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The Anti-Environment Estate Tax Why the “Death Tax” Is Deadly for Endangered Species

By Jonathan H. Adler¹

The economic and social benefits of repealing the “death tax” are well known. Repeal of the federal estate tax would make it easier to maintain small family-owned businesses and family farms. While the death tax is a small source of federal revenue – it accounts for less than two percent of tax receipts on an annual basis – it is a leading cause of destroying small, family-owned businesses. It also reduces incentives for investment. Economists estimate that due to the estate tax, America’s capital stock is nearly \$0.5 *trillion* less than it would otherwise be.²

The economic benefits of estate tax repeal are significant and important, but they are not the only reason to support taking the death tax off the books. Repealing the estate tax would also produce significant *environmental* benefits by removing a powerful economic incentive to develop land and liquidate natural resources. Indeed, repeal could eliminate one of the most powerful forces driving the subdivision and development of large land tracts in America today.

The “death tax” encourages development. The environmental impact of the estate tax is clear. The tax operates so as to tax wealth transfers that occur at the time of death. The entire estate, including financial holdings, land and other assets, is taxed at a rate of up to 55 percent. A base portion of the estate, \$625,000 in 1998, is exempt, but gifts in excess of \$10,000 per year and transfers that skip generations, are not.

For many landowners, if the land is not developed at the time of inheritance, it will be soon thereafter. This is especially true for countless rural Americans who are “land-rich and cash-poor.” For them, subdividing or developing inherited land is the only way to pay the estate tax. Consider that the average annual household income for a tree farmer is under \$50,000, according to the Joint Economic Committee. Yet the average tree farm has a book value of \$2 million or more.³ When a tree farmer dies, there is simply no way for his family to pay the estate tax without clearing timber or selling off land.

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² Joint Economic Committee, U.S. Congress, *The Economics of the Estate Tax*, December 1998, p. 21.

³ Douglas P. Stinson, Testimony to the Committee on Ways and Means, U.S. House of Representatives, Jan. 28, 1998.

“It is often economic hardship that results in more intense land uses being considered by landowners,” notes Dennis “Duke” Hammond, a biological scientist with the Florida Game and Fresh water Fish Commission, who is concerned about the impact the estate tax has on endangered species habitat.⁴ Based upon his extensive research, Hammond concludes, “if estate taxes were not assessed by the government, thousands of privately owned acres of land would be protected from development.”⁵

The “death tax” destroys habitat. Consider the impact of the estate tax on endangered species. Over 75 percent of species currently listed under the Endangered Species Act rely upon private land for some or all of their habitat.⁶ Yet the estate tax imposes a significant burden on private landowners who wish to maintain land in an undeveloped state from generation to generation.

This point was recently made in the *Keystone Dialogue on Incentives for Private Landowners to Protect Endangered Species*. Keystone’s final report concluded that:

Federal estate tax requirements are a major obstacle for private landowners whose land stewardship has been sensitive to environmental value and who would like to be able to pass on their land to their heirs without destroying that value. The imposition of federal estate taxes often forces large parcels of environmentally valuable land to be broken up into smaller, less environmentally valuable parcels. Some of the best remaining habitat for endangered species is put at risk in this manner.⁷

The “death tax” endangers the Florida Panther. Larger species, like the Florida panther, are particularly vulnerable because they depend on large, uninterrupted swaths of habitat. A single panther’s range can be as large as 450 square miles. Therefore it does not take a lot of development to put them at risk. According to Hammond and other wildlife experts in Florida, the estate tax is a major threat to the species survival in the state. There are only 30 to 50 panthers left in Florida, and habitat is dwindling. “[P]anthers cannot continue to exist if these private lands do not continue to support panthers as they currently are,” says Hammond.⁸

Consider the experience of the Hilliard family in southern Florida. When Marlin Hilliard died in 1981, his heirs were forced to sell 17,000 acres in order to pay the \$17.5 million estate tax assessment on their land. Most of that land, 12,000 acres, has been developed, and the remaining 5,000 acres may soon be as well. Before getting hit by the estate tax, however, the

⁴ Dennis E. Hammond, “Protecting Panther Habitat on Private Lands in Southern Florida – A Current Assessment,” *Trans. 63rd No. Am. Wildl. And Natur. Resour. Conf.* 1998, p. 459.

⁵ *Id.*

⁶ U.S. General Accounting Office, *Endangered Species Act: Information on Species Protection on Nonfederal Lands*, GAO/RCED-95-16 (December 20, 1994).

⁷ The Keystone Center, *The Keystone Dialogue on Incentives for Private Landowners to Protect Endangered Species – Final Report* (Washington, DC: Keystone Center, 1995), p. 26.

⁸ Hammond, p. 457.

Hilliard family had no intention to sell or develop the land. As one of Marlin's nephews told Hammond and his colleagues "It was a loss, just a total loss."⁹

The Hilliards, like many landowners, would prefer to maintain their land for wildlife, but the estate tax leaves them with little choice. As wildlife specialist Michael Bean of the Environmental Defense Fund observes, the estate tax is "highly regressive in the sense that it encourages the destruction of ecologically important land in private ownership." Bean is hardly alone in this conclusion.¹⁰ According to Bernard Yokel, president emeritus of the Florida Audubon Society, "Wildlife is clearly an asset. But the farmer, and businessman, will not put himself out of business to protect that."¹¹

Repeal is the only real solution. Some environmental activists conclude that the solution lies in designing new regulations or loopholes, complicating an already arcane tax code. One proposal is to make estate tax relief contingent upon pledging one's land to conservation. Yet many landowners are reluctant to place easements on their land that would permanently restrict potential future use.

Federal tax law already provides numerous loopholes that enable estate planners to protect assets by creating trusts or placing conservation easements on eligible land. These provisions have not prevented the estate tax from having a devastating impact on many species. Rather than tinker with the tax code further, Congress should repeal the estate tax altogether. This is the surest way to stop the destruction of wildlife habitat caused by the present confiscatory tax.

For too long policymakers have labored under the assumption that the only way to enhance environmental protection is the enactment of more federal rules and regulations. We forget that existing federal laws are often part of the problem. Before imposing new regulatory requirements on private landowners, we should first identify and eliminate those existing policies that encourage the destruction of habitat.

"All may not agree on what kinds of reform are needed, but without significant federal estate tax reform, private lands will continue to lose natural areas to development," Hammond warns.¹² Whether or not the federal estate tax was ever sound public policy, today it imposes substantial toll. According to Hammond, "The future of the Florida Panther may well depend on how quickly this concept can be grasped by law makers today."¹³

⁹ Quoted in Selene Jacobs, Dennis E. Hammond, and Harvey M. Jacobs, "The Connection between Federal Estate Tax Law and Panther Habitat Loss in South Florida," draft manuscript on file with author.

¹⁰ Michael J. Bean, "Shelter from the Storm," *The New Democrat*, April 1997.

¹¹ Quoted in Mark R. Howard, "The Price of Panthers," *Florida Trend*, September 1998, p. 172

¹² Hammond, p. 461.

¹³ *Id.*