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The Federal Estate Tax Survives a Near-Death Experience

By [JONATHAN BERR](#) Posted 12:20 PM 12/07/10 [Economy, Taxes](#)

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It looks like the estate tax will survive its near-death experience.

For months, the tax has been public enemy No. 1 for fiscal conservatives, who have given it the ominous-sounding nickname of "the death tax." Under the Bush-era tax cuts, the levy was suspended for 2010, yielding a bonanza for families of the super-wealthy who went to the great country club in the sky this year, such as New York Yankees owner George Steinbrenner. His heirs saved a reported [\\$500 million on their tax bill](#).

The tax, however, was set to return next year at a rate of as much as 55% on estates valued at more than \$1 million, which would also have affected many middle-class taxpayers, whose assets could have easily hit that level when property and investments were considered. But the deal announced Monday by President Barack Obama and congressional leaders preserves the levy for two years at a more reasonable 35% rate, with an exemption of up to \$5 million for individuals and \$10 million for couples.

Some critics of the tax, though, still aren't happy. "For all of this year, there has not been a punitive and immoral tax imposed on people simply because they die," writes Daniel J. Mitchell of the libertarian Cato Institute, [in a post on the think tank's blog](#). He argued that he was pleased that the tax wasn't worse, but he still believes "... there is no justification for this class-warfare levy."

"A Backstop" for the Government

For now, investors are happy that the larger tax fight on Capitol Hill seems to be over and sent stocks soaring in early trading Tuesday. The agreement also extends the Bush tax cuts for two years and will provide unemployed people an extra 13 months of benefits.

Wealthy people, many of whom get large portions of their income tax-free, will do fine. "Since the wealthy can control the time of sales of their assets, they generally time them for low rate or for ability to use losses to offset gains, further ensuring that they minimize the taxes paid," writes Wayne State University law professor Linda Beal [on her blog](#). "Accordingly, the estate tax serves as a backstop to ensure that they contribute something to the government that has facilitated their wealth."

Among the many critics of the estate tax, some argue that it unfairly penalizes small businesses and farmers, along with people who prudently invest their money. Before its repeal, the U.S. estate tax was the third-highest in the world, according to the American Family Business Institute, which supports repeal. Other critics claim that a permanent repeal would create more than a million new jobs.

"Americans spend about as much hiding from the death tax as it generates (\$28.8 billion in 2008, according to the latest revenue data)," writes Deroy Murdock, a fellow at the Hoover Institution on War, Revolution and Peace at Stanford University in the [conservative National Review Online](#).

"Americans understand the death tax's intolerable cruelty. They believe that people of all income levels should be free to bury their loved ones in peace without enduring family quarrels and worse, refereed by CPAs and financial advisers. Bereavement is excruciating enough without having to inspect spreadsheets and tax schedules."

A Victory for Buffett

Unfortunately, Uncle Sam could not afford to be more generous. According to the [Center on Budget and Policy Priorities](#), permanently repealing the estate tax would add almost \$1.3 trillion to the deficit between fiscal years 2012 and 2021. This includes \$1 trillion of lost revenues and \$277 billion of

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higher interest payments on the national debt, which currently tops \$1 trillion.

Some billionaires, including Warren Buffett, have spoken out in favor of the tax, which was established to help fund World War I. In fact, the legendary investor said repealing the levy would be a "terrible mistake." For now, the Oracle of Omaha has won the day.

Tagged: [Bush era tax cuts](#), [estate tax repeal](#), [federal budget](#), [taxes](#), [warren buffett](#)

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