

Statement for the Record

*On Behalf of the*

AMERICAN **BANKERS** ASSOCIATION

*Before the*

Committee on Finance

United States Senate

*For the hearing*

Outside the Box on Estate Tax Reform: Reviewing Ideas to Simplify Planning

April 3, 2008



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The American Bankers Association (ABA) appreciates the opportunity to submit comments for the record on wealth transfer tax reform. ABA is grateful to Senator Baucus and Senator Grassley for holding this much-needed series of hearings on estate taxation. ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women. In 2007, nearly 1700 commercial banks and savings associations – a majority of them ABA members – managed over four trillion in assets in over three million accounts,<sup>1</sup> many in the context of individual or family estate planning.

To promote the provision of these financial services, ABA has long been involved in the issue of estate and gift tax reform. From 2002 to 2004, ABA participated in the multi-disciplinary Task Force that led to the publication of the *Report on Reform of Federal Wealth Transfer Taxes*.<sup>2</sup> The report provides a thorough analysis of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and made specific recommendations to improve the system. ABA hopes that Congress will avail itself of the Task Force's expertise and consult its report in formulating future legislation.

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<sup>1</sup> Federal Deposit Insurance Corporation, Quarterly Banking Profile, Table VIII-A (December 31, 2007).

<sup>2</sup> In addition to ABA, the Task Force was composed of five organizations: The American College of Trust and Estate Counsel; The American Bar Association Section of Real Property, Trust and Estate Law; The American Bar Association Section of Taxation; The American Institute of Certified Public Accountants; and The American College of Tax Counsel. Link to the Report: <http://www.aba.com/aba/documents/Trust/FederalWealthTransferTaxReport.pdf>.

ABA strongly supports comprehensive reform of federal wealth transfer taxes well before EGTRRA sunsets at the end of 2010. Any reform of federal wealth transfer taxes should provide individuals, families, and estate planning professionals with a consistent, simplified tax system that promotes the interests of family-owned businesses and farms without diverting capital from job creation and other useful activities for local communities. To this end, ABA supports significant, general relief to smaller estates and makes several recommendations.

➤ **Use a Higher Exemption and Reduced Rates**

Expand the estate tax reforms of EGTRRA. The exemption should go up to at least \$5 million per person. The long-term capital gains rate should be applied for assets between \$5 million and \$25 million, and twice the long-term capital gains rate should be applied for assets exceeding \$25 million. Raising the exemption amount and reducing rates would:

- Provide appropriate relief for estates with family-owned businesses or farms;
- Help avoid the need to sell estate assets to pay for the tax liability; and
- Assist families with properties such as homes that are worth more because of inflation rather than appreciation.

➤ **Index for Inflation the New Exemption Amount**

Index for inflation any new exemption amount so as not to require continuous Congressional action to keep the levels fair over time. Adjusting for inflation would be consistent with the approach Congress has taken with respect to other aspects of the Internal Revenue Code such as the income tax brackets, the standard deduction, and personal exemptions.

➤ **Maintain the Current Cost Basis Rule**

Maintain the cost basis rule in which estate assets are marked to market at death, as opposed to transitioning to a modified carryover basis regime in 2010. It is worth remembering that after enacting carryover basis as part of the Tax Reform Act of 1976, Congress later deferred the rule's effective date and finally repealed it retroactively in 1980 because of concerns about the inherent difficulties in trying to prove a decedent's cost basis in long-held assets. Carryover basis would be unduly burdensome and costly for heirs.

➤ **Reunify the Estate, Gift, and Generation-Skipping Transfer Tax Systems**

Reunify the estate, gift and generation-skipping transfer (GST) tax systems to avoid unnecessary complexity in estate planning and to keep more family-owned businesses and farms within the family over generations. By making the gift tax exclusion smaller than the estate tax and GST exclusions, families are in the odd situation of triggering the gift tax if they want to pass along, for example, the family business to the next generation. Instead, the families must wait until the death of the patriarch or matriarch, and hope that the business has not become vulnerable to estate tax because it exceeds the decedent's estate tax exclusion.

➤ **Reinstate the State Estate Tax Credit**

Reinstate the state estate tax credit to avoid complex estate planning and unnecessary taxes for married couples. When Congress repealed the state estate tax credit, it indirectly undermined a fundamental premise of the estate tax system: that no estate tax should be payable until both the husband and wife have died. In reaction to the repeal of this credit, a number of states have "decoupled" from the federal system to preserve their state estate tax revenues. This decoupling effectively forces many married couples to make a choice: Do they take full advantage of the amount they could protect from federal estate tax and incur some state estate tax when the first spouse dies, or do they limit themselves to the state exclusion amount, and ultimately pay more federal tax when both spouses have died?

➤ **Allow Portability of Credit between Spouses**

Allow the portability of the unified credit and the GST exemption from one spouse to the surviving spouse. Such portability would simplify planning for many married couples and potentially reduce legal and estate administration expenses.

We look forward to working with the Committee on any future legislative reforms.