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CAPITAL: Populist Scythe Aids 'Death Tax' Foes

By David Wessel

WHEN WE LAST left the estate tax -- or, if you prefer, the death tax -- Congress had slaughtered it. Well, not exactly. President Bush signed a bill that reduces the estate tax gradually until it vanishes altogether in 2010. But the tax will be resurrected in its pre-Bush glory in 2011 unless Congress acts before then.

The House of Representatives voted 272-162 yesterday to wipe out the estate tax permanently. But as my colleague Brody Mullins has reported, some Senate Republicans doubt repeal can get through the Senate. They are sniffing around for a compromise that would keep the tax alive with a rate as low as perhaps 15% and a threshold that exempts all but the wealthiest of the wealthy.

Before another round in this debate begins, pause to consider the facts -- and the unusual politics that have made a populist issue out of repealing a tax that hits only the best-off Americans.

The estate tax this year will fall on those who leave assets of more than \$1.5 million. That is about 18,800 of the 2.5 million people expected to die this year, according to the Brookings Institution-Urban Institute Tax Policy Center. Only 440 -- that isn't a typo -- will be estates in which half or more of the assets are farms or family-owned businesses, the cases so highly publicized by those who want to kill the tax.

The tax will bring in about \$18 billion this year, enough to fund the National Aeronautics and Space Administration, with a few billion dollars left over.

All this has **Michael Graetz, a Yale Law School professor** and the top Treasury tax official in the first Bush administration, wondering: "How could a tax that applies only to the richest 2% of the American public become anathema to 70% of the population and be repealed by bipartisan votes in both the House and the Senate?"

IN A NEW BOOK, "Death by a Thousand Cuts," that tries to unravel the mystery, Mr. Graetz and **Yale political scientist Ian Shapiro** show how defenders of the tax underestimated the tenacity and shrewdness of the other side and mistakenly thought reciting facts would keep public opinion on their side.

Advocates of repeal steered the issue away from facts to morality, declaring the estate tax an unfair levy on success. They also put faces on it -- U.S. farmers and small-business

owners, never rich fellows who wanted to bequeath mansions or portfolios. One of the most prominent belonged to Chester Thigpen, a tree farmer from Mississippi, who testified in favor of repeal at age 83 in 1995. "It turns out," Mr. Graetz reports, "that Thigpen's estate was too small to be affected by the estate tax, but that was just a detail."

Those opposed to repeal never found a way to counter such stories. "The only reason you were given to oppose repeal," Bill Frenzel, a former Republican congressman from Minnesota, said the other day, "was that somebody else whom you don't know . . . and none of your friends or neighbors know, who lives in a gated community in the Caribbean, is going to pay this tax."

With hindsight, Mr. Graetz says estate-tax defenders (of whom he is one) should have focused on the children who were lucky to be born to wealthy people. "We could have called it the Paris Hilton Benefit Act," he says.

The public case for repeal revolves around stories about those who would be forced to sell the family farm or business to pay the levy. A 1997 law to help them proved so complex that hardly any used it. Taxing only estates larger than \$5 million would exempt most small businesses. But the small-business lobby, at least so far, won't accept that.

"We've been fighting this on the grounds that it's an unfair tax, and if you believe that, it's hard to argue for anything except repeal," says Dena Battle, a lobbyist for the National Federation of Independent Business.

The ability of estate-tax foes to hold onto the "fairness" argument is a remarkable milestone. The modern estate tax dates to Teddy Roosevelt, who famously declared that the "man of great wealth owes a particular obligation to the state because he derives special advantage from the mere existence of government."

The case that the well-off should be taxed at higher rates than others remains popular in polls but no longer is a given in American politics. Just listen to the talk about a flat tax or a national sales tax. "This death-tax effort has been a critical piece of an attack on the very idea of progressive taxation in America . . . that those who have more should contribute a larger share of their resources to support the government," Mr. Graetz says.

As both sides realize, the stakes in this year's estate-tax debate are larger than the small number of people it hits. It is part of a debate about how much to use the tax code to arrest the widening gap between rich and poor.