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THE END OF THE WIDOW'S TAX

The "widow's tax" is the label created by the feminists to describe the trauma that a recently bereaved widow suffers if her late husband failed to do adequate estate planning and then the tax collector decrees that jointly-owned property must be taxed in the estate of the deceased spouse unless the surviving spouse can prove that she contributed to its value in money or other full and adequate consideration.

That's been the law for many years. Of course, the law (26 U.S.C. 2040(c)) is sex-neutral on its face, but it obviously impacts more widely on female spouses because they tend to outlive their husbands. The result is that, upon the husband's death, federal estate (death) taxes must be paid on all their property unless she can prove she paid for it

Many wives, particularly homemakers, don't contribute cash or capital toward the acquisition of the home or other property. But they work in it and they certainly do consider it at least half theirs, especially if it is titled in joint names.

In the last decade, rapid inflation has escalated land values so much that the federal estate tax could force the sale or all or a portion of the property. While the estate tax is on the value of the property, regardless of whether it is a farm, a residence, stocks and bonds, or cash, the sale of family-owned farm land to pay a husband's estate tax has been the most visible and resented aspect of the widow's tax.

Several years ago, the tax code was amended by Section 2040(c) to mitigate this result. Through a complicated formula a spouse was allowed to "work off" -- that is, to acquire ownership in the property -- of "her" interest in the jointly-held property at the rate of two percent a year up to a maximum of 25 years.

Thus, if the wife was married for 25 years, she could acquire 50 percent of the ownership of the jointly-held property which was already titled in her name. However, she could only do this if she "materially particpated" in the operation of the business or farm; and "material participation" was defined so as not to include homemaking services.

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Now comes President Ronald Reagan to the rescue. He brought about the total repeal of the "widow's tax" by his Economic Recovery Tax Act which he signed into law on August 13, 1981.

Under amended Section 2040 of the tax code, effective Jan. 1, 1982, property held jointly by husband and wife will be treated as owned 50 percent by the husband and 50 percent by the wife upon the death of the first spouse. This new rule applies even though the husband may have furnished 100 percent of the consideration for the property.

As a result, only 50 percent of the value of joint property is considered as part of the husband's gross estate if he is the first to die. The complicated 2-percent-up-to-50-percent formula was repealed since each spouse is automatically deemed to be a 50 percent owner.

Under amended Section 2056, there will be an unlimited estate tax deduction for any property passing to a surviving spouse. Previously, the marital deduction was limited to the greater of $250,000 or 50 percent of the value of the decedent's estate.

As a result, a husband's entire estate, no matter how large, may now pass to his widow without having to pay any federal estate tax whatsoever.

The combined effect of these two amendments is that all property jointly held by husband and wife passes to the survivor entirely free from any federal estate (death) tax when the first spouse dies. Half the joint property's value is deemed to be already owned by the survivor (under Section 2040), and the other half passes to the surviving spouse free from tax (under Section 2056).

Under amended Section 2523, there will now be an unlimited gift tax deduction for property given by one spouse to the other during the donor's lifetime. The unlimited deduction also applies to the creation of a joint tenancy between spouses, which previously would have constituted a gift. Previously, the deduction for gifts to spouses was limited to the first $100,000 plus 50 percent of cumulative gifts over $200,000.

Ronald Reagan was correct in dismissing as "a bum rap" any accusations that his Administration does not address issues affecting women. He has proved in a financially-meaningful way that he is pro-women and pro-family.

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