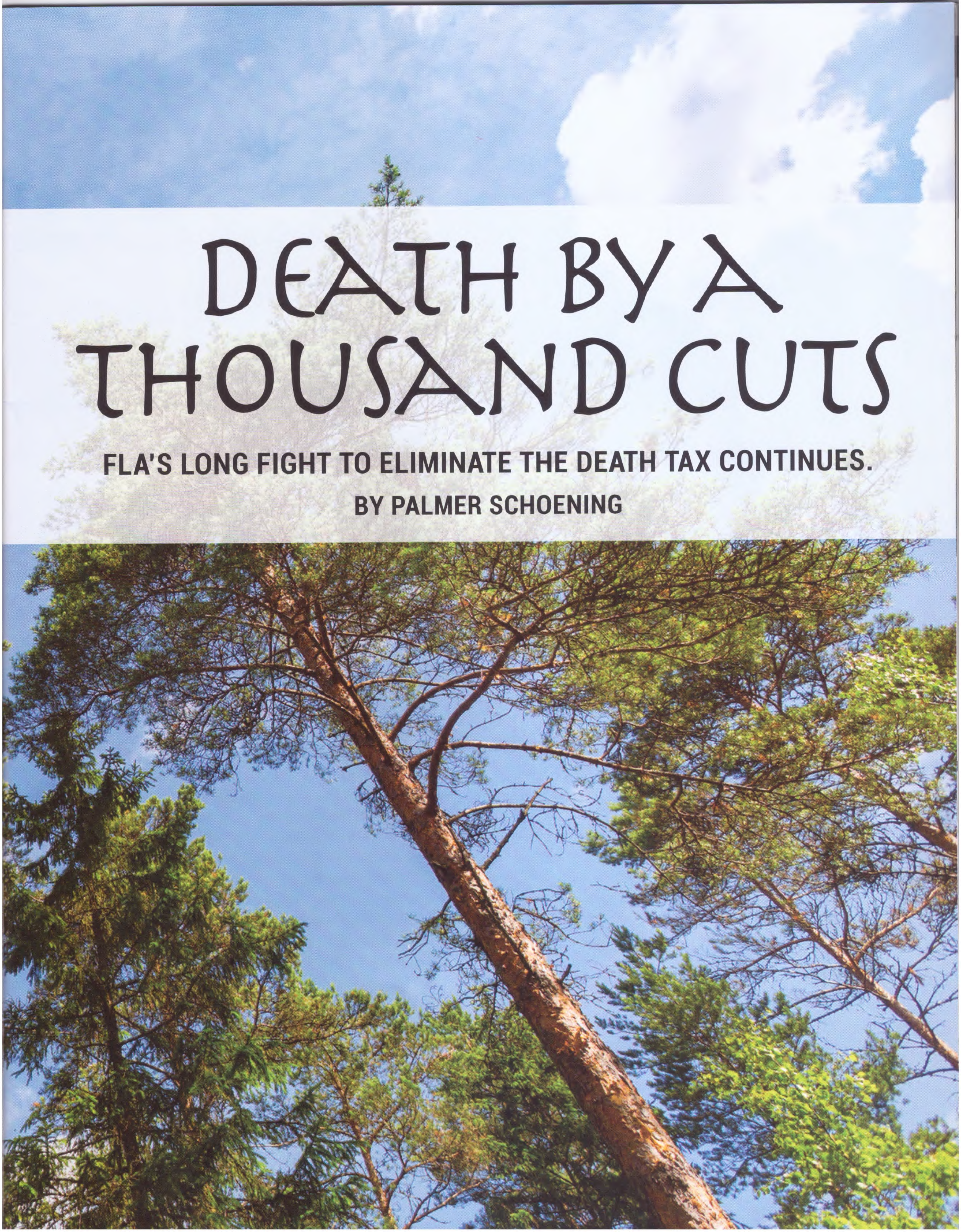
DEATH BY A THOUSAND CUTS

FLA'S LONG FIGHT TO ELIMINATE THE DEATH TAX CONTINUES.

BY PALMER SCHOENING



The federal estate tax, more commonly referred to as the death tax, is defined as a tax on "your right to transfer property at death" and it has been a detriment to small businesses since its inception in 1916.

When the tax was first put into place, it was a small tax on huge fortunes (10 percent of estates valued at $115 million in current dollars) but like many capital taxes it stayed on the books and grew to affect more and more taxpayers. Since a dedicated effort starting with the Bush tax cuts in 2001, the death tax has been on a steady decline and businesses may now protect more property for future generations than they could anytime in recent history.

The Tax Cuts and Jobs Act doubled the amount of property families may now protect from the estate tax to $11.4 million per individual or $22.8 million per couple with spousal portability. As recently as 2001 the estate tax exemption was only $675,000 and the rate was a whopping 55 percent, affecting more than 55,000 taxpayers annually. Imagine paying 55 percent of your entire net worth over $675,000 to the federal government while trying to keep a business running.

Fortunately, because of the dedicated efforts of the small business community, the Forest Landowners Association, and the Family Business Coalition, fewer landowners will be forced to grapple with death taxes. Under the changes in the Tax Cuts and Jobs Act, only 1,800 taxpayers per year will have to visit Uncle Sam and the grim reaper in the same day.

Family businesses are hit particularly hard by estate and gift taxes and more small business associations are joining the fight. The Family Business Coalition, which I serve as chairman of and of which the Forest Landowners Association is an advisory board member, has grown from only 30 organizations in 2012 to 150 groups strong this year.

FBC was the driving force behind the House passing full and permanent repeal of the death tax during tax reform and the improvements made to the law in the Senate version of President Trump's tax reform bill. Even given these significant improvements in the law, there is more to accomplish in the way of providing predictability for business owners.

Uncertainty regarding the estate and gift taxes has been a significant obstacle for many family businesses trying to plan for succession. In the past 20 years, the tax has changed in some form every single year. With the exemption ticking up during the Bush tax cuts and rate ticking down.

In 2010, the death tax was repealed for one year as scheduled which set the stage for the current compromise. Senator Mitch McConnell and then-Vice President Joe Biden hashed out a deal to set the exemption at $5 million indexed for inflation and the rate at 40 percent. The basic construction of this compromise became permanent law during the 2012 fiscal cliff deal which averted the scheduled snap back of a $1 million exemption and 55 percent rate.

Then in December of 2017 President Trump signed the Tax Cuts and Jobs Act into law which doubled the current exemption. Most of those changes were big wins for family businesses but the nature of constant change in estate tax law has meant that business owners must revisit their estate plans constantly, which anyone who runs a business understands is a costly and time-consuming process.

Current advocacy efforts in Congress are focused on locking in the current rate and exemption permanently and allowing business owners to better plan for the future. Because of Senate budget rules, most of the individual tax cuts in President Trump's tax law expire in 2026, including the death tax relief. If no law is passed before that time the current $11.4 million exemption per person will be cut in half. FLA's immediate concern is to lock in the current improvements in the law permanently and to avoid losing any ground on the progress that has been made.

Through the Family Business Coalition, FLA is participating in monthly strategy meetings with top members of Congress and the White House. Congressman Jason Smith's (R-MO) and Senator John Thune's (R-SD) Death Tax Repeal Act now boasts more than 100 cosponsors in the House, 33 in the Senate, and growing. FLA coalition partners are staying on offense to lock in the current exemption and eventually repeal the tax entirely, but given the changes in the makeup of Congress, our groups have also been pushing back against proposals that would be harmful to our members.

Some of those harmful proposals include Rep. Alexandria Ocasio Cortez's (D-NY) proposal for a 70 percent top marginal tax rate, Senator Elizabeth Warren's (D-MA) proposal for a new "wealth tax," and the Senator Bernie Sanders (I-VT) proposal for a 77 percent top death tax rate. Each of these policies would force private forest landowners to pay massive taxes, even if they don't have the cash on hand to do so.

Taken together, these policies likely would force even more consolidation and more businesses to close their doors. Fortunately for small businesses, Senator McConnell has indicated that he would block any proposal that rolls back the improvements made in President Trump's signature tax legislation. But the germ of a bad idea can go a long way in Washington, D.C., which is why it is imperative that FLA strongly communicates our opposition to these policies as they arise to both parties in Congress.

One such example of bad ideas eventually finding their way

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into public policy came in the last three months of the Obama administration, when the Treasury Department proposed ending lack of control and lack of marketability discounts for family businesses. Selling a minority stake in a family business is much different than selling stock in a large company like Apple so when valuing minority stakes, business owners are allowed to take the lack of controlling interest and lack of a market into consideration.

Treasury's proposal sought to eliminate these discounts which would have artificially boosted the valuation of family businesses and increased estate and gift tax valuations by up to 30 percent unilaterally.

The Forest Landowners Association and the Family Business Coalition sprung into action upon these regulations being proposed. The Family Business Coalition immediately wrote to request withdrawal of the regulations. During comment period for the proposed changes to Section 2704, FBC sent a letter signed by 119 small business associations including FLA calling for Treasury to withdraw the regulations.

At our urging, 24 members of the Ways and Means Committee and 41 Senators wrote to Treasury requesting that the regulations be withdrawn. In addition, FLA and FBC teamed to create a portal for small business owners to comment on the proposed regulations and together helped to direct several thousand comments into the Treasury Department. Because of the large number of comments and backlash from the small business community, the Treasury Department stated that they were unable to finalize the regulations before President Obama's term concluded and the regulations remained pending.

Fast forward to the election of President Trump. The President immediately issued Executive Order 13789 directing the Treasury Department to identify and eliminate regulations that were harmful to small businesses. The small business community pushed the new administration to kill the pending 2704 regulations and in the final report issued to the President, the regulations were one of the eight regulations out of the hundreds reviewed that Treasury identified as "creating a burden on the taxpayer, increasing complexity in the tax code, and beyond the statutory authority of the IRS." In September of 2017, the regulations were officially scrapped, saving forest landowners and the small business community $18 billion according to the Joint Committee on Taxation.

The death tax will continue to be a political football as we head into a contentious election year but FLA hopes to build on many of the positive changes made since the Bush tax cuts. The 2704 valuation regulations are dead and the death tax is the least burdensome it's been in years but Congress must lock in the new tax law permanently to provide the certainty small business owners need.

FLA has many more great stories to tell on Capitol Hill about family succession, proper land management, and conservation. Forest landowners are among the most vulnerable to the death tax because of their "cash poor" but "land rich" makeup. Voices from forest landowners provide an important perspective in the fight.

Without personal stories from forest landowners helping to inform the debate in Washington and the strong position FLA has consistently taken on death tax repeal, the United States likely would have a much more burdensome death tax today. Indeed, the improvements put forth in President Trump's tax bill are encouraging for forest landowners but our team will not stop fighting until the death tax is permanently buried.

With the tax marking its 103rd birthday this year, it's well past time for Congress to pull the plug on the death tax once and for all.

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