AMERICANS FOR TaxFairness

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NEWS THAT HALF OF RICHEST U.S. FAMILIES DODGE ESTATE TAX PROVES NEED FOR WAYS & MEANS REFORMS, PLUS MORE

Bloomberg, Oprah, Lorne Michaels, Other Wealthy Scions Use Special Trusts to Avoid Taxes & Create Family Dynasties; Ways & Means Committee Tax Plan Starts to Address Scandal but Further Reform Is Needed

WASHINGTON – Bombshell news from ProPublica that over half of the nation's richest families are using special trusts to dodge the estate tax and create tax-free family dynasties points up the urgent need for the estate-planning reforms contained in the House Ways & Means committee tax plan—and for stronger reforms of wealth taxation as well.

The ProPublica report, which is based on troves of IRS tax returns secretly supplied to the journalism organization, documents that more than half of 100 very wealthy Americans have set up trusts that will allow potentially billions of dollars to flow to their descendants without the payment of the estate tax, the only federal curb on the creation of family dynasties. Among those named are financial-news titan and former presidential candidate Michael Bloomberg; media mogul Oprah Winfrey; "Saturday Night Live" creator Lorne Michaels; and Laurene Powell Jobs, the widow of Apple founder Steve Jobs.

"The growth of fabulously wealthy American dynasties destabilizes our economy and undermines our democracy," said Bob Lord, attorney and tax counsel to Americans for Tax Fairness (ATF). "Congress can address this danger by closing the estate-tax loopholes that let rich families pass along increasingly huge fortunes to their descendants tax-free in special trusts that go on forever."

The main vehicle for estate-tax dodging in the ProPublica report is the Grantor Retained Annuity Trust (GRAT). It allows the rich person creating the trust to shift the increase in value in the trust's assets out of her taxable estate, while ultimately taking back the initial value of the assets. It's a risk-free way to shield huge fortunes from the estate tax.

As explained in this ATF analysis, the House Ways and Means Committee tax plan essentially ends the ability of future GRATs to act as a surefire estate-tax dodge. But it does not shut down the use of existing GRATs for further estate tax avoidance. Moreover, reforms are needed to ensure that assets are required to stay in trust longer and more of them are retained by the grantor. Eight years ago, the estate lawyer who created the GRAT estimated it had robbed the public of about $100 billion in lost revenue this century. The current figure is undoubtedly many multiples of that, and the total will only accelerate in the future.

ATF has identified other loopholes used by the wealthy to avoid paying any estate taxes that should be remedied in budget reconciliation legislation before Congress:

- Clarify that the Ways and Means plan's reform of Intentionally Defective Grantor Trusts apply to all additions to existing trusts, whether by contribution, sale, exchange, or the payment of income tax on trust income, and not just trusts created after enactment.
- Reform the Generation-Skipping Transfer (GST) tax to prevent the lifetime GST exemption being used to fund tax-free-forever dynasty trusts.
- Reform the gift tax so that it applies both to the amount of the gift and the gift tax paid, consistent with the application of the estate tax.

GRAT reform was one of the few measures in the Ways and Means plan that would impact billionaires and other super-wealthy Americans. The committee dropped President Biden's initiative to close the Billionaires Loophole, known as stepped-up basis, which allows wealthy families to avoid tax on lifetimes of investment gains.

Senate Finance Committee chairman Ron Wyden is crafting a reform that would tap into the now largely untaxed growth in billionaire fortunes. His Billionaires Income Tax would tax the annual growth in the wealth of billionaires regardless of whether they sell the underlying assets to "realize" those gains. Those "unrealized" gains allow the wealthy to live luxurious lifestyles—through low-cost loans and other means—yet currently go untaxed, unlike workers' paychecks that are taxed all year, every year.

"The Ways and Means Committee plan is a good start towards meaningful tax reform," said ATF executive director Frank Clemente. "But Congress cannot in good conscience adopt a plan that leaves billionaires essentially untouched by reform. That's what will happen if the current proposal is not strengthened to more fairly tax wealth, including more stringent regulation of tax-dodging trusts and adoption of Sen. Ron Wyden's Billionaires Income Tax."