



National Funeral Directors Association
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2011 POLICY

PROTECT, MODERNIZE AND IMPROVE S CORPORATION LAWS AND REGULATIONS

NFDA Position

That NFDA support efforts to Protect, Modernize and Improve S Corporation laws and regulations

Background

In 1958, Congress passed legislation to establish the Subchapter S Corporation which merged the single level partnership form of taxation with the liability protections of a Chapter C corporation with certain limitations on number and type of shareholders and allowance for only one class of stock. Over the years, modest changes have been made to this increasingly popular corporate form. Today, over 4.1 million Subchapter S corporations are in existence including a growing number of funeral homes.

Discussion

In this time of increased federal deficits, Congress is looking for ways to raise revenues through changes in the tax code. The challenge for Subchapter S corporations is to defend against efforts to dramatically raise taxes on their shareholders and to modernize their structure to keep them relevant for future business formation.

In this regard, 2010 will be a critical year as the 2001 & 2003 tax cuts expires at end of the year; the alternative minimum tax will overtake tax code; corporate tax rates are among highest in free world and the wage gap is seen as widening. The 111th Congress will address these tax issues in its lame Duck session as a result of the agreement between President Obama and Congressional Republican reached in December to extend all the current tax rates, capital gains tax rates and related tax provisions for the next two years beginning in January 2011.

As far as modernizing the Subchapter S corporation rules, the following have occurred since 1996:

- Shareholder limits have increased from 35 to 100;
- Family members now count as just one shareholder;
- S Corporations have expanded access to capital—certain trusts, IRAs, and other entities are allowed to own shares;
- S Corporations can now own other businesses; and

- C corporations that convert to S status face fewer obstacles

Changes that are needed include but are not limited to:

- Increase access to capital by reducing ownership restrictions
- Ease transition rules for firms that convert to S corporation status, including reform of the built-in gains tax rules and reducing the bite of the so-called “sting tax”.

In 2009 and 2010, NFDA, as part of the Subchapters S Coalition, strongly supported H. R. 2910 [Rep. Kind (D-WI)] and S. 996 [Sen. Lincoln (D-AR)] bills that would modernize the current outdated Subchapter S rules to make it easier to elect this corporate form, free up accumulated capital, attract new investors and utilize the value of appreciated property among other things. Since many NFDA members have indicated that they use this corporate form or would like to, we believe this legislation would be extremely helpful to those members. However, passage of either bill is not expected before the 111th Congress adjourns *Sine Die* this December. We will try again in the new 112th Congress in 2011.

NFDA Governance History:

2009: Committee Action 1/29/09; Policy Board Action 3/30/09

2010: Committee Action 1/20/10; Policy Board Action 3/08/10

2011: Committee Action 1/27/11; Policy Board Action 3/09/11

Attest: NFDA Policy Board (original resolution) Date: March 30, 2009 File Code: RES090/Policybd

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