

INTRODUCTION OF LEGISLATION
TO PROVIDE EXTENDED PAY-
MENT OF ESTATE TAX FOR ES-
TATES WITH CLOSELY HELD
BUSINESSES

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OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

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Mr. ABERCROMBIE. Mr. Speaker, Mrs. MCCARTHY from New York joins me today in introducing a bill to provide estate tax relief for closely held, family-owned businesses. Both Mrs. MCCARTHY and I support repeal of the estate tax and we have co-sponsored legislation in this Congress, H.R. 8, to effect repeal. The Ways and Means Committee will soon mark up H.R. 8 and report the measure for floor action.

The estate tax threatens the survival of family businesses. Mrs. MCCARTHY has heard this in her Small Business Committee, just as I have heard from my constituents. Economists and tax experts confirm that the estate tax creates a true impediment in passing the family business to the next generation. The Congressional Budget Resolution, however, prevents an immediate repeal of the estate tax, and the anticipated committee recommendation will provide rate reduction with a gradual, extended phase down of the tax.

I support that recommendation as do many of my colleagues. But family-owned businesses need immediate relief if they are to survive as family enterprises. Any business owner who dies during that phase-down period, will face the problem of having to sell the business to pay the tax. Active, family-owned businesses are inherently illiquid. The owners

have invested most, if not all, of their assets in the business. Where a business constitutes the major part of a person's estate, the estate must sell off the business assets, or in many cases the business itself, to pay the federal estate tax within 9 months of the owner's death.

Now, sale of the business or sale of the business assets is hard to complete within 9 months. The seller is not going to get the full value of the property in a forced sale. Instead of this losing proposition, an aging parent while still living will often sell the family business even though the children want to retain the enterprise.

Even the tax scholars, who argue in favor of the estate tax, agree that family businesses face a true hardship to raise cash for the estate tax. They recommend that family businesses should have an extended period to pay off the tax so that the business will not have to be sold.

Trying to deal with this problem, Congress in 1958 and again in 1976 enacted the deferral and installment payment provisions in current law. Under section 6166 of the tax code, an executor of an estate can elect to defer payment of the federal estate tax for 4 years and pay the tax in annual installments over the next 10 years. The decedent's estate must pay the Treasury a discounted rate of interest on the amount of deferred tax outstanding. The 4-year deferral and 10-year installment payment apply as to the estate tax on a closely held business.

This relief covers ownership of a sole proprietorship, a corporation, or a partnership. But the relief is restricted under an obsolete definition of eligibility. Back in 1948, the tax code defined a small business as having 10 or less shareholders or owners for Subchapter S

treatment. In the estate tax area, relief was geared to the same definition under Subchapter S. In 1976, when Congress re-visited the estate tax, it extended the deferral and installment payment relief to businesses with 15 or less owners in keeping with the revised Subchapter S definition of small business. In 1996, Congress modified the definition of a small business under Subchapter S to mean a business with less than 75 owners, but Congress failed to make the comparable change in the estate tax. Consequently estate tax relief for closely held businesses is now based on an antiquated definition.

The proposal in the bill Mrs. MCCARTHY and I are introducing, raises the number of permissible shareholders and partners in a qualifying business from 15 to 75 for purposes of section 6166 relief. Again, our proposal is consistent with the definition of a small business corporation in section 1361 of the tax code. Congress, in the Small Business Jobs Protection Act of 1996, had raised the permissible number of shareholders from 35 to 75 for small business corporations under section 1361, and Congress in that same bill should have made the same change for estate tax relief back in 1996.

As I stated earlier, owners of closely held, family businesses have to sell their business to meet their estate tax liability. The proposed relief gives family-owned businesses as well as other closely held businesses, additional time to pay the tax. Business earnings could then be used to pay the decedent's estate tax liability without having to sell business assets or the business itself. The children could continue to own and run the family business. I commend this bill to my colleagues.