The Truth-O-Meter Says:

"Joe Sestak ... even wants to bring back the death tax, letting the IRS take half of your savings when you die."

Pat Toomey on Wednesday, July 14th, 2010 in a television commercial

Pat Toomey hits Joe Sestak on estate tax, but leaves out some details

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Former Rep. Pat Toomey, R-Pa., attacked Democratic Rep. Joe Sestak over estate taxes in their U.S. Senate race

In his Senate race against Rep. Joe Sestak, D-Pa., former Republican Rep. Pat Toomey is using a favorite GOP issue: taxes. In an ad, Toomey charges that "Joe Sestak ... even wants to bring back the death tax, letting the IRS take half of your savings when you die."

Before we look at the substance of the ad, let's first take a closer look at what Toomey calls the "death tax" and what others call the "estate tax."

According to the IRS, the decades-old estate tax was levied until recently on "your right to transfer property at your death. It consists of an accounting of everything you own or have certain interests in at the date of death," including such items as cash and securities, real estate, insurance, trusts, annuities and business interests. Various factors reduce the gross amount subject to the tax, such as mortgages and other debts, amounts passed to surviving spouses and a credit that shields upwards of $1 million per person, and double that for a couple.

Unless Congress and the president act to eliminate it permanently, the estate tax won't exist at all for exactly one year -- 2010. This oddity came about as a result of the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001, which was one of the tax cuts proposed and signed by President George W. Bush. The 2001 law slowly ratcheted down the estate tax's rates and ratcheted up the amount excluded from the tax, concluding with a total elimination of the tax for 2010. At the end of 2010, the estate tax would return to its levels in the early part of the decade -- a $1 million exclusion and a 55 percent top rate -- though many expect that Congress would either act before then to set new levels or eliminate the tax entirely.

We see two questions to ask in evaluating in Toomey's ad. The first is whether Sestak "wants to bring back the death tax." The second is whether it's accurate to say that the tax "(lets) the IRS take half of your savings when you die."

On the first question, both Toomey and Sestak have points to make.

Toomey's camp points to votes Sestak took in Congress that supported continuation of the estate tax. In one of them, on Dec. 3, 2009, Sestak voted with 225 other Democrats (and no Republicans) to pass the Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009. This legislation -- which passed the House but stalled in the Senate -- would have established the top estate tax rate at 45 percent and set the exclusion rate at $3,500,000 per person or $7 million per couple. (This happens to be the Obama administration's proposal as well.) Immediately prior to that vote, Sestak voted against a GOP-backed "motion to recommit" that would have asked lawmakers to go back to the drawing board and permanently eliminate the tax.

When we spoke to Sestak's camp, they confirmed that their candidate continues to support the position he voted for in the 2009 bill. However, they took issue with Toomey's characterization of his position as one that would "bring back" the tax. A Sestak spokesman noted that it was actually the 2001 bill -- which Toomey himself voted for -- that is the reason why the estate tax is set to pop back to life in 2011 (and at a higher tax rate and lower exclusion level than what Sestak

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Sources:

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E-mail interview with William Ahern, director of policy and communications for the Tax Foundation, Aug. 18, 2010

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E-mail interview with Daniel Mitchell, senior fellow with the Cato Institute, Aug. 18, 2010

E-mail interview with Roberton Williams, senior fellow with the Urban Institute-Brookings Institution Tax Policy Center, Aug. 18, 2010

E-mail interview with Nachama Soloveichik, director of communications for the Pat Toomey for supports).

We accept the Sestak camp's point, but we believe it's ultimately a bit of semantics. Toomey's main point is that, one way or another, Sestak, unlike Toomey, wants there to be an estate tax of some sort after the tax's disappearance in 2010, and the Sestak camp confirms that he stands by the estate tax parameters he voted for in 2009.

Now to the second question -- the ad's claim that the tax "(lets) the IRS take half of your savings when you die."

On the surface, what the ad says is close to true -- that is, unless Congress and the president agree to new terms before Dec. 31 of this year, the new top estate tax rate in 2010 would be 55 percent, which is slightly over the "half" indicated by the ad.

However, the ad glosses over three pieces of context that are important.

The first is that the ad says a reinstated tax would "(let) the IRS take half of your savings when you die," giving the impression that many of those watching would be subject to it. Yet the reality is that in any given year, very few families would pay the tax, and all of them would be quite wealthy.

According to calculations by the Urban Institute-Brookings Institution Tax Policy Center, the 2009 proposal Sestak voted for would levy the tax on 6,400 estates nationwide in 2011 -- about three-tenths of one percent of all those who die that year. (By comparison, the estate tax that would apply in 2011 without any congressional action would levy the tax on 44,200 estates -- still only 2 percent of deaths that year, but about seven times higher that what Sestak voted for.)

The second problem is that even those families that do pay the tax would not pay it on half their savings, as the ad states. Because of the exclusions, the "effective" tax rate -- that is, the tax levied divided by the total amount of assets considered under the tax -- averages around 20 percent, according to the liberal Center on Budget and Policy Priorities.

The last problem is that Sestak supports setting the estate tax rate at 45 percent. Even ignoring the much lower "effective" tax rate due to the $3.5 million-per-person exclusion, that top tax rate falls short of the "half" that Toomey's ad indicates.

Advocates of eliminating the estate tax defended the ad's distillation of a complicated subject.

"In politics, as opposed to policy writing, you have a very brief time to get across any message, so I don't think it is realistic for candidates to include all the caveats," said Dan Mitchell, a senior fellow at the libertarian Cato Institute. "So I would view Toomey's ad as kosher, much as I would feel it would be acceptable if Sestak were to run an ad about Toomey wanting to 'put people's retirement incomes at the mercy of Wall Street.' It's Sestak's job to criticize Toomey's ad, just as it's Toomey's responsibility to to go after Sestak when his positions get caricatured."

To recap, while there is some truth to Toomey's claim because Sestak supports reviving the estate tax, Toomey exaggerates the scope of the tax, incorrectly implying that it would apply to far more taxpayers, and that it applies to their entire estates. In fact, only the wealthiest Americans would pay the tax under the proposal that Sestak supports, and the proposal would exclude $3.5 million per person and $7 million per couple. On balance, then, we rate the ad Barely True.

Senate campaign, Aug. 18, 2010

Interview with Jonathon Dworkin, spokesman for the Joe Sestak for Senate campaign, Aug. 18, 2010

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