

Issue

To Make Permanent the Current Federal Estate Tax

Background

Under current law, estate taxes are paid by the estate of a decedent on the value of assets owned at the time of death in accordance with a graduated scale. As a result of Congress passing H.R. 4853, the “Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010” which was signed into law by President Obama as Public Law 111-312, the estate tax has been extended for two years until December 31, 2012. Among other things, the law sets the exclusion at \$5 million dollars (\$10 million for a couple) and lowers the tax rate above that limit to 35%. Unless Congress acts otherwise, it will automatically revert to the 2001 exclusion of \$1 million dollars (\$2 million for couples) and a tax rate of 55% for everything above that limit starting January 1, 2013.

Problem

In order to recognize and preserve the heritage and strength of family-owned businesses, it is absolutely critical that federal tax laws not penalize or otherwise prevent the tax-free transfer of family business ownership at death to other family members. To emphasize this point, a recent survey of NFDA members revealed the following:

- Under the current federal estate tax, 36% of NFDA members would have to sell all or part of their business if the current owner died, and 33% said they would have to borrow money to pay the federal estate tax. In addition, many indicated that they have purchased large insurance policies to pay for the estate tax which further reduces resources that could be used productively in the business.
- If the owner of their firm died, most members (62%) stated that they would be forced to eliminate between one to four jobs under the current estate tax laws.
- If they did not have to set aside, buy insurance, or borrow money to pay the federal estate tax, most funeral homes (over 60%) would be able to create between one and four additional new jobs, fund business operations, salaries and other worker benefits as well as community outreach programs.

Congressional Solution

The best solution to the current federal estate tax situation would be to permanently repeal it. However, in the alternative, Congress should make permanent the current estate tax laws.