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Estate Tax Legislation in the 109th Congress

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Summary

Under provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16), the estate tax and generation-skipping transfer tax are scheduled to be repealed effective January 1, 2010. But the estate tax repeal, and all other provisions of EGTRRA, are scheduled to sunset December 31, 2010. If the sunset provision is not repealed, or the law is not otherwise changed beforehand, in 2011 estate and gift tax law will return to what it would have been had EGTRRA never been enacted. The unified estate and gift taxes will be reinstated with an exclusion amount of $1 million. The maximum tax rate will revert to 55%.

On April 13, 2005, the House passed H.R. 8, a bill to permanently repeal the estate tax. The House defeated the Pomeroy substitute amendment (H.Amdt. 69) which would have retained the estate tax with higher applicable exclusion amounts.

The sunset clause was included in EGTRRA so that the bill would comply with the Senate's Byrd rule, which applies only to reconciliation bills and requires 60 votes to waive. The Byrd rule could restrict efforts to extend the reduction or repeal of the estate and gift taxes beyond 2010 through the budget reconciliation process.

Both before and after the enactment of EGTRRA, there have been efforts in Congress, primarily by Republicans, to make estate tax repeal permanent. The 106th Congress passed legislation that was vetoed by President Clinton in August 2000. In both the 107th and 108th Congresses, the House passed legislation making the repeal permanent, but the Senate did not. Democrats introduced bills, not enacted, that would have retained the estate tax but raised the applicable exclusion amount.

The Bush Administration's budget for FY2006 has once again endorsed permanent repeal of the estate tax as part of a broader proposal to extend the major income tax cuts enacted in 2001 and 2003. The FY2006 budget resolutions from both the House and Senate can accommodate the gift and income tax revenue losses anticipated in advance of permanent repeal of the estate tax in 2010 in the revenue losses they will permit for FY2006-FY2010.

There are differences among the bills introduced thus far in the 109th Congress to permanently repeal the estate and generation-skipping transfer taxes. Bills like H.R. 8 that would repeal the sunset provision of EGTRRA with respect to Title V (Estate and Gift Taxes) would preserve the modifications to the gift tax and the modified carryover basis for assets transferred at death scheduled to be put in place by EGTRRA in 2010. In contrast, bills that would repeal Subtitle B of the Internal Revenue Code (Estate and Gift Taxes) would also repeal the gift tax and allow the return of step-up in basis for assets transferred at death. House bills introduced to retain but alter the estate tax differ on the level of the applicable exclusion amount, from $3 million up to $7.5 or $10 million, and whether it is indexed for inflation. Three bills would introduce a flat estate tax rate. One would reduce rates by 20%. Two would exempt qualified family-owned farms and businesses from estate tax but impose a carryover basis. This report will be updated when new estate tax bills are introduced or other legislative activity warrants.

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Estate Tax Legislation in the 109th Congress

Background

Economic Growth and Tax Relief Reconciliation Act of 2001

Under provisions of Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, pronounced *egg-tra*, P.L. 107-16), the exempt amount under the estate tax will continue to increase from $1.5 million for decedents who died in 2004 or 2005, to $2 million for 2006-2008, and $3.5 million for 2009. The maximum estate tax rate will continue to fall from 48% for decedents who died in 2004, to 47% in 2005, 46% in 2006, and 45% for 2007-2009.

Effective January 1, 2010, the estate tax and generation-skipping transfer (GST) tax are scheduled to be repealed. The gift tax is to remain in place with a cumulative lifetime exclusion amount of $1 million and with a maximum marginal tax rate of 35% (equal to the highest rate for the individual income tax in 2006 and thereafter under EGTRRA). However, the estate tax repeal, and all other provisions of EGTRRA, are scheduled to sunset at the end of 2010. Title IX or Section 901 of EGTRRA states that the provisions of the act do not apply after December 31, 2010.[1]

If the sunset provision is not repealed, or the law is not otherwise changed beforehand, in 2011 estate and gift tax law will return to what it would have been if EGTRRA had never been enacted. For the unified estate and gift tax, the applicable exclusion amount would have risen to $1 million under prior law.[2] The special deduction for qualified family owned business interests (QFOBI) will be restored, with a value of $1.3 million in combination with the applicable exclusion amount. The maximum tax rate will revert to 55% for taxable estate values over $3.0 million, with a 5% surtax on taxable estates over $10.0 million and up to $17.184 million.

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[1] The text of the sunset clause is as follows:
TITLE IX — COMPLIANCE WITH CONGRESSIONAL BUDGET ACT
Sec. 901. Sunset of Provisions of Act.

(a) IN GENERAL. — All provisions of, and amendments made by, this Act shall not apply —
(1) to taxable, plan, or limitation years beginning after December 31, 2010, or
(2) in the case of title V, to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010.
(b) APPLICATION OF CERTAIN LAWS. — The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.

[2] The Taxpayer Relief Act of 1997, P.L. 105-34.

The Senate's Byrd Rule Under the Reconciliation Process

The sunset clause was included in EGTRRA so that the bill would comply with the Senate's Byrd rule.[3] The Byrd rule applies only to reconciliation legislation. Reconciliation is an optional procedure sometimes used by Congress to implement budget resolution policies on revenues and mandatory spending. If so directed by the budget resolution, House and Senate committees must develop legislation changing laws within their jurisdiction sufficient to achieve the required budgetary changes. The legislative recommendations of each committee usually are merged into an omnibus reconciliation bill, which is considered under expedited procedures. Under the Byrd rule, a point of order may be raised to strike "extraneous" matter from, or prevent it from being offered to, reconciliation legislation. A motion to waive the Byrd rule requires the affirmative vote of three-fifths of the Senate membership (60 votes).

The Byrd rule provides six definitions of what constitutes "extraneous" matter for purposes of the rule. One of those definitions declares a provision to be extraneous if it would decrease revenues in a fiscal year after the fiscal years covered by the reconciliation legislation, and such decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year.[4] Consequently, a point of order may be raised in the Senate to strike, or prevent the offering of, any proposal for a tax cut that is not offset by a spending cut and/or revenue increase of equal magnitude in each year beyond the budget window covered by the reconciliation bill.

The Byrd rule could restrict any current efforts to extend the reduction or repeal of the estate and gift taxes beyond 2010 through the budget reconciliation process. (The reconciliation instructions in the FY2006 budget resolution approved by the House and Senate do not extend beyond FY2010.) A 60-vote waiver of the Byrd rule would be required if the projected revenue losses in years beyond 2010 were not adequately offset. In order to avoid the Byrd Rule altogether, bills to permanently reduce or repeal the estate and gift taxes (or any other taxes, for that matter) could be considered under regular legislative procedures.

Legislative Activity in Prior Congresses

Preceding EGTRRA. Even before the enactment of EGTRRA there were efforts in Congress to permanently repeal the estate tax. The 106th Congress approved H.R. 8, the Death Tax Elimination Act of 2000, but it was pocket vetoed by President Clinton on August 31, 2000. The House sustained the President's veto.[5]

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[3] The Byrd Rule is Section 313 of the Congressional Budget Act of 1974 (2 U.S.C. § 644). For a detailed account, see CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule*," by Robert Keith.

[4] Sec. 313(b)(1)(E) of the Congressional Budget Act of 1974. It applies to increases in net outlays as well as decreases in revenues.

[5] H.R. 8 was introduced in the 106th Congress on Feb. 25, 1999, on a bipartisan basis by (continued...)

Early in the 107th Congress, the House passed H.R. 8, the Death Tax Elimination Act of 2001. Many provisions of that bill were included in EGTRRA enacted on June 7, 2001 (P.L. 107-16).[6]

Remainder of the 107th Congress. H.R. 2143, the Permanent Death Tax Repeal Act of 2001 was introduced on June 12, 2001, just days after the enactment of EGTRRA. But the estate tax did not receive further congressional attention until the spring of 2002, in the second session of the 107th Congress. On April 18, 2002, the House passed an amended version of H.R. 586, the Tax Relief Guarantee Act of 2002, 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 2001 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 (Title V). The House defeated the Pomeroy Democratic substitute amendment that would have retained the estate tax but increased the exclusion to $3 million per decedent in 2003.

On June 12, 2002, the Senate considered three amendments offered to H.R. 8 regarding the estate tax. The Conrad Democratic substitute amendment would have retained the estate tax but increased the applicable exclusion amount to $3 million in 2003 and $3.5 million in 2009, among other changes. The Dorgan amendment to the Democratic substitute amendment would have provided a full tax deduction for family-owned business interests, and raised the applicable exclusion amount to $4 million in 2009 for all estates, among other changes. The Gramm-Kyl (Republican) amendment was identical to H.R. 2143. None of these 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 H.R. 2143 before the 107th Congress adjourned. The Senate did not act on the bill.[7]

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[5] (...continued)
Representatives Dunn and Tanner. The version of H.R. 8 approved by the House Ways and Means Committee was an amendment in the nature of a substitute offered in the committee by Chairman Archer. This was the version approved by the House and the Senate. For further description of H.R. 8 in the 106th Congress, and the Democratic substitute amendments offered in its place, see archived CRS Report RS20592, *Estate Tax Legislation: A Description of H.R. 8, The Death Tax Elimination Act of 2000*, by Nonna A. Noto (for a copy contact the author).

[6] H.R. 8 was reintroduced in the 107th Congress on March 14, 2001, on a bipartisan basis by representatives Dunn and Tanner. It was replaced by an amendment in the nature of a substitute by the Ways and Means Committee on March 29 and passed by the House on April 4. For further discussion of H.R. 8 in the 107th Congress, and the Democratic substitute amendments offered in its place, see archived CRS Report RL30912, *H.R. 8: The Death Tax Elimination Act of 2001*, by Nonna A. Noto, Apr. 9, 2001 (for a copy contact the author). For a brief description of H.R. 8 and three other bills introduced in the first session of the 107th Congress to permanently repeal the estate tax, see CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto, Apr. 20, 2001, pp. 12-14.

[7] For additional information, see CRS Report RS21224, *Estate Tax: Legislative Activity in*
(continued...)

The 108th Congress. All together, 26 measures addressing the estate tax were introduced in the 108th Congress, 19 in the House and seven in the Senate. The bills can be grouped into three broad categories. First, eight House bills would have made the repeal of the estate tax permanent after 2010. Two Senate joint resolutions would have expressed the sense of Congress that the number of years during which the estate tax is repealed should be extended, pending permanent repeal of the tax. Second, one House bill and three Senate bills would have accelerated the repeal of the estate tax — to 2003 or 2005. Third, 10 House bills and two Senate bills would have retained but altered the estate tax. Some would have lowered the tax rates. Some would have increased the exclusion amount for all estates. Some would have forgiven the estate tax on family-owned businesses and farms but imposed a carryover basis in calculating the capital gain if the heir later sold the business. Some would have repealed the modified carryover basis instituted by EGTRRA and returned to the step-up in basis rule for assets transferred at death. One would have deposited revenues from the estate tax into the Social Security trust funds.

The House approved H.R. 8, the Death Tax Repeal Permanency Act of 2003 (Dunn) on June 18, 2003, by a vote of 264-163. H.R. 8 would have made 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. Prior to its vote on H.R. 8 the House debated and defeated the Pomeroy substitute amendment. That amendment would have retained the estate tax but increased the exclusion amount to $3 million per decedent, effective January 1, 2004. It included other changes to the estate tax laws to partially offset the cost of increasing the exclusion amount. The Senate did not take up H.R. 8 or any of its own bills.[8]

Revenue Proposals for FY2006

Bush Administration's Proposal

Among its revenue proposals for FY2006, the Bush Administration has once again proposed to make permanent the tax cuts enacted in 2001 and 2003.[9] This would include making permanent the repeal of the estate tax and generation-skipping transfer tax and the modifications to the gift tax as provided in Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).[10]

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[7] (...continued)
2002, by Nonna A. Noto.

[8] For additional information, see CRS Report RL31776, *Estate Tax Legislation in the 108th Congress*, by Nonna A. Noto.

[9] U.S. Congress, Joint Committee on Taxation, *Description of Revenue Provisions Contained in the President's Fiscal Year 2006 Budget Proposal*, 109th Cong., 1st Sess., Joint Committee Print JCS-3-05 (Washington: GPO, 2005), pp. 2-5.

[10] U.S. Executive Office of the President, Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006*, p. 281, Table 17-3, p. 296.

In February 2005, the Treasury Department published its estimates of changes in federal receipts expected each year from FY2005 through FY2015 if legislation to repeal the sunset provision (effective in 2010) with respect to the estate and gift taxes were enacted in 2005. The Joint Committee on Taxation (JCT) released its estimates of budget effects for the same period in March 2005. (These are identical to the JCT revenue loss estimates for H.R. 8, as passed by the House.) Both sets of estimates are presented in **Table 1**.

The relatively modest estimated revenue losses from FY2006 through FY2010 stem primarily from a projected decline in gift tax revenues. The estimates are based on the assumption that taxpayers would immediately begin to reduce taxable gifts during their lifetimes if they knew that the estate tax would be permanently repealed in 2010. In addition, the Treasury Department and the Joint Committee on Taxation project that the enactment in 2005 of permanent repeal of the estate tax (effective in 2010) would modestly affect revenues from the individual income tax, in two different ways. First, they assume that lifetime charitable donations and accompanying tax deductions would fall, thereby increasing income tax revenues. Second, they assume that capital gains realizations by the elderly would fall, thereby decreasing income tax revenues.[11]

For the years prior to full repeal of the estate tax, the Treasury Department estimated losses from $557 million in FY2006 up to $2.2 billion in FY2010. The JCT's revenue loss estimates were slightly higher, ranging from $1.1 billion in FY2006 to $2.6 billion in FY2010. FY2011 reflects a period of transition from estate taxes for decedents dying in 2009 to no estate taxes in 2010 and beyond. For FY2011 the Treasury estimated revenue losses of $22.4 billion, the JCT $28.3 billion.

For the years reflecting full repeal of the estate tax, Treasury estimated a revenue loss of $51.2 billion for FY2012, rising annually to $62.4 billion in FY2015. The JCT estimates rose from $54.9 billion in FY2012 to $71.6 billion in FY2015. The five-year revenue loss estimate for FY2006-2010 was $7.0 billion for Treasury and $9.1 billion for JCT. The 10-year revenue loss estimate for FY2006-FY2015 was $256.0 billion for Treasury and $289.9 billion for JCT.

To put these numbers in some perspective, the full set of revenue proposals presented in the Bush Administration's FY2006 budget were estimated by Treasury to cost $106.2 billion over the five-year period FY2006-2010 and $1.3 trillion over the 10-year period FY2006-2015. The JCT estimated a total revenue loss of $127.2 million over five years and $1.5 trillion over 10 years.[12] The revenue loss associated. with the repeal of the estate tax and the generation-skipping transfer tax and the modification of the gift taxes represents 7% of the total proposed revenue losses over the period FY2006-FY2010, before total repeal. However, it represents 19% (JCT) or 20% (Treasury) of total estimated revenue costs for the period FY2006-FY2015.

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[11] For more information, see CRS Report RL32768, *Estate and Gift Tax Revenues: Several Measurements*, by Nonna A. Noto.

[12] See source notes for **Table 1**. OMB, *Analytical Perspectives FY 2006*, Table 17-3, p. 298. JCT, *Estimated Budget Effects*, JCX-10-5, p. 4.

This reflects the large effects of full estate tax repeal during the second half of the 10-year period, FY2011-FY2015

Table 1. Estimated Revenue Changes Through FY2015 from Acting in 2005 to Permanently Repeal the Estate and Generation-Skipping Transfer Taxes and Modify the Gift Tax Effective in 2010

(millions of dollars)

Fiscal Year	Treasury Department	Joint Committee on Taxation
2005	4	—
2006	-557	-1,135
2007	-910	-1,591
2008	-1,514	-1,999
2009	-1,847	-1,785
2010	-2,192	-2,556
2011	-22,423	-28,300
2012	-51,215	-54,883
2013	-54,400	-59,269
2014	-58,647	-66,730
2015	-62,352	-71,645
2006-2010	-7,020	-9,065
2006-2015	-256,057	-289,893

Note: These estimates include the projected effect on individual income tax revenue, in addition to estate and gift taxes.

Sources: U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2006 Revenue Proposals* (referred to as the Bluebook), Washington, February 2005, p. 159. The Treasury Department's annual estimates for FY2005 to FY2010, and the cumulative five- and 10-year estimates are also published in U.S. Executive Office of the President, Office of Management and Budget, *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006*, Table 17-3, p. 296. U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2006 Budget Proposal*, 109th Cong., 1st Sess., JCX-10-05, March 9, 2005, p. 1. These are the same numbers reported in JCT, *Estimated Revenue Effects of H.R. 8, the "Death Tax Repeal Permanency Act of 20005,"* Scheduled for Consideration by the House of Representatives on April 13, 2005, 109th Cong., 1st Sess., JCX-20-05, April 13, 2005.

FY2006 Congressional Budget Resolutions

The FY2006 budget resolution approved by the House Budget Committee on March 9, 2005, and by the House as H.Con.Res. 95 on March 17, provided for $105.7 billion in tax cuts over the five-year period FY2006-FY2010. Of that, $45 billion would be achieved under reconciliation instructions. The House budget resolution called for $16.623 billion in tax cuts for FY2006, all to be achieved through reconciliation. The House Ways and Means Committee was given until June 24 to develop a plan to comply with the tax cut reconciliation instructions.[13] Extending the expiring tax provisions enacted in 2001 and 2003 was estimated to cost $42 billion. According to the House Budget Committee Majority Caucus, the House budget resolution could accommodate permanent repeal of the estate tax. (The House Budget Committee plan could also accommodate the extension of tax cuts on capital gains and dividends, the section 179 small business expensing allowance, individual AMT relief, the state and local sales tax deduction, and the research and experimentation credit. It was left to the House Ways and Means Committee to recommend specific tax cuts.)[14]

The FY2006 budget resolution approved by the Senate Budget Committee on March 10, 2005, provided for a reduction in revenues of no more than $14.9 billion in FY2006 and $70.2 billion over the FY2006-FY2010 period. The Senate Finance Committee was given until September 7 to report reconciliation legislation incorporating these tax cuts. According to the Chairman's Mark, the $70.2 billion amount was sufficient to accommodate a permanent extension of the repeal of the estate tax. (The Senate Budget Committee plan also provided room for the extension of provisions expiring within the five-year budget window, including lower capital gains and dividend tax rates, the section 179 expensing provisions for small business, the deduction for state and local sales taxes, the saver's credit, the deduction for qualified tuition expenses, and energy tax credits. It was left to the Senate Finance Committee to recommend specific tax cuts.)[15] S.Con.Res. 18, approved by the Senate on March 17, provided for a reduction in revenues of $19.016 billion in FY2006 and $128.6 billion over FY2006-FY2010. These were substantially larger revenue reductions than the numbers approved by the Senate Budget Committee.

The concurrent resolution on the budget for FY2006, H.Con.Res. 95, was approved by both the House and the Senate on April 28, 2005. It provided for a reduction in aggregate federal revenues of $105.7 billion over the five years FY2006-FY2010. Of that total a reduction in revenues of $11 billion in FY2006 and $70 billion over the FY2006-FY2010 period would be carried out under reconciliation

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[13] U.S. Congress, House Committee on the Budget, *Concurrent Resolution on the Budget — Fiscal Year 2006*, report to accompany H.Con.Res. 95, 109th Cong., 1st Sess., H.Rept. 109-17, March 11, 2005 (Washington: GPO, 2005), pp. 17-18, 69-71, and 137.

[14] U.S. Congress, House Committee on the Budget, Majority Caucus, *FY20006 Budget Resolution: Overview*, March 9, 2005. Available online at [http://www.house.gov/budget/fy06overview.htm].

[15] U.S. Congress, Senate Budget Committee, Chairman Judd Gregg, *Chairman's Mark 2006 Budget*, March 9, 2005,pp. 3, 22. Available online at [http://www.senate.gov/~budget/republican/pressarchive/FY06ChairmansMark.pdf].

instructions.[16] The final budget resolution thus used the House Budget Committee figure of $105.7 billion for total tax cuts and the Senate Budget Committee figure of $70 billion for reductions under reconciliation for the FY2006-FY2010 period.

As documented in **Table 1** in the previous section, looking only at the projected revenue losses for FY2006-FY2010 does not adequately account for the much larger losses anticipated for FY2011 and beyond when the estate tax is fully repealed.

Main Differences Among the Bills

Bills to Permanently Repeal the Estate Tax

All of the estate tax bills introduced in the 109th Congress prior to April 12, 2005, would permanently repeal the estate tax and generation-skipping transfer tax. The bills to permanently repeal the estate tax differ in four main ways. One is whether or not they would preserve the other changes to the taxation of gifts and inherited assets made by EGTRRA. A second is whether the extension of estate tax repeal is part of a broader effort to extend the income tax cuts enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief and Reconciliation Act of 2003. A third is whether the repeal of the estate tax is part of a fundamental tax reform effort to replace the income tax and possibly the payroll tax with some form of consumption-based tax. A fourth is when permanent repeal would take effect.

Preserving Other Changes Made to the Taxation of Gifts and Bequests by EGTRRA

Some bills to permanently repeal the estate and generation-skipping transfer taxes take the approach of repealing the sunset provision of EGTRRA (Section 901 of P.L. 107-16) with respect to Title V of EGTRRA (Estate, Gift, and Generation-Skipping Transfer Tax Provisions). By default these bills would also preserve the other changes to the taxation of gifts and bequests made by EGTRRA. Relevant among the other changes that would be preserved are the continuation of a modified gift tax and the institution of a modified carryover basis (instead of a step-up in basis) for assets transferred at death. The companion bills H.R. 8 (Hulshof) and S. 420 (Kyl and Bill Nelson), H.R. 183 (Pitts), S. 7 (Kyl), S. 988 (Sessions), and S.Amdt. 849 (Frist) to H.R. 6 would remove the sunset provision of EGTRRA.[17]

Other bills to permanently repeal the estate and generation-skipping transfer taxes take the approach of repealing Subtitle B of the Internal Revenue Code of 1986 (Estate and Gift Taxes). These bills would allow EGTRRA to sunset. This would

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[16] U.S. Congress, House of Representatives, *Concurrent Resolution on the Budget for Fiscal Year 2006*, conference report to accompany H.Con.Res. 95, 109th Cong., 1st Sess., H.Rept. 109-62, April 28, 2005, Sec. 101(1)(B), Sec. 201(b), and Sec. 202(b).

[17] S. 7, discussed later, would extend other tax cuts made in 2001 and 2003 as well. H.R. 8, H.R. 183, and S. 420 focus solely on making the repeal of the estate tax permanent.

have the effect of repealing other changes made by EGTRRA, such as the modified carryover basis treatment of assets transferred at death and the modified taxation of gifts. Repealing Subtitle B would repeal the gift tax, in addition to repealing the estate tax and generation-skipping transfer tax. The step-up in basis treatment for assets acquired from a decedent would remain as provided in Subtitle A (Income Taxes) of the Internal Revenue Code. H.R. 25 (Linder), H.R. 64 (Cox), H.R. 1040 (Burgess), S. 25 (Chambliss), S. 812 (Specter), and S. 1099(Shelby) would repeal Subtitle B.

Still another approach to permanently repealing the estate tax and GST tax is to amend the U.S. Constitution. H.J.Res. 14 (Paul) proposes an amendment that would prohibit Congress from levying taxes on personal incomes, estates, and gifts. This would repeal not only the estate and gift taxes but also the income tax on capital gains.

Modified Gift Tax. Under the provisions of EGTRRA a gift tax is retained even when the estate tax and generation-skipping transfer tax are repealed in 2010. The main reason given for maintaining the gift tax when the estate tax is repealed is to protect income tax revenues. The gift tax is intended to discourage people from gifting income-generating or appreciated assets to someone in a lower income tax bracket and/or with offsetting losses. In the case of appreciated property, the donee could sell the assets and pay a lower capital gains tax rate than the donor, and then gift or bequeath the sales proceeds back to the original donor.

If Subtitle B of the Internal Revenue Code were repealed, the gift tax would be repealed along with the estate tax and GST tax. However, if the sunset clause of EGTRRA were repealed, the gift tax — as modified by EGTRRA — would remain in effect after 2010. The cumulative lifetime exclusion amount for any one donor would be $1 million.[18] (This amount is not indexed for inflation.) Beyond that, gifts up to $500,000 would be subject to the same marginal tax rate schedule that had previously applied to both gifts and bequests (with marginal tax rates from 18% to 34%). Starting in 2010, when the estate tax is repealed, and continuing thereafter, the top gift tax rate would be capped at 35% on cumulative lifetime taxable gifts over $500,000. (This is in contrast to a maximum tax rate of 45% on gifts or bequests in excess of $1.5 million scheduled for 2007 through 2009.) The 35% rate is equal to the maximum tax rate on individual income scheduled by EGTRRA for tax year 2006 and subsequent years.[19] The modified gift tax would continue after 2010 under companion bills H.R. 8 (Hulshof) and S. 420 (Kyl and Bill Nelson), H.R. 183 (Pitts), and S. 7 (Kyl). S. 988 (Sessions) would implement these changes to the gift tax beginning in 2005 and S.Amdt. 849 (Frist) to H.R. 6 beginning in 2006.

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[18] This lifetime exclusion is in addition to the annual exclusion available for gifts of up to $11,000 (indexed for inflation) per donor per donee. There is an exclusion from the gift tax for qualified transfers of payments for tuition or medical expenses on behalf of another individual (IRC Section 2503(e)). In addition, there is also a special exclusion from the gift tax for contributions to qualified tuition programs (IRC Section 529).

[19] For a fuller explanation of the gift tax provisions of EGTRRA, 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, pp. 7-9.

If the provisions of EGTRRA are permitted to sunset and we return to prior law, the unified estate plus gift tax exclusion would be $1 million. The maximum estate and gift tax rate would return to 55% for gifts and bequests combined of over $3 million (with a 5% surtax over the $10.0 million to $17.184 million range).

Modified Carryover Basis at Death for Capital Gains Purposes. Under the law in place through 2009, and scheduled to resume in 2011, a *step-up in basis* rule applies to assets transferred at death.[20] Under this rule the cost basis of an asset is set at the value of the asset on the decedent's date of death.[21] If the heir sells the asset, his or her capital gain is calculated as the difference between the sales price and the stepped-up basis, not the decedent's original purchase price (called the *carryover basis*). The effect of this practice is to permanently forgive the income tax liability on the increase in value of the asset (the capital gain) during the decedent's period of ownership.[22]

The estate tax is sometimes defended as a substitute for the capital gains tax at death.[23] Consistent with this argument, an important tradeoff that EGTRRA made for the repeal of the estate tax in 2010 was the return to a carryover basis for assets transferred at death.[24, 25] However, two important exceptions were made. In what is called a *modified carryover basis*, a step-up of $1.3 million in the aggregate per decedent[26] is permitted in the original adjusted basis of assets transferred at death ($60,000 for nonresident aliens). An additional step-up of up to $3 million is permitted for assets transferred to a surviving spouse. (These dollar amounts are indexed for inflation.[27]) The executor of the estate is left with the task of allocating the step-up allowance to specific assets.

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[20] Section 1014 of the Internal Revenue Code, relating to the basis of property acquired from a decedent.

[21] Or, the value may be determined as of the alternate valuation date, six months after the date of death, if that value is lower.

[22] For an asset that has decreased in value since the decedent purchased it, such as an automobile, or stocks or real estate after a decline in the market, the stepped-up basis can be lower than the original cost. As a consequence of the step-up in basis rule, the loss in value during the decedent's period or ownership cannot be claimed as a capital loss when an inherited asset is sold.

[23] For a discussion of this tradeoff, written prior to the enactment of EGTRRA, see CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto, April 20, 2001 (archived).

[24] For property acquired from someone dying after December 31, 2009, the basis for the person acquiring the property is to be the lesser of (A) the adjusted basis of the decedent, or (B) the fair market value of the property at the date of the decedent's death.

[25] Under both prior law and EGTRRA, property transferred by gift has a carryover basis.

[26] This limit may be increased by the amount of unused built-in losses and loss carryovers that the decedent may have had.

[27] The minimum increments are $100,000 for the $1.3 million amount, $6,000 for the $60,000 amount, and $250,000 for the $3 million amount.

Note that these figures apply to the *net* increase in value of the assets, not the *gross* value of the assets. Thus, the $1.3 million step-up might cover all the gains in a gross estate valued at $2-to-$3 million or more. The spousal step-up of $3 million alone could cover the gains in an estate with a gross value of $4 million to $5 million. In short, the practical effect of these two exceptions to carryover basis is to maintain a step-up in basis for smaller estates.

If the sunset provision were repealed with respect to Title V of EGTRRA, then the modified carryover basis rules introduced by EGTRRA would continue in effect after 2010 when the estate tax is permanently repealed. This would occur under companion bills H.R. 8 (Hulshof) and S. 420 (Kyl and Bill Nelson), H.R. 183 (Pitts), and S. 7 (Kyl). S. 988 (Sessions) would implement the modified carryover basis rules beginning in 2005 and S.Amdt. 849 (Frist) to H.R. 6 beginning in 2006. However, if EGTRRA is permitted to sunset, then the tax law would revert to the step-up in basis rules found in Subtitle A, Section 1012 of the Internal Revenue Code. The return to step-up in basis would also hold if the estate tax were permanently repealed by repealing Subtitle B of the Internal Revenue Code, with no accompanying changes in the basis rules, as proposed by H.R. 64 (Cox) and companion bills H.R. 25 (Linder), S. 25 (Chambliss), and S. 1099 (Shelby).

A previous effort to institute a carryover basis was enacted by the Tax Reform Act of 1976.[28] Its implementation was postponed by three years by the Revenue Act of 1978.[29] It was repealed before it ever took effect by the Crude Oil Windfall Profit Tax Act of 1980.[30, 31] Leading up to the repeal, tax practitioners at the time pointed out the difficulties in trying to determine the historical cost basis of an inherited asset.

Extending All of the Major Tax Cuts Made in 2001 and 2003

The Bush Administration's budget for FY2006 has once again proposed making permanent all of the major tax cuts enacted in 2001 and 2003. Repealing the estate tax and modifying the gift tax was just one of the tax cuts enacted by EGTRRA in 2001. Thus, permanent repeal of the estate tax could be part of a broader bill to make other tax cuts permanent.

One example in the 109th Congress is S. 7 (Kyl). S. 7 would repeal the sunset provision of EGTRRA with respect to Title V, the estate, gift, and generation-skipping transfer tax provisions. S. 7 would also repeal the sunset provision of EGTRRA with respect to Title I relating to the reduction of income tax rates for individuals. (This includes the creation of the lowest 10% bracket and the reduction of the highest marginal tax rates.) In addition, S. 7 would repeal the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27) relating

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[28] Sec. 2005 of H.R. 10612, P.L. 94-455.

[29] Sec. 515 of H.R. 13511, P.L. 95-600.

[30] Sec. 401 of H.R. 39319, P.L. 96-233.

[31] See CRS Report 95-444, *A History of Federal Estate, Gift, and Generation-Skipping Taxes*, by John R. Luckey.

to the reductions in the income tax rates on capital gains and dividends for individuals, scheduled to sunset at the end of 2008.

A bill to make other tax cuts permanent as well would have a larger projected revenue cost than a bill targeted solely on making the repeal of the estate tax permanent. The U.S. Budget for FY2006 presents the Treasury Department's estimates of the effect of the Bush Administration's proposals on receipts for the 10-year period FY2006-FY2015. The estimated cost of making permanent a wide range of tax cuts enacted in 2001 and 2003 is $1.09 trillion dollars, over the next 10 fiscal years. Of that total revenue loss, $256 billion, or 24%, was attributed to making permanent the repeal of the estate and generation-skipping transfer taxes and the modification of the gift tax. (Another $502 billion, or 46%, was attributed to making permanent the reductions in marginal individual income tax rates, also enacted in 2001.)[32] The Joint Committee on Taxation estimates a total cost of $1.29 trillion from extending the 2001 and 2003 tax cuts, of which $290 billion or 22% is due to the repeal of the estate tax and modification of the gift tax.[33]

Part of Fundamental Tax Reform

Several of the bills introduced in the 108th Congress to implement fundamental tax reform would have repealed the estate and gift taxes, along with individual and corporate income taxes (and in some cases payroll taxes or certain excise taxes as well), and replaced them with other taxes. These other new taxes generally took the form of a broad-based tax on consumption, such as a value-added tax (VAT), a national retail sales tax, a consumed-income tax, or a flat tax on consumption. Some took the form of a tax on earned (labor) income but not on unearned (investment) income. Some, described as a modified VAT, combined a tax on wages with a cash-flow tax on businesses. The intent of these proposals is to favor savings and investment relative to consumption.[34]

Repealing estate and gift taxes is theoretically consistent with a consumption-based tax system. Under such a system, bequests and gifts would be taxed not when transferred or received, but only when the proceeds were spent by recipients.

In the 109th Congress, the companion bills H.R. 25 (Linder) and S. 25 (Chambliss) offer a fundamental tax reform package. They would repeal the estate and gift taxes, along with the individual and corporate income taxes, payroll taxes,

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[32] U.S. Executive Office of the President, Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006* (Washington: GPO, 2005), Table 17-3, p. 296.

[33] U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2006 Budget Proposal*, 109th Cong., 1st Sess., JCX-10-05, March 9, 2005, p. 1.

[34] For more information on these proposals, see CRS Issue Brief IB95060, *Flat Tax Proposals and Fundamental Tax Reform: An Overview*, by James M. Bickley.

and taxes on self-employment income.[35] They would replace these taxes with a national sales tax. H.R. 25, and S. 25 would repeal the estate and gift taxes by repealing Subtitle B of the Internal Revenue Code. They also include a finding that the sixteenth amendment to the U.S. Constitution, which permits Congress to levy income taxes without apportionment among the states, should be repealed.

H.R. 1040 (Burgess) would offer each individual and business taxpayer the opportunity to irrevocably elect to be taxed under a flat rate income tax, instead of the regular income tax and alternative minimum tax. The tax rate would be 19% for the first two years, and 17% in subsequent years. S. 812 (Specter) would replace the current income tax with a flat tax of 20% on the taxable earned income of individuals and business taxable income. S. 1099 (Shelby) would levy a flat tax on individuals and businesses of 19% for 2006 and 2007, and 17% in 2008 and thereafter. All three of these flat tax bills would repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code.

H.J.Res. 14 (Paul) proposes amendment to the Constitution to deny Congress the power to levy personal income, estate, and gift taxes. It would also prohibit the U.S. Government from engaging in business in competition with its citizens. It would repeal the sixteenth amendment to the Constitution. It does not propose an alternative revenue source.

When Permanent Repeal Would Take Effect

Under most of the bills that would remove the sunset provision with respect to Title V of EGTRRA, the repeal of the estate and generation-skipping transfer taxes would first take effect in 2010, as scheduled by EGTRRA. These bills would simply extend the repeal for the years 2011 and beyond. These include companion bills H.R. 8 (Hulshof) and S. 420 (Kyl and Bill Nelson), H.R. 183 (Pitts), and S. 7 (Kyl). In contrast, S. 988 (Sessions) would accelerate the repeal to 2005. S.Amdt. 849 (Frist) to H.R. 6 would accelerate the repeal to 2006.

The bills that would repeal Subtitle B of the Internal Revenue Code (Estate and Gift Taxes), would take effect earlier. H.R. 64 (Cox) would take effect January 1, 2005. H.R. 1040 (Burgess), S. 812 (Specter), and S. 1099 (Shelby) all proposing a flat rate income tax, would take effect January 1, 2006. H.R. 25 (Linder) and S. 25 (Chambliss), proposing a national sales tax in place of the income, estate and gift, and payroll taxes, would take effect January 1, 2007.

H.J.Res. 14 (Paul), proposing a Constitutional amendment to abolish the income and estate and gift taxes, would not take effect until after 2011. It would allow up to seven years for three-quarters of the state legislatures to ratify the amendment after its submission, and an additional three years after ratification for the changes to take effect.

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[35] The taxes on self-employment income correspond to the combined employer and employee share of payroll taxes for old-age, survivors, and disability insurance plus hospital insurance (OASDHI).

Bills to Retain but Alter the Estate Tax

Six bills that would retain but alter the estate tax were introduced in the House on April 12 and 13, 2005. April 13 was the day that the House was scheduled to vote on H.R. 8, a bill to permanently repeal the estate tax. The language of H.R. 1577 was introduced as H.Amdt. 69, the Pomeroy substitute amendment to H.R. 8, offered on April 13, 2005, but defeated. S. 928 (Lincoln) was introduced on April 27.

Four bills share some common elements: H.R. 1560 (Ford), H.R. 1568 (Leach), H.R. 1574 (Dennis Moore), and H.R. 1577 (Pomeroy). All four would repeal EGTRRA's repeal of the estate tax and generation skipping transfer tax. They would repeal the modified carryover basis introduced by EGTRRA for determining the cost basis of assets transferred at death after 2009 and would restore the step-up in basis treatment (value at the time of death). They would also repeal EGTRRA's reduction in the maximum gift tax rate to 35% and the provision making certain transfers in trust a taxable gift, both scheduled to take effect in 2010.

The bills differ on the level at which they would set the applicable exclusion amount per decedent, when this would take effect, and whether or not it would be indexed for inflation. H.R. 1557 (H.Amdt. 69) (Pomeroy) would increase the applicable exclusion amount to $3 million for 2006 through 2008 and $3.5 million for 2009 and thereafter. H.R. 1574 (Dennis Moore) would increase the applicable exclusion amount to $3.5 million in 2006, indexed for inflation. H.R. 1560 (Ford) would increase the applicable exclusion amount to $7.5 million in 2006. H.R. 1568 (Leach) would increase the applicable exclusion amount to $10 million upon enactment, indexed for inflation. H.R. 1568 would also increase the annual gift tax exclusion (per donor per donee) from $10,000 to $50,000, indexed for inflation.

Two of the bills would replace the table of increasing marginal tax rates with a flat tax rate. H.R. 1560 (Ford) would set the estate tax at a flat rate of 27.5%. H.R. 1568 (Leach) would set a flat tax of 30% on taxable estates and gifts.

H.R. 1577 (H.Amdt. 69) (Pomeroy) would freeze the maximum estate and gift tax rate at 47%, its 2005 level. (Under EGTRRA, the maximum tax rate is scheduled to fall to 45% in 2007 through 2009.) It would also restore the 5% surtax on taxable estate values over $10 million, up to the level needed to phase out the value of the graduated estate tax rates and the unified credit. It would limit the ability to use minority discounts in determining the value of certain nonbusiness assets and to count those assets in determining the value of an interest.

H.R. 1614 (Lowey) would reduce the marginal estate tax rates by 20% and set the applicable exclusion amount at $3 million, indexed for inflation, effective upon enactment. H.R. 1624 (Mike Thompson) would provide an unlimited exclusion from the estate tax for qualified family-owned business interests but would apply a carryover basis to those assets when sold by the heirs. S. 928 (Lincoln) also would provide an unlimited exclusion from the taxable estate for family-owned farms and businesses but would apply a carryover basis to the assets when sold by the heirs.

Bills Introduced in the 109th Congress

All of the bills introduced in the 109th Congress to permanently repeal the future of the estate tax have been introduced by Republican Members of Congress. Those cases where there is a Democratic co-sponsor are noted in the summaries below. Of the six House bills to retain but alter the estate tax, five were introduced by Democratic Members and one (H.R. 1568) by a Republican Member.

House

H.R. 8 (Hulshof). Death Tax Repeal Permanency Act of 2005. H.R. 8 would repeal the sunset provision of EGTRRA solely with respect to the estate, gift, and generation-skipping transfer tax provisions (Title V). This would make the repeal of the estate and generation-skipping transfer taxes permanent starting in 2010. It would leave in place the modified gift tax and the modified carryover basis for assets transferred at death instituted by EGTRRA. The Joint Committee on Taxation estimated that H.R. 8 would cost $290 billion in lost revenues over the fiscal years 2006-2015 (JCX-20-05, April 13, 2005). (See the numbers reported in the right-hand column of **Table 1** earlier in this report.) Introduced February 17, 2005; referred to the Committee on Ways and Means. Passed by a vote of 272-162 on April 13, 2005. Companion to S. 420. As of April 13, 2005, H.R. 8 had 206 co-sponsors, including 16 Democrats.

The bill continues the precedent, begun by Representative Jennifer Dunn in 1999 in the 106th Congress, of using H.R. 8 as the number for a bill to permanently repeal the estate and generation-skipping transfer taxes. H.R. 8, the Death Tax Elimination Act of 2000, was passed by the 106th Congress but vetoed by President Clinton on August 31, 2000. H.R. 8 (Dunn and Tanner), the Death Tax Elimination Act of 2001, was reintroduced in the 107th Congress, substantially amended by the Ways and Means Committee, and passed by the House on April 4, 2001. Many of its provisions were included in EGTRRA (P.L. 107-16), enacted on June 7, 2001. In the 108th Congress, H.R. 8 (Dunn), the Death Tax Repeal Permanency Act of 2003, was passed by the House on June 18, 2003.

H.Res. 202 (Rules Committee). Provided for the consideration of H.R. 8 with one hour of debate. Also provided for the consideration of the amendment in the nature of a substitute, if offered by Representative Pomeroy, with one hour of debate. Introduced April 12, 2005. Agreed to by voice vote April 13, 2005. House Calendar No. 20, H.Res. 202, 109th Cong., 1st Sess., H.Rept. 109-35, April 12, 2005. Some Democrats sought to defeat the rule in order to offer an amendment that would have directed the savings from the Pomeroy substitute compared with H.R. 8 ($218 billion) to strengthen Social Security.

H.Amdt. 69 (Pomeroy) to H.R. 8. Certain and Immediate Estate Tax Relief Act of 2005. Identical to H.R. 1577. H.Amdt. 69 was an amendment in the nature of a substitute to H.R. 8. The Pomeroy substitute amendment would have repealed EGTRRA's repeal of the estate tax and generation skipping transfer tax. It would have raised the applicable exclusion amount to $3 million per decedent, effective January 1, 2006, through December 31, 2008. The exclusion would have risen to

$3.5 million per decedent in 2009, and remained at that level thereafter. The amendment would have frozen the maximum estate tax rate at 47%, its 2005 level. It would have restored the 5% surtax on taxable estate values over $10 million, up to the level needed to phase out the value of the graduated estate tax rates and the unified credit. It would have repealed the modified carryover basis enacted by EGTRRA, and restored the step-up in basis rules (value at the time of death) for determining the cost basis of assets transferred at death after 2009. It would have repealed EGTRRA's reduction of the maximum gift tax rate to 35% and the provision making certain transfers in trust a taxable gift, also scheduled to take effect after 2009. The preceding provisions would all take effect January 1, 2006. The amendment also would have limited the ability to use minority discounts in determining the value of certain nonbusiness assets and to count those assets in determining the value of an interest. This provision would have taken effect upon enactment. The Joint Committee on Taxation estimated that the amendment would have cost $72 billion in lost revenues over the ten fiscal years 2006-2015.[36] Defeated by a vote of 194-238 (Roll no. 101) on April 13, 2005. Representative Pomeroy had offered a similar substitute amendment in the 108th Congress (H.Amdt. 171 to H.R. 8).

H.R. 25 (Linder). Fair Tax Act of 2005. H.R. 25 would repeal the estate and gift taxes along with the corporate and individual income taxes, payroll taxes, and taxes on self-employment income. In their place it would institute a national sales tax, to be administered primarily by the states. It would repeal Subtitle B of the Internal Revenue Code. It contains a finding that the 16th amendment to the U.S. Constitution should be repealed Would take effect January 1, 2007. Introduced January 4, 2005; referred to the Committee on Ways and Means. Companion bill to S. 25. A similar bill, also numbered H.R. 25, was introduced by Representative Linder in January 2003, at the outset of the 108th Congress.

H.R. 64 (Cox). Family Heritage Preservation Act. H.R. 64 would repeal Subtitle B of the Internal Revenue Code of 1986. This would repeal the estate tax, the generation-skipping transfer tax, and the gift tax. It would repeal other changes made by EGTRRA to the taxation of bequests and gifts such as the modified carryover basis for assets transferred at death and the modified gift tax. The repeal would take effect as of January 1, 2005. The bill lists six findings of Congress opposing the taxes to be repealed. Introduced January 4, 2005; referred to the Committee on Ways and Means. As of April 14, 2005, H.R. 64 had 160 co-sponsors, including four Democrats.

H.R. 183 (Pitts). H.R. 183 would repeal the sunset provision of EGTRRA solely with respect to the estate, gift, and generation-skipping transfer tax provisions (Title V). This would make the repeal of the estate and generation-skipping transfer taxes permanent starting in 2010. It would leave in place the modified gift tax and the modified carryover basis for assets transferred at death and other changes made

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[36] U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects of an Amendment in the Nature of a Substitute Offered by Mr. Pomeroy to H.R. 8, the "Death Tax Repeal Permanency Act of 2005," Scheduled for Consideration by the House of Representatives on April 13, 2005*, 109th Cong., 1st Sess., (JCX-21-05, April 13, 2005.

to the gift tax by EGTRRA. Introduced January 4, 2005; referred to the Committee on Ways and Means.

H.R. 1040 (Burgess). Freedom Flat Tax Act. H.R. 1040 would permanently repeal the estate, gift and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code. Would take effect January 1, 2006. H.R. 1040 would also offer individuals and persons engaged in business activities the chance to make an irrevocable election to be subject to a flat tax instead of the regular income tax and alternative minimum tax. For individuals, taxable income would include the sum of cash wages, retirement distributions, and unemployment compensation, minus a basic standard deduction and an additional standard deduction (akin to a personal exemption) for each dependent. For-profit businesses would be taxed on gross receipts minus deductions for wages, retirement contributions, and business inputs. Tax-exempt and governmental organizations would pay a tax on the on the noncash compensation provided to their employees. The flat tax would be levied at a rate of 19% for the first two years after its election by the taxpayer, and 17% for subsequent years. Introduced March 2, 2005; referred to the Committee on Ways and Means. One of the four original co-sponsors is a Democrat.

H.R. 1560 (Ford). H.R. 1560 would repeal EGTRRA's repeal of the estate tax and generation skipping transfer tax. It would increase the applicable exclusion amount to $7.5 million. The estate tax would be set at a flat rate of 27.5%. The bill would repeal EGTRRA's modified carryover basis provisions and reduction of the maximum gift tax rate to 35% after 2009. It would repeal the EGTRRA provision making certain transfers in trust a taxable gift after 2009. The bill would take effect January 1, 2006. Introduced April 12, 2005; referred to the Committee on Ways and Means.

H.R. 1568 (Leach). H.R. 1568 would repeal EGTRRA's repeal of the estate tax and generation skipping transfer tax. It would raise the applicable exclusion amount to $10 million, indexed for inflation. It would replace the tables of increasing marginal tax rates with a flat tax of 30% on taxable estates and gifts. It would apply the 30% rate and an increase in the unified credit to the estates of nonresidents who are not citizens. It would repeal the modified carryover basis provisions of EGTRRA and the reduction of the maximum gift tax rate to 35% in 2010. It would repeal the EGTRRA provision making certain transfers in trust a taxable gift after 2009. These parts of the bill would take effect after the date of enactment. H.R. 1568 also would increase the annual gift tax exclusion (from $10,000) to $50,000, indexed for inflation. This would apply to gifts made after December 31, 2004. Introduced April 12, 2005; referred to the Committee on Ways and Means.

H.R. 1574 (Dennis Moore). H.R. 1574 would repeal EGTRRA's repeal of the estate tax and generation skipping transfer tax. It would increase the applicable exclusion amount to $3.5 million, indexed for inflation. It would also repeal EGTRRA's modified carryover basis provisions, reduction of the maximum gift tax rate to 35%, and provision making certain transfers in trust a taxable gift, all scheduled to take effect in 2010. The bill would take effect January 1, 2006. Introduced April 12, 2005; referred to the Committee on Ways and Means.

H.R. 1577 (Pomeroy). Certain and Immediate Estate Tax Relief Act of 2005. Identical to the Pomeroy substitute amendment to H.R. 8, H.Amdt. 69. H.R. 1577 would repeal EGTRRA's repeal of the estate tax and generation skipping transfer tax. It would raise the applicable exclusion amount to $3 million per decedent, effective January 1, 2006, through December 31, 2008. The exclusion would rise to $3.5 million per decedent in 2009, and remain at that level thereafter. The maximum estate tax rate would be frozen at 47%, its 2005 level. The bill would restore the 5% surtax on taxable estate values over $10 million, up to the level needed to phase out the value of the graduated estate tax rates and the unified credit. It would repeal the modified carryover basis for determining the cost basis of assets transferred at death, the reduction of the maximum gift tax rate to 35%, and the provision making certain transfers in trust a taxable gift, all scheduled to take effect in 2010 under EGTRRA. The preceding provisions would take effect January 1, 2006. The bill also would limit the ability to use minority discounts in determining the value of certain nonbusiness assets and to count those assets in determining the value of an interest. This provision would take effect upon enactment. The Joint Committee on Taxation estimated that the identical Pomeroy substitute amendment to H.R. 8 would cost $72 billion in lost revenues over the ten fiscal years 2006-2015 (JCX-21-05, April 13, 2005). Introduced April 12, 2005; referred to the Committee on Ways and Means.

H.R. 1614 (Lowey). Estate Tax Reduction Act of 2005. H.R. 1614 would reduce the graduated marginal estate tax rates by 20% each. This would leave a maximum estate tax rate of 39.2% on taxable amounts over $2 million. The applicable exclusion amount would be set at $3 million, indexed for inflation. The provisions would take effect upon enactment. Introduced April 13, 2005; referred to the Committee on Ways and Means.

H.R. 1624 (Mike Thompson). Estate Tax Repeal for Family-Owned Farms and Businesses Act of 2005. H.R. 1624 would strike from the Internal Revenue Code Section 2057 which provided a special deduction for qualified family-owned business interests (QFOBI), such that the deduction and applicable exclusion amount totaled $1.3 million. It would introduce a new section, 2059, which would allow an unlimited deduction from the gross estate for qualified family-owned business interests. These assets would be subject to carryover basis rules when sold by an heir. Qualified spousal property could still receive the aggregate spousal property basis increase of up to $3 million. A decedent would be treated as engaged in a trade or business if any member of the decedent's family is engaged in the trade or business. A qualified heir could include an active employee of the trade or business who was employed by the trade or business for at least 10 years before the decedent's death. The provisions would apply to the estates of decedents dying and gifts made from 2006 through 2009, and after 2011 (after EGTRRA sunsets). Introduced April 13, 2005; referred to the Committee on Ways and Means.

H.J.Res. 14 (Paul). H.J.Res. 14 proposes an amendment to the U.S. Constitution that would deny Congress the power to levy personal income, estate, and gift taxes. The amendment would prohibit the United States Government from engaging in business in competition with its citizens. It would repeal the sixteenth amendment to the Constitution (which grants Congress the power to levy taxes on incomes without apportionment among the states). Introduced January 26, 2005; referred to the Committee on the Judiciary.

Senate

S. 7 (Kyl). Jobs and Growth Tax Relief Act of 2005. Also known as the Permanent Tax Cuts bill. S. 7 would repeal the sunset provision of EGTRRA with respect to Title V, the estate, gift, and generation-skipping transfer tax provisions. This would make the repeal of the estate and generation-skipping transfer taxes permanent starting in 2010. S. 7 would also repeal the sunset provision of EGTRRA with respect to Title I relating to the reduction of income tax rates for individuals. This includes the creation of the 10% bracket and the reduction of the highest marginal tax rates. In addition, S. 7 would repeal the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27) relating to the reductions in the income tax rates on capital gains and dividends for individuals. Introduced January 24, 2005; referred to the Committee on Finance.

S. 25 (Chambliss). Fair Tax Act of 2005. H.R. 25 would repeal the estate and gift taxes along with individual and corporate income taxes, payroll taxes, and taxes on self-employment income. In their place it would institute a national sales tax, to be administered primarily by the states. Would repeal Subtitle B of the Internal Revenue Code. Contains a finding that the 16th amendment to the U.S. Constitution should be repealed. Would take effect January 1, 2007. Introduced January 24, 2005; referred to the Committee on Finance. Companion to H.R. 25. A similar bill, S. 1493, was introduced by Senator Chambliss in the 108th Congress.

S. 420 (Kyl). Death Tax Repeal Permanency Act of 2005. S. 420 would repeal the sunset provision of EGTRRA solely with respect to the estate, gift, and generation-skipping transfer tax provisions (Title V). This would make the repeal of the estate and generation-skipping transfer taxes permanent starting in 2010. It would leave in place the modified gift tax and the modified carryover basis for assets transferred at death as provided by EGTRRA. Introduced February 17, 2005 on a bipartisan basis with Senator Bill Nelson (D-FL);[37] referred to the Committee on Finance.

S. 812 (Specter). Flat Tax Act of 2005. S. 812 would repeal Subtitle B of the Internal Revenue Code, thereby repealing the estate, gift, and generation-skipping transfer taxes, effective January 1, 2006. It would replace the current income tax with a flat tax of 20% on taxable earned income of individuals and business taxable income. Introduced April 15, 2005; referred to the Committee on Finance.

S. 928 (Lincoln). Estate Tax Repeal Acceleration (ExTRA) for Family-Owned Businesses and Farms Act. S. 928 would immediately and permanently repeal the estate tax on family-owned businesses and farms. A carryover basis interest (COBI) is defined as any interest in a trade or business, with a principal place of business in the U.S., that is substantially owned by one, two, or three families. There would be no estate tax on a COBI. But the basis for the person acquiring the property from the decedent would be the carryover (not step-up) basis — the lesser of the adjusted basis of the decedent or the fair market value of the property at the date of the decedent's

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[37] See Sen. Jon Kyl and Sen. Bill Nelson, statements accompanying the introduction of S. 420, *Congressional Record*, daily edition, vol. 151, no. 18, Feb. 17, 2005, pp. S1633-S1634.

death. Consequently, the heirs would likely be subject to capital gains taxes if they sold the business.

An unlimited portion of a decedent's estate could be treated as a COBI. The COBI would also be eligible for an unlimited marital deduction. To qualify, the decedent or a member of the decedent's family must own and materially participate in the trade or business for five out of the eight years ending on the date of the decedent's death. If the member of the decedent's family is the spouse, then the participation requirement is met under the active management standard. A qualified heir includes an active employee of the trade or business who has been employed by the trade or business for at least 10 years before the decedent's death. The proposal would take effect after the date of enactment and before January 1, 2010, and then again after December 31, 2010. In 2010, the one year the estate tax is repealed, the COBI would be eligible for the $3 million property basis increase available to surviving spouses, plus the aggregate $1.3 million basis increase for any heirs, under EGTRRA's modified carryover basis rules. Introduced April 27, 2005; referred to the Committee on Finance.

S. 988 (Sessions). Jobs Protection and Estate Tax Reform Act of 2005. S. 988 would accelerate to 2005 the changes to the estate, gift, and generation skipping transfer taxes that are scheduled to take effect in 2010 under EGTRRA. Effective retroactively to January 1, 2005, it would repeal the estate and generation skipping transfer taxes, modify the gift tax, and introduce the modified carryover basis for assets transferred at death. It would make these changes permanent by repealing the sunset provision of EGTRRA solely with respect to the estate and gift tax provisions of that act. Introduced May 10, 2005; referred to the Committee on Finance.

S. 1099 (Shelby). Tax Simplification Act of 2005. S. 1099 would permanently repeal the estate, gift and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code effective January 1, 2006. S. 1099 would also replace the current income tax on individuals and businesses with a flat tax levied at a rate of 19% in 2006 and 2007, and 17% in 2008 and thereafter. For individuals, taxable income would include the sum of cash wages, retirement distributions, and unemployment compensation, minus a basic standard deduction and an additional standard deduction (akin to a personal exemption) for each dependent. The taxable income of any dependent child under age 14 would be included in the parent's taxable income. For-profit businesses would be taxed on gross receipts minus deductions for business inputs, wages, and retirement contributions. Tax-exempt and governmental organizations would pay the tax on noncash (excludable) compensation provided to their employees. S. 1099 would simplify the rules relating to qualified retirement plans. It would permit employer reversions of excess pension assets under certain conditions. It would repeal the alternative minimum tax and all tax credits. It would require a supermajority vote on any legislation that would increase or add any federal income tax rate, reduce the standard deduction, or provide any exclusion, deduction, credit, or other benefit which would reduce federal revenues. Introduced May 23, 2005; referred to the Committee on Finance.

S.Amdt. 849 (Frist) to H.R. 6. This amendment would accelerate to 2006 the changes to the estate, gift, and generation skipping transfer taxes that are scheduled to take effect in 2010 under EGTRRA. Effective January 1, 2006, it would repeal the

estate and generation skipping transfer taxes, modify the gift tax, and introduce the modified carryover basis for assets transferred at death. It would make these changes permanent by repealing the sunset provision of EGTRRA solely with respect to the estate and gift tax provisions of that act. Introduced on the Senate floor June 22, 2005, by Senate Majority Leader William Frist, as an amendment to H.R. 6, the Energy Policy Act of 2005.[38]

For Additional Information

CRS Report 95-444, *A History of Federal Estate, Gift, and Generation-Skipping Taxes*, by John R. Luckey.

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 RL32768, *Estate and Gift Tax Revenues: Several Measurements*, by Nonna A. Noto.

CRS Report RL31776, *Estate Tax Legislation in the 108th Congress*, 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.

CRS Issue Brief IB95060, *Flat Tax Proposals and Fundamental Tax Reform: An Overview*, by James M. Bickley.

CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto.

CRS Report RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule*," by Robert Keith.

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[38] Sen. Frist, SA 849, *Congressional Record*, daily edition, vol. 151, no. 84, June 22, 2005, pp. S7080-S7081.