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Testimony to the U.S. Senate Finance Committee
"Alternatives to the Current U.S. Estate Tax System"
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Chairman Baucus, Ranking Member Grassley, and Members of the Committee: I am honored to present testimony on today's hearing, "Alternatives to the Current Federal Estate Tax System". As a family-business owner, I want to explain why Congress should repeal, not replace, the federal estate tax, or death tax. Any "alternative"

which leaves a large confiscatory tax in place will damage, if not destroy, Shumaker Trucking and Excavating.

Shumaker Trucking and Excavating was born out of the cold war arms race, as the military needed contractor support for missile silo installation. We were hired by the military to transport site materials and provide labor for digging and constructing the silos that would house the ballistic missiles. When we first started, our only assets were a few dump-trucks and basic construction equipment. Over time, we have grown into a moderate-sized full-service contractor. We now serve a variety of projects, most of which are government related.

Like many family-owned businesses, Shumaker Trucking and Excavating is asset rich but cash poor. In order to maintain a competitive edge, we plow the majority of our profits back into the business. We have no mythical slush fund of cash. This family's American dream requires constant reinvestment in order to stay afloat.

The result of this lack of cash is that the future obligation of paying the death tax – currently at a rate of 45% but slated to return to a much higher rate of 55% - would entail selling of considerable assets in order to raise sufficient cash. We cannot afford to sell off 10% of our existing assets without the business becoming unsustainable and likely folding – let alone 55%. Yet this is just what the law would require us to do.

Of course, the IRS in its generosity also extends the option of a 10-year deferred payment plan. This may be workable for families with liquid assets, but few cash-strapped businesses are prepared for an unprofitable tax burden. 10-years of payout to Uncle Sam, depending on my business's valuation, could cost more than the business can reasonably sustain. Even if the business is kept viable, such a loan would certainly hamstring future growth and could result in payroll cuts to some of my 60-employees.

Like most family business owners, I have taken out life-insurance in order to provide some liquidity when I die, but it will not be close to enough. The harsh reality is that my family will face very harsh choices when I die. My wishes are to pass the operation on to one of my two sons, both of which have shown interest in the business. Of course, they are too young now to decide their future, but I think it is absolutely unjust that the death tax could remove this opportunity from consideration.

I understand that the Senate Finance Committee has heard a panel of witnesses propose "alternatives" to the death tax, most prominently a proposed "inheritance tax". Having read through the panelists' remarks, I have trouble understanding how this "inheritance tax" would be any improvement over the current estate tax.

As explained by panelist Lily Batchelder, the inheritance tax would be designed to fall more on the heir rather than the deceased. Specifically, heirs would be able to inherit a certain amount – perhaps $2 million – exempt from the tax. Above that, they would be subject to the current rate of income tax (35%) plus a "surtax" of 15%. Currently, that would come to 50%, slightly more than the 2008 death tax rate of 45%. And if Congress does not make the 2001 tax relief permanent, then the income tax rate will rise to 39.6%, making the total inheritance tax come to 54.6%, just below the 2011 death tax rate. Finally, this assumes that stepped-up basis for capital gains is retained, which I've been told Ms. Batchelder wants to eliminate. Without stepped-up basis, the full inheritance tax burden could come to almost 70%.

The effect of this tax will be to place family-owned enterprises such as mine between a rock and a hard place. Of course, one option is simply to bequest all of the company's ownership to one or both of my sons' and let them deal with paying 50% of the company's value in tax. My prior remarks should make clear why this is not acceptable.

The other option would be to split up the family enterprise between enough heirs that each receives no more than $2 million of total income. The problem with this is that I have only 2 sons, and my company is valued well over $4 million. In order to take advantage of the proposed exemption, I would have to bequest shares of my company to individuals' who lack long-term interest in maintaining the business's viability.

I do understand that Ms. Batchelder has some understandings of how her proposal would fall on family-owned businesses, and has suggested a sort of "deferral" plan. According to her, this deferral would allow those who lack liquid assets to defer paying the tax until they sold the business. Though this may seem benign at first blush, it comes with a host of complications. First, Ms. Batchelder made it clear that until the tax is paid, interest would accrue on the amount of deferred tax. This means that the total amount due will climb even higher than the total rate. Second, it is assumed that the IRS would place a lien on the property for amount of tax owed as long as it is deferred. I can tell you that it would be very hard, if not impossible, for my company to continue to grow while subjected to an IRS lien.

There is no way to "improve" on the death tax. Business owners such as myself will continue to face harsh decisions about the future of their company as long as it exists. Some proposals may shift the technical burden on paper, but the final effect will be the same. Any redistributionist tax will punish those who have worked hard and invested themselves and their profits in a viable company.

I recommend that the Senate Finance Committee get back to the work of crafting legislation to permanently and substantially reduce, if not repeal, the existing death tax. Thank you for hearing my remarks.