

Forest Service should not expand its tax policy role to advocating for specific tax policies. As Kimbell et al. note, “being truly unbiased is challenging because tax [policies’ impacts] ... cut across economic sectors[, and c]are must be taken to ensure that proposed policy changes will benefit the entire nation, not just certain sectors.” The US Forest Service is not equipped to (1) address how tax policies address national (nonforest) issues or (2) analyze the neutrality, efficiency, and fairness of tax policies on nonforestland taxpayers and citizens. Because even tax policies that address forestland-specific issues will affect multiple national objectives, the agency should not be advocating legislative policymakers for specific policies. Legislative advocacy is the role that interest groups play in a pluralistic society.

Furthermore, federal agencies, through the President and other executive branch entities, already can and do advocate policies (including tax policies) and lobby the Congress to adopt those policies. The executive

branch as a whole is well equipped to (1) understand how tax policies affect national interests and (2) analyze the neutrality, efficiency, and fairness of tax policies on all citizens. The home interest mortgage deduction offers a good example of the difficulty of the US Forest Service advocating national tax policy. The current deduction decreases the cost of owning (and therefore building) of primary residences and second homes, which encourages the conversion of forestlands to residential use. The US Forest Service is well suited to analyze the effects of this policy on the forest sector, but how appropriate would it be for the agency to advocate for the elimination of the deduction? How could the agency advocate a change in the deduction policy to legislative leaders without analyzing the deduction’s other effects, such as encouraging home ownership and increasing employment?

For decades, the US Forest Service has helped forestland owners understand how tax policies affect their lands and the

nation understand how tax policies affect our forest resources. We see no reason why the US Forest Service should not expand this role to educating policymakers about how tax policies impact forestlands. However, public policy decisions, including decisions about how tax policies affect forestlands, must be made within the context of public policy in general. That is a role for the President and his advisors, not one federal agency.

## Literature Cited

KIMBELL, A.R., C. HICKMAN, AND H. BROWN. 2010. How do taxes affect America’s private forest landowners? *J. For.* 108(2):93–97.

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*Robert W. Malmshemer (rwmalms@esf.edu) is associate professor and David Newman (dnewman@esf.edu) is chair and professor, SUNY College of Environmental Science and Forestry, Department of Forest and Natural Resources Management, 320 Bray Hall, 1 Forestry Drive, Syracuse, NY 13210.*

## RESPONSE

# Comments on “How Do Taxes Affect America’s Private Forestland Owners?”

**William C. Siegel**

The impact of taxes on America’s private forests has triggered extensive discussion in the forestry community for more than 100 years. Thousands of articles and papers have been published and/or presented on various aspects of the subject. We see today many of the same debates, arguments, and conclusions that have been part of the dialogue over this long history. Thus, the title question posed by Kimbell, Hickman, and Brown is not a new one by any means. For example, part of the 1924 Clarke-McNary Act mandated a nationwide study of forest taxation. This resulted in the seminal 1935 Fairchild report titled “A Forest Taxation Inquiry.”

The first portion of the authors’ article (before discussion of the US Forest Service role) is merely a short restatement and description of the current major provisions of three types of taxes that affect private forestry, together with some brief history and short discussion of selected recent research results. What is presented here has appeared elsewhere many times.

In the third paragraph of their article the authors state that the three most important taxes paid by private forest owners are property, income, and estate taxes. The estate tax, although imposed primarily by the federal government, is only one form of “death tax.” Many states impose some form of inheritance tax, which is entirely

different in definition and format from the estate tax. In the last few years, since the state death tax credit has been eliminated from the federal estate tax provisions, state death taxes have risen in numerous states to levels that are quite high. Even relatively small forest estates can be seriously impacted because state exemption levels are generally much lower than for the federal estate tax.

Additionally, state income taxes are important because the maximum rates are often high. Many states also do not have a lower rate for noncorporate long-term capital gains as does the federal income tax. Because virtually all nonindustrial private forest (NIPF) timber income is taxed as a long-term gain, this is a significant matter for private forest owners. Inclusion of a discussion of state death taxes and state income taxes in the article would have made it more encompassing and complete.

Some comments on the authors’ specific discussions of the three types of taxes are in order. Inaccurate, incomplete, or misleading statements appear in a number of places. With respect to special forest property tax rules, it should be pointed out that a number of reasons other than withdrawal penalties contribute to nonuse by NIPF owners. These include, among others, mandatory public access and use, restrictions on construction of homes and buildings on the forest property, and prohibiting leasing the land for hunting. Then, too, in some states there is very little difference between the current use tax and the ad valorem property tax.

In the authors’ discussion of the federal income tax, it should be pointed out that the tax is not limited to individuals and corporations as stated, but also applies to trusts and estates, which have their own tax rate structure. Many NIPF forest properties are in trust and sometimes are parts of estates for a number of years. The statement is made that from 1943 to 1986 all forestland owners who met length of ownership requirements could qualify for long-term capital gain

status. Actually, this began in 1944, not 1943. The legislation was passed in 1943; it did not become effective until 1944.

It should also be pointed out that although the lower long-term capital gain rates were eliminated by the 1986 Tax Reform Act, this was not just for timber as the authors state, but for all capital gains, regardless of source. Additionally, this did not become effective for some taxpayers until 1988.

In the third paragraph under the income tax discussion, mention of the Section 179 deduction needs clarification. This deduction is only available to NIPF owners who operate as a business, not to those who file as investors who are probably in the majority.

In the last paragraph under the income tax discussion, the double taxation of “C” corporations is mentioned as a tax disadvantage that contributed to divestiture of timberland by integrated firms. Another very important tax reason not mentioned is the loss of the corporate differential long-term capital gain rate (applicable to “C” corporation timber income) that occurred with enactment of the 1986 Tax Reform Act. The authors also make no mention of timber real estate investment trusts (REITs). A substantial acreage of the forestland formerly owned by forest product firms is now in the hands of REITs, which have a significant tax ad-

vantage over “C” corporations. REITs have no double taxation and taxes are paid at noncorporate rates, which includes the lower long-term capital gain rate.

In the estate and gift tax discussion some clarifications are needed as well. The current \$3.5 million federal estate tax exemption applies to taxable value, not gross value. With respect to the marital deduction, the deduction is a 100% deduction, both for estate and gift tax purposes. Also, the recipient spouse takes the deduction in estate tax cases; the donor spouse (not the donee spouse as stated by the authors) takes the deduction in gift tax cases. With respect to the gift tax annual exclusion, the total is not capped at \$13,000/\$26,000 as inferred by the authors—the cap is \$13,000/\$26,000 per donee. It should additionally be pointed out that the \$1 million one-time lifetime gift tax exemption does not stand alone. Any portion that is used by the donor will reduce the estate tax exemption by the same amount upon the donor’s death.

With respect to special use valuation, the term “maximum benefit” used by the authors needs to be explained. First, it is now \$1,000,000, not \$960,000. And second, it does not represent maximum tax savings, but rather maximum reduction of estate gross value. Because of the onerous and restrictive requirements (including the fact

that specially valued standing timber cannot be harvested for 10 years), very few forest properties can or do qualify.

At the beginning of the article, the authors state that their purpose is to “evaluate the major ways of taxing forestland owners in terms of the three principles of good taxation.” A major shortcoming of the article is that nowhere is this done in their discussions except perhaps obliquely in a few places. More in-depth evaluations of these principles in terms of forest taxation can be found in a number of places. These include, among others, Gregory’s *Forest Resource Economics* and *Forest Resource Management* by Duerr, Teeguarden, Christensen, and Guttenberg.

The US Forest Service’s current and past roles in the tax arena are well delineated and discussed by the authors. The limits of US Forest Service advocacy are also well set out. It should be noted, however, that the US Forest Service did, at infrequent times during the 1960s and 1970s, evaluate proposed tax policy and legislative changes, and provide information needs to tax policymakers. I know—I was involved in most of these efforts. However, in all probability, I suspect that the US Forest Service’s present forest taxation role will continue as is.

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*William C. Siegel (wcsieg@aol.com) is a forestry consultant, River Ridge, LA 70123.*

## RESPONSE

### Forest Taxation—Who Will Speak for the Landowner?

**Tamara Cushing**

In Dr. Seuss’ story “The Lorax” he asks, “Who will speak for the trees?” We might ask a similar question, “Who will speak for the forest owners?” With so many parties fighting for tax legislation that benefits them, how can we make sure policymakers hear forest landowners?

A couple of years ago, I had the pleasure of meeting with property tax assessors to discuss the methods being used to determine assessed values of timberland throughout the state. The conversation occurred because a very vocal landowner in the state was upset with his assessment and had appealed to the state tax assessment board claiming an arbitrary assessment. In this particular state, assessors have suggested guidelines to follow when determining assessed value.

Exploration of the issue resulted in the discovery that there was no consistency in how forestland was assessed. Some assessors viewed it as “wasteland” while others felt that “dirt” was important and therefore should all be worth at least \$500 an acre. During this conversation I attempted to inform the assessors about the state law that stated that forestland was to be assessed based on its use value. After further explanation, one assessor asked, “So this is all about protecting green space?”

Before I left the meeting, we realized that to the assessors, it boiled down to the fact that one person making noise over an issue isn’t going to cut it. Because the assessors had only heard one person complain, the issue must not exist. How can we help them understand the importance of maintaining land in forestry and how taxes work against that? I forgot to mention, those assessors were elected officials. The almighty vote. The assessors felt that by giving forest landowners a break, someone else (read, “another voter,” or, should I say, “lots of other voters”) was going to pay more.

Yes, this is about protecting green space. How can landowners continue to own land in forestry? What can tax policy do to encourage land management and discourage conversion? We, as foresters, talk amongst ourselves. We have made our voice heard at a national level, but how can our voice be louder? We need to come across as a