



By Barry A. Nelson, partner, Nelson & Levine, P.A., North Miami Beach, Fla.

## Repeal Really Could Happen

That's the terrifying lesson two Yale professors teach in their excellent new book, *Death by a Thousand Cuts*

Why is it that so many secretaries and mid-level employees believe the estate tax should be permanently repealed? How is it that the gay and lesbian community favor repeal? Why did the congressional black caucus hold a press conference denouncing the “death tax”? How did the estate tax repeal movement capture the high ground by coining that catchy phrase, “death tax”? Why have charities and the life insurance industry, knowing they'll suffer significant adverse consequences in the wake of repeal, stayed on the sidelines during the debate? All of these questions, and more, are answered in the recently published *Death by a Thousand Cuts* by Yale University professors Michael J. Graetz and Ian Shapiro (Princeton University Press, 2005).

liquid assets, not family businesses or funds.

Do not, however, underestimate the determined opposition of that few who are being taxed. The authors report one senior Republican staffer as saying, “Our strategy was simple: we're going to start from total repeal and negotiate down to total repeal.”

But why is total repeal the goal when a mere raising of the estate tax exclusion would help the moderately wealthy? Graetz and Shapiro note that the ultra rich—those who stand to gain little from an increase of \$5 million or even \$10 million in the exemption—have prevailed over the merely rich, for whom an extra few million dollars is the whole ball game.

Also, how is it that a tax affecting only the fabulously wealthy is feared by the middle class? The authors note that non-partisan polling finds almost half of Americans believe most families have to pay estate taxes and only a third believe that a few families have to pay it. One-third of small business owners indicated in surveys that they believe they would have to pay the estate tax. A 1995 poll revealed that 90 percent of minority business owners thought they would be vulnerable to the tax. A third believed that their tax liability would require them to sell all or part of their business.

### GOING TO THE SOURCE

The professors interviewed players in the estate tax debate, including congressmen, senators, staffers from key committees, civil servants, think-tankers and interest group representatives.

Clearly the authors believe the estate tax is a good thing. Graetz and Shapiro spell out what can be done with the money it represents. The \$24.4 billion of estate taxes raised in 1999 alone would fund nearly half of the total spending in 2004 for either the Department of Homeland Security or the Department of Education. The sum also is twice the size of annual Pell grants, which is the federal government's largest expenditure to help students attend college.

Nearly one-quarter of the total estate-tax revenue (\$5.7 billion) came from 550 estates worth \$20 million or more in 1999. Nearly two-thirds of the wealth taxed by the estate tax is publicly traded securities and other

### BUYING PUBLIC OPINION

These erroneous beliefs, the authors show, are a direct result of more than three decades of investing in conservative think tanks, research and polling, lobbying and advertising in addition to newspaper editorials. There's also the brilliant coining of the damning label “death tax.” The result: those who would have little chance of ever having to pay the estate tax are calling for repeal of a tax on the wealthy.



### PHILANTHROPY

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If you're curious why the lower and middle class seem to approve of permanently repealing a tax on the wealthy, then read Yale University professors Michael J. Graetz's and Ian Shapiro's *Death by a Thousand Cuts*. Barry A. Nelson reviews the recently published book and concludes finds that, after years of a well-financed misinformation campaign, the fight to preserve the estate tax may already be lost.

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“We might really become two Americas: One quite well-to-do, the other impoverished. We could become Brazil.”

*Death by a Thousand Cuts* is a must read for anyone practicing in any area of taxation. Before reading it, I believed that most Americans would endorse raising the unified credit to \$5 million and possibly reducing the estate tax rate. Internal Revenue Service reports reflect that for the year 2000, if the unified credit had been \$5 million, less than 4,000 estates would have been subject to estate tax, but those estates would have paid about \$12 billion or 53 percent of overall estate taxes currently paid. Based upon these numbers, many professionals have questioned whether estate tax repeal could ever become a reality. But *Death by a Thousand Cuts* shows us that it can and possibly will. Defenders of the estate tax may already have lost the debate. Their shouting “only the richest 2 percent will pay” over and again has failed. Most Americans seem to accept the pro-repeal argument that it’s unacceptable to have a death tax only for people above a certain threshold.

Learning how those behind the estate tax repeal have manipulated public opinion is an important lesson not only for tax practitioners but also those interested in government and politics. Graetz and Shapiro should be applauded for their thorough analysis of the estate tax repeal movement.

#### FEARING THE FUTURE

But the future their research has led them to envision is dispiriting: “We might really become two Americas: One quite well-to-do, the other impoverished. We could become Brazil,” they warn. “Make no mistake; the anti-tax forces are working tirelessly to dismantle America’s system of progressive taxation.”

As for us estate tax practitioners: having kept quiet during the debate (we could hardly argue in favor of our clients being taxed), we must now quietly go about adjusting our careers, focusing on planning for gift taxes, state estate taxes (in states that have them), asset protection planning and income taxes. It’s that—or get out of the business altogether. |