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Estate Tax Reform/Repeal

Congress officially recessed June 30, 2006 with the Senate batting zero for June in the never-ending battle over the estate tax. As the Congress recessed, Senate Majority Bill Frist (R-TN) assured fellow Senators, "The Senate will vote on a permanent reduction of this tax—a tax that destroys small businesses and family farms." Sen. Frist did not say when the vote would occur.

The Senate failed on June 8, 2006 to get the 60 votes necessary to overcome the threat of a filibuster so the Senate could proceed to debate the merits of H.R. 8, a bill that would permanently repeal the estate tax starting in 2010. H.R. 8 passed the House with a large majority last year, however the motion to proceed in the Senate failed to carry by a vote of 57 to 41, with two Senators not voting. In the light of the 60-vote reality, Sen. Frist "encouraged" the House to pass a new bill that "reformed" the estate tax in a way that would attract support from Democratic Senators, but was also close enough to full repeal so support from pro repeal Senators would not be lost. That effort ultimately failed and by June 27, Sen. Frist announced, "The Senate would not vote on a permanent reduction in the death tax before the Fourth of July recess."

The lack of action in the Senate was not for lack of trying by the Chairman of the House Ways and Means Committee, Rep. Bill Thomas (R CA). With lightning speed, Chairman Thomas crafted H.R. 5638 and rammed it through the House on June 22 by a vote of 269-156. As passed by the House, H.R. 5638 would make the following changes to the federal estate tax:

- An exempt amount of \$5 million for each individual (\$10 million for a married couple). Spouses would be able to carry-over any unused exemption of a deceased spouse.
- Reunify the estate, gift and generation-skipping tax regimes.
- The exempt amount would become effective January 1, 2010 and be indexed thereafter.
- Taxable estates above \$5 million and up to \$25 million would face a top rate of the capital gains rate, currently set at 15 percent.
- Taxable estates above \$25 million would be subject to a top rate that is double the capital gains rate.
- Currently the capital gains rate is 15 percent, but that rate sunsets in 2010 and would increase to 20 percent if Congress does not act.
- Repeal the current federal tax deduction of the payment of state estate taxes.

NAIFA and its allies embrace some of the above reforms but continue to believe a more moderate level of reform would be politically sustainable long term. NAIFA supports continuing into the future the exempt amount and tax rates that will be in place in 2009. That would peg the exempt amount at \$3.5 million per individual (\$7 million for a married couple) and the top rate at 45 percent. With a \$3.5 million exemption, 3 out of 1,000 estates would be subject to estate tax.

The failure in the Senate to garner the votes to take up either H.R. 8 or H.R. 5638 leaves possible future action in doubt. Reports coming out of the Senate indicate that Rep. Thomas' reform bill not only failed to attract additional Democratic support, but that ardent Republican supporters of complete repeal were threatening to drop their support. Pro repeal forces, however, are making another strong grassroots effort over the July 4 recess targeting a small group of Democrats and two Republicans to gain the three votes needed to proceed.

NAIFA Appointed to Interstate Compact Committee

NAIFA was appointed as the agent representative to the Interstate Compact Commission's Interim Industry Advisory Committee.

The Interstate Compact Commission is a major effort to reform state insurance regulation by improving the speed-to-market conditions for life, annuity, long-term care and disability income products. The Compact Commission will enable those products to reach consumers faster by allowing companies to file products with the Commission for approval in every state that enacts the compact law. NAIFA supports the compact, which has already been adopted by 27 states, so that new products satisfying uniform standards will be available sooner for agents to offer their clients.

The Compact Commission held its first organizational meeting last month and created several interim committees to help it become operational by early 2007. The Interim Industry Advisory Committee's charge is to provide input, counsel and advice on matters pertaining to the Commission. As the leading association representing agents selling all the products governed by the compact, NAIFA's seat on the Interim Industry Advisory Committee will ensure that agents' views are heard in the critical months ahead as the Compact Commission prepares to do its important work.

The other three members of the Interim Industry Advisory Committee are ACLI, representing life insurance companies; AHIP, representing health insurance companies; and MassMutual Financial Group, as a carrier offering the four lines the Compact Commission will review.

Senate Committee Examines Insurers' Antitrust Exemption

On June 20, the Senate Judiciary Committee held a hearing entitled "The McCarran-Ferguson Act: Implications of Repealing the Insurers' Antitrust Exemption." The hearing marked the first time since the 1980s that the Senate has addressed the issue of repealing the antitrust provision of the McCarran-Ferguson Act. The McCarran-Ferguson Act is the federal law that grants to the states the power to regulate the business of insurance.

Witnesses before the panel included representatives of the American Insurance Association (AIA), the NAIC, the American Bar Association (ABA), the Consumer Federation of America (CFA), the Insurance Services Office (ISO) and the New York State Attorney General's office. Only two members of the Judiciary Committee attended the hearing: Chairman Arlen Specter (R-PA) and Ranking Member Patrick Leahy (D-VT).

When Congress passed the McCarran-Ferguson Act in 1945, it provided insurers with a limited exemption from federal antitrust laws and instead delegated to the states the power to ensure competitiveness within the business of insurance. However, allegations of collusive behavior by insurers with regard to medical malpractice insurance and the Marsh & McClellan bid-rigging scandal uncovered by the New York State Attorney General's office in 2004 prompted the Judiciary Committee to reexamine the antitrust exemption.

As expected, industry witnesses and the NAIC defended current law while the ABA, the CFA and the New York State Attorney's office expressed their support for repeal of the antitrust exemption. The industry maintained that as long as insurance is regulated solely by the states, then it should be the states' duty to ensure competitiveness within the industry. It should be noted that supporters of an optional federal charter for insurance support removing the antitrust exemption for nationally chartered insurance companies should an OFC bill be enacted into law. With regard to an OFC, NAIFA leaders continue to study legislation that would create an optional federal charter. They are also considering other state-based and federal proposals designed to improve insurance regulation including the ease, speed and cost of acquiring agent licenses, and the ease and speed of getting new insurance products to market.

So what does this mean for NAIFA? Nothing for now. With Chairman Specter indicating after the hearing that evidence uncovered so far does not warrant wholesale dismantling of the McCarran-Ferguson Act, the likelihood that the Senate will move forward on this issue separately from tackling the larger issue of insurance regulatory reform is low. This month, the Senate Banking Committee will begin a series of hearings to examine the need to fundamentally alter insurance regulation. NAIFA will be monitoring the hearings closely.

NAIC Adopts Agent Fingerprint Law

At its national meeting last month, the National Association of Insurance Commissioners (NAIC) approved a model law to govern the fingerprinting of insurance agents.

The model law gives state insurance departments a method to provide electronic fingerprints to the FBI in order to access FBI criminal history information as part of new resident agent background checks. The model applies only to agents seeking an initial resident license, an additional line of authority where a criminal history background check had not been performed or a change in their resident state. The model does not apply to license renewals or non-resident licensing.

NAIFA supports the model law as a means to ensure the public is served by ethical producers whose background checks include review of FBI criminal history information. Our support is consistent with NAIFA's proud history of favoring the highest ethical standards for insurance agents and the goal of a modernized agent licensing system.

The model is named the Authorization for Criminal History Record Check Model Act and NAIFA associations are urged to support its adoption in their respective states.