

Tax Analysts Tax Notes Weekly

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Those crazy Senate moderates are at it again. First they deprived the nation of a "nuclear" spectacle by drafting a truce over judicial filibusters. Now they want to snatch bipartisan compromise from the jaws of GOP conquest yet again by drafting an estate tax compromise.

Let's hope they succeed. Compromise on the estate tax, should it materialize, will combine higher exemptions with lower rates -- hardly a great victory for the cause of progressive taxation, but probably the best we can hope for under the circumstances.

The battle to save the estate tax was fought and lost over the last decade. In their compelling study, *Death by a Thousand Cuts*, Yale scholars Michael Graetz and Ian Shapiro demonstrate the genius of the anti-estate-tax campaign. Even more convincingly, they underscore the ineptitude of estate tax defenders, who managed to bungle one of the most important tax debates of the last 50 years.

For progressives, it's time to move on. If we're lucky, we might salvage some version of the estate tax. And let's be clear: Raising the exemption and lowering the rates would be good tax policy, although it seems likely that lawmakers will go too far in both directions.

Still, the estate tax of the pre-Bush era had begun to reach people it was never meant to afflict. Although homeowners in various suburbs may in fact deserve to be called rich, they hardly fit the profile for this historically narrow tax. Indeed, soaring real estate valuations may be one of the most important explanations for the declining fortunes of this "rich man's" tax.

The case for the estate tax -- never a great moneymaker -- has always rested principally on its symbolic effect. By ensuring that rich Americans pay their fair share, it makes the revenue system seem fairer to everyone else. That political effect, although sometimes subtle, has occasionally been central to American politics. In periods when middle-class wage earners have been asked to shoulder steep new taxes -- during the Great Depression and World War II, for instance -- the estate tax has lent legitimacy to the revenue system as a whole.

Today it does just the opposite. Conservatives managed to destroy the moral argument for the tax, turning a vital asset into a serious liability for advocates of progressive taxation. That battle is lost, and it's going to stay lost, at least for a while. If Senate moderates can save some version of the tax, so much the better. But champions of progressive reform should look elsewhere in their battle to advance social justice. Trying to defend the estate tax isn't worth the political capital it would cost.

As Graetz and Shapiro point out, progressives bungled the case for the estate tax from the beginning by emphasizing its narrow incidence but failing to engage convincingly the moral claims advanced by its opponents. It would be unfair to say that liberals retreated to an argument for "soaking the rich"; their defense was much more thoughtful and nuanced than that crass sloganeering implies. But conservatives managed to make a caricature of the liberal argument, and Americans bought it.

It's too late to undo the damage. Even if moderates salvage the estate tax, it will remain vulnerable to further attack. Support for reform, rather than repeal, hinges on the soaring budget deficit. But until recently, Congress was more than willing to overlook those prosaic concerns. Given a reasonable opportunity -- like the one presented by recent, slightly less dismal deficit predictions -- it might do it again.

If the estate tax is ever going to survive over the long haul, liberals must return to fundamentals, finding a better way to talk about tax fairness. They should start by shifting their gaze from the top of the income scale to the bottom. Rather than arguing that justice demands steep taxes on the rich, they should make the case for lower taxes on the poor and middle class -- or at least different ones. Specifically, they should target the payroll tax.

Conservatives like to argue that Americans dislike the estate tax because they're optimistic -- they may not be rich yet, but someday they hope to get there. Some polls lend credence to that view, and downcast liberals occasionally take comfort in the notion that Americans are just horribly confused about their upward mobility.

But who wants to make that sort of case to the electorate? "Sorry, folks, but you really don't stand a chance of making it good. Might as well tax the folks already there." Not exactly a compelling argument for tax fairness. And call me crazy, but I don't believe liberals will find a path out of the political wilderness by trampling on the American dream.

Liberal tax policy should certainly be grounded in progressivity. But it should focus on efforts to make the tax system more progressive at the bottom, rather than the top. Over the past 50 years, the payroll tax has become a heavy, deeply regressive burden for working Americans. And by capping the income subject to tax, policymakers have ensured it will stay that way.

Abolishing the cap would make things better. But Democrats would do well to think even more creatively. For instance, Maya MacGuineas of the New America Foundation has suggested replacing the payroll tax with a progressive consumption tax. It's a provocative idea, and, depending on the details, it might be a very good one. In any case, it's the sort of idea Democrats should be considering.

A progressive campaign to repeal the payroll tax would take a page from the anti-estate-tax crusade. It's simple and easy to explain. Reforming anything requires long and tedious explanation, and most Americans are simply not willing to engage in tax debates on that level.

Of course, filling the revenue gap from payroll tax repeal won't be easy. Introducing a progressive consumption tax, for instance, would almost certainly be a tough fight. But it would be a fight worth having. And although people may often prefer the devil they know to the devil they don't, I'm not sure that's true when it comes to taxes. Witness the popularity of the national sales tax proposal.

Anyone drawing a paycheck is painfully aware of the burden imposed by the payroll tax. I suspect many of them would be willing to take a chance on something new.

Progressivity can be a compelling political issue. Americans have a reputation for being inherently antitax, and to some degree, they deserve it. The nation's history is replete with tax revolts, from its founding to the present day. But Americans have also been known to embrace progressive reform, especially when it seems relevant to their everyday lives. Raising taxes on the rich doesn't do much to help the average American, and large majorities seem unconvinced that it serves the cause of social justice.

But focusing the case for progressivity on the low end of the income scale promises to change the terms of our national debate -- and that's something liberals badly need to do.