



The Death Tax IS a Gay Issue  
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A lot has been written about tax reform throughout 2001, as it jumped to the top of the list of national legislative priorities in the U.S. Congress. One particular aspect was the debate over the repeal of the death tax.

At first, you may think that the death tax isn't something that applies to you. This is particularly true of younger Americans who are not yet thinking about things like wills and estate planning, who don't yet own a condo or a house, and who aren't yet firmly established in a life-long relationship or in a career path. But we all get on in years. We all have to make a living. Many of us will be in a committed relationship. And all of us will eventually die.

So, without a doubt, the death tax is about you. And if you're gay or lesbian, it is a discriminatory tax that can bankrupt your loved ones at the worst possible moment – the time of your death.

What is the Death Tax?

The "death tax" is a tax on all of your assets, when you die, (estate tax), or on gifts during your life, (gift tax). The estate tax is 55% tax on all of your assets, due in full, nine months after date of death on assets, upon which you have already paid taxes. These assets include a home, a small business, the cash in your bank account, your retirement savings, any family heirlooms of value – in short, everything you have at the moment you die.

Married couples under federal tax laws are exempt from the tax until the second spouse dies, referred to as the "marital deduction." This means that assets are transferred to a husband or wife without being taxed, but after the second spouse dies the tax is due. It also means that an income-earning spouse of a married couple can gift to a non-income earning spouse, unlimited amounts of money for which there is no tax due! The spouse can either keep that money or use it to gift to others. A gay couple can only gift \$10,000 a year to their partner no matter if they earn or don't earn an income.



But gay and lesbian couples are not entitled to the “marital deduction,” so the 55% tax is assessed immediately at the time of death – and then assessed again at the time of the second spouse’s death. In other words, in a gay or lesbian family, you are taxed twice.

Some couples, regardless of sexual orientation, have tried to avoid the huge burden of the death tax by giving away their assets, or “gifting,” to their partners or children before their death. But there is also a gift tax on assets that you give away during your lifetime that is taxed at the same rate as the estate tax. Again, a married couple can give assets to their spouse without paying a gift tax, but a gay or lesbian couple cannot. Anyone may gift only \$10,000 a year, per person without paying a gift tax. In addition, either during life or at death, \$675,000 of assets, are excluded from tax and may be gifted without paying a gift or estate tax, however, to take advantage of that exclusion you must give up the asset forever.

If you own a home, a car, furniture, jewelry, art, if you have a 401(k) or IRA account, or if you own a small business, the total value can add up to the lifetime exclusion amount of \$675,000 very quickly. If you’re in your late twenties, think about what the total value of your assets are likely to be in 20 or 30 years, and add inflation to the mix. Even though the exemption amount is scheduled to increase, you’ll see that this issue, in the debates in Congress, was not about the super-rich – it was about average Americans.

Since the tax must be paid in cash, it turns out that homes, cars and businesses are sold to pay the bill, many times leaving the surviving partner without a livelihood or home. Jobs are terminated and communities lose local businesses.

Some people will argue – if you’re gay, why don’t you just gift everything over to your partner over time within the annual gifting rules, and if it’s a marriage in everything but a piece of paper, what’s wrong with giving up those assets for life to your spouse?

Well, it’s not so simple. First of all, it takes a long time to gift any substantial amount of assets, at \$10,000 a year, and it’s costly for a gay or lesbian couple to set up a secure estate plan. (Example: ownership of a business, would require new stock certificates to be issued each year for \$10,000 of value, which would require an appraisal of the business.) But more fundamentally, how can you plan which partner will die first? And if you are a gay couple that owns a small business as your main source of family income, even with the best legal preparation money can buy, you can’t plan your death around your business’ cash flow to make sure the surviving spouse isn’t bankrupted. And you shouldn’t have to.



## The Economic Growth and Tax Relief Reconciliation Act of 2001 and the Death Tax

In May 2001, President George W. Bush signed a comprehensive tax reform bill, entitled the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16). The new law will eliminate the death tax in 10 years. The death tax rate will be reduced in 5 years (2006) from 55% to 45%, and remain at that level until repeal at the end of Fiscal Year 2010. At the time of repeal, a limited step-up in basis will be given to smaller estates and the balance will have carryover basis. This means that only a capital gains tax will be due when inherited assets are sold. Death will no longer be a taxable event, and gay and lesbian families will no longer face the prospect of being taxed twice at the time of death.

For the first time this century, repeal of the death tax has been signed into law with both Democrats and Republicans voting in favor of the bill. But there is a catch. Unfortunately, the new law will sunset in 10 years, which means that it will terminate and the previous law (death tax included) will, unless new legislation is enacted, return to the books in 2011. Furthermore, the gift tax is not repealed under the new law, but only reduced to 35%, until 2011.

Unless the sunset provision is eliminated or changed, the death tax as we know it will only be repealed for one year. Even though the rate of tax is reduced more quickly than proposed in the original House bill, the rate stays flat for 5 years at 45% before it is repealed. And the lifetime exclusion increases to \$3.5 million, but not until 2009, then returns to \$675,000 in 2011. The retention of the gift tax means that gay couples will not be allowed to gift their businesses -- which may be their partner's livelihood -- or their assets to their partner during their lifetime. Gay couples will still be discriminated against by the death tax until either the marital exemption is amended to include gay and lesbian spouses -- which would require both the repeal of the Defense of Marriage Act and enactment of federal recognition of same-sex marriage in all U.S. jurisdictions, something not politically feasible for many years to come -- or until the death tax is repealed permanently, something clearly achievable before its return in 2011.

### The Challenge Ahead

The broad coalition fighting to repeal the death tax has come very far over the years. We are families of all kinds, contributing greatly to the U.S. economy through our hard work, our family-owned businesses, our family farms and wise investments made over a lifetime. The success in 2001 was a big step forward in the national debate, but we clearly have more work ahead.



Our first challenge is to work with Congress, the Treasury Department and the White House to eliminate the sunset provision in the 2001 Act so that the estate and generation skipping taxes are not reinstated once repealed. We must participate with the Treasury in the process to find the best solution to eliminate the gift tax, at the same time addressing the concerns of the Joint Committee on Taxation and others, about the income tax leakages that may exist with the elimination of the gift tax. We should continue to lobby Congress for faster rate reduction than currently in the new law, so repeal happens sooner and lasts longer. It is vital that we stay at the top of the tax relief priority list by letting legislators know that the 2001 Act is just a start and that we will continue the pressure for repeal through more rapid rate reduction.

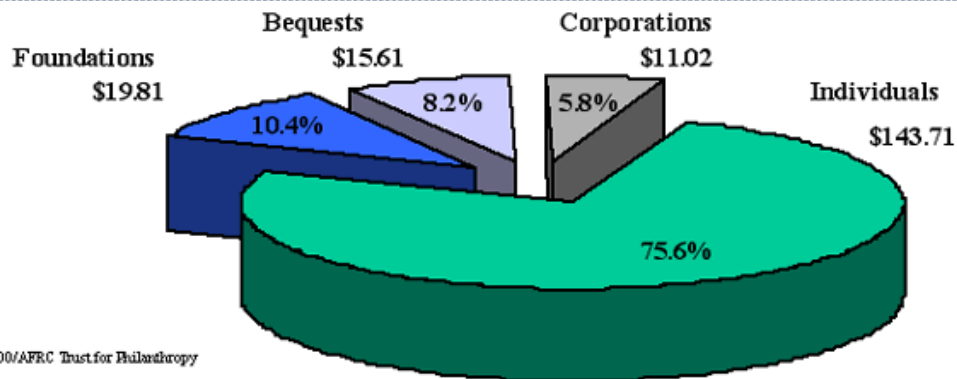
Most importantly for gay and lesbian families, it is crucial to continue to publicize the discrimination that the death tax creates for the gay and lesbian community. We must do our best to educate gay and lesbian Americans about the challenges and burdens that the death tax will cause them, and the earlier we get the message to them the better their ability to prepare themselves against it, and to join the movement to repeal it.

“The Death Tax IS a Gay Issue” was presented at the 2001 Liberty For All National Leadership Conference on July 21, 2001, in Chicago, Illinois.



## Giving 1999: \$190.16 Billion

### Source Of Contributions



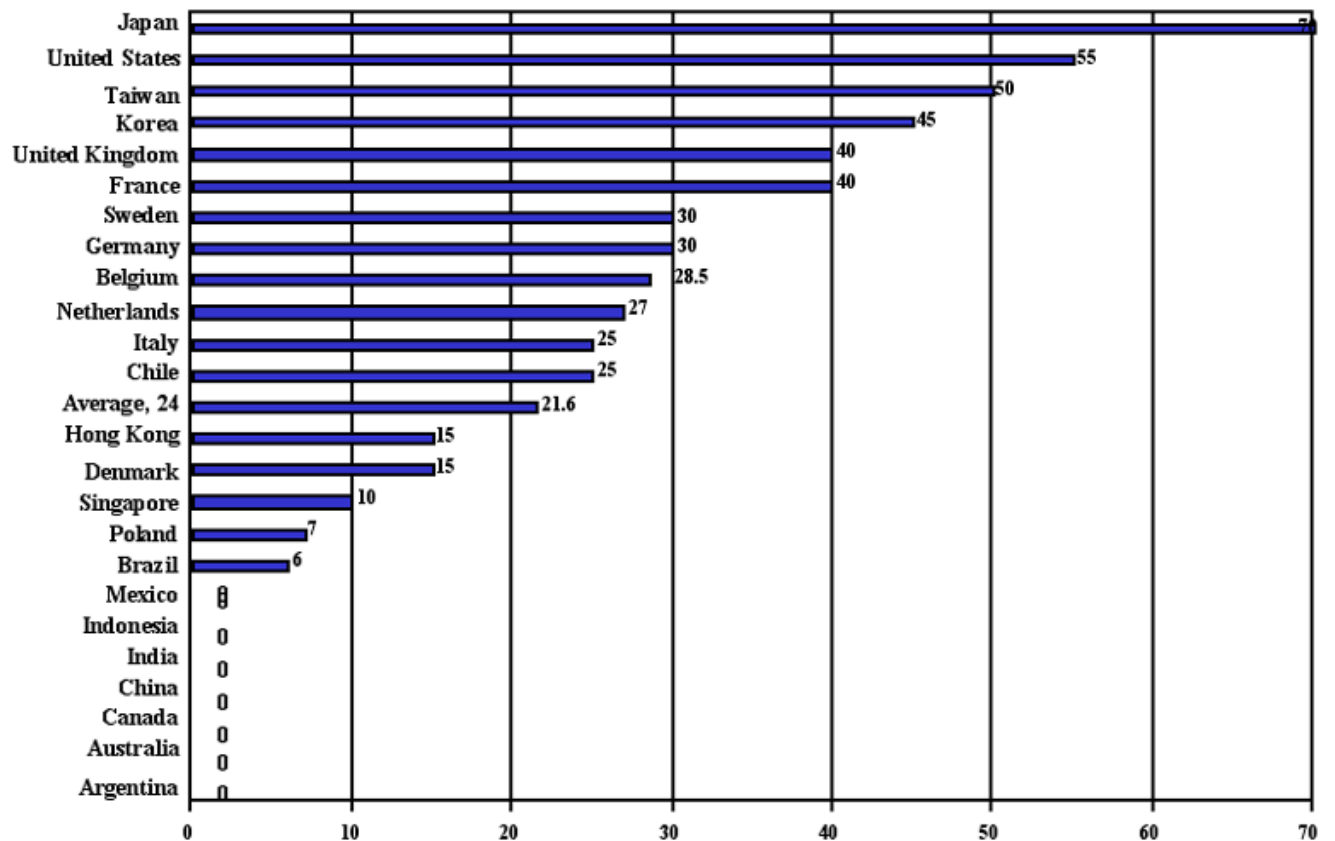
Source: Giving USA 2000/AFRC Trust for Philanthropy

### Reasons Charitable Organizations Should Not Be Afraid Of The Repeal Of The Death Tax

- Charitable giving has remained at a consistent level for the last forty years, irrespective of tax laws.
- If there is no estate tax, there will be a larger pool of assets (55% more) available to be donated or contributed to charitable causes.
- Families give to charitable organizations: First, as they have the financial ability to give; second, for the strong desire to benefit the organization,; and lastly, for tax motivated purposes.
- A vast majority of charitable giving is done during lifetime, as opposed to after death. With the elimination of the estate tax, it is likely the percent of giving during lifetime will increase.



## International Comparison of Top Marginal Death Tax Rates



## The “New” Tax Act - Death Tax Changes

<b>Calendar Year</b>	<b>Estate Tax Applicable Exclusion Amount</b>	<b>Highest Estate, Gift and GST Rates</b>
2002	\$1 million	50%
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	3.5 million	45%
<b>2010</b>	<b>TAX REPEALED</b>	<b>35% (gift tax only!!)</b>
<b>2011</b>	<b>\$1 million</b>	<b>55% - SUNSET</b>

## Reasons Gay Partners Pay More Death Tax

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❖ Are not entitled to the “marital deduction”, which permits a traditional couple to gift to their spouse an unlimited amount of assets, either during life or at death.  
An example:

	<u>Gay Partners</u>	<u>Traditional</u>
•		
➤ Assets	\$850,000	\$850,000
➤ Tax due at 1 <sup>st</sup> death	\$64,750	none
➤ Non-income earning partner can gift	\$10,000	unlimited