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## **The 1% Split Over Estate Taxes**

By Jeffrey H. Birnbaum and Jonathan Weisman

The very rich and the merely rich are fighting over the fate of the estate tax.

So far, the very rich are winning.

Small-business owners -- the merely rich -- want to exempt from taxation inheritances of up to \$10 million. The very rich -- people whose estates are worth tens of millions or even billions of dollars -- want instead to reduce the tax rate on assets passed on at death. A \$10 million exemption isn't nearly enough for them.

To the pleasure of the very rich, the leading compromise in the Senate would drastically lower the top rate on inherited assets -- to 15 percent from 47 percent. But, to the chagrin of the merely rich, the exemption wouldn't come close to their demands.

Small businesses are irate. "We don't think that a compromise that leaves small business at the starting gate and takes care of the rich guys is a good thing," said Donald A. Danner, executive vice president of the National Federation of Independent Business, which represents small-business owners. "Our members would be very upset."

Representatives of the very rich are much happier but are also girding for battle. "The other side is painting our people as extraordinarily rich," said John J. Motley III, senior vice president of the Food Marketing Institute, which represents many family-owned supermarket chains. "We plan our lobbying to get more intense."

This elite conflict has serious implications for average citizens as well: a sharp reduction in the estate tax would deprive the federal government of tens of billions of tax dollars each year. "Wealthy people will get tax cuts they don't need at the expense of important public services like food stamps and health care," said Matthew W. Gardner of the Institute on Taxation and Economic Policy, a liberal research group.

Only a small number of people would benefit directly from a change. Of the 2.4 million adults who died in 2003, just 28,600 left estates that were liable for any tax, according to the nonpartisan Tax Policy Center. In other words, the levy fell on the richest 1.2 percent of Americans with the highest taxable estates.

Still, thanks to lobbying by the heirs of Wal-Mart stores, Mars candies and Campbell soup, the tax is close to becoming extinct. For nearly two decades, clusters of extremely wealthy people have campaigned to get rid of the tax on inheritances. NFIB, a Republican stalwart, joined the effort in the mid-1990s, bringing with it numerous small-business and farm groups.

Pressure from those powerful groups helped persuade President Bush to call for a repeal during his campaign in 2000. But budgetary constraints allowed him only a partial victory the next year. Bush signed into law a bill that eliminated the tax for one year only -- 2010. It will pop back to life in 2011 unless Congress acts to change it.

Hence the debate. The House voted in April to abolish the tax permanently. The Senate is scheduled to take up the matter during the week of Sept. 5.

Senators and lobbyists agree there aren't enough votes for complete repeal because of how much it would cost (about \$75 billion a year between 2014 and 2024) and because of procedural obstacles that Democratic opponents are expected to erect. That has spurred negotiations to find a less expensive compromise.

Sen. Jon Kyl (R-Ariz.), who is leading the talks, has devised a basic outline for the compromise. Its heart is the 15-percent rate, which matches the rate applied to long-term capital gains -- the profits from the sale of property or securities. Kyl believes that a rate that low would prevent the fire sale of assets to pay inheritance.

"At 47 percent, the [estate] tax today is a great inhibitor to growth," Kyl said, "and is also a business-ending event."

But the Arizonan's focus on rates has disappointed small-business advocates who prefer a larger exemption and a smaller rate cut. "Some in the Senate are very anxious to find a compromise," Danner said. "But when you go down that path, you quickly get to rates versus the exemption. We'd like a \$10 million exemption."

That size exemption would permit virtually all of NFIB's 600,000 members to escape the tax.

But owners of bigger businesses wouldn't be satisfied with a \$10 million exemption. Many supermarket chains, beer wholesalers and auto dealerships are controlled by families and contend that they would still face huge taxes on assets they inherit unless they get extra relief.

To me, the most important factor is the rate," said Seattle Times Publisher Frank A. Blethen, who is part of a coalition of very rich people who oppose the tax. "I'd like the exemption as high as possible but not if it sacrifices the rate."

Heirs to the \$84 billion Wal-Mart fortune, for example, "would save billions of dollars in tax" with repeal or the Kyl compromise, said Michael J. Graetz, co-author of "Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth."

The Joint Committee on Taxation, Congress's official tax scorekeeper, estimates that an estate tax compromise similar to Kyl's that sets the rate at 15 percent and the exemption at \$3.5 million -- the same as current law mandates in 2009 -- would cost \$53 billion in 2015, or about three-quarters of full repeal.

Clearly, however, the benefits would not be widespread. A new study by the Congressional Budget Office concluded that a \$3.5 million exemption in 2000 would have forced a mere 94 family-owned businesses and 65 family farms to pay any estate tax -- which works out to 0.007 percent of adult deaths that year. Only 54 such enterprises would have had to liquidate assets to pay the taxes, the study added.

The estate tax repeal movement began in the late 1980s when Patricia Soldano, an estate planner in Southern California, teamed with Blethen to lobby Congress. Soldano was bankrolled by a handful of families with vast holdings, including the Mars family of McLean, who made millions from candy; Mrs. R.B. Davenport III of the Krystal hamburger fortune; and Dorrance H. "Dodo" Hamilton, a Campbell soup heiress.

Soldano joined the financial clout of her clients with the grass-roots muscle of small-business and farm groups that agreed that the fate of their family-owned enterprises were jeopardized by the tax.

But last year the very rich and the merely rich began to part ways. Persistently high budget deficits made permanent repeal look doubtful. So some of the wealthiest families turned to Aubrey A. Rothrock III, a lobbyist at Patton Boggs LLP, to promote a compromise that would permanently lower the rate and provide much-desired certainty for their estate planning.

Rothrock represented the Mars family, Wal-Mart heirs, the families that own Rich's prepared foods and Wegmans Food Markets, and Soldano's Policy and Taxation Group.

These very rich families had an advantage: access to politicians. Blethen has traveled to Washington frequently for meetings, including a "death tax summit" two months ago with Kyl, White House officials and potential Democratic supporters. Robert Johnson, founder of Black Entertainment Television and an estate tax opponent, said he made his case to Bush personally on a July 15 flight to North Carolina, where the two appeared together at a public event.

The wealthy also have good relations with Democrats. Wegmans owners have courted Sen. Charles E. Schumer (D-N.Y.) and both Democratic senators from New Jersey have been visited by owners of Shoprite stores in their state.

Further complicating the search for compromise are the efforts of the Association for Advanced Life Underwriting, whose members include estate planners who stand to lose a large piece of their livelihoods if the tax no longer looms at the end of life. The AALU hired two Democratic lobbyists, Jeff and Steve Richetti, who started an anti-repeal group called the Coalition for America's Priorities.

The coalition has run newspaper and television advertisements in the states of senators whose vote on the inheritance tax is up for grabs. One newspaper ad pictures a woman in an elegant gown and reads, "The last thing a rich heiress needs is a one trillion dollar raise in her allowance." The effort also is supported by nonprofit organizations, which fear that an end to the tax will dry up endowments that are often funded by inheritances.

"There's not only a social value that's at stake, there's a self-interest involved," conceded Gary Bass, chair of Americans for a Fair Estate Tax, which is backed by liberal groups and nonprofits.

The dispute could lead to stalemate, a result that some fans of repeal wouldn't mind. "There is absolutely nothing to be gained by settling the issue with compromise this year," said Dirk Van Dongen, president of the National Association of Wholesaler-Distributors. "One very viable option is to wait and try to elect more pro-repeal senators next November."