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February 2, 2009

Congressional Research Service

Report RL31776

Estate Tax Legislation in the 108th Congress

Nonna A. Noto, Government and Finance Division

May 14, 2004

Abstract. Under provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16), enacted June 7, 2001, the estate tax is scheduled to be repealed in 2010 but reinstated in 2011. All tax cut provisions of EGTRRA are scheduled to sunset on December 31, 2010. This report tracks actions in the 108th Congress to permanently repeal the estate tax or to retain but alter the tax.

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Updated May 14, 2004

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Estate Tax Legislation in the 108th Congress

Summary

Under provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16, enacted June 7, 2001), the estate tax and generation-skipping transfer tax are scheduled to be repealed in 2010 but reinstated in 2011. This is because all tax cut provisions of EGTRRA are scheduled to sunset on December 31, 2010. This report tracks actions in the 108th Congress to permanently repeal — or retain but alter — the estate tax.

On June 18, 2003, the House passed H.R. 8 (Dunn), which would make the repeal of the estate tax permanent from 2010 onward. Prior to that vote, under provisions of the rule (H.Res. 281), the House debated and then defeated the Pomeroy substitute amendment (H.Amdt. 171 to H.R. 8) to retain the estate tax but increase the exclusion amount to \$3 million per decedent beginning in 2004.

Thus far in the 108th Congress, 26 measures addressing the estate tax have been introduced, 19 in the House and 7 in the Senate. The bills can be grouped into three categories. First, seven House bills would make the estate tax repeal permanent after 2010. Four bills would remove the sunset provision only for the estate tax provisions of EGTRRA: H.R. 8 (Dunn), H.R. 57 (Dunn), H.R. 139 (McGinnis), and H.R. 158 (Pitts). S.J.Res. 20 (Kyl) and S.J.Res. 21 (Kyl) would express the sense of Congress that the number of years during which the estate tax is repealed should be extended, pending the permanent repeal of the estate tax. The revenue cost for FY2013 from permanent repeal of the estate tax has been estimated in 2004 at \$50 billion by the U.S. Treasury Department and \$55 billion by the Joint Committee on Taxation. In addition, four bills would repeal the entire sunset provision, making all of EGTRRA's tax cuts permanent: H.R. 210 (Tiberi), H.R. 407 (Bonner), H.R. 1612 (Hulshof), and H.R. 3773 (Hulshof).

Second, four bills, one in the House and three introduced by Senator Kyl, would accelerate the repeal of the estate tax sooner than the 2010 date scheduled by EGTRRA and make the repeal permanent. H.R. 51 (Cox) would repeal the gift tax along with the estate tax effective in 2003. S. 13 (Kyl), S. 169 (Kyl), and S. 96 (Kyl) would accelerate the repeal of the estate tax to 2005.

Third, twelve bills, ten in the House and two in the Senate, would retain but alter the estate tax. Some would lower the tax rate. Eight House bills would increase the exclusion amount for all estates. This includes H.Amdt. 171 (Pomeroy) to H.R. 8, H.R. 396 (DeFazio), H.R. 2477 (Ford), H.R. 2480 (Leach), H.R. 2481 (Lowey), H.R. 2502 (Bereuter), H.R. 2532 (Kennedy, P.), H.R. 2610 (Peterson, C.), and H.R. 2682 (Lowey). S. 135 (Dayton) would both increase the exclusion amount for all estates and provide a complete estate tax exclusion for family-owned businesses. In addition to S. 135, companion bills H.R. 2513 (Thompson) and S. 34 (Lincoln) would immediately and permanently repeal the estate tax on family-owned businesses and farms. In contrast to S. 135, which uses a step-up in basis, H.R. 2513 and S. 34 would use carryover basis to calculate the capital gain if the beneficiary later sold the family-owned business interest. This report will be updated as events warrant.

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Estate Tax Legislation in the 108th Congress

Background

The estate tax and generation-skipping transfer (GST) tax are scheduled to be repealed effective January 1, 2010, under Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16). However, under Title IX of the tax cut Act, the estate tax repeal, and all other provisions of EGTRRA (pronounced egg-tra), are scheduled to sunset as of December 31, 2010. If the sunset provision is not repealed, in 2011 tax law would return to the law in place prior to the enactment of EGTRRA on June 7, 2001. For the estate tax, the exclusion amount would have risen to \$1 million under prior law.¹

During 2002, estate tax proposals offered by Republican Members in both houses focused on making the repeal of the estate tax permanent. The Bush Administration supported permanent repeal. Alternative proposals offered by Democratic Members in the House and Senate would have retained the estate tax but made some changes, such as making special exceptions for qualified family-owned business interests (QFOBI) and/or accelerating an increase in the exclusion amount for all estates.

In 2002, efforts to permanently repeal the estate tax focused on removing the sunset provision of EGTRRA with respect to the estate tax provisions of the Act. The estate and generation-skipping transfer taxes would thus be eliminated from 2010 onward. Other changes made by Title V of EGTRRA also would continue, such as replacing the step-up in basis with a modified carryover basis for assets transferred at death and retaining the gift tax on transfers made during one's lifetime even when the estate tax is repealed.

On April 18, 2002, the House passed H.R. 586, part of which would have removed the sunset provision of EGTRRA and thereby made permanent the repeal of the estate tax and all other provisions of the tax cut law. On June 6, 2002, the House passed H.R. 2143 which would have removed the sunset provision solely from the estate tax provisions of EGTRRA. On June 12, 2002, the Senate considered three amendments offered to H.R. 8 regarding the estate tax. None of the amendments received the 60 votes needed to waive the budget point of order as established by a unanimous consent agreement. On September 19, 2002, the House approved a resolution, H.Res. 524, which called upon the Senate to approve the Permanent Death

¹ For additional information, see CRS Report RL31061, *Estate and Gift Tax Law: Changes Under the Economic Growth and Tax Relief Reconciliation Act of 2001*, by Nonna A. Noto.

Tax Repeal Act of 2002 (H.R. 2143) before the 107th Congress adjourned. The Senate did not act on the bill.²

Bush Administration's Revenue Proposal for FY2004 and FY2005

One of the revenue proposals offered by the Bush Administration in conjunction with its FY2004 budget proposal was to "...permanently extend provisions expiring in 2010." That proposal would permanently extend all of the provisions of EGTRRA, which would otherwise sunset on December 31, 2010.³ One effect of this extension of EGTRRA would be to make the repeal of the estate tax and the generation-skipping transfer tax permanent for 2010 and beyond.

The repeal of the sunset was not included as part of H.R. 2 (Thomas) and S. 2 (Nickles), the Jobs and Growth Tax Act of 2003, introduced on February 27, 2003. These companion bills in the House and Senate were the initial legislative vehicles for the economic growth package portion of the Administration's FY2004 tax cut and economic growth proposals. Nor did the final version of H.R. 2 (enacted May 28, 2003, as P.L. 108-27, the Jobs and Growth Tax Relief Reconciliation Act) remove the sunset on tax provisions expiring in 2010 or include any provision regarding the estate tax.

On June 18, 2003, the Bush Administration expressed its support for the House to pass H.R. 8, to make the repeal of the estate tax permanent. The Administration cited the importance of providing certainty about future estate tax law. Certainty about repeal would reduce the cost of estate tax planning and compliance, particularly for family-owned businesses, farms, and ranches. The Administration urged quick congressional action to make the repeal permanent.⁴

In 2003, for the FY2004 budget, the estimated one-year revenue loss from permanent repeal of the estate and generation-skipping transfer taxes, and modification of gift taxes, was \$46 billion according to the U.S. Treasury

² For additional information, see CRS Report RS21224, *Estate Tax: Legislative Activity in 2002*, by Nonna A. Noto.

³ U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2004 Revenue Proposals* (referred to as the "Blue Book"), Washington, Feb. 2004, 129. U.S. Congress, Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2004 Budget Proposal*, Joint Committee Print JCS-7-03, 108th Cong., 1st Sess., March 2003 (Washington, U.S. Govt. Print. Off., 2003), 239-41.

⁴ Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy on H.R. 8 — Death Tax Repeal Permanency Act*, Washington: June 18, 2003.

Department⁵ and \$64 billion according to the Joint Committee on Taxation⁶ for FY2013.⁷

Among its revenue proposals for FY2005, the Bush Administration once again proposed to permanently extend the provisions of EGTRRA that sunset on December 31, 2010.⁸ In 2004 the U.S. Treasury Department estimated a one-year revenue loss of \$50 billion for FY2013 for the repeal of estate and generation-skipping transfer taxes and the modification of gift taxes.⁹ The Joint Committee on Taxation estimated a revenue loss of \$55 billion for FY2013.¹⁰

Actions in Congress

H.R. 8, the Death Tax Repeal Permanency Act of 2003, was approved by the House on June 18, 2003. H.R. 8 would make the repeal of the estate and generation-skipping transfer taxes permanent from 2010 onward by exempting the estate tax provisions (Title V) from the sunset provisions of EGTRRA. Other changes made by Title V of EGTRRA would also continue after 2010. These changes include using modified carryover basis (instead of step-up in basis) to calculate the capital gain upon subsequent sale of assets transferred at death. The changes also include retaining the gift tax and lowering the maximum gift tax rate to the maximum income tax rate from 2010 onward.

H.R. 8 was introduced by Representative Jennifer Dunn on June 12, 2003, with 207 cosponsors.¹¹ The bill was referred to the House Ways and Means Committee.

⁵ U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2004 Revenue Proposals*, 152.

⁶ U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2004 Budget Proposal*, JCX-15-03, 108th Cong., 1st Sess., March 4, 2003, 4. The March 2003 estimate of \$58 billion is close to the Joint Committee's estimate of \$56 billion for FY2012, made in June 2002. U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects of H.R. 2143, "Permanent Death Tax Repeal Act of 2001,"* JCX-51-02, 107th Cong., 2d Sess., June 4, 2002.

⁷ FY2012 is the first full fiscal year that would reflect the extension of EGTRRA's expiring provisions beyond December 31, 2010.

⁸ U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2005 Revenue Proposals*, Washington, February 2004, 5. U.S. Congress, Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2005 Budget Proposal*, Joint Committee Print JCS-3-04, 108th Cong., 2nd Sess., February 2004 (Washington, U.S. Govt. Print. Off., 2004), 9-12.

⁹ U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2005 Revenue Proposals*, 191.

¹⁰ U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2005 Budget Proposal*, JCX-14-04 R, 108th Cong., 2nd Sess., March 3, 2004, 1.

¹¹ The bill number H.R. 8 had been reserved by the House leadership in the 108th Congress. (continued...)

H.R. 8 was equivalent in intent to H.R. 57, introduced by Representative Dunn on January 7, 2003. The Joint Committee on Taxation estimated the revenue cost of H.R. 8 to be \$161.8 billion over the 11-year period FY2003-FY2013 and \$63.6 billion for FY2013 alone.

On June 17, 2003, the House Rules Committee reported by voice vote H.Res. 281 (H.Rept. 108-157), the rule for consideration of H.R. 8. The bill was thus made available for floor consideration even though the Ways and Means Committee had not reported it in the intervening five days. The modified closed rule permitted only one amendment, an amendment in the nature of a substitute to be offered by Representative Earl Pomeroy or his designee.

The proposed Pomeroy substitute would retain but alter the estate tax. It would increase the estate tax exclusion to \$3 million per decedent, effective January 1, 2004. It would partially offset the cost of increasing the exclusion by freezing the current estate and gift tax rates (with a maximum rate of 49%), limiting the ability to claim valuation discounts of nonbusiness assets and to count those assets in the determining the value of an interest, limiting minority discounts for interests in family-controlled entities, and restoring the prior-law phaseout of the benefit of both the graduated rates and the exclusion amount by reimposing a 5% surtax on estate values above \$10 million, over a limited range of values. It would repeal the modified carryover basis rules (scheduled to take effect in 2010 when the estate tax is to be repealed under EGTRRA); instead, it would keep the current-law step-up in basis rules. The Joint Committee on Taxation estimated the revenue cost of the Pomeroy amendment at \$27.8 billion over the 10-year period FY2004-FY2013.¹²

On June 18, 2003, the House adopted the rule, H.Res. 281. The Pomeroy amendment in the nature of a substitute was offered as H.Amdt. 171 to H.R. 8. The Pomeroy amendment was defeated by a vote of 188-239 (Roll no. 287). H.R. 8 was then passed by a vote of 264-163 (Roll no. 288).

H.R. 8 now awaits action by the Senate. At Senator Kyl's request, the bill was not referred to the Finance Committee but was placed directly on the Senate calendar. If the Finance Committee chooses to report a bill of its own for Senate consideration, this procedure would facilitate starting the process of resolving differences between

¹¹ (...continued)

H.R. 8 is the same number that was given to bills introduced by Representative Dunn in the 106th and 107th Congresses. These earlier bills would have phased out and then permanently repealed the estate tax. In the summer of 2000, during the second session of the 106th Congress, H.R. 8 was approved by both the House and the Senate, but vetoed by President Clinton. During the first session of the 107th Congress, H.R. 8 was passed by the House on April 4, 2001. Many provisions of H.R. 8 were included in the estate tax provisions of EGTRRA, P.L. 107-16, enacted June 7, 2001. During the second session of the 107th Congress, three amendments to H.R. 8 were considered but not passed by the Senate on June 11 and 12, 2002.

¹² The original Pomeroy proposal had also included revenue offsets from customs user fees and closing corporate tax shelter loopholes, but they were disallowed by the Rules Committee as non-germane.

the House and Senate bills. Alternatively, this procedure could permit the Senate to act on the House bill without further action by the Finance Committee.

Overview of Bills Introduced in the 108th Congress

To date, 26 measures addressing the estate tax have been introduced in the 108th Congress, 19 in the House and seven in the Senate. The bills can be grouped under three broad categories. First, eight House bills would make the repeal of the estate tax permanent after 2010. H.R. 8 (Dunn) and H.R. 57 (Dunn) would remove the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16) solely with respect to the estate tax provisions (Title V) of EGTRRA. H.R. 139 (McGinnis) and H.R. 158 (Pitts) are equivalent in substance to H.R. 57. H.R. 210 (Tiberi), H.R. 407 (Bonner), H.R. 1612 (Hulshof), and H.R. 3773 (Hulshof) would repeal the entire sunset provision, making all of EGTRRA's tax cuts permanent. In addition, S.J.Res. 20 (Kyl) and S.J.Res. 21 (Kyl) would express the sense of Congress that the number of years during which the estate tax is repealed should be extended, pending the permanent repeal of the tax.

Second, four bills would accelerate the repeal of the estate tax, currently scheduled for 2010 under EGTRRA. One bill is in the House and the three others in the Senate, introduced by Senator Kyl. H.R. 51 (Cox) would repeal the gift tax, along with the estate and generation-skipping transfer taxes, effective in 2003. S. 13 (Kyl) and S. 169 (Kyl) would accelerate the repeal of the estate and GST taxes to 2005. S. 13 and S. 169 (like H.R. 57, H.R. 139, and H.R. 158 in the House) would make the repeal permanent by removing the sunset provision solely with respect to the estate tax provisions of EGTRRA. S. 96 (Kyl), like S. 13 and S. 169, would accelerate the repeal of the estate and GST taxes to 2005. In contrast to S. 13 and S. 169, S. 96 would make the repeal permanent by repealing the sunset for all provisions of EGTRRA (not just the estate tax provisions). In addition, S. 96 would accelerate the income tax rate reductions scheduled under EGTRRA and introduce other provisions favorable to investments and retirement plans.

Third, twelve bills would retain but alter the estate tax. Ten are in the House and two in the Senate. Three would repeal the estate tax for qualified family-owned business interests. Nine would immediately increase the applicable exclusion amount.¹³ One, S. 135 (Dayton), would do both. Some bills would explicitly repeal

¹³ The amount of a decedent's assets that may be transferred free from estate tax is commonly referred to as the "exemption amount" or simply the "exemption." Formally, however, in the Internal Revenue Code, the exemption is called the "applicable exclusion amount." EGTRRA calls it the "unified credit effective exemption amount," referring to the unified estate and gift tax credit.

Under the law prior to EGTRRA, the applicable exclusion amount was scheduled to rise from \$675,000 in 2001, in steps, to \$1 million in 2006. Thus, \$1 million would be the exemption amount in effect if EGTRRA sunsets as scheduled on December 31, 2010.

EGTRRA raised the applicable exclusion amount to \$1 million for 2002 and 2003, \$1.5 million for 2004 and 2005, \$2 million for 2006-2008, and \$3.5 million for 2009, before the tax is repealed in 2010.

(continued...)

the modified carryover basis rules scheduled to take effect in 2010 when the estate tax is repealed under EGTRRA; instead, they would retain the current-law step-up in basis rules for calculating the capital gain upon sale by heirs of assets transferred at death. Two companion bills would exempt family-owned businesses and farms from the estate tax but impose carryover basis treatment on the subsequent sale of those assets.

As previously mentioned, H.Amdt. 171 to H.R. 8 (Pomeroy) would increase the estate tax exclusion to \$3 million. As partial revenue offsets, it would freeze estate and gift tax rates at their current level (with a maximum rate of 49%), limit the ability to claim valuation discounts of nonbusiness assets and to count those assets in the determining the value of an interest, limit minority discounts for interests in family-controlled entities, and restore the prior-law phaseout of the benefit of both the graduated rates and the exclusion amount by reimposing a 5% surtax on estate values above \$10 million, over a limited range of values. It would repeal the modified carryover basis rules and keep the step-up in basis rules for assets transferred at death.

As revenue offsets to the other provisions of H.R. 396 (DeFazio), section 602 of the bill would repeal EGTRRA's repeal of the estate and GST taxes. It would increase the applicable exclusion amount to \$5 million; keep the maximum estate tax rate at its 2003 level of 49%, applied to taxable estate amounts over \$2 million; and repeal the carryover basis, keeping stepped-up basis. In addition, section 601 would freeze EGTRRA's reduction of the top individual income tax marginal rate at its 2003 level of 38.6%.

H.R. 2477 (Ford) would increase the exclusion equivalent of the unified credit to \$7.5 million, reduce the marginal estate and gift tax rates to 25% for taxable estate values up to \$50 million and 30% for \$50 million and over, and repeal the modified carryover basis rules. H.R. 2480 (Leach) would increase the exclusion equivalent of the unified credit to \$10 million (indexed for inflation), increase the annual gift tax exclusion to \$50,000 (indexed for inflation), and lower the estate and gift tax rates to 30%. H.R. 2481 (Lowey) would increase the unified credit against estate and gift taxes to the equivalent of a \$2,500,000 exclusion amount (inflation-adjusted) and reduce estate tax rates by 20%. H.R. 2502 (Bereuter) would raise the exclusion equivalent of the unified credit to \$10 million (indexed for inflation), repeal the special benefit for family-owned business interests (Sec. 2057 of the Internal Revenue Code), and lower the estate and gift tax rate to the highest income tax rate for the year. H.R. 2532 (Kennedy, P.) would increase the applicable exclusion amount to \$3 million, restore the maximum rate of estate and gift tax to 50%, repeal the modified carryover basis provisions of EGTRRA, and deposit revenues from the

¹³ (...continued)

The applicable exclusion amount is expressed per decedent. With appropriate estate tax planning, a couple could take advantage of twice the exclusion amount.

See CRS Report RL31061, *Estate and Gift Tax Law: Changes Under the Economic Growth and Tax Relief Reconciliation Act of 2001*, by Nonna A. Noto, 4-5. For further explanation of the relationship between the applicable exclusion amount and the applicable credit amount, see CRS Report RL31092, *Calculating Estate Tax Liability During the Estate Tax Phasedown Period 2001-2009*, by Nonna A. Noto, 1-2.

estate tax into the Social Security trust funds. H.R. 2610 (Peterson, C.) would increase the estate and gift tax unified credit to an exclusion equivalent of \$5,000,000, repeal the modified carryover basis rules of EGTRRA, and reduce the estate and gift tax rate to 15% or, if lower, the generally applicable capital gains rate for individuals. H.R. 2682 (Lowey) would increase the unified credit against estate and gift taxes to the equivalent of a \$3,000,000 exclusion amount (inflation-adjusted) and reduce estate tax rates by 20%.

S. 34 (Lincoln) would keep the estate tax but immediately and permanently repeal the tax on family-owned businesses and farms. These would be classified as carryover business interests (COBIs) and carryover (not stepped-up) basis would apply in any subsequent sale by the heir. S. 34 would also eliminate several restrictive requirements included under the current qualified family-owned business interest (QFOBI) rules. Companion bill H.R. 2513 (Thompson) is equivalent in substance to S. 34 but uses the term “qualified family-owned business interests” in place of “carryover business interests.”

S. 135 (Dayton) would increase the applicable exclusion amount for all estates to \$4 million and provide a complete estate tax exclusion for family-owned businesses. It would eliminate EGTRRA’s repeal of the estate tax and its institution of carryover basis. It would also expand the 10% (lowest) tax bracket under the individual income tax, freeze the rate decline for the top income tax brackets, and address other income tax issues.

This report does not cover the several bills that would repeal the estate and gift taxes as part of a major overhaul of the federal tax system. They include proposals to replace the current income tax with a flat tax on earned income, a tax on consumed income, a modified value added tax, or a national sales tax.¹⁴

In the descriptions below related to provisions of EGTRRA, references to the estate tax include the generation-skipping transfer tax, but not the gift tax. Under EGTRRA, the gift tax would continue after the estate tax is repealed. Also under EGTRRA, the repeal of the estate and GST taxes is accompanied by replacing the step-up in basis treatment by a “modified carryover basis” for inherited assets. Any exceptions to these conventions are noted in the bill descriptions that follow.

House

H.R. 8 (Dunn). Death Tax Repeal Permanency Act of 2003. H.R. 8 would make the repeal of the estate and generation-skipping transfer tax permanent by exempting the estate tax provisions (Title V) from the sunset provisions of EGTRRA. Equivalent in intent to H.R. 57. Introduced June 12, 2003; referred to Committee on Ways and Means. Brought directly to the House floor on June 18, 2003, under provisions of rule H.Res. 281, without being reported by the Ways and Means Committee. Passed the House by a vote of 264-163 (Roll no. 288). Placed

¹⁴ For more information on fundamental tax reform proposals and the role of the estate and gift taxes in those proposals, see CRS Issue Brief IB95060, *Flat Tax Proposals and Fundamental Tax Reform: An Overview*, by James M. Bickley.

directly on the Senate Calendar. In June 2003 the Joint Committee on Taxation estimated the revenue cost to be \$161.8 billion over the 11-year period FY2003-FY2013 and \$63.6 billion for FY2013 alone.

H.Res. 281 (Rules Committee). Rule governing House consideration of H.R. 8. Modified closed rule providing for one hour of debate on H.R. 8, equally divided between the chairman and ranking minority member of the Ways and Means Committee. Provided for the consideration of only one amendment, an amendment in the nature of a substitute, if offered by Representative Earl Pomeroy or his designee. Provided for an additional hour of debate on the amendment, equally divided and controlled by the proponent and an opponent. Waived all points of order against the amendment printed in the report. Provided for one motion to recommit the bill, with or without instructions. Reported to the House by voice vote of the Rules Committee on June 17, 2008. Approved by the House by voice vote on June 18, 2003. (See also *H.R. 8 — Death Tax Repeal Permanency Act of 2003* [H.Rept. 108-187], 108th Cong., 1st Sess., June 17, 2003, which contains both the rule and the Pomeroy amendment.)

H.Amdt. 171 (Pomeroy) to H.R. 8. H.Amdt. 171 to H.R. 8 would increase the estate tax exclusion to \$3 million, effective January 1, 2004. Would partially offset the cost of increasing the exclusion by freezing the current estate and gift tax rates (with a maximum rate of 49%), limiting the ability to claim valuation discounts of nonbusiness assets and to count those assets in the determining the value of an interest, limiting minority discounts for interests in family-controlled entities, and restoring the prior-law phaseout of the benefit of the graduated tax rates and exclusion amount by reimposing a 5% surtax on estate values above \$10 million, over a certain range. Would repeal the modified carryover basis rules (scheduled to take effect in 2010 when the estate tax is repealed under EGTRRA); would keep the current-law step-up in basis rules instead. Introduced on the House floor June 18, 2003, as an amendment in the nature of a substitute to H.R. 8, under provisions of rule H.Res. 281. Defeated by a vote of 188-239 (Roll no. 287). The Joint Committee on Taxation estimated the revenue cost to be \$27.8 billion over the 10-year period FY2004-FY2013. The original Pomeroy proposal had also included revenue offsets from customs user fees and closing corporate tax shelter loopholes, but they were disallowed by the Rules Committee as non-germane.

H.R. 51 (Cox). Family Heritage Preservation Act. H.R. 51 would repeal the federal death tax, including gift taxes as well as the estate tax and the tax on generation-skipping transfers, effective in 2003. Lists seven findings related to death taxes and saving, investments, and other taxes. Introduced January 7, 2003; referred to Committee on Ways and Means.

H.R. 57 (Dunn). Death Tax Permanency Act of 2003. H.R. 57 would make the repeal of the estate tax and generation-skipping transfer tax permanent. Would amend EGTRRA to exempt only the estate tax provisions (Title V) from the sunset provisions of EGTRRA. Equivalent in intent to H.R. 8. Equivalent in substance to H.R. 139 and H.R. 158. H.R. 57 was introduced January 7, 2003; referred to Committee on Ways and Means.

H.R. 139 (McInnis). Permanent Death Tax Repeal Act of 2003. Equivalent in substance to H.R. 57. H.R. 139 was introduced January 7, 2003; referred to Committee on Ways and Means.

H.R. 158 (Pitts). Equivalent in substance to H.R. 57. H.R. 158 was introduced January 7, 2003; referred to Committee on Ways and Means.

H.R. 210 (Tiberi). H.R. 210 would accelerate the income tax rate cuts made by EGTRRA and remove the sunset provision, making all the tax cuts of EGTRRA permanent. Introduced January 7, 2003; referred to Committee on Ways and Means.

H.R. 396 (DeFazio). Emergency Anti-Recession Act of 2003. Section 602 of H.R. 396 would retain the estate and GST taxes by repealing EGTRRA's repeal of those taxes. It would increase the applicable exclusion amount for estates to \$5 million starting in 2004; keep the maximum estate tax rate at its 2003 level of 49% (rather than declining by one percentage point per year to 45% by 2007); and repeal the carryover basis that is scheduled to replace the step-up in basis in 2010 under EGTRRA. These estate tax provisions, together with freezing the reduction of the top individual income tax marginal rate at its 2003 level of 38.6% (Sec. 601), are revenue offsets to the other provisions of the bill. Introduced January 28, 2003; referred to Committee on Ways and Means and, in addition, to Committees on Transportation and Infrastructure; Education and the Workforce; Energy and Commerce; Agriculture; Financial Services; Armed Services; and numerous subcommittees.

H.R. 407 (Bonner). H.R. 407 would repeal the sunset provisions of EGTRRA (Title IX), making all of the tax cuts permanent. Introduced January 28, 2003; referred to Committee on Ways and Means.

H.R. 1612 (Hulshof). H.R. 1612 would repeal the sunset provisions of EGTRRA (Title IX), making all of the tax cuts permanent. Equivalent in substance to H.R. 407. Introduced April 3, 2003; referred to Committee on Ways and Means.

H.R. 2477 (Ford). H.R. 2477 would increase the exclusion equivalent of the unified credit to \$7.5 million. Would reduce the marginal estate and gift tax rates to 25% for taxable estate values up to \$50 million and 30% for \$50 million and over. Would repeal both the repeal of the estate tax and the introduction of the modified carryover basis scheduled to take effect in 2010. Would retain the step-up in basis treatment of assets transferred at death. Would remove the sunset provision for the remaining estate tax provisions of EGTRRA. Introduced June 16, 2003; referred to Committee on Ways and Means.

H.R. 2480 (Leach). H.R. 2480 would increase the exclusion equivalent of the unified credit to \$10 million (indexed for inflation), increase the annual gift tax exclusion to \$50,000 (indexed for inflation), and lower the estate and gift tax rates to 30%. Introduced June 16, 2003; referred to Committee on Ways and Means. On June 17, 2003, the House Rules Committee declined to permit the text to be offered as an amendment under the provisions of H.Res. 281, the rule governing floor consideration of H.R. 8 on June 18, 2003.

H.R. 2481 (Lowey). Estate Tax Reduction Act of 2003. H.R. 2481 would reduce estate tax rates by 20% and increase the unified credit against estate and gift taxes to the equivalent of a \$2,500,000 exclusion amount, adjusted for inflation. Introduced June 16, 2003; referred to Committee on Ways and Means.

H.R. 2502 (Bereuter). Estate Tax Relief Act of 2003. H.R. 2502 would lower the estate and gift tax rate to the highest income tax rate for the year, raise the exclusion equivalent of the unified credit to \$10 million (indexed for inflation), and repeal the special benefit for family-owned business interests (Sec. 2057 of the Internal Revenue Code). Introduced June 18, 2003; referred to Committee on Ways and Means.

H.R. 2513 (Thompson). Estate Tax Repeal for Family-Owned Farms and Businesses Act of 2003. H.R. 2513 would immediately and permanently repeal the estate tax on family-owned farms and businesses. Equivalent in substance to companion bill S. 34 (Lincoln) except that H.R. 2513 uses the term “qualified family-owned business interests” in place of S. 34’s “carryover business interests.” Introduced June 18, 2003; referred to Committee on Ways and Means.

H.R. 2532 (Kennedy, P.). Save Social Security First Act of 2003. H.R. 2532 would eliminate EGTRRA’s repeal of the estate tax and institution of carryover basis scheduled for 2010. Effective in 2004, would increase the applicable exclusion amount to \$3 million and restore the maximum rate of estate and gift tax to 50%. After 2004, would deposit revenues from the estate tax into the Social Security trust funds (the Federal Old Age and Survivors and Federal Disability Insurance (OASDI) trust funds). Introduced June 19, 2003; referred to Committee on Ways and Means.

H.R. 2610 (Peterson, C.). H.R. 2610 would restore the estate tax and repeal the carryover basis rule of EGTRRA. Would reduce the estate and gift tax rate to 15% or, if lower, the generally applicable capital gains rate for individuals. Would increase the estate and gift tax unified credit to an exclusion equivalent of \$5,000,000. Introduced June 26, 2003; referred to Committee on Ways and Means.

H.R. 2682 (Lowey). Estate Tax Reduction Act of 2003. H.R. 2682 would reduce estate tax rates by 20% and increase the unified credit against estate and gift taxes to the equivalent of a \$3,000,000 exclusion amount, adjusted for inflation. Introduced July 9, 2003; referred to Committee on Ways and Means.

H.R. 3773 (Hulshof). Tax Relief Guarantee Act of 2004. H.R. 3773 would make the repeal of the estate and generation-skipping transfer tax permanent after 2010 by repealing the sunset for all tax provisions of EGTRRA. Would also repeal the scheduled reductions in tax benefits provided by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). Introduced February 4, 2004; referred to Committee on Ways and Means.

Senate

S. 13 (Kyl). Death Tax Fairness Act of 2003. S. 13 would accelerate the repeal of the estate and generation-skipping transfer taxes to 2005 (compared to 2010 under EGTRRA). Would make permanent the repeal of the estate and GST taxes by removing the sunset provision solely with respect to the estate tax provisions of EGTRRA (Title V) after 2010. S. 13 is equivalent in substance to S. 169 (Kyl). Introduced February 14, 2003; read the second time and placed on the calendar February 24, 2003.

S. 34 (Lincoln). Estate Tax Repeal Acceleration (ExTRA) for Family-Owned Businesses and Farms Act. S. 34 would immediately and permanently repeal the estate tax on family-owned businesses and farms. Would repeal section 2057 of the Internal Revenue Code (IRC) regarding the deduction for qualified family-owned business interests. In its stead, would introduce a new section 2059 of the IRC providing for a dollar-unlimited deduction from the gross estate of the “carryover business interests” (COBIs) of the decedent. Carryover (not stepped-up) basis would apply in any subsequent sale by the beneficiary. No spousal property basis increase could be allocated to a COBI. The COBI deduction could not apply to property acquired by the decedent by gift, or for less than adequate and full consideration, during the three-year period before the decedent’s death.

The bill would eliminate several requirements under the current qualified family-owned business interest (QFOBI) rules: that the business represent at least 50% of the decedent’s gross estate; that the heir materially participate in the business; that the tax benefit be recaptured if the heir does not participate over the next 10 years; and that not more than 35% of a business’s adjusted gross income be passive income. The exempt COBI would be permitted to hold cash or marketable securities, or both, up to “reasonably anticipated business needs,” a term that is expected to encompass funds needed to retire debt or expand the business. This is in contrast to current law which limits exempt cash and marketable securities to the “reasonably expected day-to-day working capital needs” of the business.

The executor would have the option to allow family-owned business interests to pass under ordinary estate tax law, as would the other taxable assets in the estate. Under ordinary law, the (net) taxable estate would be free from estate tax for amounts up to the applicable exclusion amount plus property transferred to a surviving spouse under the unlimited marital deduction. Assets would receive a step-up in basis, with the exception that the aggregate spousal basis increase would be limited to \$3 million.

These amendments would apply to the estates of decedents dying and gifts made 1) after December 31, 2003, and before January 1, 2010, and 2) after December 31, 2011 [*sic*]. (Presumably, December 31, 2010, is intended. If this presumption is correct, the bill assumes that the estate tax will remain in effect except for 2010, as provided by EGTRRA and its sunset provision.) No estate tax would be due on the estates of decedents who die in 2010, the year of repeal under current law.

S. 34 is equivalent in substance to companion bill H.R. 2513 (Thompson), except that H.R. 2513 uses the term “qualified family-owned business interests” in

place of S. 34's "carryover business interests." Introduced January 7, 2003; referred to Committee on Finance.

S. 96 (Kyl). Contract With Investors. S. 96 would repeal the sunset for all tax provisions of EGTRRA, including those applying to the estate tax. Would accelerate the repeal of the estate and generation-skipping transfer taxes to 2005 (compared to 2010 under current law). In addition, would accelerate the scheduled reductions in individual income tax rates. Would reduce the maximum capital gains tax rate for individuals to 10% (from 20%). Would increase the limit on capital losses applicable to individuals to \$10,000 (from \$3,000), indexed for inflation. Would accelerate the scheduled increase in contributions to certain retirement plans. Would increase the age for beginning mandatory distributions from qualified pension and retirement plans to 75 (from 70 1/2). Would exclude from income taxation dividends received by individuals.

Includes a sense of the Senate resolution endorsing action by Congress to safeguard American workers' pension and retirement accounts; to modernize this country's international tax provisions in order to enhance the international competitiveness of U.S. companies; to repeal redundant, outdated, and unscientific regulatory burdens on investors and U.S. companies and perform a cost-benefit analysis before enacting new burdens; to enact meaningful tort reform; and to enact meaningful tax reform that simplifies the federal tax code and reduces the cost recovery periods that businesses must use to recover the cost of capital (reduces the number of years over which depreciation deductions must be spread). Introduced January 7, 2003; referred to Committee on Finance.

S. 135 (Dayton). Dayton Fair Tax Cut Act. S. 135 would eliminate EGTRRA's repeal of the estate tax and institution of carryover basis scheduled to take effect in 2010. Instead, would immediately increase the applicable exclusion amount to \$4 million and provide a complete estate tax exclusion for family-owned businesses. Would also expand the 10% (lowest) tax bracket under the income tax and freeze the rate decline for the top income tax brackets. Also addresses tax shelter transactions; expatriate corporations; acceleration of increase in child tax credit; acceleration of marriage penalty relief; and extension of alternative minimum tax relief. Introduced January 9, 2003; referred to Committee on Finance.

S. 169 (Kyl). Permanent Death Tax Repeal Act of 2003. S. 169 would accelerate the repeal of the estate and generation-skipping transfer taxes and the implementation of the modified carryover basis to 2005 (compared to 2010 under EGTRRA). Would make permanent the repeal of the estate and GST taxes by removing the sunset provision solely with respect to the estate tax provisions of EGTRRA (Title V) after 2010. S. 169 is equivalent in substance to S. 13 (Kyl). Introduced January 15, 2003; referred to Committee on Finance.

S.J.Res. 20 (Kyl). S.J.Res. 20 is a joint resolution expressing the sense of Congress that the number of years during which the death tax is repealed should be extended, pending the permanent repeal of the death tax. Introduced October 23, 2003; referred to Committee on Finance.

S.J.Res. 21 (Kyl). S.J.Res. 21 is identical in content to S.J.Res. 20. Introduced October 27, 2003; placed directly on the Senate calendar.

For Additional Information

CRS Electronic Briefing Book, *Taxation*, “Federal Estate and Gift Tax,” available at [<http://www.congress.gov/brbk/html/ebtxr35.html>].

CRS Report RL31092, *Calculating Estate Tax Liability During the Estate Tax Phasedown Period 2001-2009*, by Nonna A. Noto.

CRS Report RS20609, *Economic Issues Surrounding the Estate and Gift Tax: A Brief Summary*, by Jane G. Gravelle.

CRS Report RL30600, *Estate and Gift Taxes: Economic Issues*, by Jane G. Gravelle and Steven Maguire.

CRS Report RL31061, *Estate and Gift Tax Law: Changes Under the Economic Growth and Tax Relief Reconciliation Act of 2001*, by Nonna A. Noto.

CRS Report RS21224, *Estate Tax: Legislative Activity in 2002*, by Nonna A. Noto.

CRS Report 95-416, *Federal Estate, Gift, and Generation-Skipping Taxes: A Description of Current Law*, by John R. Luckey, Legislative Attorney.

For Arguments in Support of Retaining but Reforming the Estate Tax:

Council on Budget and Policy Priorities. *Permanent Repeal of the Estate Tax Would Be Costly, Yet Would Benefit Only a Few, Very Large Estates*. By Joel Friedman and Andrew Lee. June 17, 2003. Washington, 2003. 19 p. Full report available on the Web at [<http://www.cbpp.org/6-17-03tax.pdf>]; two-page summary, *Estate Tax Should Be Reformed, Not Repealed*, by John Springer, at [<http://www.cbpp.org/6-17-03tax-fact1.htm>]. Two related fact sheets by John Springer were also published on June 17, 2003: *Estate Tax Affects Very Few Family Businesses*, online at [<http://www.cbpp.org/6-17-03tax-fact2.htm>], and *Repealing the Estate Tax Would Reduce Charitable Giving* at [<http://www.cbpp.org/6-17-03tax-fact3.htm>]. Stored under Federal Tax Policies, 2003, visited May 13, 2004.

For Arguments Opposing the Estate Tax:

U.S. Congress. Joint Economic Committee. *The Economics of the Estate Tax: An Update*. A Joint Economic Committee Study. By Dan Miller, Senior Economist. 108th Cong., 1st Sess., June 2003. Washington, 2003. 12 p. Available on the Web at [<http://www.house.gov/jec/tax/06-18-03.pdf>], visited May 13, 2004.