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RESPONSE

Limit Forest Service's Role Expansion to Informing Policy

Robert W. Malmshiemer and David Newman

A good friend of ours, Professor Warren Flick, often stated that taxes are the most direct manifestation of government policy on citizens' lives, and thus are an important area of study. The fact that he was often saying this to undergraduate policy students who had often never even paid taxes did not necessarily endear him to his students, but the point was well-taken. Only governments can tax the general population and these taxes are often imposed or not imposed with the express intention of altering people's behavior. Citizens can analyze (sometimes only with the assistance of a tax professional) the financial implications of existing and proposed tax policies and factor this information into their decisionmaking, including how they manage their forests. But their choices may well be predetermined because of the government's tax policy decisions.

However, taxes are, at best, blunt policy instruments that are enacted to address multiple objectives, including raising revenue. Their bluntness and multiple objectives often cause tax policies to have unanticipated consequences. Kimbell et al. (Kimbell 2010) recount an example that will have ecological, economic, and social implications for many Society of American Foresters members for decades to come, the role recent changes in income tax policy played in restructuring US forestland ownership. As they note, this change in tax policy was a (if not the most) significant reason why 64% of the land previously owned by vertically integrated timber companies is now owned by timber investment companies, such as timber management organizations and real estate investment trusts. This example illustrates how broad changes in tax policy can affect forestlands and their owners; these changes were not specifically designed to affect forestlands and their consequences for forestlands were not widely anticipated.

Forestland-specific tax policies can have unintended conse-

quences on forestlands and their owners, and they can have consequences that may contradict other public policies or preferences. A clear example of the former is the taxation of standing timber for ad valorem purposes through the property tax code. As trees grow older, they become more valuable, thus giving a large incentive to property owners to harvest their timber at a younger age. Income and property tax policies that govern when forest landowners donate or sell a conservation easement is an example of the latter. Although these tax policies accomplish an important forest-oriented goal (i.e., preventing the conversion of forestlands to other land uses), the policies also contradict hundreds of years of US public policy which sought to (1) promote the alienability of land and (2) limit the ability of current generations to encumber land title and reduce the options of future generations.

The "good" tax policy principles noted by Kimbell et al. are the basis for our belief that the US Forest Service should limit any expansion of its existing roles (currently, research and education) to informing policy and not engage in advocating tax policies to legislative policymakers. Given the US Forest Service's unique mission, informing tax policy is not only appropriate, but also essential. Unlike other federal land-management agencies, the US Forest Service not only manages federal lands, but through its State and Private Forestry organization, provides technical assistance to other forestland owners and their resource managers and other advisors. Other federal land-management agencies do not have similar responsibilities. For example, the National Park Service does not provide similar assistance to state or local park managers or private preservation area owners or managers. The US Forest Service's mission already allows it to educate legislative policymakers on the neutrality, efficiency, and fairness of existing and proposed tax policies on the nation's private forestlands. Expanding this mission to informing legislative policymakers and others of the implications of existing and proposed tax policies is a natural and appropriate expansion of this mission. After all, given the agency's extensive research and experience with tax policies, who is better qualified to provide policymakers with sound, data-based information? In fact, one could argue that the agency's research and education already directly and indirectly inform legislative policymakers.

However, "good" tax policy principles also dictate why the US

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.

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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