

making this last point. He is absolutely right. Under the law that we passed, we have to consider what we are going to do with nuclear waste before the middle of July. And there is only one procedure under which it can be done. If the majority leader does not bring it up, then the statute provides anybody else can. That is what will happen.

The Senator from Idaho is exactly correct. I compliment him on his leadership on this issue.

#### PERMANENT REPEAL OF THE DEATH TAX

Mr. KYL. Mr. President, I rise this morning to talk about the issue that will be before us as soon as we resume business, and that is the permanent repeal of the death tax. This Senate has already repealed the death tax. The President has already signed it into law. But most Americans are now realizing there was a catch.

Under the special procedures that the Senate operates, that bill came before the Senate with a 10-year sunset. So all we could do was pass a law that was in effect for 10 years and in the 11th year, we are right back to where we were in the year 2001, meaning that while we repealed the death tax, it is back in the year 2010. That is not something we intended when we voted to repeal it.

I don't think anybody could argue that they intended only that it be repealed for 1 year. That is extraordinarily bad tax policy and a cruel hoax on the American people, who thought we were repealing it permanently. Obviously, we need to repeal it permanently, and that is what the Gramm-Kyl amendment will do.

I want to speak this morning about why this is so important, to bring it down to simple, personal terms.

In the Mansfield Room, just a few feet from the Senate Chamber in which we are right now, Mr. President, there is a small businessman, the owner of a lumber company. Actually, his dad owns the lumber company. He is helping to run it now. His name is Brad Eiffert, from Columbia, MO. And it is the Boone County Lumber Company.

His problem is this. When his father dies, the U.S. Government says: We want half of the value of everything you own with this lumber company. Let's explore what that means. They have been paying income tax on their corporate income. They have been paying individual income tax on the salary they take out of the company. They pay the payroll tax. They pay the Social Security tax. They generate a lot of taxes for Boone County and for the State of Missouri. And they have created 30 jobs.

This has been a successful, now second-generation company. The children of the father who owns the company now pay \$58,000 a year in insurance premiums so that when their father dies, they will be able to inherit the business and have the money to run the

business. Think of an insurance premium of \$58,000 a year.

What does the Government do right now? The policy before we repealed the death tax was, the day he dies, his estate—that is to say, the people who would inherit the money the father owns and would inherit the business—has to pay half of that to Uncle Sam—half, 50 percent.

There is an exemption of a few hundred thousand dollars. I don't know how much this lumber company is worth, but let's say it is worth \$5 million, just to pick a figure. I could be way off. About \$4.5 million is now subject to the estate tax when the father dies.

So how do people pay the estate tax? This is the perversity of this tax. This lumber company has an inventory of lumber. They buy lumber from different companies that chop down trees and make it for them. So they have a bunch of warehouses full of lumber. And they have trucks that deliver the lumber. They have forklifts that enable them to move that lumber around. They have a little office. They have some other things; I am sure they sell hammers and nails and things such as that.

When this business is valued at, let's say, \$5 million, they don't have a drawer that says: If you need \$2.5 million to pay Uncle Sam, here is \$2.5 million. No business has that. What they have is a value in the inventory, the lumber, the trucks, the forklifts, the warehouses, and so on. That is what is worth \$5 million.

So, in effect, Uncle Sam wants to come in and say: We want half of that value. If you have 10 forklifts, we want 5 of them. If you have 10 lumber trucks, we want 5 of them. We want half of the inventory. In effect, just put it on a railroad car and send it to Washington. We want half of your warehouses.

There isn't money to pay Uncle Sam. We are talking about the value of the business. Remember, they have paid their income taxes. We are now talking about the value of the estate. It is called an estate tax.

What is the estate? The estate is the Boone County Lumber Company, with its forklifts and trucks and lumber. If that is worth \$5 million, Uncle Sam says: I want half of it. How do you keep the business going by sending Uncle Sam half of the forklifts and half the trucks and half the lumber? That is obviously not what happens. You have to sell it to generate cash to write a check to Uncle Sam. You cannot just sell half your business. You end up selling the whole business.

Somebody said maybe they could get a loan to pay the taxes. Wrong. Anybody who knows anything about small business knows two things: One, you have financed the purchase of your equipment. You have financed the purchase of the land. Who buys a house for cash? You go get a home mortgage loan.

Well, businesses are the same. They don't pay cash for the land and the buildings; they get a loan from the bank so they can buy the property. They get a loan from the bank to buy their trucks, just as you buy a car on time, and you pay a Ford or GMC creditor or whoever it might be. The same with lumber, you get a bank loan to buy the lumber. Then you sell it and pay back the bank.

So these small businesses are highly leveraged in the sense they have already gotten all the credit they could get out of the bank. They can't go to the bank and borrow \$2.5 million to pay the estate tax.

There is another reason, too, and that is there is an exemption. Today you get a \$1 million exemption—and some people are proposing the exemption be more than that—but you can't qualify for the exemption.

The National Federation of Independent Businesses, which knows a lot about this because it represents a lot of these businesses, has testified, as have other experts, before the House Ways and Means Committee, which considered this, that the provision under which you can theoretically get an exemption is way too complicated and does not work.

The ABA, as a matter of fact—the American Bar Association—has advised its lawyers of being very careful of trying to help anybody to qualify for this exemption because they likely will be committing malpractice. So it does not work either.

So the bottom line is, hundreds of thousands of small businesses around this country face what Brad Eiffert faces. When his dad dies and Uncle Sam says pay us half of the value of everything in this business, he does not have the cash. He is not going to be able to borrow the cash. He has one choice: Sell the Boone County Lumber Company.

I will give you another company. The idea of the death tax was to prevent the accumulation of wealth. I had a good friend in Arizona. His name was Jerry Witosky. He died. He created a printing company, Imperial Lithograph. He started with one employee, himself. He gradually built it up. He had about 150 employees, somewhere in that neighborhood when he died. It was a very successful business in Phoenix.

He contributed more money to charities in Phoenix than anybody I have ever known—a wonderful man. He died. His family could not pay half the value of that printing company to Uncle Sam, and they eventually had to sell the business.

Who did they sell it to? They sold it to a great big corporation. So much for preventing the accumulation of wealth. Here you had a family business, a going concern, a wonderful contributor to the community, and it had to be sold to a big corporation just to generate the cash to pay the estate tax.

Is this right? No. It is bad tax policy. It is unfair. It destroys all of the incentive. We talk about the American

dream: save, invest, and hope that your kids can have a better opportunity than you had. That is the American dream. And the estate tax, or the death tax, just cuts that right to the quick and says: We want half of everything you earned during your lifetime. And, by the way, if you have to sell your business to pay us the money, that is tough. We want to spend it back in Washington.

This is a perverse tax policy. The good thing about the version of the repeal that Senator GRAMM and I have proposed is that it does not let anybody off the hook in terms of paying taxes to Uncle Sam. They already paid the taxes on the income. What we say is when Brad Eiffert inherits his father's business, the Boone County Lumber Company, he does not pay a tax when his dad dies—that is perverse—but if he ever sells the Boone County Lumber Company, then he pays a capital gains tax, and he pays it based on what his dad paid for the original company.

So Uncle Sam is going to get the full take. We will get all the money we need here to spend in Washington, but it is when he decides to sell the business; that is the taxable event. Death should not be a taxable event.

So I hope my colleagues will join Senator GRAMM and me later today when we have an opportunity to finally repeal this perverse tax and replace it with a capital gains tax. We are not letting anybody off the hook. We are substituting one tax for the other, but we are substituting a tax that is fair because it says if you make a decision, knowing the tax consequences, to sell the asset, you pay Uncle Sam. If you don't, you don't. But that is your decision. It replaces a tax on the event of death which is more perverse and unfair.

The U.S. Government should not have that as a policy for the people of the United States of America. I urge my colleagues to reject the alternatives. There is only one real repeal, and that is the Gramm-Kyl repeal of the death tax.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRIME MINISTER OF AUSTRALIA

The PRESIDING OFFICER. Pursuant to the order of the Senate, the following Senators are appointed to escort the Prime Minister of Australia into the House Chamber: The Senator from South Dakota (Mr. DASCHLE), the

Senator from Florida (Mr. NELSON), the Senator from Mississippi (Mr. LOTT), the Senator from Oklahoma (Mr. NICKLES), the Senator from Texas (Mrs. HUTCHISON), the Senator from Idaho (Mr. CRAIG), and the Senator from Indiana (Mr. LUGAR).

Without objection, in accordance with the previous notice, the Senate will now stand in recess for the purpose of attending a joint meeting with the House of Representatives to hear the very distinguished Prime Minister of Australia, John Howard.

Thereupon, the Senate, at 10:46 a.m., took a recess and the Senate, preceded by its Secretary, Jeri Thomson, proceeded to the Hall of the House of Representatives to hear an address delivered by the Honorable John Howard, Prime Minister of Australia.

(For the address delivered by the Prime Minister of Australia, see today's proceedings of the House of Representatives.)

At 12:30 p.m., the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mrs. CLINTON).

#### DEATH TAX ELIMINATION ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 8, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 8) to amend the Internal Revenue Code of 1986 to phaseout the estate gift taxes over a 10-year period, and for other purposes.

Pending:

Conrad amendment No. 3831, in the nature of a substitute.

#### AMENDMENT NO. 3831

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, what is the issue before the Senate?

The PRESIDING OFFICER. The Conrad amendment No. 3831.

#### AMENDMENT NO. 3832 TO AMENDMENT NO. 3831

Mr. REID. Madam President, on behalf of Senator DORGAN, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. DORGAN, for himself, Mr. DURBIN, Mrs. CARNAHAN, and Mr. CORZINE, proposes an amendment numbered 3832 to amendment No. 3831.

Mr. REID. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Internal Revenue Code of 1986 to make permanent the estate tax in effect on December 31, 2009, to increase the exclusion amount to \$4,000,000 in 2009, and to provide a full family-owned business interest deduction in 2003)

In lieu of the matter proposed to be inserted, insert the following:

#### SECTION 1. ESTATE TAX WITH FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.

(a) ELIMINATION OF ESTATE TAX REPEAL.—(1) IN GENERAL.—Subtitle A of title V, sections 511(d), 511(e), and 521(b)(2), and subtitle E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 are repealed.

(2) CONFORMING AMENDMENTS.—

(A) The table contained in section 2001(c)(2)(B) of the Internal Revenue Code of 1986 is amended by striking “2007, 2008, and 2009” and inserting “2007 and thereafter”.

(B) The table contained in section 2010(c) of such Code is amended by striking “2009” and inserting “2009 and thereafter”.

(C) Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended—

(i) by striking “this Act” and all that follows through “2010.” in subsection (a) and inserting “this Act (other than title V) shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.”, and

(ii) by striking “, estates, gifts, and transfers” in subsection (b).

(b) INCREASE IN EXCLUSION AMOUNT.—The table contained in section 2010(c) of the Internal Revenue Code of 1986 (relating to applicable credit amount), as amended by subsection (a)(2)(B), is amended by striking “\$3,500,000” and inserting “\$4,000,000”.

(c) FULL TAX DEDUCTION FOR FAMILY-OWNED BUSINESS INTERESTS.—

(1) IN GENERAL.—Section 2057(a) (relating to deduction for family-owned business interests) is amended—

(A) by striking paragraphs (2) and (3), and

(B) by striking “GENERAL RULE.—” and all that follows through “For purposes” and inserting “ALLOWANCE OF DEDUCTION.—For purposes”.

(2) PERMANENT DEDUCTION.—Section 2057 is amended by striking subsection (j).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying, and gifts made, after December 31, 2002.

The PRESIDING OFFICER. Who yields time? If no one yields time, time shall be charged equally to both sides.

Mr. REID. Madam President, I suggest the absence of a quorum and I ask unanimous consent that time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAMM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Madam President, let me remind my colleagues where we are and what we are doing. Last year, we adopted a repeal of the death tax. Under that repeal, we phased up the exemption. We will soon start phasing down the rates, and in 2010 we will actually repeal the death tax. But because of a quirk in the rules of the Senate and the budget process, this death tax snaps back into full force in 2011.

Members of the Senate voted to repeal the death tax. They proclaimed they were repealing the death tax. We are here today to really finish that work by simply taking the provisions of law that are in place and in 2010—a