

## Estate (Death) Tax

*The death tax is so unreasonably high that many heirs must sell the family business*

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The *Economic Growth and Tax Relief Reconciliation Act of 2001*, the tax relief package put forward by President George W. Bush and key Hill leaders, was signed into law on June 7, 2001. This tax relief law included the elimination of the estate tax in 2010.

Unfortunately, attached to the legislation is a sunset provision that would limit all of the tax relief included in the law to 10 years. In 2011, all of the tax cuts will return to their 2001 levels. Therefore, the estate tax will be repealed in 2010, but would return in 2011. Thus, all of the concerns business owners have expressed in the past about high and unfair estate taxes remain because the repeal of the estate tax is not permanent.

Under the current estate tax structure, family members who inherit businesses are forced to pay the government up to 55 percent in taxes (in cash) on all assets received—including land, buildings, equipment and all other forms of property. Federal estate and gift taxes harm family-owned businesses on an ongoing basis because the owner of the business must take various expensive estate planning measures—such as purchasing insurance and/or the creation of trust funds to ensure the future viability of the business. If families do not take these steps, they may have to liquidate the business to pay the estate taxes.

The repeal of the estate tax in 2010 would end the need for families to spend time and valuable financial resources on estate planning and remove the threat of having to sell the business to pay the taxes. However, when it returns in 2011, these family businesses face the same concerns they have now. The temporary nature of the death tax repeal may result in more confusion and complexity for small businesses, and therefore may increase estate planning costs.

NSBA is pleased with the accomplishments of the House in the 109 Congress, which passed two bills which would end this outdated and inefficient tax. House Ways and Means Chairman Bill Thomas (R-Calif.) introduced *H.R. 5638* (the *Permanent Estate Tax Relief Act of 2006*), which gained rapid momentum and passed June 22, 2006 by a vote of 269-156.

The House-approved measure exempts estates worth less than \$5 million per spouse, taxes those worth less than \$25 million at the capital gains rate and taxes wealthier estates at twice that rate. Critically important, the bill indexes this exemption for inflation—ensuring that the benefits of this legislation remain for future generations.

On July 29, 2006, the House approved *H.R. 5970* (the *Estate Tax and Extension of Tax Relief Act of 2006*) by a vote of 230-180. This measure included a provision in which the estate-tax reduction gradually increases the individual exemption level to an estate size of \$5 million in 2015 and then indexes the exemption amount to inflation. Estates ranging in size between the exemption amount and \$25 million will be taxed at the top capital gains rate, which currently stands at 15 percent. In 2011, the capital gains rate, and thus the estate tax rate, will increase to 20 percent. Under the House bill, estates larger than \$25 million are taxed at 40 percent starting in 2010, but decrease to 30 percent by 2015. In 2015, the \$25 million estate size also will be indexed for inflation. This approach removes the burden of the estate tax from the back of the nation's small businesses. Unfortunately, the Senate yet again failed to pass the cloture motion on this bill prior to the end of the 109th session. It is unlikely estate tax repeal will be considered in the Democrat-lead 110th Congress.

*NSBA is committed to making the repeal of the estate tax permanent. This is necessary to make sure that small businesses can invest in the future and not in estate planning.*