women for Agriculture I feel a need to support changes in our country's estate exemption laws. I thank you for the opportunity to appear here before you today and ask that you consider some new provisions for our outdated estate tax law.

STATEMENT

of

Mrs. Lloyd Royal
Springfield, Nebraska

My name is Mrs. Lloyd Royal of Springfield, Nebraska. My husband, Lloyd, and I own 240 acres of farm land and rent another 80 acres in Sarpy County, Nebraska. We are family farmers in the true sense of the word with both of us working in the farming operation. Today I am presenting two petitions containing 130,051 signatures to Chairman Ullman and the members of the committee. These signatures have been gathered in 48 states. I am also presenting copies of letters and quotes from other letters.

It is still hard to believe that a simple campaign by three women to arouse the people in their county could spread across the entire United States without receiving any dissent. This to me is a very vivid proof that the law is in need of change.

I am not a women's libber; however, when I found that the IRS did not recognize the contribution of a spouse, it was a feeling of disbelief. To think that spouses can work together for so many years and be told only one of them had earned the estate. It's unreal!!

I firmly believe that in middle class families there cannot be much of an estate unless both spouses help. It is easy to spend; difficult to save.

There is no logical reason why work on a family farm or in a family business should not count as a contribution. I, and many others, can and do operate almost every piece of machinery on the farm. Just this last summer, my husband was hospitalized during cultivating time. This meant one tractor in the field instead of two. My hours went from 4:30 in the morning until 10:30 at night. I almost didn't get finished before the corn became too big.

To us, I made a contribution to our net worth. Why not to IRS? What difference should it make if I drive the tractor or work in town for wages with which to pay a hired hand? Every husband I came in contact with declared emphatically that their estate would not be as large if it had not been for the help of their wife. In Springfield almost every business is family owned with the wives helping.

I am very pleased to see that H.R. 7521 has been introduced by Rep. Charles Thone and S. 2879 by Sen. James Pearson, in an effort to change this injustice.

Contrary to articles stating there really is no problem, farmers and businesses are having to sell to pay estate taxes. One of the saddest cases I have heard is a farm that was given to a son by his father many years ago. It was small and when the son died, it was not enough to keep his widow. Her

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daughter and son-in-law contributed much to her upkeep. The widow died recently. The daughter's husband died shortly after her mother. The doctor bills, funeral bills, etc. drained all of the savings. The daughter had to sell part of the property. She then applied for a loan. Because of her age and health, she was turned down.

This woman had no training for a job. All she knew was farming. Her children mortgaged their property to obtain the necessary money so she could remain on the farm.

It is very obvious, where the children have already mortgaged their property to pay her tax, there will be no way they will be able to pay the tax when she dies. The land that has been in the family for 3 generations will never make it to the 4th. Incidentally, she has 7 grandsons who would like to farm. Another farm will go the way of a big farmer taking over.

They say all of this can be avoided by proper estate planning. This family had not one, but two, attorneys. They used the attorneys who handled all of their business matters. The money they gave the attorneys was lost, as even they did not have the knowledge to write the deeds correctly.

I wonder what our forefathers, who gave up so much to settle this country, would think if they could return to life and see what is happening. My own grandfather left Germany to escape the two class system. We are rapidly approaching that point in this country. Where will our children and grandchildren have to go to own a business of their own?

It is my hope that the Congress will move rapidly. Making the estate tax law more equitable will encourage the continued existence of small family enterprises.

I can think of no more fitting way to celebrate this year's Bicentennial than to pass estate tax legislation which will save the small and middle class people from becoming dependent on state or federal aid. There are still many of the old school who try to save for their retirement. Why take their savings away just because one happens to die. You pay income tax, land tax, personal tax, sales tax, etc. Can't the government let a person grieving a death alone? Even then it shows an even greater lack of compassion by making the survivor pay within 9 months. Very few are over the shock of the death before the tax man asks them to make major decisions on their property.

A concern has been voiced about loss of revenue. Revenue is very important; however, death is a very cruel time to be gathering money. It always has many

other expenses - funeral, lawyer, often a lengthy hospital and doctor bill, disruption of the business which, if a sale is necessary, means more income tax. Very often the estate tax is the so-called "straw that breaks the camel's back".

Revenue could be gained by evaluating some of the current programs to see if they really are doing what they were intended to do and if they really are getting their true dollars worth for what they cost. Mrs. Vernon Clark of Iowa cited the article which appeared in their paper about a project for studying the Love Life of the Guppy. The cost - \$50,000.

If estate tax is necessary, then repeal the tax evasion laws that allow the wealthy to avoid estate taxes and get back to the original intent of the law. The revenue lost if all estate taxes were abolished would amount to 1.6% of the annual federal budget, according to the Wall Street Journal. Think how much revenue could be raised if they would abolish the "outs" that only the wealthy can afford.

At an estate planning meeting the speaker told how one millionaire, and he named him, paid no estate tax by giving half to his wife and the other half to charity. If my husband or any other middle class man gave half to charity, the spouse might end up living off charity. A look at your schedule of tax reform bills shows so many that are for tax exempt status. Just giving each of them a little bit less of a tax break would more than take care of the revenue problem.

I realize there are many identical or similar bills to the ones I will be quoting; however, due to work on the farm and my lack of time, I will use the bills which have been sent to me or someone has called to my attention.

H.R. 1793 - S. 1173:

While I support Rep. Burleson's bill, I do feel it is lacking in the treatment of spouses. How can the issue be settled by setting a monetary figure which applies to all estates. I, and those who have contacted me, feel the \$200,000 figure is too low.

According to Farm Real Estate Developments, Economic Research Service, farm land in Nebraska moved from an average of \$21 per acre in 1942 to \$215 per acre in 1975. This is an increase of 1023.8%. If the specific exemption had been raised by the same percentage (the \$60,000 would now be \$614,285), we would not have an estate tax problem today. Good farm land usually sells for about \$1,000 an acre. This makes the \$60,000 exemption even worse.

- 4 -

The Wall Street Journal editorial on March 10th states: "The fact is that inflation and the rise in real incomes now means that 11% of estates are now subject to the estate tax against 1% prior to the 1940's which means that more than 75% of all Americans including the children, grandchildren, and great grandchildren of the deceased have a direct interest in estate taxes. Even some retired elderly people who have never earned more than \$4,000 or \$5,000 a year during their lives have estates worth in excess of \$60,000, the point at which the estate tax now begins to bite."

S. 2879:

I hope the House will consider the ideas presented in Sen. Pearson's S. 2879, as he includes all family enterprises as long as they are managed by the heir. He has included a clause which authorizes automatic increases to reflect cost of living raises. This is very important and should be included in legislation so we will never again be caught with an outdated bill. He also has a retroactive clause which should be considered. Since this change is so long overdue, some consideration should be given to correcting the injustices which have been done. At the present time we feel that S. 2879 is the best bill that has been brought to our attention.

S. 227:

Senator Bayh has introduced S. 227 in an effort "to save the family farm". While this bill sounds like help for the family farm, there is one word which will not let it apply to many bona fide cases; that is, live on the farm. The widow may be afraid to stay on the farm and prefer a house in town, but would still manage or help on the farm. Other instances are the son may move to a farm which is more specialized and better equipped; such as, confinement feeding versus grain farming, and while he may want to grain farm the home place, he may not want to return to the father's farm to live. If there is only one house on the farm, the heir may elect to live nearby and have a hired man live in the farm home.

All who have contacted me do not feel President Ford's first proposal solves the problem. The estate still pays. His second proposal, a step in the right direction, is not realistic with inflation.

QUOTES FROM LETTERS RECEIVED
BY MRS. LLOYD ROYAL ON ESTATE TAXATION

With the appreciation of land values, farmers can be poor rich people in a hurry.
725 Ohio

Some of my points are: 1. When property is owned jointly--yet a wife must pay inheritance tax on both halves, she is denied the right to own property. 2. Taxes are paid by joint return therefore she has already paid the tax on her half of income--how can she inherit what is already hers? 3. If labor is not a contribution then her husband's labor should not count either. If his does, then this constitutes slavery. Slavery was abolished in 1865, therefore the law is illegal.
U-1 Wis.

A lady from Kansas: With credit laws and all of the discrimination of varying sorts against women in general, my mother and I have spent the better part of her lifetime and mine trying to save up what we could to pay a goodly inheritance tax in all probability on my mother's agricultural land to me. We have dealt with inflation, droughts and a general increase in all overhead for numerous years.
Ks.

Our local agent tells us that if we were left with this problem I would have to sell everything to pay the taxes, after a lifetime of hard work and struggle and we aren't wealthy now, either.
#F N.Y.

I began circulating your petitions and did not become totally involved until a friend of mine told me that when they incorporated their business she had to pay a GIFT TAX on the shares that she was to hold on the corporation because she could not give monetary proof of her contribution in building the business. WOW!!
#E Wis.

My husband and I are in our seventies; we have worked (I without a dollar's pay) for 46 years to get our ranch paid for and improved and now we are faced with the unfair widow's tax! I am not a women's lib but I certainly would like to join the protest, against this situation.
#E-1 Tex.

We are now in the same category as a tractor or other piece of machinery. Slavery is legal in Ws. in 1976.
#T Ws.

No other segment of our economy faces the risks that farmers do yet we also have that perpetual faith and hope always for a better year.
#U Cal.

My own State, South Carolina, has similar legal requirements and it seems almost impossible to get our General Assembly to change without Federal Change--therefore we have a double dose.
#O S.C.

The average farmer's wife who works outside the home to make the operating capital for the farm, spends another eight (8) hours' work each day at home--is there no law to pay her any return for all this work.
#C Tenn.

- 6 -

There is no use for us farmers to get better prices for our production, if in the end the government in effect confiscates much of our land and savings.
#M S.D.

The country cannot be stronger than the families that make it up. When home-making is not considered of importance to the family, and the laws certainly show this, women are forced, even if they know better about its importance, to look on it as something they must get away from.
#J Ill.

Not only does your problem exist in the farming areas of this State (believe it or not, agriculture is our second largest industry) but estate taxes on middle income families presents as great a hardship in my New York City district, especially on the homemaker wife and the wife in the Mom-and-Pop stores and small businesses. We have passed legislation to assist in the real estate taxes for farms but none for estate taxes.
#K N.Y.

The market value of our farm land is outrageous. We are trying to save 400 acres for our son, but his taxes will be out of sight.
L 386 - Minn.

Why should any farmer at death leave to his wife a "drummed up" estate tax and slap it at her with 9 mos. time limit. Just such is going on in the different states I have canvassed and these widows now on welfare, are living examples of the heavy hand of the law where tyranny has taken over & taxation without representation has become a lost cause--every deceased husband died thinking he was leaving his wife a home and shelter, a roof over her head & a means to make an honorable living.
#P Ks.

The \$60,000 exemption is pitifully low and should be raised to a \$200,000 minimum. Too many of our farms in New Jersey have to be sold when the owner dies in order to pay inheritance taxes on today's inflated values. As you can see, \$60,000 is ridiculous.
#R N.J.

My husband and I made out a will recently and the inheritance tax would be a terrific amount of money. He and I have worked very hard ever since we were married 30 yrs. ago to have money to buy some land where we could live and call "our own", now it seems like the government wants to "slap our hands for doing it by making us pay such exorbitant estate taxes. We would like very much to pass the farm on to our children who also worked very hard with us to save hiring someone but we won't be able to if we have to sell some land to pay inheritance taxes.
J-1 Ks.

My husband has been a farmer (apricot, and prune grower) since he was 15 years old. He is now 70, and in between he has "eaten" his share of good clean "healthy dirt"; so we feel the same about the eventuality of his beloved orchard having to be sold to satisfy such an unfair tax structure.
K-1 Cal.

I was very upset to realize that the average 14 hr. day I put in for farm labor means nothing.
B-1 Ohio

In our area this has been caused not just by the pressure of population growth, but was started 20 or more years ago by municipalities taxing the owners of open land as though it was already sub-divided. The result has been to force almost every farmer in our area to sell to development whether he wanted to or not.
#X N.J.

- 7 -

We have wondered many times about what would happen to me or my husband should the other one pass away. The estate tax would completely put us out of business. We have a small grain farm and about 80 head of cattle.

A-1 Tex.

My wife and I own 480 acres of land that we live on, that's what we accumulated by scratch, and we are in our sunset years, and the way it is with rising land prices, our children would have to mortgage their homes to save our estate, with the \$60,000 exemption.

#L Wn.

A New Jersey gentleman writes: At the present I am working on an estate settlement, and all I can say is that between the State of New Jersey and the Federal IRS the whole thing is "unreal."

N.J.

From a Calif. gentleman: Our orchard land has been in the family for over 100 yrs., and now because of this unfair tax in an inflationary period the resources of the family (never more than provided a living for the family during the past 30 yrs.) is now about to be confiscated by the government for taxes.

Cal.

I have worked fourteen hours a day six days a week for the past thirty years raising four children--sewing, cooking, baking, gardening, canning, freezing, etc., and certainly feel that I have made a contribution to what we have accumulated, and that this contribution should be recognized.

#L 403 Tenn.

The farm wife is the most intense example of a business partner there is . . . farm wives who tend cattle, run the tractor, throw bales, sell crops and buy machinery, etc., . . . I shouldn't have to be in poverty when he dies.

#Q Tenn.

We live on a 130-acre farm in Indiana which we bought 12 yrs. ago for \$30,000. It had an old rundown brick house (about 80 yrs. old), after we improved it the insurance co. would insure it for \$5,000. The 2 barns were in bad shape; the land run down--it has taken all our money and we've both worked hard to improve it, if my husband were to die today the IRS would come out and value our property to probably \$130,000 or more since land has tripled in the past 8 years. I would have to sell the farm, cattle and everything just to pay the taxes. Where would it leave me and my daughters? Out in an apartment, just getting by.

S-1 Ind.

My husband passed away July 18, 1974 and the estate isn't settled yet. In 1946 my father-in-law died and we bought the farm for \$9,000. In 1974 when my husband died the same acreage was appraised at \$131,000, but the exemption is still the same \$60,000, so I paid a lot of taxes. What a rip-off! My husband was ailing since 1965 and the boys and I run the farm and I have helped on the farm since 1931, when we were married.

P-1 Wis.

NOTE: This petition, known as the Royal petition, addresses the specific issue of estate tax discrimination against wives. Since it is a public opinion petition, it is proper to add signature pages, as long as they are securely attached. Also, additional copies of the petition itself may be made on a good grade copy machine. Most people will want to put their names on both the Royal and the Brooks petitions. -- Mrs. Royal

TO: THE HONORABLE _____

(Senate) (House) Office Building

Washington, D.C.

We, the undersigned are concerned citizens of the United States and the State of _____, and are particularly concerned with that portion of the laws of the United States and the State of _____, relative to the taxation of estates which provides that the full value of property which a decedent held at the time of his death, either as a joint tenant or a tenant by the entirety is includable in his estate, unless the surviving tenant can show contribution toward the purchase of the property.

The undersigned strongly believe that the foregoing provision of federal and state law unjustly discriminates against women who work in the home, on the farm or in a family business and make a contribution toward the acquisition of property held in joint tenancy or tenancy by the entirety with right of survivorship with their husbands. Even if both spouses contribute significant physical efforts to earnings over the years and such earnings are the basis for increase in estate, at the time of death, the entire estate is considered to have been earned by the husband.

Justice and fairness dictate that this palpable inequity and inconsistency be corrected. There is no logical reason why women who make a contribution by working other than for salaries should be discriminated against.

The undersigned petitioners earnestly urge that federal and state law be amended and changed to recognize the contribution of women who work in the home, on the farm or in a family business toward the purchase and acquisition of property.

We respectfully request that you introduce and work diligently for legislation which will allow women to show contribution for work performed which contributes to the acquisition of such property for purposes of federal estate and state inheritance taxes.

Respectfully submitted,

NAME _____

ADDRESS

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be from a notebook or a standard sheet of stationery. The edges of the paper are slightly irregular, suggesting it might be a scan of a physical document. There is no handwriting or other markings on the page.

NOTE: This petition, known as the Brooks petition, addresses the issue of correcting the various inequities in present estate tax laws. Since it is a public opinion petition, it is proper to add signature pages, as long as they are securely attached. Also, additional copies of the petition itself may be made on a good grade copy machine. Most people will want to put their names on both the Royal and the Brooks petitions. -- Mrs. Royal

TO:

We, the undersigned, are citizens of the United States and the State of _____
_____ who are particularly interested in reform and modernization
of the Federal Estate Tax laws.

We believe that Congress should correct the inequities in present estate tax laws and should give recognition to the effects of inflation upon these laws. The present \$60,000.00 exemption was written into the law in 1942. Currently a widow has to pay such high inheritance tax on her husband's estate (even if the property is in both of their names) that she may find herself virtually destitute.

We believe that existing law creates a severe hardship upon taxpayers and penalizes those citizens who have accumulated property through hard work and the exercise of frugality.

Accordingly, we urge the Congress to enact into law S. 1173 now pending in the Senate and H.R. 1793 now pending in the House which would increase the specific exemption to \$200,000.00 and increase the marital deduction by \$100,000.00.

Respectfully submitted,

NAME _____

ADDRESS

This image shows a single page of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears slightly aged or off-white. There is no handwriting or other markings on the page.

NEED FEDERAL ESTATE TAX RELIEF

I am Helen Rafert of Gresham, Nebraska, York County, Nebraska. I am a farmer and a home maker, have three sons that are farmers. We grow corn, wheat, beans, milo and livestock. I assist my husband and sons with farming whenever needed.

My toughest work right now is keeping up with the markets, and how to get the farming done right without wasting time and money.

Our Federal Estate Tax is far out of date. It is completely out of line with today's inflated prices of land, farm equipment and operating costs.

There is no way a young farmer can start up farming, unless he inherits the farm. The impact of estate taxes at the present inflated prices could be dangerous to the point that young farmers may realize there is no future in farming.

Farmers have the largest capital investment with the smallest return. The grain drying, grain storage buildings, along with tractors, trucks, combines, planters, fertilizer and weed control machines, and all irrigation equipment, plus operating costs such as gas, oil, diesel fuels, repairs, chemicals, fertilizers, taxes, and insurance add up to a terrific investment.

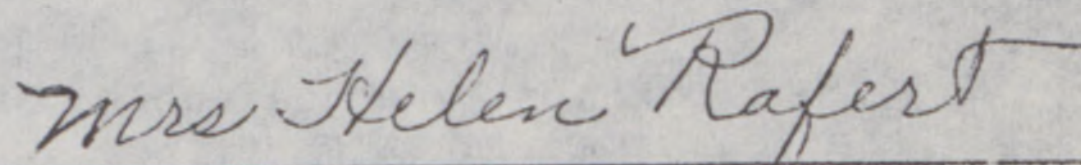
Non-farmers and investors buy farm land even at inflated prices, making it almost prohibitive for a farmer to expand. It is important that farmers own and control their farms, to be efficient, get the most production per acre, keep expenses and taxes to a minimum, to produce food at the lowest possible cost to the consumer for the same investment.

We all pay taxes on money before any property is paid for, and when that property falls into an estate, it should not be taxed again. There is no incentive to work hard and accumulate property and have taxes take it away.

Through manipulation, many never pay estate taxes, therefore the government doesn't receive any tax. To eliminate the estate tax would sure help our economy, and make farming more attractive to the young farmer, especially if he has to buy out other members in an estate.

If we must have a tax, let's get a substantial increase in our exemption, in line with our inflated prices and give husband and wife as joint owners, equal rights of inheritance.

The farmers best interests are for all America. We need each other, and must work together. If we don't succeed, the whole world is a loser. We carry the food basket.


Mrs. Helen Rafert

FOR ABOLITION OF INHERITANCE AND GIFT TAXES

STATEMENT OF ALAN W. BOCK

Director, LIBERTARIAN ADVOCATE

Before the House Ways and Means Committee Wednesday, March 17, 1976

Distinguished Members of this Committee and Ladies and Gentlemen, I am Alan Bock, Director of Libertarian Advocate, an organization founded to promote individual human liberty and to make the case for liberty in the legislature and other important forums.

The time has come to eliminate the inheritance tax and its cousin the gift tax from the arsenal of weapons which the federal government has evolved to harass its citizens. The inheritance tax is a cruel tax which works only in a negative and destructive fashion, accomplishing no positive good whatsoever. It makes no contribution to social justice and the insignificant amount which it adds to the federal coffers cannot possibly be justified by the human misery and social damage which it causes. The best course would be to eliminate it outright.

Let's look at the human side of the inheritance tax first. It is imposed at the cruelest possible time, when somebody has died. At such a time the widow or widower, and family and friends of the deceased are struggling to cope with the loss, which always hurts no matter how long it has been anticipated. There are funeral arrangements and last-minute business and family affairs to be attended to. Everyone is at a low psychological ebb, vulnerable to exploitation.

At such a time of sadness, when a family has suffered the most irreparable of losses, along comes the tax collector to inform them that they have made a gain through inheritance, and the government is going to make them pay for this crime. They huddle with lawyers and prepare for the onslaught of appraisers and inspectors. Their homes are invaded and inspected with minute thoroughness. The most private corners of their lives are opened to the impersonal inspection of hired officials. When humanity and compassion suggest that a government might either help a family which has suffered a loss, or at least leave them alone, the government invades the bereaved family and makes their lives all the more miserable.

What possible purpose can inheritance taxes be said to serve? The limited amount of money collected through these taxes (about 2% of Federal revenues) the high specific exemptions, and the highly progressive rate schedules lead to the conclusion that their purpose is to penalize the holding of large amounts of wealth. The impulse undoubtedly derives from the feeling that something ought to be done about the unequal distribution of wealth in society. But the imposition of inheritance taxes is possibly the worst possible solution.

Equity and humanity would suggest that rather than taking the negative step of penalizing success, government might better direct its attention to helping those at the bottom of the economic ladder improve their situation. The inheritance tax not only does nothing to help the poor, but the evidence suggests that they do positive damage to the prospects of the poor for climbing up the economic ladder.

The only conceivable justification for inheritance taxes is the legitimization of envy, the act of making envy part of the law. But even this is a poor excuse. It's easy to see how a poor person could envy people of greater wealth, but it's difficult to see how he could derive any satisfaction from the existence of inheritance taxes. What inheritance taxes do is to take something from the modestly wealthy and possibly powerful and use it to add to the resources of the most wealthy and powerful institution in society -- the government. The poor person gains nothing tangible from such a transaction. His enjoyment must be distant and vicarious indeed, especially if he reflects a moment and understands that these seizures actually retard his chances of improving his own situation.

Inheritance - 2

What are the economic effects of inheritance taxation?

The first and most important effect of high inheritance taxation is to reduce saving in society. Since savings are the most significant source of capital in a market economy, the effect is to retard economic growth and investment in new production and job creation.

A second economic effect is to reduce contributions to charitable and philanthropic organizations. There is a myth that inheritance taxes encourage such contributions since they are deductible from the tax obligation. This is a myth which should be exploded. Persons of modest wealth will take care of their families first. With inheritance tax looming over them, they know the government will take a bite. That leaves only some left over for charitable and philanthropic contributions only from large fortunes. Economic studies indicate that contributions from modest accumulations of wealth would be greatly increased in the absence of inheritance taxes.

The most important economic effect of high inheritance taxes is to increase caution in money management and to reduce the propensity of risk-taking. Here is the deleterious effect on those at the lower end of the economic scale. What is most helpful to a person with little wealth who wants to improve his lot is an economic environment of heavy activity and a willingness to take risks in investing. The more intense the economic activity and the more willing people are to take risks, the more economic and social mobility is possible. The most significant beneficiary of a free-wheeling economy is the person at the lower end of the economic scale. When tax policies impose caution and conservatism, the chances to improve your position are reduced accordingly. With fewer risky activities undertaken, the wealthy stay wealthy and the poor stay poor. Inheritance taxes contribute to that kind of stale and stagnant economic environment. The poor are harmed rather than helped.

What are the other legacies of inheritance taxes? We see people setting up trusts to avoid taxes, keeping money locked up when it could be doing productive work in the economy. People send their money abroad in search of exotic tax havens rather than investing it at home where it could make a contribution to the economic health of the United States. Billions of dollars are spent each year in tax avoidance schemes, and you can't hope to close the loopholes fast enough. Those billions are socially useless dollars, frittered away due to the tunnel vision of the tax men. If those billions were invested in our economy, some of it would be spent for things most of us would consider wasteful. But now, from the standpoint of society at large, all of it is wasted.

Finally, inheritance taxes lead to serious problems with family farms and businesses. We are all familiar with cases of families having to sell their farms in order to pay the inheritance taxes, when they would prefer to keep on farming. The social consequences are devastating: loss of potential farmland, loss of open spaces, encouragement of urban and suburban sprawl, and the possibility that we may in the near future destroy our national ability to produce enough food to feed our population.

Closely-held and family businesses suffer likewise. Economist Chelcie Bosland did a study which indicated that in the years 1955-59 estate tax considerations played an important part in decisions by closely-held small businesses to merge or sell out in 63% of the cases. Here we have a classic example of tax laws imposing artificial incentives to make businesses larger and more impersonal, encouraging the growth of corporate bigness, discouraging the diversity and healthy competition which comes with a diversity of small business able to meet specialized demands.

Does the government really need the revenue which is produced at the cost of all this human misery and social and economic dislocation? Inheritance and gift taxes have historically accounted for about 2% of federal revenues. In light of this separate taxation, inheritances are not subject to income taxation. If inheritances and gifts were treated

Inheritance - 3

as income, with a liberalized provision for income averaging since it is unlikely that Congress will take the sensible step of eliminating the progressive feature of the income tax, the revenue could be made up easily, and much more equitably.

The inheritance tax and its bastard cousin the gift tax are cruel taxes in one other sense. They are taxes on acts which reflect love and concern for family and friends. A person works to accumulate something to leave to his children because he loves them and wants to do something positive for them. Inheritances build bonds between generations of affection and interdependence. The fact that leaving inheritances does not always guarantee security or happiness, or even may lead to family squabbles does not diminish this motive of love and caring.

Inheritances also make it possible for private wealth to be used to support charitable, cultural and philanthropic endeavors, encouraging diversity and support of minority persuasions in these areas. The elimination of private wealth would leave the government in a monopoly position with regard to such humanitarian undertakings. Encouraging monopoly power in any area would not seem consistent with enlightened social policy.

One final suggestion. If this Committee is not yet ready to abandon the destructive policy of inheritance taxation entirely, at least it should consider eliminating taxation on inheritance transfers made to members of an immediate family. A widow whose husband dies is not enhanced by that death. In almost every case the possessions and holdings of the family were hers previously, in fact if not in law. To take part of those joint holdings at a time when she has suffered the most cruel of losses already is barbaric. If inheritance taxes are to be preserved, let them be reserved for transfer of property and wealth outside the family.

Gentlemen, thank you for your kind attention.

Testimony of Laura Lane
to the House Ways and Means Committee,
the Ninety-fourth Congress,
during public hearings on
Federal Estate and Gift Taxes

Mr. Chairman, Committee and staff:

My name is Laura Lane. I live at 2018 Spruce St., Philadelphia, Pa. 19103. I own a 400-acre farm which I bought on the installment plan in 1940. That took some scrimping, because at the time I was making \$150 a month. Two years later the specific Federal exemption applying to all estates was set at \$60,000. That was in 1942. I made my final land payment in 1958. Since then the value of my property has multiplied 10-fold, but the exemption has not been increased by a dime.

If this day should happen to be my last, my heirs would have to sell about half of my property to pay Federal estate taxes. The principal reason for that unavoidable forced sale would be the out-dated exemption. Another reason is that the Tax Code discriminates against me and my heirs because I have chosen not to marry.

Settling my affairs to file the return and pay the tax within the space of nine months would be an added hardship.

In addition to being the owner of a farm, I am self-employed--a freelance writer. Among my clients, the principal one is FARM JOURNAL, a national magazine with a

circulation in excess of 1½ million. My title is contributing editor.

For a long time I have felt that Section 2040 of the Internal Revenue Code discriminates against women who are widowed while holding the farm in joint tenancy. In effect, you are telling a woman who has worked alongside her husband in the fields, with livestock in confinement or on the range, who has coped with ledger sheets and shared in sticky decisions, that her efforts to pay for the place are not a contribution with money value. Yet the efforts of her husband are viewed in a far more favorable light. The burden of proof of contribution rests unfairly on a woman because she is a woman, according to the usual interpretation of IRS and the courts. The entire value of the property is assumed to belong to the husband. In some states--South Dakota for one--a woman's efforts to document her contribution has been an exercise in futility. With a single provision in a new law, you can change this arbitrary inequity.

Few people outside of agriculture recognize what has happened rather suddenly to women on farms and ranches. Acreage per farm operator has increased rapidly. Farm workers have decreased. I could cite a bushel of statistics, but you don't need them. The efficiency and productivity of the American farmer are the marvel and envy of the world. The hired man Robert Frost wrote about is as extinct as the passenger pigeon. Who took his place? Usually the farm wife with help from the children. But she came into the business power structure with a new role; she was forced into full partnership, and she has adapted in an amazing fashion. Her latent talents for management and for speaking out have emerged and blossomed. Farm wife partnership is an economic fact of life; the laws of some states, notably Iowa, have been changed to reflect this new necessity, this actuality. The Federal laws and regulations must also be altered.

Last summer I wrote an article about a woman who publicly has protested this injustice, Mrs. Doris Royal of Nebraska, who is here today with her husband and will present her own views. My story about her was entitled "Let's Get Rid of the Widow's Tax," and in it I explained to farm couples what their situation is with regard to estate taxes. Now that phrase, "the widow's tax," is in wide current use. I have seen it in The Congressional Record, the New York Times and in many country weeklies.

Because of this story, I had received by last Friday 4,800 pieces of mail. I suppose the best word to describe people's immediate reaction is outrage. You have received mail, too--I know, because I've seen copies. But the tone is more polite, more reasoned. People's fury was spilled to me. Since then I have written other articles to tell our readers how legally they can avoid estate taxes . . . pros and cons of incorporating the family farm; how to set up a legal husband/wife partnership with property held as tenants in common--all the devices attorneys can employ to solve their dilemma. Soon I will be writing about different kinds of trusts and private annuities. All of these stories are designed to keep the business within the farm family. Once these family businesses are bought up by corporations there will be no estate tax, for a corporation does not die. Presently the law is forcing a trend to the corporate form of business.

The saddest letters I get come from people who already have been forced to sell farms because of estate taxes. Mostly they come from widows who feel cheated . . . "Like an unpaid servant," in the words of a woman in Arkansas. Other widows say they have worked to pay for the farm twice. Both men and women say they regard this tax as a form of confiscation. I recall one letter from a man in Capistrano

Beach, Calif., who recently had settled his mother's estate. He said: "IRS is killing the goose that laid the golden egg. It's too late for me to save the farm that's been in my family for three generations. But I can do something about up-dating the laws and regulations."

Recently the president of Chase Manhattan National Bank told an audience of agribusinessmen: "When the farm is recycled from one generation to another, every 25 years or so, succession taxes take a major bite out of its total value, with a reduction of the farmer's return on investment. As a result there is a disappearance of private capital that will require years to regenerate--if it can be done at all." end of quote

In the 40 years that I have been a journalist, I have seen billions of tax dollars spent to make farming a self-perpetuating business. But it now seems that what Congress has given with one hand it is taking away with the other.

I urge you to bring estate and gift taxes into the here and now, the economic climate of 1976. Make these laws fair to women as well as to men, to the single and the married, to the farmer and the investor, to those with small family businesses, to all who won't let work and thrift become obsolescent as these laws are. My plea is: Make these laws resonable. I thank you.

R.R. 1, Box 124
Beresford, S.D. 57004

December 1, 1975

Director of Internal Revenue Service
Aberdeen
South Dakota

Re: Federal Estate Tax
Joint Tenancy Property
(Records to prove contribution)

Dear Sir:

My husband and I have been married since 1966. Since then we have made a down payment on our farm and have substantially increased our net worth. After discovering that I will have to prove my contribution to the farm if my husband precedes me in death, I would like to know just what kind of records I need to keep in order to substantiate my money contribution to the farming operation; and also how do I document my physical and management contribution?

Example 1 I was employed 4½ years as a teacher. The first 2½ years the money was directly absorbed into the farming operation. How do I document this actual money contribution?

Example 2 I am half the farrowing operation---giving shots, clipping teeth, docking tails, etc. Do I keep track of my actual hours like I do for hired help?

Example 3 I take care of all farm records and participate in all management decisions. How do I receive credit for this?

Example 4 I contribute countless hours of physical labor to all phases of the farming operation. Again, do I keep record of the actual hours?

I could continue, but it all boils down to the issue of a wife having to prove her contribution to an enterprise she is as much a part of as her husband.

Please answer this with the appropriate way for me to document my services in the coming years. Also, can I estimate hours worked in the past based on a farm daily reminder and other farm records?

Thank you.

Sincerely,

Sharon L. Jensen (Mrs.)

cc FARM JOURNAL, INC. Philadelphia, Pa.
Rep. Larry Pressler, Washington, D.C.
Sen. James Abourezk, Washington, D.C.
Sen. George McGovern, Washington, D.C.

Internal Revenue Service

Department of the Treasury

District
Director

115 4th Ave. S.E., Aberdeen, S. Dak. 57401

Mrs. Sharon L. Jensen
R.R. 1, Box 124
Beresford, South Dakota 57004

Person to Contact:
E. L. Wiest
Telephone Number:
(605) 225-0250, Ext. 218
Refer Reply to:
DIR:ABE:A:E&G
Date:
December 15, 1975

Dear Mrs. Jensen:

This is in response to your letter of December 1, 1975 concerning the records you should maintain to substantiate your contribution to a farming operation for estate tax purposes.

Regarding your first question, the Internal Revenue Service has always recognized a contribution made to a family operation by a surviving wife from earnings unrelated to a farming operation. Copies of your Federal income tax returns and Forms W-2, applicable to each year, will serve as adequate documentation for contribution purposes.

Your other three questions relate to how you can document the services you perform in the day-to-day operations of the farm for the purpose of determining your contribution for Federal estate tax purposes.

The value placed on such services which could be used in determining your contribution to the farm operation if your husband precedes you in death would be subject to the laws of the State in which the property is located. This generally accepted principle of law is discussed in Revenue Ruling 72-443, Cumulative Bulletin 1972-2, Page 531. A copy of the ruling is enclosed for your consideration.

Under the existing laws of South Dakota, the services rendered by a farm wife, freely volunteered, are considered as gratuitously given by reason of the marital contract. You could not, therefore, assign a value on your services in computing your contribution for Federal estate tax purposes.

To establish an acceptable contributive value, there must be a legal relationship between the husband and wife other than the marriage license. This could take the form of a written partnership agreement. For additional advice or assistance, you should seek the services of one who is knowledgeable in the field of estate tax planning.

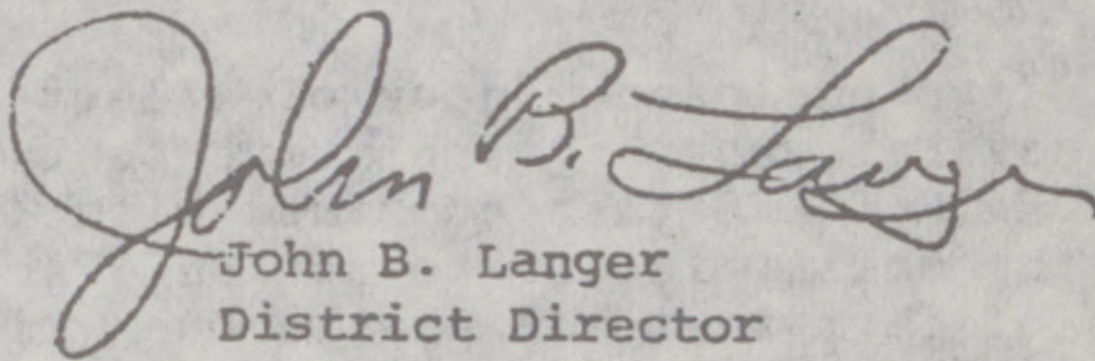
- 2 -

Mrs. Sharon L. Jensen

Your comments have highlighted an area of concern which may be of interest to other taxpayers. We plan, therefore, on issuing a news release in the near future to discuss the points covered in your letter.

Hopefully, our response to your questions has been adequate for your purposes. Please feel free to contact us if you should require any additional information.

Sincerely,



John B. Langer
District Director

Attachment

WILLIAM G. COX

Sunday September 21, 1975

PHONE: (714) 496-2405

26852 VISTA DEL MAR, CAPISTRANO BEACH, CALIF. 92624

Mr. Richard Braun, Managing Editor
FARM JOURNAL
230 W. Washington Square
Philadelphia, Pa. 19105

Dear Mr. Braun,

You're going to be losing a long time subscriber....and not because I don't like your magazine. It's because I've lost the farm land.

I know you have an interest in the problem I'm about to describe, because I've read several articles on the subject in FARM JOURNAL (example: Let's Get Rid Of The Widow's Tax by Laura Lane, September 1975).

I've enclosed a copy of a letter that I wrote to the IRS several weeks ago relative to the ESTATE, INHERITANCE, AND DEATH TAXES that combined with INFLATION will soon wipe out the small, father-to-son ONE FAMILY FARM. That is the type of farm that has always been called "The Backbone of America".

Several months ago my mother passed away and we started the simple process of changing the title from her name to mine. It is no longer simple ... in fact, it is impossible. I had to sell. For me and my family, it was a financial catastrophe. We have just lost the finest, and safest investment in the world. It is the only investment that I really know and understand. Most important, at my age (57), OUR LAND had a built-in hedge against inflation. If and when there is any money left from the sale after two or more years of waiting at 10 to 20% inflation each year on top of about 50% estate taxes, where and how can the remaining 25% be invested to assure me and my family a comfortable income, so we will not have to depend upon government assistance?

I have devoted years of time and a great deal of energy to the preservation of my family estate. We had a saying in our family, that if we took good care of the land ... it would take good care of us during our declining years. It worked too for my grandparents, and my parents, and they were never burdens on society. There was one thing for sure though...they kept the land. It's too late for me to save the land. It's gone, but we can do something about up-dating the laws, rules and

more on page two (2)

WILLIAM G. COX Page 2 Sept. 21, 1975 letter Farm Journal PHONE: (714) 496-2405
 26852 VISTA DEL MAR, CAPISTRANO BEACH, CALIF. 92624

regulations, so there is a much larger exemption before taxes. The \$60,000.00 exemption should be increased to about \$200,000.00 to preserve small (like 320A) family farms. That's all the larger our farm was, and I couldn't even save it. If I had borrowed the tax money at 9% (Land Bank), I would have been in debt the rest of my life. The farm was not large enough to sell part and save the rest. Paying the taxes would have been like buying the farm all over again from the INTERNAL REVENUE SERVICE, and they didn't have the deed. They had a RIGHT. That's WRONG.

LET'S GET CRACKIN' ON THIS.

The backbone of America is being broken at a time when everyone is talking about "SAVING THE SMALL FARM AND FARMER"

The IRS is killing the goose that lays the golden egg. The big corporations that are buying up the small farms will never pay another death tax on the land, because a corporation never dies. Forming TRUSTS and CORPORATIONS within families seems to be the only way to go now, so get set, everybody, and hire yourself a string of corporate attorneys. Wouldn't it be better for the IRS to take less and leave a little for us?

Sincerely,

William G. Cox
 William G. Cox

I am very anxious to do all I can to correct this situation. I have sent letters to my Congressman and Senator. If quoting or re-printing portions of this letter will help, I'm willing.

120E 242624 CX-2426V159 CBI
 WY G COX
 26852 VISTA DEL MAR
 CAPISTRANO BEACH CA92624



Readers fighting mad at Unfair Estate Taxes

■ Shock, anger and determination to *do something now* about unfair estate tax laws and regulations came through loud and clear in letters we've received in response to the "widow's tax" story in October issue. Fortunately, there's still time for more to get on the bandwagon for estate tax reform.

Response to our September story, "Let's Get Rid of the Widow's Tax," showed 100% support for Doris Royal and her Nebraska campaign. Not a note of dissent in the first 1,000 letters! Reactions:

- *It was a bombshell to many that if husband and wife hold property in joint tenancy and the husband dies first, IRS assumes the entire value of the property belongs to the husband . . . no matter how hard the wife has worked on the farm to help pay for it. "We are recovering from shock and amazement as to the facts," writes a Michigan woman.*

- *The discrimination is no surprise to women who have lost their husbands: "As a farm widow who found out a wife is just an unpaid servant, I am interested in changing our laws. It is too late for me, but maybe I can help others."—Arkansas*

- *Letters from men (almost half) often mentioned inflation in land values since the individual exemption was set at \$60,000 in 1942. At that time a Congressman's salary was \$10,000; it is now 4½ times that—\$45,612, a landowner in Washington says, "By that logic, why shouldn't the exemption be multiplied by 4½ and rise to \$270,000?"*

How do you lobby, once your dander is up?

1. *"Work to get a favorable bill out of committee and on the floor of the House and of the Senate, otherwise we get nowhere," says Doris Royal. This means writing your views to Les Ullman, Chairman, House Ways and Means Committee, Washington, D.C. 20515. Also to Russell B. Long, Chairman, Senate Finance Committee, Washington, D.C. 20510.*

2. *Use petitions with people who won't bother to write letters. A hardware merchant in western Nebraska paid for newspaper and radio ads to let people know they can sign petitions in his store. Feed dealers, bankers, tax consultants are displaying the petitions for people to read and sign. A Texas woman got our permission to reprint *Farm Journal's* article and the petitions in her local paper*

If you want copies of Doris Royal's two petitions, send a big stamped, self-addressed envelope to Estate Plan Changes, *Farm Journal*, 230 W. Washington Square, Philadelphia, Pa. 19105. ◁

Unite congress to help end the widow's tax

■ Farm wives who work alongside their husbands now can press for specific legislation which would end IRS discrimination against them if they were widowed while holding the farm in joint tenancy.

Congressman Charles Thone (R., Neb.) has introduced House Resolution 7521 which would change the Internal Revenue Code of 1954 by providing that "a spouse's services shall be taken into account" in determining if she contributed.

What Congressman Thone calls "sweat equity" would qualify her for exclusion from the Federal estate tax. Wives likely would have to keep work diaries. IRS now assumes in such cases that the entire value of the property belongs to the husband.

An identical bill, H.R. 11657, was introduced Feb. 3 by Congressman Mark Andrews (R., N.D.). Both make it clear that work by a spouse "shall be treated as consideration in *money or money's worth*." IRS and the courts maintain that wives of farmers and owners of small businesses have worked "for love and affection" only, not for the business.

Farm Journal believes it's no accident that this legislation was first drafted by a Congressman from Nebraska where a farm wife, Mrs. Lloyd (Doris) Royal, is rallying support for modernizing estate tax law.

What's the next step? "Readers must now put pressure on the House Ways and Means Committee to include the sense and intent of H.R. 7521 in any estate tax bill it reports out of Committee," Doris Royal said in a telephone interview. "Otherwise we'll have to start all over."

The Committee now has 149 separate bills on estate taxes to consider, so it would be easy for relief of widows to get lost. Address your letters to the House Ways and Means chairman, The Honorable Al Ullman (D., Ore.), 1102 Longworth Office Bldg. House of Representatives, Washington, D.C. 20515.

Will Congress act soon? If it is pressured, House Ways and Means hearings are scheduled March 15-19. Doris Royal hopes to testify and present petitions collected by *Farm Journal* readers.

Laura Lane

Photo: Gary Settle for New York Times

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LET'S GET RID OF THE WIDOW'S TAX

By LAURA LANE
Contributing Editor

*It's time estate tax laws
got updated so a farm
can stay in the
family, readers say.
What can you do?
Support this Nebraska
campaign now gath-
ering momentum*

■ "A farm wife doesn't know how the government discriminates against her until she is widowed or divorced. My husband and I worked hard these past 23 years to make land payments. One year ago he died at 45. Now I'm having to pay for the farm again—this time to IRS."—Nebraska

Informed couples are eager for a change in estate tax laws, our mail shows. But is Congress? The House Ways and Means Committee has on its calendar at least 15 bills aimed at reform of tax structure, yet that doesn't guarantee action. To get the job done we need more people like Mrs. Lloyd Royal of Sarpy County, Neb.

"One day I learned that if something happened to my husband, I'd probably have to mortgage the farm to pay the estate taxes," she told me. That was five years ago. Doris Royal waited for "someone to get up in arms about the injustices." Nobody did. Meanwhile, land values have climbed, making her more vulnerable and endangering the inheritance of the Royals' son and daughter.

Doris has never thought of herself as a leader or political crusader, but she has a high Indignation Quotient. So she began what later became a campaign by enlisting the help of Mrs. Jerry (Annie) Knapp, Mrs. Robert (Sylvia) Wulf, and Mrs. Bill (Evelyn) Clark. Among them they can do just about everything that needs doing on a Nebraska farm. . . spread manure, keep books, operate machinery, type letters. They have become a good team for arousing public sentiment and applying pressure. What they lobby for:

Let's get rid of The Widow's Tax! "That discrimination is enough to turn a farm wife into a libber," acknowledges Phillip A.

Henderson, Nebraska Extension economist who fuels the reform movement with information. The situation:

If husband and wife hold property in joint tenancy and the husband dies first, *the entire value of the property is assumed to belong to the husband and is subject to estate taxes*—unless the wife can prove that she inherited part or held an off-farm job to meet payments or otherwise made a legally recognized contribution of money or “money’s worth.” Proof means cancelled checks, mortgage releases, etc. Didn’t the wife *contribute* by driving the tractor, sorting cattle, doing bookwork? Not in the eyes of IRS.

“The wife renders all these services as a part of her marriage contract,” an IRS attorney explained, when I asked him about this interpretation. I pressed him for an example of when a wife *does* contribute. “The classic case is a Mom and Pop grocery store where the wife draws a salary and pays Social Security tax.”

Earlier Doris Royal had showed me sheaves of letters from widows burdened with this tax. . . . “If there is such a thing as ‘his’ and ‘her’ money, it is ‘my’ school teaching pay that we used to buy this farm in the first place, but I’m having trouble proving it.” Another reason for your keeping good records!

Everywhere I travel—not just in Nebraska—I find farm wives hurt, dismayed and angered at the IRS interpretation. . . . “We *are* contributing greatly to the acquisition of land and machinery with our labor,” a woman wrote the Nebraska Commission on the Status of Women. “We, along with our husbands, increased our net worth over the years—the difference being that later we women are told we didn’t earn half and when it is ‘given’ (willed) to us we have to pay tax on it.” Convictions like this have led to changes in laws of a few states—Iowa, for instance. Wisconsin Women for Agriculture recently have sought legislative changes, too. In June their Senate voted to alter inheritance laws so the farm wife would not have to “prove her contribution.”

“I know we can hire a lawyer to change our legal setup,” Doris Royal says, “but I want what I’ve worked for and am entitled to. We women who have taken the place of hired men deserve fair treatment under the law.” So this winter she spent over 40 hours a week working for justice she feels she is denied.

A second disadvantage of holding the farm in joint tenancy: “Upon the wife’s subsequent death the same property will be taxed again to the heirs—usually the children—the rate depending on how long she outlives her husband. It’s even higher if she survives him by 10 years. Also a widow or widower has no marital deduction. So it’s not uncommon for two

People want the facts, so you have to be prepared for explanations about laws governing estate taxes, says Doris Royal, left, who is spearhead of the reform campaign. Here she has the help of a neighboring farm wife, Sylvia Wulf, center, in collecting signatures on a petition at a convention of Nebraska’s Federation of Democratic Women.



deaths to take as much as 25% to 50% of a farm estate,” Dr. Henderson told me.

How common is it for farm couples to hold property in joint tenancy? One Nebraska attorney said 50% do; the IRS lawyer said 9 of 10 farm estate tax cases he handles. Why? This way of holding property originally meant a saving in probate expense—costs now usually much lower than estate taxes. Also, it’s a great convenience to hold a car or bank account in joint tenancy when one partner dies.

A widow often has other problems. Dixon G. Adams, Nebraska attorney who is donating time to the reform movement, gave me this instance: “Some banks are reluctant to lend money to a widow—she hasn’t proved she can manage. Just now I’m helping a woman mortgage a farm to pay off estate taxes.”

IRS’ interpretation of “contribution” isn’t limited to farm wives—it applies to other businesses and professions where the wife is receptionist, bookkeeper, secretary and general flunky. For this reason, Doris Royal seeks and gets the support of diverse groups such as Chambers of Commerce, senior citizens’ clubs, Shriners, altar societies, the Nebraska Commission on the Status of Women, dentists’ wives, livestock feeders associations and Farm Bureaus.

The personal exemption needs a big boost because of inflation since 1942. IRS was ready to propose legislation raising the specific exemption for

every estate from \$60,000 to \$100,000 or maybe \$120,000 when Watergate and the enemies' list caused them to seek a low profile, an insider told me.

The increase from \$60,000 is a reform everybody can support, believes William V. Brooks, Sarpy County commissioner and oil dealer. He is campaigning for new estate tax legislation through trade journals, business organizations, petitions, and one-to-one politicking. "Many small businesses like mine don't have liquidity to pay a big tax—we need to put everything back just like farmers do," he told me. "And of course the value of our property, too, has increased dramatically in 33 years."

It's time to change the way land is valued for estate tax purposes. As of now, estate taxes often are inflated because the farm or ranch is appraised at its anticipated market price—its "development" value—not on its ability to produce crops or livestock. This inflationary factor often means "when death comes along, land and equipment hit the auction block," writes George R. Baker, Spokane County, Wash.

We need more time to "settle" an estate and file estate tax returns. "The nine months allowed after a person's death aren't sufficient—especially if there has to be a distress sale of land or property," says Doris Royal. Attorney Adams agrees.

Farm people can get the needed legislation if they rally the support of other citizens who care enough to use political muscle. Nebraskans are supporting H.R. 1793 introduced in the House by Rep. Omar Burleson (D., Tex.) and its identical twin, S. 1173, introduced in the senate by Senator Carl T. Curtis (R., Neb.). This bill has 60 sponsors, and has been endorsed by all the Nebraska delegation.

"It doesn't include everything we might like, but it comes close," Doris Royal says. What it provides:

- An increase in the exemption allowed every estate from \$60,000 to \$200,000.
- An increase in the marital deduction by a flat sum of \$100,000 beyond the present one half. (Notice this means less financial burden on a surviving wife but does not alter the "discriminatory disregard for her contribution" where property is held jointly.)
- A method for valuing real property—farms, woodland—on the basis of current use rather than on any potential use at higher value.

Your Congressman can get you a copy of this bill or some of the others which would change estate tax laws, including House Resolutions 2048, 3871, 3903, 3915, 2417, 3879, 1349 and Senate Bill 277.

Your state inheritance tax laws probably need updating, too. The Nebraska group supports Legislative Bill 585 which specifically provides that if husband and wife hold property in joint tenancy, "it shall be assumed that each spouse contributed equally to the acquisition of the property, unless the surviving spouse shall prove that his or her contribution was greater than one half the cost of such property."

How to lobby for your ideas about changes:

1. *Write your Representative and Senators*, sending copies to Al Ullman (D., Ore.), Chairman of the House Ways and Means Committee, Washington, D.C. 20515 and Russell B. Long (D., La.), Chairman of the Senate Finance Committee, Washington, D.C. 20510. Even if you get brush-offs, keep plugging.

"Thoughtful, convincing letters probably do the most good, but we know a lot of people won't go to that trouble, so we use petitions, too," Doris Royal says. Recently copies of petitions in behalf of H.R. 1793 with 3,365 signatures were delivered to key people in Congress—signatures Doris and her co-workers had collected. I saw people interrupt her lunch in a restaurant, eager for a chance to sign!

2. *Bone up—then speak out* on proposed legislation. That means speaking at legislative hearings, state conventions or to small informal groups, being interviewed by the press and TV. It's especially helpful to have a lawyer on your team. "I don't know where we'd be without the counsel of Dixon Adams," Doris says. Also you need people who type or mimeograph, stuff envelopes, do research, work on posters and other visual aids.

3. *Accept every offer of help*. "You can't expect to agree on every issue under the sun, but you can capitalize on your mutual dissatisfaction with present estate tax laws."

After an interview appeared in the *Omaha World-Herald*, Doris had such a voluminous correspondence she had to resort to duplicated form letters. She can't spare a lot more time from the livestock or the tractor, so if you want copies of her petition in support of H.R. 1793 and her covering letter, don't write her—write us. Send a stamped, self-addressed envelope (big) to Estate Plan Changes, *Farm Journal*, 230 W. Washington Sq., Philadelphia, Pa. 19105. ◁

Here's how proposed changes in estate laws could affect tax arithmetic. Assume wife inherits 100% of estate as a surviving joint tenant. She is unsalaried and has not inherited any of the land:

	As law now stands	As proposed under H.R. 1793
Value of estate	\$350,000	\$350,000
Less marital deduction	175,000	275,000
	175,000	75,000
Less exemption	60,000	200,000
Taxable estate	115,000	0
Estate tax	25,200	0

You will find more on estate planning and taxes in OUTLOOK, *Farm Journal's* thriving monthly NEWSletter. Also concisely covered: Money management, real estate, foreign markets, upcoming legislation, alerts to government regulations, commodity outlooks and trends, practical helps with paperwork in the Executive Secretary insert. Introductory price: \$9.95 per year. Write OUTLOOK, *Farm Journal*, Inc., Philadelphia, Pa. 19105.



INTERRELIGIOUS TASKFORCE ON U.S. FOOD POLICY

110 MARYLAND AVENUE, N.E., WASHINGTON, D.C. 20002

202/543-2800

Statement by George A. Chauncey
Chairman, Interreligious Taskforce on U.S. Food Policy
before the
House Ways and Means Committee
March 17, 1976

Mr. Chairman and Members of the Committee:

My name is George Chauncey. I am a Presbyterian minister, the Washington staff person for the Presbyterian Church in the United States, and chairman of the Interreligious Taskforce on U.S. Food Policy. It is in the latter capacity that I appear before you today. I welcome this opportunity to offer testimony on behalf of the Taskforce.

The Taskforce is a team of Washington-based staff of over twenty Protestant denominations and national Roman Catholic, Jewish, and ecumenical agencies. In each of our organizations, as well as in many other national religious bodies not related to our Taskforce, hunger at home and abroad has become a major concern and programmatic priority. New programs to deal with this problem have been developed and new funds contributed. There is widespread recognition in the religious community that public policy has played a key role in aggravating the problem of hunger and that it can play a key role in solving the problem. Thus it is commonly held that one of the primary religious duties of members of the community of faith is to address public policy issues.

The particular function of the Taskforce is to facilitate the witness of the American religious community for a responsible U.S. food policy. We are seeking to do this by clarifying moral issues in U.S. food policy, by providing reliable information about policy and policy options, by identifying policies and policy objectives which in our judgment serve the cause of justice, and by recommending ways in which concerned members of the religious community can most effectively make their witness in the political arena.

The Taskforce speaks for itself only, and not for the almost two dozen national religious bodies cooperating in its work. The Taskforce speaks to those bodies, to the larger religious community, to the general public, and, on occasion, to units of the U.S. government such as this Committee.

The grounds for our advocacy of revisions in the law

The Taskforce, whose primary concern is for justice in the production and distribution of food, is advocating revisions in the current law regarding estate and gift taxes for four reasons.

First, we are committed to the survival of the family farm. We believe that family farming as a means of producing food for the hungry at home and abroad is a precious way of life which should be continued. Some people boast of the way in which America's energy-intensive agriculture, especially in its technological forms introduced by agribusiness corporations, is making it possible for fewer and fewer people to grow more and more food. We believe that the transition of recent decades toward fewer family farms and more agribusiness operations is a mixed blessing which should not go unchallenged. Family farming is not only a rich part of our national heritage; it is also inherently more respectful of our fragile and precious farming land than is the care given by many of the large corporations.

Second, we believe that justice demands that our nation give the family-owned and -operated farm a fair chance to survive as a viable social and economic unit of our society. The current structure of our estate and gift taxes, when combined with other economic factors such as the escalating cost of land and other farm inputs, unfairly stacks the deck against the individual farmer who wishes to keep his or her farm in the family.

Third, the current situation is contrary to the intent that Congress demonstrated in its most recent revision of the estate tax structure thirty-four years ago in 1942. Two goals of the 1942 revisions were to protect the family farmer and to break up excessive concentrations of wealth in agriculture by taxing those farmers with large land holdings. In 1942, \$60,000 represented a fairly large farm estate. Hence, estates under that amount were exempt from estate taxes; only those at or over that amount were taxed. However, even though the asset value of the average American farm was only \$50,000 as late as 1960, in recent years the cost of land and farm inputs has skyrocketed to the point that by 1974 the value of the average American farm was \$170,000.

This combination of "old law" and "new prices" has worked considerable hardship on family farmers. An increasing number of family farmers, for example, have been required to file estate tax returns. In 1942, only 17,000 estate tax returns (farm and non-farm) were filed, approximately one for every 60 deaths. In 1972, 175,000 such returns were required, one for every 10 deaths. Many farmers have been forced either to sell a portion of their land in order to raise enough funds to pay the estate tax or, if they could get credit, to go further into debt by borrowing at the current high rates of interest. For a significant number of these, selling off a segment of their land has meant being left with an uneconomically small amount of land with which to earn a living.

Finally, the consequences of the current situation have been harmful for practically every sector of our society. For the structure of American

agriculture itself, the current situation has meant that land sold of necessity by family farmers has been bought either by large agribusiness corporations or, in the case of marginally suburban land, by developers who convert it to shopping centers or housing developments. Between 1950 and 1974, one half--2.8 million--of the farms in the United States disappeared. Farm land lost to commercial development can never be regained.

By encouraging absentee ownership, the present tax law has contributed to dissolving the fabric of our rural communities. As family farmers move out and corporations move in, communities have less need for local businesses and services. For example, a recent study by a Wisconsin economist of the effect on small communities of the sale of small businesses in them to absentee, out-of-town owners found that employment dropped and the use of local lawyers, banking services, and other community services which kept the local economy healthy was reduced.

And then, for our national economy, present estate tax laws have meant greater concentration of agricultural land and wealth in the hands of fewer and fewer people, with the consequent loss of competition, accompanied by declining food quality and rising consumer prices.

For all these reasons--our commitment to the survival of the family farm; our conviction that justice demands that family farms be given a fair chance to survive; our sense that the current law violates the original intention of Congress; and our judgment that the consequences of the current law are harmful to practically every segment of society--the Taskforce recommends that certain changes be made in the present tax law.

Recommendations

One, we recommend that families today be provided the equivalent benefit of the 1942 exemption levels of \$60,000 per estate and \$30,000 per person via gifts during a lifetime. This benefit could be provided in several ways. The exemption levels could be increased. The \$60,000 estate tax exemption could be updated for inflation to at least \$200,000 and the gift tax exemption to \$100,000.

A second option, which we would prefer, would be to substitute a reasonable tax credit for the present exemptions. This credit should be at least \$30,000, which could perhaps be instituted on a gradual basis. The credit would have the positive effect of taxing the total asset value of the estate, thereby placing the greatest tax burden upon the wealthiest landholders while reducing the amounts contributed by smaller farmers and businessmen. It would also mean that approximately \$1 billion less would be lost to the federal treasury than with a straight increase in exemption levels.

Another way of reducing the tax burden on the small farmer would be to adjust the current tax rate schedule by making it more progressive. A gross estate of \$200,000, for example, is under current law taxed at a rate of 30%. It would be possible to adjust the current tax rates

-4-

by adopting a revision such as the following one:

<u>Taxable Estate</u>	<u>Tax Rate</u>
\$ 0 - 50,000.....	5%
50,000 - 100,000.....	10
100,000 - 150,000.....	15
150,000 - 200,000.....	20
200,000 - 400,000.....	25
400,000 - 600,000.....	30
600,000 - 1,000,000.....	35

Any one or a combination of the preceding alternatives would seem to us a substantial improvement over the present situation. Each should include an inflation escalator clause to prevent exemptions, credits, or tax rates from becoming outdated in the future.

Two, we recommend that some recognition be given to the unique partnership between husband and wife in operating a family farm. In the case of many families farming is a joint venture and involves a real partnership between the husband and wife. It is unfair to tax a surviving spouse on an estate that he or she has been heavily involved in building. We would favor the elimination or substantial reduction of estate taxes when an estate is being passed on to a surviving spouse who has been involved in building that estate. The estate will in any case be taxed when passing from the surviving spouse to his or her children. It seems unfair also to tax that estate when it initially passes to that surviving spouse.

Three, we recommend that the executor of a farm estate be given the option of valuing land used in farming at its value for agricultural purposes rather than at its "fair market value." Under current federal law all land, including farm land, is valued for estate tax purposes at its "fair market value." Thus, land used in food production is taxed not on the basis of its agricultural use, but on its commercial potential. This inequity, combined with the antiquated \$60,000 deduction for estate taxation, has contributed to the conversion of many family farms to non-agricultural uses.

In one sense the valuation is real, in that the land could be sold for that price to non-agricultural interests. But it is a false valuation from the viewpoint of the farmer paying the tax, because that value does not provide a commensurate profit to him or her. The farmer can only realize a profit by selling his or her land and going out of business.

This creates a peculiar and unfair burden upon the farmer. While the government is encouraging full production of agricultural commodities which will help feed the world's hungry, the farmer is actually being penalized for producing food on the land rather than converting it to commercial use.

-5-

An attendant threat to future agricultural use of land exists if the farmer is forced to sell the farm. In a large majority of cases, it is a nearby well-established farmer with large land holdings or a non-agricultural commercial developer who can afford to purchase the land. The latter lends itself not only to non-agricultural use of the land, but to holding actions on land that is used for speculative purposes or tax shelters when it could and should be used in the production of food.

This revision providing for an optional method of valuing land would encourage continuity in the family operation of a farm and, according to the economic division of Congressional Research Service, would have a negligible effect on the total tax revenues received by the federal government. A safeguard is of course needed to insure that a farmer's heirs could not unfairly take advantage of a reduced land valuation for tax purposes and then at some future date sell that land to commercial interests at its higher market value.

Finally, we recommend that the current system of allowing estate tax payments to be spread out in installments over ten years be continued but that the interest rate on the deferred balance be reduced to 4% from the current 9%. This revision in interest rate would be in line with the original intent of the law, which was "to prevent undue hardship" in paying estate taxes. This provision is not currently being used very widely. The interest rate should be reduced in order to encourage its use in hardship cases.

The Taskforce realizes, Mr. Chairman, that one result of the foregoing suggestions would be a reduction in the total amount of federal tax revenue. It seems to us, however, that it is not worth the consequences of imposing such inordinate burdens upon our family farms for the small fraction of total federal tax receipts currently represented by estate tax payments. It would also seem possible to increase taxes on larger estates and incomes in order to make up the amount lost through a reduction in taxes for small or moderate estates and incomes. This would place the heaviest burden of taxation where it legitimately belongs: upon the wealthiest segments of our economy.

The Taskforce believes that the recommendations offered in this testimony are reasonable and fair, and that they would contribute to the preservation of the family-owned and -operated farm and to the common good. We commend them for your serious consideration.

STATEMENT TO: COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.
MARCH 17, 1976

I am Mrs. Jacqueline Furber. I am here today representing Furber Farms, Mr. and Mrs. George Green, Fowler Brothers, George J. Mitchell, Cliff Kunes, Jr, Mr. and Mrs. Ronald Rygnor, Mrs. and Mrs. Fritz Wafler, Mr. and Mrs. Glenn Chapin, Mrs. and Mrs. Robert Chapin, Mr. and Mrs. John Salisbury, Mr. and Mrs. Merritt Thomas, Mr. and Mrs. Russell Freer, Wayne County Farm Bureau, and Women for the Survival of Agriculture in New York.

There is concern on the farms of this country, over the estate tax situation, bordering on panic. Farmers, who a short time ago, perhaps had no more than a will, are rushing to their lawyers to try to figure out elaborate estate plans that will allow their farm families to continue farming the family acres.

I had intended, when I first requested the opportunity to testify at this hearing, to represent only Furber Farms. However, my farm neighbors and the organizations mentioned insisted that I include them and they all contributed money to send me here. I even had calls, late last week, from farmers I didn't even know, who were so deeply concerned that their plight be told in Washington, they offered me, a perfect stranger, all the financial aid I needed to get here.

The economic situation of the late '60s and early '70s has pressured the little people of our country to get involved and speak out for long overdue reforms in many areas of government as a means of survival, rather than simply equity or convenience.

My husband and I just narrowly escaped extermination as "family farmers" when my father-in-law died in 1974 and left us his farm. We certainly became painfully aware of the obsolescence of the current estate tax as it applies to family farms.

It is a rarity today for an individual to have the capital to start a totally new farming operation. Therefore, most of the family farms now operating are businesses that have passed from father to son.

Our farm's history is typical of most of today's full time "family farms".

The original nucleus of Furber Farms was purchased in 1931 by my husband's father, when he was a young farm lad, just starting out during the depression. It was, for many years, a diversified sort of operation, a few cows, chickens, numerous field crops, orchard and so on. My husband was born and brought up on the farm, and as is traditional, at a very early age, became an important part of the farm labor force, gradually learning and mastering the multitude of skills necessary to farming. His wages were the privilege of sliding his feet under the family table. Over the years as some of the neighboring farmers died or moved on, our acreage increased, field by field, to the moderate size of approximately 550 acres. We have a tall stack of deeds and property searches to attest the piecemeal growth. By growing, farms could use technology and improved machinery with more efficiency. As with most of today's farms, the diversified operation gave way to specialization, in our case fruit growing. Our farm has had it's share of hail, freezes, droughts, infestations and other assorted catastrophes that all farm families risk on a year-in-year-out basis. The farm has been mortgaged and re-mortgaged for most of it's 40 odd year history, either to off-set bad crop years, poor price years, or as a means to expand or make improvements. Some of the trees that were planted by my husband's father will still be bearing fruit when his grandchildren are grown and in charge of the farm. And so the business of producing food and fiber on family farms continues from generation to generation. Some of the farms I represent here today are New York Century Farms. They have been in the same families for over one hundred years.

My father-in-law had done some estate planning by providing insurance and I know he would have bought more if he could have afforded the premiums. Unfortunately, the insurance benefit, though it was sizeable, was not enough. I really do not believe that anyone, unless they have gone through the experience of a farm estate settlement, can have any realization of the tremendous amount of capital one must raise. Fees abound: Federal Estate Tax, state inheritance tax, funeral costs, administrative costs, income taxes, appraisals, attorney's fees and on and on. The bill gets bigger and your spirits get lower. Remember too, that on a farm, you can't hang a wreath on the door and close up. So the problem becomes not only

raising the capital necessary to settle the estate, but also to continue the business of producing food. We happened to be in the middle of apple harvest when my father-in-law died. Believe me, we had little time for grief. Ripe apples will not wait through the proper period of mourning.

The information one must dig up to fill out a Federal 706 form is mind bending and time consuming. It was actually months before we knew the total estate liability and then the question was, could we scrape together the money to cover it and keep the farm in tact. There were many times during that anxious period when we hoped that nobody else died and left us anything. In the final analysis, it became clear that keeping the farm depended on finding a buyer and selling a portion of it, keeping in mind that we must retain enough property with which to make a living. Fruit farms are not exactly hot property lately, but fortunately we found a buyer. We were forced to sell 100 acres, buildings and some machinery. We did not get as much as we should have for the property because we did not have the option of time to sell at the best advantage. Our financial stability, because of this sale and the total impact of the estate settlement, is now strung so very tight, that it will be years before we recover, even under the best of conditions.

With this bitter experience still fresh in our minds, my husband and I are well aware of the problem we now face in assuring that our two sons will be able to continue the farm operation. With property values still inflating, and no end in sight, even good estate planning has limitations and the nature of farming further limits the use of the measures now commonly instituted to evade estate taxes. Because farm estates are comprised of land, buildings and machinery, it is difficult to put definite parcels in the form of gifts, and giving such property limits our ability to raise operating capital through mortgages. Adequate insurance coverage would seem a reasonable solution. Frankly, we can not afford the premiums. While farmers may be thought of, by urbanites and suburbanites, as "wealthy landowners", in truth, farmers usually exist under the "live-poor die-rich" rule. The income from our large investment is not all that great.

Now the question is ---Is the "family farm" worth saving? I read recently in

a government publication, this statement: "From the strengths of our social heritage, the lifestyles of the family farm are worth maintaining." "Lifestyles worth maintaining", indeed! Who do they think feeds them? Phase out the family farm and you have delivered your future food supply into the hands of the same nice folks who have tied up pricing in most all our other American industries and made our agricultural products our last real international trade commodity. Loss of the "family farm" will have snuffed out the last competitive feature of our food supply system.

The government's intention in levying estate taxes is to collect revenue but in practice these taxes are destroying productive, competitive, and necessary units of our society. If "family farms" are to survive, revisions of the Federal Estate Tax Law should incorporate the following concepts:

1. The outdated \$60,000 exemption figure must be raised to fully compensate the effect of inflation. I am no economist, but I believe this would be no less than \$200,000 to \$210,000.
2. Farm land evaluation for estate tax purposes should be based on the agricultural use value rather than potential use value.
3. There should be a more liberal marital deduction than the current 50%.
4. The farm wife's contribution of labor should be recognized.
5. There is merit in the proposal that the estate tax payment period be lengthened to 20 years at 4% interest.
6. To cover the event of both parents' dying in a common accident, provisions should be made for an exemption or tax free transfer of property to minor children.

Thank you for the opportunity to present the views of myself and those I represent.

TESTIMONY PRESENTED TO THE HOUSE WAYS AND MEANS COMMITTEE

March 17, 1976

By Byron L. Dorgan
State Tax Commissioner
State of North Dakota

The American public has begun sending loud messages to the United States Congress and the state legislatures that there need desperately to be some changes made in our estate or death tax laws. The American public is right. The estate tax is weary with age and no longer relates successfully to today's economy with its exemptions and rates. I'm pleased that Congress is holding hearings on this subject and I have been told that this particular hearing before the House Ways and Means Committee relates to the general subject of estate tax reform and does not necessarily focus on any one particular piece of proposed legislation. Therefore I will attempt to make some broad philosophical observations about the estate tax system and the changes in it which I believe are necessary.

Some years ago when I was studying economics and more specifically, the field of taxation, I perceived that the estate or death tax system in this country was part of a grand plan in the American system to redistribute wealth. Idealistically, I thought the estate tax was an "anti-revolution tax." Basic history lessons tell us that many other societies in the world have invariably had to experience violent revolutions in order to redistribute wealth when that wealth became concentrated in the hands of a few. It appeared to me that the United States, through a system of taxing transfers of estates, was engaging in a method of redistributing concentrations of wealth peacefully through our tax system. Philosophically, that has made a lot of sense to me.

In 1935 President Roosevelt emphasized the relationship of the federal estate tax system to this concept of redistribution of wealth. According to Roosevelt:

"The desire to provide security for one's self and one's family is natural and wholesome but it is adequately served by a reasonable inheritance. Great accumulations of wealth cannot be justified on the basis of personal and family security. In the last analysis such accumulations amount to a perpetuation of great and undesirable concentration of control in a relatively few individuals over the employment and welfare of many, many others. Such inherited economic power is as inconsistent with the ideals of this generation as inherited political power was inconsistent with the ideals of the generation which established our government."

Notwithstanding these reflective thoughts expressed by President Roosevelt, I found, as I researched the origins of the estate tax prior to this hearing, that the redistribution of wealth effect was only a by-product of the major reason for the initial imposition of estate taxes. In fact, estate taxes historically have been imposed and increased in order to finance the war efforts by this country.

For example in 1862 the first estate tax was enacted in order to help defray the cost of the Civil War. In 1870, however, a distinguished member of the House Ways and Means Committee named "Pig Iron" Kelley led the charge to abolish the estate tax. Actually, he proposed to abolish the Internal Revenue Service completely, but had to accept the death of the estate tax as a consolation prize. For the next 28 years the United States government had no federal estate tax. In 1898 another House Ways and Means Committee member named Representative Dingley proposed an estate tax ranging to 15% to help finance the Spanish American War. Again in 1917, the estate tax rates were raised to a maximum of 25% to help finance the First World War.

There have been a lot of minor changes in between, but in 1942 during the Second World War the estate tax rates were fixed from 3% to 77% and the estate exemption was raised to \$60,000. That is essentially the same estate tax that the American public now lives and dies with in 1976. As an antiquated tax, it doesn't reflect today's needs and realities, and it needs desperately to be changed.

Even though the history of the estate tax shows that it has been primarily a revenue measure during times of national crises, the estate tax is still well grounded philosophically and can operate as a pressure relief valve to redistribute wealth through an orderly process in our society.

We need an estate tax in this country that will prevent the transmission from generation to generation of vast fortunes by will, inheritance or gift because such a transmission of concentrated wealth is inconsistent with the ideals of the American people. But at the same time, we do not want an estate tax to behave as a punitive tax that destroys the average family's ability to retain a small family farm or business. We do not want an estate tax that destroys the continuity of the economic unit owned by persons of modest means who would like to pass that heritage to either their spouse or lineal descendants.

Times change and so should tax laws. Unless tax laws change with the times, that which is transcendently true can become existentially false. A good example of this principle is the \$60,000 basic exemption in the federal estate tax system. In 1942 that exemption would have allowed the transfer of a farm with well over 1000 acres without any estate tax obligation. At that time, the size of the average farm in this country was far below 1000 acres. Today, for example, in North Dakota the size of the average family farm is slightly over 1000 acres and yet at today's prices the transfer of that family farming unit can and does incur a substantial estate tax obligation. The same principle is true with the moderately successful small business or in the wage earner's case, a home and lifetime accumulation of savings or assets. In 1942 all of these could be passed on to the spouse or to a lineal descendant without estate tax liability. However, because the tax law has not changed with the times and because we have had unprecedented economic changes, particularly inflationary price level changes, now the average family farm cannot be transferred without a substantial estate tax obligation. Nor can a small business or a moderate accumulation of assets by a wage earner be transferred without an estate tax obligation.

We need to increase the estate tax exemption in our federal estate tax system in order to reflect today's economic standards. A \$200,000 basic estate tax exemption that has been widely proposed is proper for all estates of farmers, businessmen and wage earners. This would not be any substantial departure from past policy, since it would approximate and be relative to the estate tax enacted in this country in the 1940's.

In addition to increasing the basic exemption from \$60,000 to \$200,000, I believe that we have to study and change the estate tax rates, particularly in the low and middle sized estates. The rate structure, like the exemption, must change with the times or it too will effect an unplanned change in the incidence of taxation.

For example, if in 1942 a family estate had a taxable estate tax base of \$30,000 that family would have paid \$3,000 in estate tax or an effective taxable estate tax rate of 10%. If, as a result of price level increases and the decline of purchasing power of the dollar due to prolonged periods of inflation, a head of a family of today leaves a taxable estate of \$100,000, then the estate tax would be \$20,000 or 20% of the taxable estate. Although the average family unit has the same purchasing power relative to all other families in our society, it is now paying an estate tax that is several times higher than the estate tax paid by the average family 30 years ago. While the real money value of the estate might have remained approximately the same, inflation has pushed the inflated market value of the estate upward over time and pushed that estate into a higher tax bracket. This is a hypothetical case that I have used to illustrate the effective inflation on the incidence of the estate tax itself. While I intensely dislike football analogies in these instances, there is one that seems most appropriate here. The dollar, much like the football, is moving in value. The down markers (in this case the estate tax rates) must be moved also in order to maintain an accurate measurement at any given point in time.

North Dakota is one of the most rural states in America. It is also a state with a relatively high per capita income (we rank 15th in the nation) and our economy, while very healthy, resembles Adam Smith's description of early England, when he pictorialized the intermingling of small agricultural units amid

a nation of shopkeepers. We have about 42,000 farms in North Dakota that support a large number of small towns and a lot of small merchants. We have a law in North Dakota prohibiting corporate farming and therefore the farms in North Dakota are family owned and operated and still maintain a base of support for small towns which are the hubs of economic activity for rural living. There are not many large estates that show massive accumulations of wealth in North Dakota. Most estates reflect the accumulation of the assets of a small farm, small business, or a wage earner's investments over a lifetime. In 1942 most of these accumulations would have been allowed to pass to descendants without economic interruption. Because the estate tax law has not kept pace with changing times, these estates and the economic units they represent are now being interrupted by an estate tax.

Philosophically I believe North Dakotans support the notion that an estate tax or inheritance tax could and should be used to fragment the immense collection of wealth over long periods of time in this country. However, North Dakotans feel equally strongly that the estate tax should not interrupt the continuity of the individual family units that make up our type of economy and should not impede the ability of average Americans to pass a modest accumulation of assets to their heirs without burdensome estate taxes.

I believe that we need a fresh, new approach to taxing estates and I'm pleased that your committee is beginning comprehensive hearings on this subject. I hope that as a starting point you will consider increasing the exemption to \$200,000 and making some basic rate changes in the lower to middle areas of the estate tax rate range.

Finally, as a state tax official, I can tell you that a number of states are studying the idea of following federal exemptions with respect to the state estate taxes. In fact, in an effort to simplify the estate tax law in our state, North Dakota now has a \$60,000 estate tax exemption which matches the federal exemption. North Dakota has a federalized estate tax law, whereby our North Dakota tax rates are applied to the North Dakota portion of the federal taxable estate. I'm confident that if the federal government will increase its exemption in the estate tax, that North Dakota and other states will respond by increasing their exemption in like manner.

SENATOR DENNIS L. RASMUSSEN
SCOTIA,
NEBRASKA 68875

471-2631

Testifying as a farmer-rancher and concerned citizen who is interested in the preservation of the family farm.

I first became interested in the problems of our estate taxation system when I introduced a bill in our State Legislature to give some relief from our state inheritance tax laws. I soon learned how difficult this is because of the credit the federal estate tax law gives for state death taxes paid. This made it extremely difficult to give relief to the taxpayer. Rather, this original bill would have simply apportioned the total tax bill differently.

We have revised the bill considerably, and currently the bill has been advanced from committee and is waiting for action on the floor. The net effect of the revised bill is still to eliminate the estate tax on a \$300,000 estate, and put that money back in the hand of the heirs.

As we worked on this bill, I gained considerable knowledge about the federal estate tax laws, and began to realize that most of the problem results from the federal law failing to keep pace with inflation, especially in land values. If we are really serious about maintaining the family farm, we must have help at the federal level. There is not much a state can do, even if they are disposed to do so.

I represent one of the more rural legislative districts in an agricultural state. In Nebraska, we have not had a serious problem in corporate interests buying out family farms, but we are seeing a dramatic change in the family farm. Let me illustrate what is happening to Nebraska farm families.

The current trend of family farm agriculture is to accumulate capital while sacrificing short-term income. In other words, farmers sacrifice most of their lives in order to have an estate of some value at death. Normally, a farmer will, in order to increase his income, purchase additional real property which will allow him to utilize the economics of size associated with agriculture.

A 1967 study of farms in eastern Nebraska showed that the average capital investment was \$213,310. By 1972, the capital investment was \$311,740. Capital inputs, including land, accounted for 45% of all agricultural inputs used in farm production in 1940, but climbed to 80% in 1972, and is projected to reach 90% by 1980.

The University of Nebraska made a study in 1972, which showed the amount of capital required for a farmer to produce approximately \$14,000 per year income (Range $\pm$ \$1,024). The following are the results:

TYPE OF FARM	ACRES	CAPITOL
Swine, corn, eastern Nebraska	480	\$ 250,000
Grade A dairy, corn, eastern Nebraska	400	275,000
Beef feeding, corn, eastern Nebraska	480	425,000
Irrigated corn, beef cowhead, central Nebraska	640	570,000
Wheat Fallow, wheat farm, western Nebraska	6,000	760,000
Cow-calf ranch, northern Nebraska	22,000	1,765,000

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At least in the case of ranch land, the value of the land has doubled since 1972, (when this study was made). The study allowed \$50 per acre; in 1976, several areas of sandhills pasture sold for \$100 per acre or more.

The trend is clear; farms are getting larger and less numerous in Nebraska. One may also conclude that the total acreage or capital investment is not a good indicator of the potential net income to the farmer.

The cow-calf ranch, the fallow-wheat farm, and irrigated corn-beef herd are most likely to require sale to satisfy tax liability, yet they must have substantially larger capital to produce a moderate income.

In conclusion, the capital required to operate a farm is substantial. Any type of farm capable of producing a \$14,000 income probably will have capital of more than \$300,000, (in some cases perhaps between \$1 and \$2 million more).

Clearly, a \$300,000 estate is not substantial by Nebraska standards.

This is not simply an agricultural problem, however. Inflation has caused the same problem for a family business which carries an inventory or has capital assets. Examples of these include a grain elevator, grocery store, and lumber yard.

Inflation has made the current \$60,000 exemption, which was established in 1943, very insignificant when compared with the assets of many self-employed people. Hopefully, this dollar figure can be raised to an amount helpful to those who have worked a lifetime to help their children carry on the family business.

As a member of the Nebraska Legislature, I can also report to you that the body, voting 40-0-9, passed a resolution urging the Congress to take action on the federal estate tax laws so that the states may pass legislation to help save the family farm.

The measure received support from all elements of our Legislature, both rural and urban; liberal and conservative; Democrat and Republican. Not one member voted in opposition; all of our diverse body can see the need, both for farmers and consumers, to preserve the family owned farm and small business.

The Legislature realized that one of the major causes of destruction of the family farm system in the federal inheritance and estate tax laws. The resolution is strongly worded, an indication of the strong feelings the body had on the matter.

LEGISLATURE OF NEBRASKA
EIGHTY-FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE RESOLUTION 116

Introduced by DeCamp, 40th District.

WHEREAS, the salvation of the family farm in the State of Nebraska and the United States is of critical importance to both agriculture and the consumer in America; and

WHEREAS, one of the major causes of destruction of the family farm and the family farm system is the loss of family owned farms and businesses because of federal inheritance and estate tax laws; and

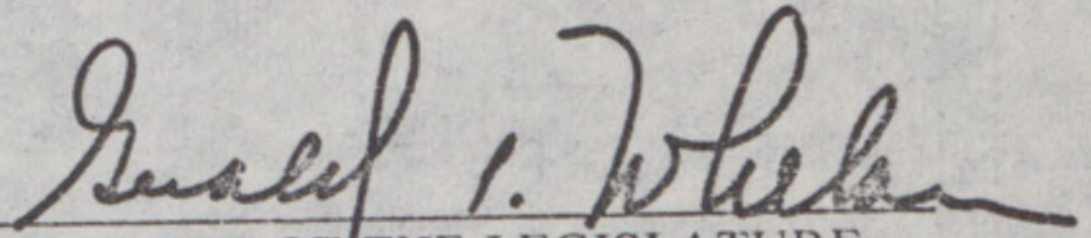
WHEREAS, it is to the benefit of this country to have estate tax laws that are not confiscatory in nature which present federal estate tax laws are; and

WHEREAS, the Congress of the United States has seemingly procrastinated on this most important matter thereby making it impossible for state legislatures to effect or enact corrective legislation until the federal government acts.

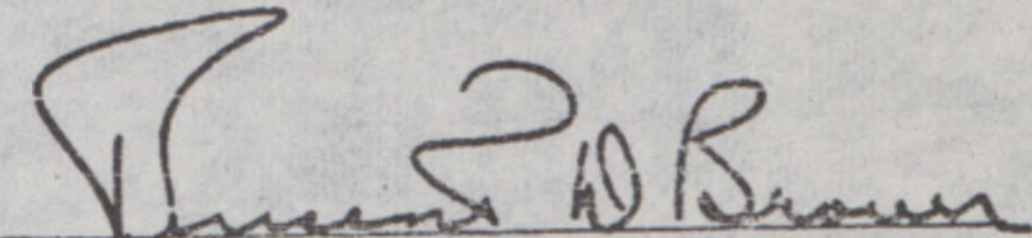
NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature of the State of Nebraska exhorts and insists that the Congress of the United States take action on this matter of the federal estate tax laws immediately in order that state legislatures throughout the United States may take action yet this year which will help save the family farm.

2. That a copy of this resolution be sent by the Clerk of the Legislature to all members of the Congress of the United States and the Nebraska's Congressional delegation be encouraged in the strongest manner possible to utilize whatever abilities they have to bring this matter to a satisfactory conclusion as quickly as possible.


PRESIDENT OF THE LEGISLATURE

I, Vincent D. Brown, hereby certify that the foregoing is a true and correct copy of Legislative Resolution 116, which was passed by the Legislature of Nebraska in Eighty-fourth Legislature, Second Session, on the 3rd Day of February, 1976.


CLERK OF THE LEGISLATURE

Nebraska Legislature



LR OR LB	NUMBER	AMR	AYE	NAY	NOT VOTING
L R	0 1 1 6	6 2 8	4 0	0 0	0 9

ROLL CALL

ON: LR 116 Adapt DATE 4/3

84th LEGISLATURE

AYE	NAY	N.V.	
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•			Duis
•			Dworak
•			Fitzgerald
•			• Fowler
•			George

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•			• Lewis, F.
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MEMORANDA: _____

Statement

To House Ways & Means Committee

17 March 1976

My name is B. Powell Harrison, Jr. I live at Leesburg, Virginia, where my family has been living for generations. Although not a farmer myself, I am a country businessman who has always done business with farmers, and have an abiding affection and respect for them.

My remarks this morning will be based on my experience in the Northern Piedmont region of Virginia, which comprises 9 counties, from Albemarle with Charlottesville as its county-seat North to the Potomac River at Loudoun County, with Leesburg as its county-seat.

Perhaps most of you know the area and have understood that since colonial times it has been one of the most productive farming areas in Virginia. It is also known for its scenic beauty, and history, having produced Jefferson, Madison & Monroe, men we are honoring this Bicentennial year.

The past may be glorious. But the present is chaotic; the future dark indeed unless government at all levels takes a firm studied fearless hand.

Three years ago a group of about 40 citizens, concerned over the deterioration of the character of this magnificent countryside decided to organize the Piedmont Environmental Council, of which I am Chairman of the Board. We have a professional staff of 5, now being expanded to 8.

The broad objective of PEC is to save the historic character of the Piedmont region. This was finally distilled into two fundamental

fields of action. The first is to save farming. The job is too massive just to peck away at saving individual sites, and we felt that neither open space nor the character of the countryside can be conserved unless we can save farming as an industry. The second objective is to preserve the distinctive characteristics of the nine county seats so they will properly reflect their 200 years of serving rural communities.

It is this business of maintaining a viable farming industry that we are discussing today. There is no more important issue before the Congress, in my judgment, than putting a halt to the systematic reduction of farming in which the federal government is now engaged.

Why so important? Because at stake in the issue are the food supplies for the future; low food prices at the city supermarkets; and the economic well being of the agricultural industry on which so many communities and states are highly dependent; deep concerns of every American family.

Without question, the farming industry in my region is nearing collapse. It is my impression that this is true throughout the East Coast. It may be true nationally. Agriculturally speaking, we are about where Penn Central was six months before the blow-up; or where New York City was shortly before the bail-out.

A few facts may be helpful here:

- (1) Age. The median age of our Piedmont population is 26-27. The median age for those in the labor force for all employment in the region is in the group 25-34. But the average age of farmers in the region is 55, with a significant portion over 65. Economists

- 3 -

generally feel that once the age structure of an industry reaches this state, the industry "has one foot in the grave."

- (2) New business. No new bonafide farming enterprises have been started in nearly half of our counties for 3 years. Contrariwise, as each old farmer dies, and most are old, his farm is generally sold to speculators in order to pay the Federal Estate Tax.

I know of no case in the history of this country where an industry has survived this condition of systematically closing up shop.

- (3) Risk Capital. Like other American enterprises, farming has evolved into a sophisticated, mechanized operation, where today a 400-acre farmer may have as much as \$175,000 invested in machinery, buildings and herd, exclusive of land. The land would add \$160,000 more at "use value" or \$800,000 at "market highest use" value. Yet with this tremendous capital outlay, this farmer probably derives an income of only \$20,000 net if he is a good dairy farmer, only \$9,000 net if he is an exceptional livestock farmer and \$11,000 net if he is a good grain producer with all 400 acres in production. Few of the farmers we deal with can do this well.

Do you know of any other business where one individual will have so much capital at risk with so little return? Yet this is the man on whom we have saddled the biggest and most impossible tax burden.

Now let us turn to what happens to the 400-acre farmer at his death. He has \$800,000 in land at speculative non-farm value and \$175,000 in machinery, buildings and herd. Add his personal property

and some few investments, and his worth to the IRS is easily \$1,000,000. Thus, his Federal Estate Tax is levied at about \$320,000. Where, oh where, does his family get this kind of money? Only by dismantling the farm. He sells the herd first, machinery next, and then the farm goes to a speculator, because it's worth \$800,000 to him, or he thinks so; it's worth only \$160,000 as a farm. So, another farm is forced out of business by the Federal Estate Tax.

The speculator-owner now waits five, ten, or fifteen years until he can sell for some other-than-farm use that will bring him a profit. The nation has lost more of its food base. Farms once lost never return. And the cost of food at the stores goes up again as the more precious food must come from greater distances.

We estimate that 20% to 30% of the once productive farm land of Loudoun and Fauquier counties Virginia are now in the "abandoned" derelict category. Drive around the countryside and view them. Once productive farms become derelict land with honeysuckle and cedars taking over the fields and the buildings and fences slowly rotting. Monuments to our inability to keep farming healthy.

For two hundred years a large percentage of the farms in this region have been operated and owned by the same families. It has been a way of life, a distinct culture with a flavor of independence that has been thoroughly recognized. But in the last twenty years the massive spreading

of population from the inner cities has engulfed large agricultural regions and created a speculative land boom that has had peculiar adverse effects on taxation. These affects are destroying profitable farming, a foul feat that depressions and wars have been unable to do before. They must be altered quickly.

The need is to change our taxes from being based on market value to use value as regards both property tax and estate tax. Virginia has done its part. Over two years ago the more strained counties adopted the Land-Use assessment property tax for farmers. Now 23 counties have adopted it.

The most essential action required today to keep a farming industry alive in eastern United States is to adjust the Federal Estate Tax for the farmer so that it too is based on "land-use" evaluation.

The question I pose is this: Does the Federal Government not want Virginia farms to continue in farming at the farmer's death? Under present conditions the government precludes it.

My organization recommends that the basic exemption be increased from \$60,000 to \$200,000, and the "land-use" assessment be adopted for the overall evaluation of a deceased farmer's land. Merely to increase the exemption as some are advocating is to ignore the basic problem. Few farms will be saved due to the inadequacy of the exemption only.

For instance, a 400-acre farm is not a big one as farms go today. Yet with an Estate Tax of \$ 320,000 , how can a \$150,000 exemption keep the enterprise going? It cannot. The family still cannot raise the remaining \$ 170,000.

A good farm friend of mine remarked the other day, "My farm is free and clear. But when I die, for my wife to continue to live there and my sons to continue farming it, they will have to pay the Federal Government a first mortgage of impossible size. I don't know what they'll do."

My Farm Study Committee feels that the most insidious force at work in the farm picture today is the imposition of the Federal Estate Tax based on speculative urban land values. The farmer feels helpless in the face of it. It kicks the widow out of her home, which frequently has been in the family for generations. It prohibits his sons from continuing in the family business. It destroys our essential food source. It ruins an old and revered culture. It destroys the beauty of the landscape while wasting the land. And, it fouls up the environment.

What more can I say?

I trust you can correct this abominable situation. So much of our future depends on it.

STATEMENT OF
YOUNG D. HANCE, SECRETARY
MARYLAND DEPARTMENT OF AGRICULTURE

Mr. Chairman, my name is Young D. Hance. I am the Maryland Secretary of Agriculture and my office is located in Annapolis. I am responsible for all matters relating to the fostering, protection, and development of the agricultural interests of the State and, very clearly, some action is needed to correct the severe problems which have existed in the agricultural community for too long.

Since the turn of the century many new words and phrases have sprung into existence; "Megalopolis" is one of these words which is heard time and time again as population booms and development threatens to swallow land throughout the United States. Maryland is no exception to this trend, and all sectors of the population have expressed alarm over the encroaching influence of urban and suburban development in this State.

Of particular concern is the status of agriculture and of the farmer in our increasingly metropolitan society. Certain trends are apparent upon examination of the statistics relating to agricultural land in this State. There has been a marked decrease in acres of agricultural land in Maryland, accompanied by a decrease in the percentage of land in farms, while a general increase has been noted in the average size of farms, the acreage of irrigated land, and the average farm value of land and buildings per acre. Projections of the Preservation of Agricultural Land Committee indicate that by the year 2000, just 24 years away, the total land in the State in farms will

approximate 1.0 to 1.3 million acres, or 19.6 percent of the State area, a highly significant decrease from the 67 percent in 1945.

It has been conjectured that the rapidly increasing value of farmland per acre is a major factor in the decrease of farm acreage; in fact, projections demonstrate that should the trend continue, the agricultural land value per acre will approach \$1,550 per acre by the year 2000, as compared to a cost of \$640 per acre in 1969, disregarding the impact of inflation. The farmer, particularly the small farmer, cannot help being tempted by the profit to be made by the sale of his land, especially when he is struggling to merely keep his head above water. In addition, the cost of agricultural land is far less than the cost of suburban land; hence, developers find it economically expedient to pursue a leapfrog pattern of development and to purchase the less expensive farmlands. These are direct causes for conversion of agricultural land. Less direct are such factors as the lure of the country, particularly for higher income families (not only from this State, but from the entire Nation), speculation in real estate, the dearth of many modern services and conveniences in agricultural areas, and the low income of the majority of those involved in farming activities.

There is at present a bill to preserve agricultural land which has been introduced into the Maryland General Assembly. While it is premature for me or anyone at this point to predict the outcome of this legislation, it is clear that the objectives of this bill would be seriously weakened by the provisions of

the present Federal Estate legislation.

One of the significant factors which has caused land to be lost to agricultural use has been the severe and unrealistic Federal Estate Tax. The Federal Government's estate tax became a permanent part of the Federal revenue system in 1916. At that time, the Federal tax included a \$50,000 exemption and taxation rates from one percent to 10 percent. The current law which was established in 1941 - 1942 and amended in 1954 provides for a \$60,000 exemption with marginal rates of taxation varying from 30 percent to 77 percent. This means that a decedent's farmland estate is assessed at its market value, rather than being assessed for its value to agriculture and has resulted in the heirs having few liquid assets with which to pay the estate taxes. The heir is often forced to sell a portion or all of the land in order to pay the estate taxes. More often than not, the sale is made to developers in lieu of other farmers. I know a farmer who is 59 years old, drives an eight-year-old Chevrolet with 110,000 miles on it and lives in an ordinary farm house. If anyone called him rich, I am sure he would laugh. But, if he died, his wife would have to pay \$32,000 in Federal Estate Taxes. The reason, of course, is that their modest farm has quadrupled in value since they bought it, thanks to inflation and spiraling land prices. In other words, they have become "paper rich." This example is typical for farmers not only in Maryland, but all over the country. I had contact recently with a farmer in Frederick County -- he and his wife are eighty years old. They own about 300 acres of land and they would like to see their children continue in farming, but under the present Federal Estate Tax, they

will owe the Federal Government \$200,000, and there is no way the heirs can meet this debt except to sell two-thirds of the land.

The inflated land prices that have caused death taxes to become a problem are also keeping young people from entering farming. It now takes at least \$250,000 by many estimates for a young man to enter farming, with high equipment prices added to high land prices. Therefore, as you can see, the farmer as our fathers knew him is a rare and endangered species. If our concern for this trend were purely a matter of nostalgia, a wistful return to a past of which there is no return, we could dispose of the subject with a few sentimental lines. But farming fifty years ago was not that glamorous. Its satisfactions and rewards, of which there were many, were earned by the sweat of the brow. The burden of labor and certain kinds of deprivation, cultural as well as physical, fell heavily on the womenfolk and the children. Incidentally, on this point, many farm wives have complained of what they believe to be sex discrimination in the Federal Tax Law. These women dislike being treated in the same way as wives of city residents and millionaires. Federal law allows a widow to deduct from her tax payment any financial contribution that she has made to the family estate, but only if she can prove it with payroll check stubs or similar documentation. Simply working shoulder to shoulder with her husband on the farm for thirty or forty years is not enough for the I.R.S. One woman stated that a few years ago, she worked all day in a heavy snow to get the cattle to the barn and threw hay to them and that when she got back to the house after dark, she realized

that according to I.R.S., she hadn't contributed one dime to the farm that day.

Short of a miracle, it would be unrealistic in this dollar-conscious economy to calculate on restoring the family-sized farm to its former importance. But saving farmland from development for nonfarming purposes is socially desirable, environmentally necessary, and essential to the production of food for our growing population -- as important to the city dweller as it is to the farmer.

We support any legislation which is drafted to meet the problem which poses such a serious threat to farming and to the pattern of rural life, that is, the transformation of the most productive farmland into shopping centers, drive-in movies, factory and warehouse sites, and housing subdivisions.

Even a successful and prosperous farmer will find it hard to resist the tempting offers of developers when his own taxes are rising unconscionably. Unless government can make it at least equally profitable for him to retain his land as farmland, he will sell it and there will be that much less open space.

It isn't only the farmer and his family who are the losers if his fields and meadows become paved with asphalt. Something very precious to us all -- something we call rural life -- would become a casualty. Therefore, I support and hope you support the principle of increasing the estate marital deduction to a more reasonable and realistic amount, and I would think that at today's inflationary standards, \$200,000 is a reasonable amount. Equally important to us is the principle that land be valued for

estate tax purposes at its value for its existing use. If these two principles are followed, then, I think there is hope for our future.





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