Congressional Research Service

Report RS21224

Estate Tax: Legislative Activity in 2002

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February 5, 2003

Abstract. On September 19, 2002, the House approved a resolution, H.Res. 524, urging Congress to complete action on the Permanent Death Tax Repeal Act of 2002 (H.R. 2143) before the 107th Congress adjourned, in effect calling on the Senate to approve the measure passed by the House on June 6, 2002. The Senate did not act on the bill.

Order Code RS21224
Updated February 5, 2003

Estate Tax: Legislative Activity in 2002

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Summary

This report summarizes actions in Congress during 2002 to make the repeal of the estate tax permanent and other proposals that would have retained but altered the estate tax. 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Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16, enacted June 7, 2001), the estate tax is scheduled to be repealed in 2010 but reinstated in 2011.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 provisions of EGTRRA are scheduled to sunset on December 31, 2010. On April 18, 2002, the House passed H.R. 586, part of which would have removed the sunset provision 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 (Title V). The House defeated a Democratic substitute amendment offered by Representative Pomeroy that would have retained the estate tax but increased the exclusion to $3 million per decedent in 2003.

The Senate leadership agreed to take up the estate tax alone, before June 28, 2002, through H.R. 8, under a unanimous consent agreement. On June 12, 2002, the Senate failed to waive the budget point of order on the three amendments offered. The Gramm-Kyl amendment, identical to H.R. 2143, would have removed the sunset provision on the estate tax provisions of EGTRRA, making estate tax repeal permanent. A Democratic substitute amendment offered by Senator Conrad would have kept the maximum estate tax rate at its 2002 level of 50% and increased the exclusion per decedent to $3 million in 2003 and $3.5 million in 2009. An amendment to the Democratic substitute offered for Senator Dorgan would have provided a full tax deduction for qualified family-owned business interests starting in 2003, increased the exclusion to $4 million per decedent in 2009, and permitted the maximum tax rate to continue to fall to 45% for 2007 and after. The underlying estate tax repeal bill, H.R. 8, was not voted on and was returned to the Senate calendar.

On September 19, 2002, the House approved a resolution, H.Res. 524, urging Congress to complete action on the Permanent Death Tax Repeal Act of 2002 (H.R. 2143) before the 107th Congress adjourned, in effect calling on the Senate to approve the measure passed by the House on June 6, 2002. The Senate did not act on the bill.

This report will not be updated.

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.

For those concerned with permanently repealing the estate tax, attention in 2002 focused on removing the sunset provision of EGTRRA with respect to the estate tax provisions of the Act. The estate tax 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. The revenue cost of permanently repealing the estate and generation-skipping transfer tax was estimated at $55.8 billion for FY2012.[1]

Summary of Major Actions and Announcements

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.

On April 16, 2002, Senate Majority Leader Thomas Daschle indicated that he would not bring up for Senate floor consideration legislation to extend the entire EGTRRA tax cut package. On April 18, 2002, the House approved such a measure. It passed H.R. 586, part of which would make permanent all of the tax provisions in EGTRRA by eliminating Title IX, which sunsets all other parts of the Act as of December 31, 2010.[2] Among its many effects, removing the sunset provision would make permanent the repeal of the estate tax, scheduled under EGTRRA to take effect in 2010.

In the Senate, there were several attempts in February and April 2002 to address the estate tax through amendments to legislation on other matters. On April 23, 2002, in order to prevent the estate tax issue from delaying the energy policy bill (S. 517), Senator Daschle agreed to schedule Senate consideration of a free-standing estate tax repeal bill under a unanimous-consent (UC) time agreement, before June 28, 2002.

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[1] 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.

[2] In addition to extending the provisions of EGTRRA, H.R. 586 contained provisions to improve taxpayer protection and Internal Revenue Service accountability. H.R. 586 passed the House on April 18, 2002, by a vote of 229 to 198, but was not acted upon by the Senate.

On May 14, 2002, House Majority Leader Richard Armey announced that the House might consider its own free-standing bill to permanently repeal the estate tax before the Senate considered estate tax legislation. On June 6, the House passed H.R. 2143, the Permanent Death Tax Repeal Act of 2001. H.R. 2143 would have removed the sunset provision with respect to the estate tax provisions of EGTRRA only. The House defeated a substitute amendment offered by Representative Earl Pomeroy that would have retained the estate tax but increased the exclusion to $3 million per decedent effective in 2003.

On June 11, 2002, the Senate began its consideration of the estate tax by taking up H.R. 8. Under the unanimous consent agreement, 60 votes were needed to waive Section 311 of the Congressional Budget Act in order to consider an amendment. On June 12, the Senate failed to waive the budget points of order on the three amendments introduced by Senators Conrad, Dorgan, and Kyl and Gramm. H.R. 8 was returned to the Senate calendar.

On September 19, 2002, the House approved a resolution, H.Res. 524, urging the Congress to complete action on the Permanent Death Tax Repeal Act of 2002 (H.R. 2143, with year changed) and present it to the President before the 107th Congress adjourned. This in effect called upon the Senate to approve the measure passed by the House on June 6, 2002. The sense of the House resolution passed by a vote of 242-158. The Senate did not act.

H.R. 2143 and Pomeroy Democratic Substitute Amendment

H.R. 2143, the Permanent Death Tax Repeal Act of 2001, was introduced by Representative Dave Weldon on June 12, 2001, soon after the enactment of EGTRRA on June 7, 2001. The bill would have removed the sunset provision only with respect to Title V of EGTRRA, which contains the estate, gift, and generation-skipping transfer tax provisions. The House passed H.R. 2143 (as the Act of 2002) on June 6, 2002, by a vote of 256 to171.

Representative Earl Pomeroy offered an amendment in the nature of a substitute to H.R. 2143 for the Democrats (H.Amdt. 502, submitted June 6, 2002). The amendment would have retained the estate tax but increased the estate tax exclusion to $3 million per decedent[3] effective January 1, 2003, to remain at that level.[4] Section 2057, the special provision for qualified family-owned business interests (QFOBI), would have terminated at the end of 2002, one year earlier than under EGTRRA (since the $3 million exclusion available to all estates would exceed the $1.3 million deduction per decedent for family-owned businesses). The maximum estate tax rate would have remained at 50% (where

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[3] As under current law, the exclusion remains per decedent in the Pomeroy, Conrad, and Dorgan proposals. Unlike some proposals offered in previous years, these proposals did not provide that any of the exclusion amount not used by the first spouse to die could automatically be applied later to the estate of the second spouse to die. However, with adequate estate tax planning, a couple could take advantage of two exclusions, as well as two QFOBI deductions where applicable to a family-owned business.

[4] Under EGTRRA, the estate tax exclusion amount is scheduled to rise from $1 million in 2002 and 2003, to $1.5 million in 2004 and 2005, $2 million in 2007 and 2008, and $3.5 million in 2009, before the tax is repealed in 2010.

it was in 2002 under EGTRRA, compared with 55% under prior law). But the 5% "bubble" surtax would have been reinstated to phase out the advantage of the graduated rates, as well as the applicable credit amount, for a range of estate values over $10 million, making the marginal tax rate 55% (rather than 60% under prior law) in that range. The Pomeroy substitute amendment would have repealed the modified carryover basis rules that EGTRRA implements in 2010 and instead continued the step-up in basis rules under current law.[5] The Pomeroy amendment also included valuation rules for certain transfers of nonbusiness assets and a limitation on minority discounts. The amendment was defeated by a vote of 197 to 231.

The revenue loss estimates for H.R. 2143 were $9.2 billion for FY2002-FY2007; $99.2 billion over FY2002-FY2012; and $740 billion over FY2013-FY2022; for a total of approximately $850 billion over FY2002-FY2022. In comparison, the Pomeroy substitute amendment was estimated to lose $21.9 billion over five years, $5.3 billion over 10 years, $165 billion over the second decade, and $170 billion over 20 years.[6]

Senate Amendments Offered to H.R. 8

On April 23, 2002, the Senate reached a unanimous consent (UC) agreement under which it was to take up H.R. 8 by June 28, 2002.[7] (H.R. 8, the Death Tax Elimination Act of 2001, was passed by the House in the first session of the 107th Congress, on April 4, 2001.[8]) Following the terms of the UC agreement, the Senate began consideration of H.R. 8 on June 11, 2002, and held its votes on June12. Three amendments were offered

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[5] The step-up in basis rule sets the basis (cost) of assets transferred at death to the value at the date of the decedent's death. The effect is to eliminate capital gains tax liability, for heirs who sell an inherited asset, on the increase in an asset's value before the decedent's death. EGTRRA's modified carryover basis limits the permitted step-up in the original adjusted basis of assets transferred at death to $1.5 million in the aggregate per decedent, plus $3 million for assets transferred to a surviving spouse.

[6] Revenue loss estimates from the Joint Committee on Taxation. As with any of the proposals that increased the exclusion amount sooner or higher than EGTRRA does, but continued the estate tax into 2010 and beyond, the Pomeroy proposal would have had larger revenue losses in the short term (five years) but smaller losses in the long term (10 years, or periods including FY2011 and beyond).

[7] Under the unanimous consent agreement, when the bill reached the floor, only four amendments to the bill would be in order, all of which must pertain to the estate tax. Senator Daschle or his designee could offer one amendment to the bill (which must be the first amendment offered) and two second-degree amendments to that amendment could be offered by Democratic Senators. After action on the two second degree amendments, Senator Gramm could offer one amendment to the bill. For each amendment, there would be a motion (requiring 60 yea votes) to waive the Budget Act (Section 311 of the Congressional Budget Act). If the Budget Act were waived for a particular amendment, it would then be debated for two hours equally divided. If any of the amendments were adopted, the Senate would proceed to vote on final passage of the bill. If none of the amendments received the 60 votes needed to waive the Budget Act, the bill would be returned to the calendar and further consideration would occur on H.R. 8 only if it were later again called up for consideration.

[8] H.R. 8 would have phased out the estate, GST, and gift taxes over a 10-year period and repealed them in the 11th year. Many provisions of H.R. 8 were included in Title V of EGTRRA, P.L. 107-16, but not repeal of the gift tax.

to H.R. 8, but none received the 60 votes needed to waive the budget point of order.[9] The underlying estate tax reduction and repeal bill, H.R. 8, was returned to the Senate calendar.

A Democratic substitute amendment was offered by Senate Budget Committee Chairman Kent Conrad (S.Amdt. 3831, submitted June 11, 2002). It would have kept the maximum estate tax rate at its 2002 level of 50% and provided a $3 million exclusion per decedent, effective in 2003, and a $3.5 million exclusion starting in 2009. The 5% surtax would be restored on a range of estate values over $10 million to phase out the advantage of the applicable credit amount as well as the graduated tax rates. The Conrad amendment also included a section setting valuation rules for certain transfers of nonbusiness assets in conjunction with business entities and a limitation on minority discounts (if an individual transferee did not have control of an entity but the transferee and members of the family did have control); this was identical to the section contained in the Pomeroy substitute amendment in the House.

The Conrad amendment would have kept the estate and generation-skipping taxes and the step-up in basis, by eliminating their repeal under EGTRRA. It would have kept other estate tax changes under Title V of EGTRRA by removing the sunset provision for them. But it would have kept the sunset provision for titles other than Title V. It would have terminated the Section 2057 provision in 2003 rather than 2004 under EGTRRA (because the exclusion amount of $3 million would already be larger than the $1.3 million deduction available to qualified family-owned business interests). The Conrad amendment was estimated to cost $12.6 billion in revenues over the first ten years. With a vote of 38 to 60, the Senate failed to waive the budget point of order on the amendment.

Senator Byron Dorgan offered a second-degree amendment to the Democratic substitute (S.Amdt. 3832, offered June 12, 2002) labeled "Estate tax with full tax deduction for family-owned business interests." Senator Dorgan's proposal, like the Conrad proposal, would have amended several provisions in Title V of EGTRRA, the title which deals with estate, gift, and generation-skipping transfer taxes, and removed the sunset on them. But it would have left the sunset for other provisions of EGTRRA.

Notably, effective in 2003, the Dorgan proposal would have eliminated the dollar limits on the special deduction for qualified family-owned business interests (QFOBI, defined in Section 2057 of the Internal Revenue Code) and made the deduction permanent.[10] Starting in 2009, the Dorgan proposal would have increased the applicable exclusion amount (the estate tax exemption) to $4 million per decedent, and set it to

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[9] Although a second Democratic second-degree amendment was permitted under the UC time agreement, none was offered.

[10] Currently, through 2003, the maximum amount of the deduction for qualified family-owned business interests, in combination with the applicable exclusion amount available to all estates, is $1.3 million, higher than the amount available to other estates. Under EGTRRA, Section 2057 is scheduled to be repealed in 2004 when the applicable exclusion amount for all estates rises to $1.5 million. Thus, under EGTRRA, there would no longer be preferential estate tax treatment for family-owned businesses compared with other assets after 2003. The Pomeroy and Conrad proposals take a similar position. In direct contrast, the Dorgan proposal would have restored preferential treatment for family-owned businesses and made the dollar amount unlimited.

remain there. It would have retained the estate and generation-skipping transfer taxes after 2009. It would have kept the step-up in basis rule for determining the basis for assets transferred at death, and not introduced the modified carryover basis in 2010. It would have let the maximum rate of tax fall to 45% as scheduled under EGTRRA, but remain there from 2007 on, with no repeal in 2010. It would have eliminated the further reduction of the maximum gift tax rate from 45% to 35% in 2010. With a vote of 44 to 54, the Senate failed to waive the budget point of order on the Dorgan amendment.

The Gramm-Kyl amendment (S.Amdt. 3833, submitted June 12, 2002) was identical to H.R. 2143 as passed by the House. It would have removed the sunset provision only on the estate tax provisions of EGTRRA, thereby making repeal of the estate tax permanent from 2010 on. The Bush Administration supported Senate approval of the amendment. The vote of 54 to 44 failed to waive the budget point of order on the Gramm-Kyl amendment, falling six votes short of the 60 needed.

Estate Tax Amendments Offered to Other Bills in the Senate

In February and April 2002 there were several attempts in the Senate to address the estate tax through amendments to legislation on other matters. An amendment to remove the sunset on the repeal of the estate tax was offered for Senator Jon Kyl on February 5. (S.Amdt. 2807 was an amendment to S.Amdt. 2721 to H.R. 622, the economic stimulus bill.) The amendment was considered by the Senate on February 6 but not voted upon.

On February 13, 2002, the Senate agreed, by a vote of 56 to 42, to an amendment expressing "...the sense of the Senate that the repeal of the estate tax should be made permanent by eliminating the sunset provision's applicability to the estate tax." (S.Amdt. 2850 was introduced by Senators Jon Kyl and Don Nickles as an amendment to S. 1731, the Senate's farm aid bill.[11])

The amendments regarding the estate tax that were offered, but not voted upon, in April 2002 in relation to S. 517, the energy policy bill,[12] were the same as those later offered to H.R. 8 by Senator Gramm and Senator Dorgan. On the Republican side, Senator Gramm's amendment to S. 517 (S.Amdt. 3144, offered April 18, 2002) would have made repeal of the estate tax permanent by removing the sunset provision for the estate, gift, and generation-skipping transfer tax provisions of EGTRRA only. On the Democratic side, Senator Byron Dorgan introduced a proposal for an "estate tax with full tax deduction for family-owned business interests." (The Dorgan proposal was offered in three separate amendments to S. 517, all with the same language but designed for use in different parliamentary settings: S.Amdt. 3293, S.Amdt. 3303, and S.Amdt. 3304, offered April 23, 2002.)

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[11] S. 1731 was the Agriculture, Conservation, and Rural Enhancement Act of 2001. Further action on S. 1731 occurred as H.R. 2646, which became P.L. 107-171. The estate tax reference was not included in the final Act.

[12] S. 517 was a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006. S. 517 was later incorporated in H.R. 4 as an amendment.