

FAMILY BUSINESS ESTATE TAX COALITION

The FBETC is a grassroots group dedicated to full, permanent repeal of the death tax.

As the United States Senate prepares to vote on the 2004 Budget Resolution, which will accelerate repeal of the death tax to 2009, the Family Business Estate Tax Coalition (FBETC) would like to take a moment to bring a few facts to your attention and ask you to separate myth from reality in the debate to repeal the death tax.

Myth: Only 2 percent of Americans are affected by the estate tax.

Reality: According to the Treasury Department 123,600 individuals filed estate tax returns in 2000. They also estimate that the same number of returns will be filed for 2002 and that in 2003 this number will grow to 130,100. However, what is not included in these statistics is that twice as many people sell their business or property early, before they die, so that the estate tax is not a burden on their family (The Polling Company, December 2000). Plus, thousands more are impacted when jobs in a local community are lost when a family-owned business is sold to pay the estate tax.

In addition, more than 2 percent of Americans do pay this tax—not to the federal government, but to lawyers, accountants and life insurance agents. Privately held businesses get involved in estate planning, because if they don't, all that they have worked for will be eliminated. To ignore the death tax statute is suicide for family business.

Myth: Increasing the unified credit for individuals from \$1,500,000 to \$4 or \$5 million will carve out most small businesses and farms.

Reality: An additional increase in the exemption will establish an arbitrary line at which some family businesses get relief from the death tax and others do not. Families who build their businesses past the exemption amount will continue to face estate taxes that range from 37 to 55 percent in 2011. The fundamental unfairness of the tax is not removed by increasing the exemption. Furthermore, the Small Business Administration's definition of a small business is based on industry size standards. For example, a construction company, grocery store or department store with less than \$27.5 million annual receipts is considered a small business. Increasing the exemption threshold would not help these small businesses.

The very existence of a death tax, regardless of the size of the exemption, will force small business owners to spend significant time and money on efforts to understand the tax law and plan for potential death taxes, instead of focusing on growing their businesses and providing new jobs and better benefits to their employees. *The reason an exemption is not a clear solution is that: 1) most small business owners are stunned—and generally disagree—with what the IRS considers the fair market value of their business—a process that takes place only after the death tax is triggered, and 2) establishing the fair market value of a privately-held business is a very subjective and expensive effort for the business owner and the government.* There is no way to protect small businesses from this burden other than to provide full repeal of the death tax.

Myth: Let's just keep a qualified family-owned business exemption. That law works well and it just needs a little tweaking to work right.

Reality: We have tried this already and it has failed miserably. Established in 1997, the law, which will be repealed in 2004, shields \$1.3 million in assets for farms and closely held businesses from the death tax. However, this provision was far from successful. This section of the code was widely recognized by tax authorities as complex and dangerous from a malpractice perspective. Less than 3 percent of family businesses, the very people it was intending to help, could qualify for relief under these provisions (Section 2057 and Section 2032A). The Real Property and Probate Division of the American Bar Association has condemned this provision and has urged its repeal. While the House Democrat and House Republican versions of death tax reform varied widely, all versions repealed this cumbersome provision from the code.

Myth: Repealing the estate tax will cost the federal government too much money.

Reality: The death tax raises a small amount of money for the federal government. According to the Congressional Budget Office, the estate tax was expected to add \$22 billion in revenues to the federal government in 2003. This represents 1.1 percent of the total revenues out of a nearly \$2 trillion federal budget. A dynamic study found that repeal of the estate tax and adoption of a limited step-up in basis would result in a net increase in revenues of \$38 billion from 2003 through 2012.

Myth: The federal estate tax is an efficient way to redistribute wealth in America. We should use its tax revenue to fund federal government programs.

Reality: The Joint Economic Committee found that the costs of collection and compliance for the estate tax is equal to the revenue raised ("The Economics of the Estate Tax," 1998). Litigation involving disputes between the IRS and taxpayers represent the bulk of these costs to the government.

Myth: Family businesses can plan for the death tax with little or no impact on the business.

Reality: Family businesses spend approximately \$125,000 per company on attorneys, accountants and financial experts to assist in estate planning over five years ("Survey of the Impact of the Federal Estate Tax on Family Business Employment Levels in Upstate New York," Travis Research Associates, Inc., June 1999). Other studies have found that the average minority-owned business spends approximately \$28,000 annually on life insurance premiums to prepare for the estate tax and \$9,000 on estate tax planning ("A Report on the Impact of the Federal Estate Tax," Family Enterprise Center, Kennesaw State College, July 1995). Resources currently spent on lawyers, accountants and life insurance premiums would be better spent on the business to modernize equipment, expand the business and create jobs.

Myth: Repealing the estate tax will dramatically decrease the amount of money given to charities.

Reality: In fact, quite the opposite is true. More than \$190 billion dollars were given to charities in 1999, with two-thirds of the contributions coming from individuals. Charitable giving has remained at a consistent level for the last 40 years, irrespective of changes in the tax laws.

A survey by Harris Interactive (part of the Harris Poll) in November 2000 asked individuals with net assets of at least \$500,000 how the repeal of the estate tax would affect their charitable giving. Seventy-three percent of the individuals said that it would have no effect at all, and 19% said they would increase their giving. The response was more dramatic for older individuals: 56% expected no change in their charitable giving while 43% expected to increase their giving.

Myth: We are cutting the rich man's tax. Billionaires are going to get off without paying any taxes!

Reality: This argument makes clear one fact—opponents fundamentally misunderstand the law. Under the law enacted in 2001, the death tax would be repealed in 2010. At that time, all assets that transferred from one generation to the next would not be subject to the death tax. They would instead be subject to the capital gains tax.

Under a capital gains tax structure, the tax is imposed only when the asset is sold. Thus, the families of the decedent can decide whether they want to liquidate assets based on sound economic and business principles, not based on the amount of tax liability they owe the federal government. This method keeps family-owned businesses and their employees sound and in a position to grow even if the owner meets his or her fate.

Myth: State governments will lose enormous amounts of revenue if the estate tax is repealed.

Reality: State governments were historically opposed to the federal estate tax for fear that it would attack one of their traditional tax bases. As a compromise, Congress provided for a credit (the so-called pickup tax) guaranteeing states a portion of federal estate tax revenue. With the passage of the 2001 tax law, states that cannot sustain the revenue loss would be free to modify or enact their own estate taxes.

More importantly, it is critical to point out that almost every state in the nation does not rely on the death tax for significant revenue. The Illinois Economic and Fiscal Commission has recently issued a paper on the issues surrounding repeal of the death tax. As you can see by the table below, death tax revenue is a small percentage of the funding pie for the states of this nation.

Alabama	1.04%	Nebraska	.64%
Alaska	.17%	Nevada	2.04%
Arizona	1.05%	New Hampshire	3.61%
California	1.11%	New Jersey	2.68%
Colorado	.87%	New Mexico	.43%
Connecticut	2.34%	New York	2.53%
Delaware	1.93%	North Carolina	1.24%
Florida	2.98%	North Dakota	.52%
Georgia	1.10%	Ohio	.79%
Hawaii	.69%	Oklahoma	1.5%
Idaho	.47%	Oregon	.74%
Illinois	1.53%	Pennsylvania	3.57%
Indiana	1.39%	Rhode Island	1.68%
Iowa	1.92%	South Carolina	.68%
Kansas	1.29%	South Dakota	3.07%
Kentucky	.97%	Tennessee	1.19%
Louisiana	1.47%	Texas	1.02%
Maine	2.21%	Utah	1.62%
Maryland	1.52%	Vermont	.92%
Massachusetts	1.03%	Virginia	1.19%
Michigan	.82%	Washington	.66%
Minnesota	.62%	West Virginia	.63%
Mississippi	.47%	Wisconsin	1.05%
Missouri	1.52%	Wyoming	5.27%
Montana	1.35%	United States	1.48%