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Retention of Estate and Gift Taxes by the Federal Government

Harold M. Groves*

Since the federal government inaugurated its estate tax in 1916 there has been a persistent and sizeable demand that the tax, along with the accompanying gift tax, be "returned to the states." This demand was particularly insistent following World War I and numbered among its proponents the American Taxpayers League, a conference sponsored by the National Tax Association, many state governors, and even President Coolidge himself.¹

The issue was forestalled by the enactment and extension of the federal credit in 1924 and 1926 providing that, within limits, the taxpayer can pay his federal estate tax with state death tax receipts. The limit is 80% of the federal tax computed according to the 1926 rates. As originally adopted the credit was designed to give the states the main revenue from death taxes. The 80% figure was regarded as very high by advocates of federal death taxation but was accepted as the only way to preserve at least a small federal stake in this source of revenue. However, substantial additions to the federal rate scale have since been enacted outside the credit. The result has been to restore the federal government to the dominant position in the death tax field. Currently (1948) federal revenue received from the estate tax represents some 83% of the total amount of death taxes paid to both the federal and state governments.²

Following World War II the demand for federal surrender of the death tax to the states was renewed. The nature of this demand and its supporting argument are well illustrated in A Tax Program for a Solvent America by the Committee on Postwar Tax Policy.³ The Committee stated first that estate taxes are excises on the transfer of title to property at death and the tax should be imposed by the jurisdiction which grants the privilege of transfer. This was conceded to be "a somewhat formal and legalistic argument." Turning to more substantial ground, the Committee maintained that the states need

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*Professor of Economics, University of Wisconsin.

¹This history has been very well reviewed recently in TULLY, THE TAX CREDIT, Special Report of the State Tax Commission, State of New York, No. 15, Albany 1948).

²THE TAX FOUNDATION, FACTS AND FIGURES ON GOVERNMENT FINANCE 1948-49, 50 (1948).

³Roswell Magill, Chairman; Harley L. Lutz, director; Ronald Press Co., New York, c. 10 (1945).
the revenue more than the federal government. Although the latter collects currently more from the death tax than do the states, the proportion of federal collections to total federal revenue is less than that of state collections to total state revenue. Thus the federal government could more readily dispense with the tax than the states. Further, the present dual occupation of the field should cease in order to prevent waste arising from duplicate administration and compliance costs. Finally (and one suspects most important), the Committee declared that confining the tax to the states would give the taxpayer "wholesome" protection from exorbitant rates by the ever present threat of avoidance through migration. The federal government imposes high death taxes with a "social" rather than a revenue motive; this is bad and would disappear were the states given exclusive tenure in the field.

The Republican Party platform in 1948 suggested that "the Federal Government shall withdraw or reduce those taxes that can best be administered by local governments, with particular consideration of excises and inheritances."  

An opposite proposal is made in the report prepared for the Hoover commission by the Council of State Governments. The Council recommended that duplication of state and federal death taxation be eliminated not by a federal withdrawal but by a relinquishment of death taxes by the states.  

On the other hand, an appendix to the Council's report favored the federal withdrawal.

It is the purpose of this article to state a case for federal retention of death taxation.

DEATH TAX SHOULD BE STRENGTHENED RATHER THAN WEAKENED

We may begin with the proposition that the death tax as a feature of our over-all revenue system should be strengthened rather than weakened. The relevance of this consideration should become clear as we proceed. One's judgment about the federal tax is likely to turn on his view of the proper place of the death tax in the tax system.

As to the merits of the death tax, we need not pause long on the standard arguments such as those that stress the unearned character of wealth received by heirs or the desirable contribution to equality of opportunity that a death tax can make. If these considerations be termed "social" rather than "fiscal" they need not suffer from the

6 Id. at 242, 248.
former label. Social and fiscal considerations are so intermingled throughout the revenue system as to make artificial any attempt to separate them. One cannot make a case against a tax by proving that it has social effects; he has to show that the social effects are bad.

On the fiscal side, one may observe that there are two primary elements in any tax system—income and property. These are the rational indicia of ability to support the government and the media in which taxes have to be paid. In a sense all taxes "come out of" these two primary elements and the incidence of taxation is almost without exception measured in terms of these categories. Consideration of either alone will never make a balanced tax system. We have developed personal income taxes substantially but we have no personal tax on wealth except the rather undeveloped death tax. That income alone is not a satisfactory measure of ability to pay is suggested by the constant urge to differentiate the income tax, granting favorable rates to so-called "earned" income, that is to income from services as distinct from property. It is said that any fool knows there is a difference between "marrying a $100,000 salary and marrying a $100,000 income from securities." But "earned income credits" encounter their own difficulties and have been tried and abandoned by the federal government. Net worth taxes have considerable vogue abroad but are ruled out here by constitutional provisions respecting the levy of direct federal taxes and state requirements of uniformity. Perhaps the best substitute lies in strengthening our one existing personal tax on property—namely, the death tax.

The economic effects of severe death taxes need concern us less than those of stiff income taxes. Death taxes reduce savings more than income taxes and impede production and investment incentives less. As a levy on personal wealth, they probably take a larger cut from the capital fund than other taxes but because of the element of futurity involved in their consideration they are not greatly inimical to the best employment of wealth. According to the popular Keynesian view that highly developed capitalistic countries tend toward a chronic over-supply of savings, the ideal tax would be one that reduced saving without discouraging investment. The death tax comes nearer than any other tax to meeting these specifications. It aims

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7 The local tax on property is impersonal, that is, it is levied on property as such rather than on the owner. Accordingly, it is based on gross rather than net value, the rates are proportional, and large holdings of intangible interests in tangible wealth are largely ignored.
straight at the special privilege element in wealth, seeking to spare the creative element that a mixed economy must foster.\(^8\)

It is true that the death tax has contributed only modestly to the revenue of state and federal governments. It could do much better if attention were given to patching the well-known loopholes that have long been associated with the tax.

Unfortunately, no precise calculations can be made of the yield of a thoroughly adequate death tax and its proportionate place in the over-all tax system. No data are available to indicate directly what is at stake in loophole plugging, though it is certain that the amount in terms of present yields of the tax must be substantial. Approaching the problem from the angle of a potential base, one finds that there are no satisfactory recent calculations of the national wealth. The energy of our statisticians has thus far been very largely confined to the arduous task of reckoning national income and its constituents. Now that the income calculation problems are to a considerable degree in hand, it may be wise to devote attention to the field of wealth, and this development is under discussion. One can also reckon potential yields of the death tax by comparing our own situation with that of Great Britain. The latter country is generally recognized as the one that has made the most of its death tax program. Postwar figures indicate that Great Britain is collecting about 4.5% of total internal revenue from this source. This is more than twice the proportionate amount raised by death taxes here. The British system, though tighter and broader in coverage than ours, is by no means perfect. Aiming conservatively we should be able to equal their performance. This would mean an increase in death tax revenue of something like one billion dollars which is not a large proportion of total revenue but by no means inconsequential.

This brings us to the question whether the states, left to themselves and their own devices, would be likely to show any disposition to improve the tax.

**SURRENDER TO THE STATES WOULD WEAKEN THE DEATH TAX**

The answer is that granting the states a monopoly in this area would almost certainly further weaken a weak tax. This conclusion is based on the following observations:

1. Even now, with the support of the federal credit, state death taxes are rather unimpressive whether the test be the terms of the

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\(^8\) Groves, Postwar Taxation and Economic Progress c. IX (1946).
law, the administration of the tax, or the revenue yield. As to administra-
tion, the situation apparently is somewhat spotty but in general 
the field is one of neglect and confusion. Legal and lay authority, and 
state and local responsibility, appear to be mixed in a variety of pat-
terns. Inefficiency arises from the fact that those units of government 
principally responsible for enforcement (counties) often have little, 
if any, financial stake in the results. Inadequate funds and personnel 
also contribute to bad administration. Officials are frequently paid 
through an antiquated fee system, and they are paid whether they 
have adequately performed their allotted tasks or not. Self-assess-
ment prevails to a degree never contemplated in the statutes. One of 
the most thorough surveys of the subject on record sums up with the 
conclusion: "At present it is probably true that among major state 
taxes none is more poorly administered than the death tax, whether 
judged by principles of organization, by equity of application, or by 
available quantitative measures." 9

Certainly one of the qualifications of a competent death tax sys-
tem is a reasonably adequate defense against those forms of avoid-
ance that have plagued the operation of the death tax since its origin. 
One of these defenses is a gift tax, and it is highly significant that 
only twelve states have found it worth their while to add this weapon 
to their death tax systems. 10 To be sure states do generally provide 
that gifts made in contemplation of death or to take effect at death 
are taxable along with gifts at death. But these provisions have 
proved a notoriously weak defense against avoidance by transfer be-
fore death. A major difficulty lies in establishing the fact that gifts 
were made in contemplation of death. The evidence indicates that 
the government has a very poor score in cases where the matter has 
been in dispute. 11

(2) At the time the credit was inaugurated, state death taxes were 
considerably weaker than they are now. Several states, notably Flor-
da and Nevada, had repealed their levies entirely and Alabama had 
not enacted a tax. Competition among the states for the aged wealthy 
was very keen and took the form of outdoing other states in leniency 
of death taxes. The original credit was supported and defended on 
the ground that it enabled "States like New York, Massachusetts

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9 Heller and Harriss, The Administration of State Death Taxes, 26 IOWA L. REV. 628, 673 (1941).
10 Tax Systems 238 (1948). Of the seven leading states in terms of death tax re-
cipts only California has a gift tax.
11 Rudick, infra p. 153, and references cited.
and Wisconsin which levied substantial taxes of this nature . . . to preserve them without losing any of their citizens."

(3) The states are in a very weak position to levy death taxes, particularly on the higher brackets of estates. Concentrated wealth is largely in the form of intangibles which mainly follow the domicile of the owner; the latter can be changed in contemplation of death with relative ease and impunity. Even where migration itself is not great, fear of undermining the state tax base and propaganda to enkindle this fear impose a very effective break to any display of aggressiveness in death taxation.

State taxation of inheritances, without support, is likely to degenerate into competitive underbidding much like that of state incorporation of business. The issue in federal versus state death taxes is not so much which should levy the tax or get the revenue as whether the tax should continue to be (or become) a respectable member of the over-all tax system.

SURRENDER TO THE STATES WOULD AGGRAVATE TERRITORIAL INEQUALITIES

Federal surrender of the death tax to the states would mean localized taxation of wealth that arises from interstate commerce. There may have been a time when the great fortunes could be said to "belong to" a particular state and perhaps even a particular county or city. But in our present era of great economic interdependence this is surely no longer true. We may concede that some particular district of situs or domicile is entitled to some of the public emoluments that attend the liquidation of an estate. But it is hardly entitled to all of them.

Judging from the present statistics, were the states to become the sole occupant of the death tax field, no more than three of them would together get 42% and no more than seven would receive 64% of the revenue from what would then be the sole personal tax on wealth in the United States. Presently with the federal tax in the picture the seven leading states receive less than 11% of total death tax revenues. The details of this distribution are shown in the accompanying table.

A different form of territorial unfairness would arise because of migration in contemplation of death. The taxpayer would then be in a peculiarly strategic position. He could incorporate his physical assets and this would make his personal wealth intangible. He could

12 Green, The Theory and Practice of Modern Taxation 208 (2d ed. 1938).
### DEATH AND GIFT TAX COLLECTIONS, BY STATES, FISCAL YEAR 1948

<table>
<thead>
<tr>
<th>State</th>
<th>Death and Gift Tax Collections* (Thousands)</th>
<th>Individual State Collections as Per Cent of all States</th>
<th>Cumulative Total*</th>
<th>Individual State Collections as Per Cent of Federal and State</th>
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<td>Federal and State</td>
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<td>18.50%</td>
<td>$1,085,964</td>
<td>18.50%</td>
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<tr>
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<tr>
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<tr>
<td>North Dakota</td>
<td>95</td>
<td>.05%</td>
<td>5</td>
<td>.05%</td>
</tr>
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</table>

* Items do not add up to total or to 100 per cent because data for New Hampshire and New Mexico are not available.

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select the state of incorporation. He could then change his domicile to a non-tax or low-tax state any time up to his death. If he followed the rules explicitly, his new domicile would have sole claim to the tax on his estate. Although all his physical assets would be in state A and all his business activities would have been conducted there, his last act of tax avoidance would give the right to tax to state B. It might be bad enough for, let us say, a tobacco manufacturer to pay estate tax only to the state in which he gathered his fortune. It would be much worse for him to pay exclusively to some other state that had no special claim to him except his migration there shortly before his death.

Territorial inequality is now so great that Congress is seriously contemplating equalization aids to the states. It hardly seems wise under these circumstances to weaken further the differential territorial incidence of the tax system.

SURRENDER TO THE STATES WOULD AGGRAVATE JURISDICTIONAL PROBLEMS

Finally, the federal surrender of the death tax to the states would aggravate jurisdictional problems in the death tax field. These problems include confusion as to domicile (the problem of double domicile) and multiple claims to the jurisdiction to tax intangible property. It is true that the federal government has done far too little to mitigate these ugly aspects of state death taxation. It could do much more were it to use its credit to protect taxpayers from the grave injustices that arise from territorial multiple taxation. It is also true that the states have made considerable and commendable progress in dealing with these problems by reciprocal legislation and forbearance. But the progress has fallen far short of clearing the field of anomalous duplication in levies. The federal government in its own tax, at least, is largely free from these problems and this means that their importance in the over-all picture is minimized.

There are those who take the position that multiple territorial taxation in the death tax field is unimportant because it is "mainly at the expense of millionaires." This represents a cynical view which the author does not share.

INTERGOVERNMENTAL RELATIONS AND PROGRESS IN THE DEATH TAX FIELD

Students of taxation are looking for progress in the death tax field at the following points.

14 Discussed in more detail later.
(1) Death and gift taxes should be integrated. Although the passage of gift tax legislation was a step in the right direction, it failed to recognize that gifts during life are not essentially different from gifts at death. Under existing law with two transfer taxes, the estate owner is free to use either or both, according to his particular advantage. It is quite convenient for him to make use of the exemptions and lower brackets of both taxes, thereby escaping the upper brackets of either. Thus the progressivity and revenue raising capacity of both taxes are defeated. Both levies should be replaced by a single cumulative transfer tax.\(^1\)

(2) The death tax must be brought to bear upon the transfer from a life estate to the remainderman. At present the law permits the almost indefinite postponement of successive estate taxes by the inclusion of several partial interests in a single transfer. Thus \(X\) may leave his property as a life estate to his son and thereafter as a second life estate to his grandson, and finally in remainder to his great-grandson. This is treated by the law as a single transfer, subject to only one tax. Competent authority supports the fear that unless transfers from life tenants to remaindermen are taxed, the base of the federal estate tax will shrink to the point where the tax will no longer serve a useful function in the tax system.\(^2\) Various proposals have been made for blocking this gaping loophole. The simplest is to follow the British in applying the tax to the transfer from the life tenant to remainderman, allowing the life tenant's estate the right of recovering the tax from the remainderman.\(^3\) This would largely eliminate avoidance by the use of trusts, powers of appointment and life estates with remainders.

(3) Closer correlation between death, gift and income taxes is needed. That these three taxes are interrelated and should be viewed as a system has long been recognized. Some proponents of integration go so far as to suggest that the first two of the three be dropped and that all receipts by transfer be included in the income tax base. The preponderant, and, in the author's opinion, the better view regards this degree of integration as unnecessary and unwise, involving a fusion of taxes on wealth and those on income, and creating grave problems of timing and of the equitable application of progressive rates. But without such ambitious schemes of integration, it is evident

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\(^1\) DeWind, infra p. 79.

\(^2\) Mills, Transfer from Life Tenant to Remainderman, 19 Taxes 195 (1941).

\(^3\) For other possible solutions see Vackrey, Agenda for Progressive Taxation cc. 7-9 (1947); Rudick, infra p. 150.
that our law could be considerably improved were common rules applied to the three taxes. At present a taxpayer may create a trust, for instance, with provisions that render him free from income taxes on income from the trust property and at the same time leave him subject to the estate tax on this property when he dies. The exact reverse of this inconsistency can also be found in the law or Treasury regulations. Usually these diversities of treatment serve no useful purpose and are accounted for by the piecemeal development of tax practice. Substantial research and deliberation have been devoted to the end of developing an integrated code for application to the three fields.\textsuperscript{18}

(4) Elimination of "double domicile" in state taxation is highly desirable. It will be recalled that two or more states may presently lay claim to an estate on the ground that each includes the spot where the deceased intended to make his permanent abode. It is conceded that there can be only one such spot and that only one state has a valid claim but each of several states may claim to be the one. The Supreme Court has, in the main, refused to arbitrate these conflicting claims. The result can be and has occasionally been the collection of several state taxes on the same property with no recourse for the taxpayer. Such grave infractions of tax neutrality create unnecessary bitterness and threaten the repute of government. The matter has been studied and discussed at length but none of the suggested remedies has received serious consideration by the tax makers.

(5) Multiple taxation of intangibles in state taxation should be eliminated. At one time the Supreme Court seemed well along on the high road to accomplishing this objective. It appeared that it would allow the taxation of intangibles only by the state of the deceased's domicile.\textsuperscript{19} But more recently it has shifted to the view that to rule out one plausible state jurisdictional claim in favor of another is arbitrary and beyond the prerogative of the Court.\textsuperscript{20} The conclusion is that legislatures must shoulder some of the difficulties that courts previously carried for them.

Probably no member of federal and state tax system is so much in need of a thorough overhauling as the death tax. Suffice it for our present purpose to point out that each and all of these badly needed reforms would very probably be laid on the table indefinitely were

\textsuperscript{18}DeWind, \textit{infra} p. 79.

\textsuperscript{19}First National Bank of Boston v. Maine, 284 U.S. 312 (1932).

the federal government to abdicate the field. Some of the needed changes are largely beyond the power and perspective of state governments and all of them would probably fall by the wayside in the competitive atmosphere that would attend a state monopoly of the death tax field. It will be difficult enough to achieve the needed modification without this deadening setback.

SURRENDER OF STATE DEATH TAXES TO THE FEDERAL GOVERNMENT

Digressing a moment from the objective of this article, we may consider briefly the exact opposite of the proposal here before us. Perhaps the states should leave the death tax field to the federal government. A strong case could be made for such a solution of the coordination problem. But no plausible and feasible means could be suggested for carrying it into effect. The federal government could conceivably “buy” a monopoly of the death tax field by returning to states with a majority vote in Congress considerably more revenue than they now receive from death taxes. But this would be to embark upon a shared tax program not too well recommended by experience abroad and to set a precedent that could lead to serious losses in those values associated with the autonomy of state and local government. On the whole it seems much better to live with and improve the crediting device, thus accepting the ills we have rather than inviting “those we know not of.” Any attempt to modernize the credit will be criticized on the one hand as a vicious attempt to undermine state independence and on the other as an attempt to perpetuate the vested interest in death tax revenues of the wealthy states. But the former critics can be answered with the proposition that the solution of certain state tax problems will ward off centralization in the long run. And the critics who deplore concession to the wealthy states can be told that the credit is at least much less vulnerable to attack from the angle of territorial inequity than the alternative surrender of the death tax to the states. The surrender would give the wealthy states the major part of total death tax revenue. The credit does not and need not approach this result.

MODERNIZING THE CREDIT

Any student who takes the pains to examine the federal credit can hardly fail to arrive at the conclusion that it is a badly neglected and highly antiquated feature of our federal tax system and of federal-state fiscal relations. The credit as it now operates does fill one highly useful purpose. It enables the states to apply a fairly substan-
tial tax to large estates without fear of causing migration of their wealthy citizens to low taxed areas. On the other hand, it falls short in that it fails to:

1. eliminate dual administration;
2. mitigate multiple taxation;
3. eliminate or perhaps even mitigate diversity of practice (states apply a multitude of inheritance tax, estate tax and gift tax institutions);
4. maintain flexibility (it is tied to a law and adapted to an era rapidly fading into ancient history; federal practices have changed radically since the credit was adopted and state taxes have also changed, though less radically);
5. give adequate support to the poorer states.

Taking account of these facts, one is obliged to inquire whether the credit could not be revised to do its job more acceptably. If the answer to this is affirmative as seems likely, he is then challenged to name the specific modifications that would fit the credit for its task. He will find that this is no small undertaking.

The situation is complicated by the great variety of death tax practices in the states. Summarizing the facts as outlined in the latest edition of *Tax Systems* (1948), one observes the following: 5 states confine their death taxes to the absorption of the federal credit; most (but by no means all) of the other states have minimum estate taxes to ensure full utilization of the credit; 39 states have an independent inheritance levy, 2 levy on estates, and 1 has both an inheritance and estate tax. To complete the diverse picture, Nevada has no tax at all.

States also differ radically in the pattern of estate which they have to tax; some have very few large transfers (large enough to be taxed by the federal government with its $60,000 exemption); some have many such estates and receive the major portion of their revenue from them; the first get very little and the latter substantial support from the federal credit. Of course, the credit provides no support to the states directly; its concession goes entirely to the taxpayer who is allowed to pay his federal tax with a state tax receipt. But indirectly the support given to some states by the credit is substantial; it clears the field from federal interference and leaves the states free to exploit the protected area. Moreover, it removes the threat of interstate competition as the states proceed to utilize their new tax resources.

Two possible modifications in the credit seem relatively unobjectionable. One would extend it to cover the gift tax and the other apply
it to estates between $60,000 and $100,000 in value. The first would support a desirable trend toward state prevention of avoidance. The second would put an end to the dubious situation under which the federal government collects relatively more from estates below $100,000 than from those immediately above. If the credit is warranted and desirable for transfers above $100,000 there seems no good reason why it should not apply to transfers between the federal exemption of $60,000 and the present starting point of the credit, $100,000. The change would give the poorer states greater stake in the credit. It would give taxpayers some concession for the time being but this would probably disappear eventually in the manipulation of state and federal rates. (The federal rate scale already leans toward severity; it is not the rates but the other conditions of the tax that need strengthening.)

The trend in federal death tax legislation over the last 25 years has been one of extending coverage by reduction of exemptions. The trend is commendable and should continue. But as coverage broadens, the credit should expand correspondingly.

More radical changes to remedy the shortcomings of the credit listed above are more controversial. Without structural changes the credit could and probably should be used to mitigate territorial multiple taxation. It could be allowed on condition that certain standard rules of jurisdiction be observed by state law and on the further condition that cases of "double domicile" be submitted to arbitration. The rules of jurisdiction should not be set arbitrarily but should grow out of conference between federal and state officials. The states may object to this as an interference with their autonomy. But they have no great financial stake in multiple taxation. The latter is an historical accident that serves nobody substantially and operates principally to upset the neutrality of the tax system and discredit its reputation.

Looking toward the mitigation of the wastefulness of dual administration, much progress could be made without changing the credit. Federal and state administrations could do much more than they have in the exchange of information and the use of each other's apprais-

21 The credit is tied to 1926 rates under which there was a $100,000 exemption. For the additional taxes imposed since 1926 the exemption is only $60,000.

22 A result characterized by Professor Martiu as "grotesque" and attributed to a "failure to work out a studied articulation of the two levies" (federal and state). See Martin, State and Federal Relations in Taxation, PROCEEDINGS OF THE NATIONAL TAX ASSOCIATION CONFERENCE 306, 310, 313 (1935).
Going further, the federal government might agree to administer at cost for the states a supplementary estate tax with a low exemption and the 1926 schedule of federal rates. This would be equivalent to allowing a 100% credit in the application of the federal tax to smaller transfers. It would encourage the states to do more generally what five of them have actually done already, namely, to use the federal credit and federal administration for their entire death tax system. It might be objected that this would encourage the states to change from the inheritance to the estate tax form of death taxation. The inheritance tax is regarded by some critics as the more refined and advanced technique. The author does not share this view. But, in any event, the proposal would afford the states an opportunity to choose between the evil of dual administration on the one hand and that of an “inferior” form of tax on the other.

There has been support for the idea of a graduated credit with a higher percentage allowed in the case of smaller estates. This is grounded on the following logic.

(1) The large estates are undoubtedly concentrated in the wealthy states; a higher credit on the smaller transfers would give more support relatively to the weaker states.

(2) The larger estates are more likely to arise out of interstate commerce.

(3) Federal administration is better adapted than state to deal with the large estates.

On the other hand, the large estates are also the ones most prone to migrate. It is at this point that the states most need protection from interstate competition. In the long run, at least, a graduated credit would tend to discourage progression in the state scale and encourage it in federal taxation. In the short run it might sacrifice the important present function of the credit, that is, the protection it provides against interstate competition. Considering the high inertia of state death tax systems and recognizing the small likelihood of a thorough recasting of state and federal systems to achieve a more rational coordination, one may conclude that graduation is presently inadvisable.

None of the above proposals requires the application of the credit to the present schedule of federal rates though this also may be desirable. Unfortunately, the difficulty of fitting a credit to the current scale in such manner as not to cause violent changes in state death tax receipts is exceedingly great. Even ten years ago (1936-1939) a fed-

23 Heller and Harriss, supra note 9 at 662.
eral credit of 28.7% against the then existing federal rates would have provided New York with the revenue actually collected in those years, but to have done the same for Pennsylvania and New Jersey would have required credits of 60.1% and 64.2%, respectively. The variation is due to the high degree of diversity in state laws and to the distribution of different sizes of estates in different jurisdictions. Even if the credit were attached to the current federal scale the modernization would not last unless the credit were changed with each modification of the federal scale. This might have the undesirable effect of making the federal scale extremely inflexible. Since it is quite possible to make major needed changes within the framework of the 1926 schedule, it may be inadvisable to attempt a correlation between the credit and the most recent schedule of rates applied by the federal government.

CONCLUSION

On strictly logical grounds a very strong case could be made for separation of sources as the coordination device in the death tax field. If this were recommended, the federal government would be the choice as the taxing unit. The state tax is plagued by interstate competition and multiple taxation, and especially by the fact that estates are highly concentrated in a relatively few states, though the wealth represented may have accumulated over a much wider area. State death taxation, unsupported, is confronted with the avoidance and inequity associated with migration in contemplation of death. Hope of needed reforms in death taxation is and must be very largely centered upon the federal law. Most of the states have not even developed a gift tax, a first step in the prevention of wholesale death tax avoidance. On the other hand, the removal of the states from the death tax field is neither politically feasible (at least without a disposition of revenue somewhat after the present pattern) or necessary. The federal credit may have disappointed the hope and faith of its founders, but, if so, the disappointment can be laid to neglect. It has abundant potentialities for the achievement of first rate federal-state coordination in the death tax field. It should be retained and modernized to cover all estates subject to the federal tax, to include gift transfers, and to mitigate the inequities of multiple taxation. The federal government should offer administrative services in the taxation of estates smaller than the federal exemption and thus increase the feas-

ibility and attractiveness of state reliance on federal administration for death tax revenues. That the death tax field needs major operations is the fact that stands out above all others. But federal retirement from the field is not the answer. It would constitute a long step backward.