Testimony of Thomas Pitrone,

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On Behalf of
The National Small Business Association

House Small Business Committee
Subcommittee on Tax, Finance and Exports
"The Estate Tax and the Alternative Minimum Tax – Inequity for America's Small Businesses"

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Good afternoon Chairman Bradley and members of the committee. I appreciate this opportunity to testify on the negative impacts of the estate tax on small family businesses. My name is Thomas Pitrone and I am a Principle at the Integrity Group. The Integrity Group financial service practice was started with my father, Frank P. Pitrone, CLU, in 1983. The practice works with seniors to provide retirement planning. I also consult with small businesses on estate planning and continuity issues. I have been actively involved in small business advocacy since 1988 when I joined the Council of Smaller Enterprises (COSE). That involvement led me to serve as a delegate to the 1996 White House Conference on Small Business. I currently sit on the board of the National Small Business Association.

The estate tax, as far as small business is concerned, is a tax on capital. For the majority of small business owners, their major asset is their business. I know scores of business owners whose net worth is over $5,000,000 but can't pass a check for more than $10,000 personally. It's because all the value is in the business. It can be very difficult to get personal liquidity out of a business.

They have worked hard and lived frugally in order to amass the capital investment we call a business. They view the business as part of the family. The family lives around the demands of the business all the time. It doesn't matter if it's a farm, a construction company, an insurance agency or a store. When the business is in trouble, everyone in the family reacts. They understand that the business is part of the breadwinner's life. They understand the business pays the bills.

This is not a new phenomenon. It's older than our nation. The Founders were all small businessmen, by our standards. They were farmers, printers, lawyers and self-employed tradesmen. In the 1760s, Washington began to realize that separation from England was vital for business in the Colonies to thrive. In fact, it wouldn't be an overstatement to say that the survival of independent small business was one of the chief motives for the Revolution and the development of our government.

I have been involved in advocacy for 17 years. I've heard representatives from both parties say, "I believe in small business." That's nice. But they'd better do more than believe in it. Our country exists for small business and depends on it. The freedom to start your own business is one of the most precious freedoms and one of the first to blossom where there's liberty. When you go into New York or Kiev, you see people on almost every corner with a box and a few items to sell. They are self-employed; making it on their own.

So, a business owner works for 35 or 40 years. Reinvests his profits. Pays his taxes. Volunteers and contributes. He complies with all the regulations. He plays by the rules. Then I call on him, one day. I tell him that the government will take half the value he's built when he dies. He often doesn't believe me.

One fellow I spoke with, a trucking company owner, told me it couldn't be true. He said his company wasn't worth that much. I looked out the window of his office at his terminal and tractors. He probably had 25 trailers in his yard. He said they had no book value, they had all been written down. I said the IRS doesn't care about book value. They go by the price a willing buyer would pay a willing seller. The fellow told me if I knew a willing buyer to bring him in, quick. He started to rant and say unpleasant things about the government. He said there had to be a way he could avoid having the government take his business from his family. As I began to explain to him what he had to do, he was astonished. He told me it was ridiculous and kicked me out of his office.

The truth is it is ridiculous. The things we make people do to reduce, eliminate and fund estate taxes are absurd. I have to tell folks they need irrevocable defective grantor trusts. Then they have to send Crummy letters to their kids. It's voodoo. I feel like a witch doctor. First, I convince them that they have a problem they never heard of and can't believe in, then I tell them that they have to do certain transparently meaningless acts to make the problem go away. Of course, they also have to pay lawyers a lot of money and buy life insurance.

A small business owner already has a buy-sell agreement with his partner. He has insurance to provide liquidity when he dies to keep the business and the family afloat. Those things make sense. He can see the need. Now, he's got to have enough cash to buy 50% of his company back from the government with nine months of his death?! Can you blame him for feeling persecuted?

The proponents of the death tax are dismissive of the concerns of small business. They say elimination isn't necessary. "We can fix all that by raising the exemptions and credits." They say. "Why isn't that good enough?"

I'll be candid about why it's not good enough. We don't trust Congress.

While most in Congress voice concern for the impact of the death tax on small business, the fixes offered thus far to mitigate the estate tax's impact on family businesses shows a lack of real world understanding.

Look at the two major estate tax provisions you've made for small business so far; the Family-Owned Business Exclusion and IRC Section 6166. Both of these provisions are supposed to help small business reduce the impact of the tax.

The Family-Owned Business Exclusion allows a family to exclude part of the value of the business from their estate for tax purposes. However, it's so complicated that few can plan to use it. The only way it gets used is if after the death of the owner, the executor of the estate happens to notice that the estate fits the requirements. Even then, they may not take advantage of it because use of the exclusion is conditioned on the estate continuing to qualify for ten years. Failure to continue to qualify forces the estate to pay the avoided tax. Beside that, the exclusion isn't indexed so its benefit is almost eliminated by inflation and the increase in the Unified Credit.

Section 6166 allows an estate to pay its estate tax bill over time, 14 years, financed by the

IRS. I only know of one case where this was used. I talked to the son of a fellow whose accountant convinced him not to plan and buy insurance. When he died, the estate had to use Section 6166. The company stayed in the family and the son was running it. He told me it was living Hell.

He said it isn't so much that the IRS finances you, as they become your senior partner. They can look at the books anytime. They can tell you you're paying yourself too much. They can tell you that, if your children go to community college, you can pay the loan off quicker. They can tell you that you can't do an expansion or an improvement. This arrangement used to be called serfdom.

The folks that tell small business to trust them to "fix" the estate tax are the same ones who came up with the Family-Owned Business Exclusion and Section 6166. We'd rather not trust our futures to their tender mercies. Family businesses will not be safe until the death tax is eliminated.

For that reason, the National Small Business Association fully supports the efforts of Representative Kenny Hulshof and Representative Bud Cramer to fully and permanently repeal the estate tax by passing H.R. 8, "The Death Tax Repeal Permanency Act of 2005." The House vote on H.R. 8 has been designated a *Key Vote* for NSBA and our membership will be paying close attention to the vote's outcome.

I once again thank the committee for the opportunity to testify and look forward to any questions.