U. S. Senate Republican Policy Committee

Larry E. Craig, Chairman Jade West, Staff Director

Legislative Notice

No. 42 June 11, 2002

H.R. 8 – Death Tax Elimination Act of 2001

Calendar No. 33

H.R. 8 passed the House of Representatives on April 4, 2001, by a vote of 274-154; on April 6, 2001, it was read the second time and placed on the Senate Calendar.

NOTEWORTHY

- A unanimous consent agreement reached April 23, 2002, and another reached today provide for the consideration of H.R. 8 in the Senate. Today's agreement provides for consideration to begin at 3:15 p.m. today.

- The previous UC provides the following: the only amendments permitted are one by Senator Gramm, and one by Senator Daschle or his designee that is subject to two second-degree amendments to be offered by Senator Daschle or his designee; the Daschle amendment will be offered first. Each amendment is limited to two hours of debate. Further, all amendments must pertain solely to the subject of the death tax, and all are subject to a 60-vote Budget Act point of order. If any amendments are adopted (that is, receive 60 votes to waive the point of order), the Senate will move to final passage of H.R. 8, as amended. If none is adopted, the underlying bill returns to the Calendar.

- P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001, contained the 10-year phaseout of the death tax as provided by H.R. 8. However, due to the so-called Byrd Rule (see Background section), this tax relief is scheduled to sunset as of December 31, 2010.

- On June 6, 2002, the House, by a vote of 256-171, passed H.R. 2143, to make repeal of the death tax permanent. Forty-one Democrats supported its adoption. That bill, now on the Senate Calendar, is likely to be the text of the Gramm amendment.

- This debate will be the third time in three years the Senate has considered legislation to repeal the death tax. The Senate twice voted successfully to repeal the death tax; once as part of the larger Bush tax relief package last year and once as a stand-alone bill (H.R. 8) in 2000. The stand-alone bill was subsequently vetoed by President Clinton.

HIGHLIGHTS

In order to comply with the so-called Byrd Rule governing legislation adopted under reconciliation, the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16), signed by President Bush on June 7, 2001, are scheduled to sunset on December 31, 2010. The House subsequently passed legislation, H.R. 586, that would remove the sunset provision and thereby make permanent all other provisions of the tax cut law, including the repeal of the death tax.

In addition, the House passed its own free-standing estate tax repeal bill, H.R. 2143, on June 6. That bill simply removes the sunset provision of the tax-cut law with respect to the death tax provisions passed last year. The effect is to make the death tax repeal permanent. Forty-one Democrats voted in support of H.R. 2143.

In the Senate, Senator Gramm, a leading proponent of the complete and permanent repeal of the death tax, negotiated the unanimous consent agreement reached in April that provides the Senate the opportunity to consider permanent repeal of the death tax. In addition to Senator Gramm's amendment to permanently repeal the estate tax, Senator Daschle is expected to offer one or more alternatives which would retain the death tax while either a) increasing the unified credit up to a certain amount (likely $4 million) or b) increasing the Qualified Family Business Exemption from it current $1.3 million (also up to $4 million).

BACKGROUND

The Byrd Rule and the Death Tax

There has been some confusion of late regarding the reason behind the 10-year sunset of the death tax repeal and most of the provisions contained in last year's tax relief package. For example, on June 8, 2002, the lead *Washington Post* editorial stated:

> The tax cut's backers used all sorts of accounting gimmicks to disguise the real long-term cost of the measure. The ultimate one came when, in order to make the measure fit within Congress's 10-year cost limit of $1.35 trillion, negotiators decided to make its major

provisions, including the estate tax repeal, expire after 2010. Once the accounting tricks had served their purpose of getting the cuts into law, the drumbeat to make the reductions permanent began.

This editorial is simply wrong. The *only* reason last year's tax cuts were made temporary was to comply with the Byrd Rule (Section 313 of the Budget Act). The Byrd Rule is designed to protect reconciliation bills from being filled with amendments not related to spending and revenue matters. This rule, named after Senator Robert C. Byrd (D-WV), applies the following rules to any legislation, amendment, or conference report considered under reconciliation. Material is considered extraneous if it:

- Does not change outlays or revenues (unless it is a term or condition of a provision that does produce such a change);
- Increases the deficit if the committee has failed to meet its instruction;
- Is a provision from a committee which has no jurisdiction over the provision;
- Would produce changes in outlays or revenues which are incidental to the non-budgetary components of the provision;
- **Creates a net outlay increase or a revenue decrease in the year following the scoring window; or**
- Affects the receipts or outlays of the Social Security trust fund.

If a Byrd Rule point of order against a provision in the bill is sustained, the offending provision is stricken from the bill. A waiver of the Byrd Rule requires 60 votes. The Senate Budget Committee is required to produce a list of Byrd Rule violations in any reconciliation bill or conference report.

As the bold face type shows, any legislation considered under reconciliation that reduces revenues outside the budget window is subject to a 60-vote point of order. The budget the Congress adopted last spring had a 10-year window, so any revenue loss outside 10 years would have been subject to the Byrd Rule. That is why repealing the sunset of the death tax and other provisions was necessary.

BILL PROVISIONS

H.R. 8 was introduced in the House of Representatives on March 14, 2001, prior to adoption of the Bush tax relief package which included the repeal of the death tax among its many provisions. For today's Senate debate, the bill is being used as a vehicle for competing amendments regarding the death tax – an effort by Senator Gramm to make last year's repeal permanent and an effort by Senator Daschle to preserve the death tax while carving out certain estates. Senator Daschle has not indicated what his alternative amendments may include, but this outline of two possible amendments is included below.

Gramm: Senator Gramm will offer the text of the House-passed death tax repeal as his amendment.

Possible Daschle 1: Two years ago, during consideration of death tax repeal legislation, Senator Dorgan offered an amendment designed to preserve the death tax while expanding the Qualified Family Business Exclusion. Enacted as part of the 1997 Taxpayer Relief Act, the Qualified Family Business Exclusion provides a total exclusion from estate taxes of $1.3 million for qualified estates. To qualify, however, an estate must meet a series of stringent tests, including:

- The business must make up at least 50 percent of the estate's total value;
- Heirs must have been actively employed by the family business for at least 10 years prior to the death of the owner; and
- Heirs must continue to work for the business for five out of any eight-year period in the decade following the owner's death.

The tax benefits of the exclusion are subject to "recapture" if the heirs fail to meet the work requirements following the transfer of the business.

These requirements, coupled with the recapture provision, make the Business Exclusion extremely unattractive to families as they write their wills and plan for the dissolution of their businesses and estates.

Possible Daschle 2: Daschle may also offer an amendment similar to the House Democrat alternative offered earlier this year. That amendment would have: a) retained the death tax, b) set the unified credit at $3 million per spouse effective January 1, 2003, while repealing the subsequent increases under current law, and c) repealing the carryover basis provisions enacted last year. The amendment may also offsets the cost of increasing the exclusion by freezing existing estate tax rates, eliminating the ability to claim valuation discounts by holding property through partnerships, and restoring the prior-law phase-out of the benefit of the graduated rates and exclusion.

ADMINISTRATION POSITION

On June 6, 2002, the Bush Administration sent up the following Statement of Administrative Position on H.R. 2143.

> The Administration strongly supports House passage of the Permanent Death Tax Repeal Act. The Administration is pleased that the House is acting now to make an important part of the President's tax relief plan permanent. The Economic Growth and Tax Relief Reconciliation Act of 2001 provided well-timed and much needed tax relief to the American people and laid the foundation for a quicker return to long-term economic growth.
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> ...The unfair death tax results in the double taxation of a family's hard-earned assets. Its elimination will lower the tax burden on families, small businesses, and family farms and promote fairness and economic growth. Unfortunately, this tax relief expires at the end of 2010.... Failure to make the death tax repeal permanent would increase taxes by $103.5 billion. The time to fix this problem is now, so American families, small businesses, and farmers and ranchers can make their plans for the future today, without needlessly worrying how these plans could be jeopardized by inaction in the future.
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> Making the tax repeal permanent will ensure that Americans can make long-term plans when saving for their children's education, when undertaking new business ventures, when planning for retirement, and when planning future contributions to charity and passing on a family business to their children. The Administration urges quick action in the Congress to make the elimination of the death tax permanent.

COST

According to the Joint Committee on Taxation, the House-passed repeal of the death tax sunset would reduce revenues by $99 billion over the next ten years, with most of that revenue loss concentrated in the last two fiscal years – $25 billion in 2011 and $56 billion in 2012.

POSSIBLE AMENDMENTS

H.R. 8 is being considered under a UC which makes only four amendments in order, one first degree by Senator Gramm and one first degree and two second degree amendments by Senator Daschle. Those possible amendments are described above (see pp. 3-4).

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