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July 14, 2006

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United States Senate
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The Honorable Charles Schumer
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Washington, DC 20510
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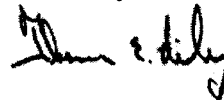
**Re: THE NEED FOR CERTAINTY IN ESTATE PLANNING &
COMMENTS ON PROPOSED LEGISLATION**

Dear Senators:

The New York State Society of Certified Public Accountants, the oldest state accounting association, representing approximately 30,000 CPAs, offers the following suggestions concerning pending legislation affecting estate planning.

The NYSSCPA Estate Planning Committee and the Tax Policy Subcommittee of the NYSSCPA Tax Division Oversight Committee deliberated the issues pertinent to estate planning and have prepared the attached comments. If you would like additional discussion with the committees, please contact Estate Planning Committee Chair Mark I. Rozell at 212-832-4881 or NYSSCPA Tax Policy Manager William R. Lalli at 212-719-8433.

Sincerely,



Thomas E. Riley
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**THE NEED FOR CERTAINTY IN ESTATE PLANNING &
COMMENTS ON PROPOSED LEGISLATION**

July 14, 2006

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

**THE NEED FOR CERTAINTY IN ESTATE PLANNING &
COMMENTS ON PROPOSED LEGISLATION**

July 14, 2006

GENERAL COMMENTS

We are writing on behalf of the more than 30,000 members of the New York State Society of Certified Public Accountants to emphasize the pressing need for certainty and ease of administration with respect to the transfer tax. CPAs are asked frequently to advise clients on the effects of their financial and transactional planning on the taxability of their estate. Without legislation to clarify the long-term tax treatment of estates, planners are subject to trying to foretell what regime the Congress and the Executive Branch are ultimately likely to decide. This situation does not foster confidence in our system of taxation; nor does it allow professionals such as CPAs to serve their clients most effectively.

The Need for Certainty

Taxpayers and the professionals who provide services to them need certainty in order to plan successfully for those taxpayers and their businesses and families in order to comply with the law. We need certainty as it pertains to the structure of the transfer tax regime, the rates and the exemption level, and effective dates so that resources are not wasted planning for a tax that may not apply. Furthermore, it is necessary to engage in economically efficient planning in order to plan properly for funding of the estate tax in situations in which a tax will apply. Wills, trusts and other estate planning documents are now burdened with a multitude of contingencies and alternative planning devices in order to enable taxpayers to pass their assets to their loved ones in a tax-effective manner.

The more complexity that exists, the more the taxpaying public is left unsure that their estate plan will prove sufficient. For example, as a result of the current system of changing rates and exemptions, there has been a rise in so-called "disclaimer trusts" that allow a surviving spouse to disclaim assets to fund "credit shelter trusts." These disclaimer trusts allow for flexibility because the decedent spouse may die in a year of low or no tax (such as 2010, under current law). A disadvantage of these types of trusts is that very often the surviving spouse fails to make the disclaimer and fails to fund the trust due to emotional difficulties after the first spouse's death. Thus, the uncertainty in our system may cause the estate plan of a decedent to fail. This is not an effective public policy.

Unless certainty is provided, especially in light of the scheduled abrupt return to old law in 2011, some small businesses may refrain from committing capital that would ordinarily create jobs.

They may react from a fear of lack of liquidity at death and the potential inability to pay resultant estate taxes depending upon the year of death and estate tax rate then in effect.

The Need for Ease of Administration

Resetting the tax basis of assets upon death to fair market value is a critical component of current law that must be retained. Any alternative would create chaos and a tremendous administrative burden with respect to assets that have been acquired by the decedent prior to the implemented change. Without a step-up in basis, a large number of taxpayers would not have the historical cost information required to comply with a carryover basis regime. Carryover basis is likely to lead to taxpayers, in good faith, simply guessing at their cost bases with no real proof or substantiation. In addition, it could lead to a significant tax increase on those who acquire property from any estate (regardless of size) by requiring income taxes to be paid on pre-estate appreciation for disposed-of property. The smaller the estate and the greater the need to dispose of assets, the higher the likelihood of imposition and relative burden is of such a tax. This would tend to increase the concentration of assets in a very small portion of the population that could live off the low-taxed earnings of the inherited assets and that do not need to dispose of them in a manner reminiscent of the landed gentry in “Old Europe.”

For these reasons, we commend the effort in current legislative proposals to create certainty in the transfer tax area while retaining a “stepped-up” basis in the proposed legislation.

SPECIFIC COMMENTS

Estate Tax Exemption

The last major “permanent” structural changes to the estate tax rates and structure were enacted during the Reagan Administration nearly 20 years ago. Since then, there has been a doubling of prices, housing values have skyrocketed, and personal retirement assets have become a major portion of many estates (as encouraged by the U.S. Government by the expansion of IRA’s and 401(k) plans). The growth in size of many family businesses and modest amounts of needed life insurance protection for surviving family members means that, in 2006, it would not be unusual to accumulate a gross estate of several million dollars. We applaud recent proposed legislation for its recognition of the need for the exemption level to be readjusted upward seriously and permanently. While we are not wedded to the \$5 million amount proposed (because we consider the \$3.5 million that some have proposed also to be reasonable), it is important that the exemption be raised to a reasonable level.

Certainty in Rates

We urge that the transfer tax rates also be set with certainty rather than annual adjustments, or by reference to capital gains rates. If the estate tax rates were tied to the then prevailing capital gain rates, more uncertainty would result because we have experienced several changes to the capital gains rate in the past and it may well change again over time. It is a frequent element of proposed tax legislation.

We realize that if transfer tax rates are lowered (as proposed), the revenues available to finance our Country’s needs will be impacted. While we believe that a 15% estate tax rate on transfers

from \$5 to \$25 million appears reasonable, the decision as to which rate to use must be made while factoring in considerations of revenue needs. For example, an estate tax rate of 30% may be chosen and retained. What is critically important is that the rates be set in a manner that permits business and estate planning to proceed without unnecessary uncertainty.

Portability of Estate Tax Exemption

The portable spousal exemption is a necessary element of estate planning, and we support legislation that reflects this need. A husband and wife should not have to go through the time, expense and effort to split assets solely to utilize their respective estate tax exemptions. A surviving spouse should be allowed to employ the unused exemption of the decedent spouse. Congress should not penalize a couple that chooses not to separately re-title ownership of its assets, as is the current circumstance. We recognize that Congress may determine it appropriate to place limits upon the portability of the estate tax exemption between spouses in the case of multiple marriages.

The Benefit of Having Unified Estate, Gift and GST Tax Exemptions

U.S. taxpayers need consistency and uniformity similar to that which we have experienced under prior law. The public will have certainty that will aid it in planning as well as an understanding of the system. There should not be a difference in transfer tax treatment if one makes gifts during his or her lifetime versus at the time of death.

Proposed Repeal of the State Estate Tax Deduction

Under the proposed legislation, there is no Federal deduction for state estate tax paid or incurred. We believe that repeal of this deduction (or credit under pre-2001 law) will result in a disproportionate disadvantage to New York resident decedents, and urge that this particular provision of the current proposal not be adopted.