



**June 29, 2010**

***TAKING SMALL BUSINESS OUT OF THE ESTATE TAX EQUATION or  
DID THE DEMS JUST SAY "CHECK" OR IS IT "CHECKMATE"?***

Last week, Senators Sanders, Whitehouse, Harkin and Brown (from Ohio) (all very liberal) introduced a new estate tax bill, the Responsible Estate Tax Act, (S. 3533) which would, among other things:

- Reinstatement of the estate tax exemption at 3.5 million permanently (no COLA)
- Impose the following estate tax rates on estates in excess of 3.5 million:

45% on assets over \$3.5 million up to \$10 million

50% on assets over \$10 million up to \$50 million

55% on assets over \$50 million (by the way this is the rate on estates over \$1 million starting in 2011, if nothing is done!)

- Impose a 10% surtax on assets in excess of \$500 million
- Retroactively reinstate the estate tax back to January 1, 2010
- Disallow minority discounts for "nonbusiness" assets
- Provide additional relief for farmers, allowing them to reduce the value of their farmland by \$3 million
- Require GRATs to have at least a 10 year term

In essence, these Senators accomplished repealing estate taxes permanently for the vast majority of small businesses, family farms, and ranches, while paying for this permanent exemption by charging the super-wealthy estates with a 10% surcharge and making the estate tax retroactive to the beginning of this year. The Republicans and some Dems wanted to reduce the tax rate on the very largest estates to 35% - so this bill is running counter to what most Republicans and some Dems want - stay tuned for the next act but we predict the estate tax issue will start heating up now.

In the estate tax relief debate, the SBCA, as well as some other leading small business groups, believe it has been unfortunate that the super-wealthy and small business have been tied together. We knew that if the exemption amount was large enough that basically small business was "out of the game". A few years ago, the Republicans held out for repeal and turned down an offer by the Dems for a \$5 million exemption. In part this is because for the super-wealthy the name of the game has always been rate reduction which is why increasing the exemption held little interest for them. A one percent cut off the top rate means a whole lot more to the super wealthy with a \$500 million potential estate than a \$10 million exemption off the bottom. It is easy arithmetic to see why.

This year we have seen the true irony of this linking small business and the super-wealthy together with a repeal bill which is currently causing a significant number of small business owners to end up worse off under repeal than they would under the \$3.5 million exemption due to the loss of the step up in basis.

Of course, we would prefer the \$3.5 million exemption be adjusted for inflation and are concerned that the provision dealing with family limited partnerships and LLCs could cause a number of problems, but regardless this is a strong bill for small business. It would bring certainty to the estate tax area which is sorely needed.