RSC
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Legislative Bulletin……………………………..…..……..……June 6, 2002

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H.R. 2143—Permanent Death Tax Repeal Act (Weldon of Florida)

Order of Business: The bill is scheduled to be considered on Thursday, June 6th, subject to a modified closed rule (i.e. only one Democrat amendment in the nature of a substitute may be offered).

Summary: H.R. 2143 would make permanent the elimination of the estate tax (otherwise known as the "death tax"), gift tax, and generation-skipping transfer tax, which are set to be fully eliminated in 2010. Current law for phasing out and eliminating these taxes is as follows:

- Phases-out the estate tax beginning in 2002 by eliminating the 5% surtax and the rates in excess of 50% and increases the exemption to $1 million
- Continues to phase out the estate tax as follows:

Calendar Year	Exemption	Highest Estate and Gift Tax Rate
2002	$1 million	50%
2003	$1 million	49%
2004	$1.5 million	48%
2005	$1.5 million	47%
2006	$2 million	46%
2007	$2 million	45%
2008	$2 million	45%
2009	$3.5 million	45%
2010	N/A (estate tax repealed)	Top Individual Rate (for gift tax)

- Beginning in 2010, the "stepped up" basis for valuation of inherited assets would be replaced with the "carryover basis," thereby imposing a **new capital gains tax** on the difference between what the deceased paid for assets and current market value. An exemption of $1.3 million in gained value ($4.3 million for a surviving spouse) would be allowed.

The elimination of the death and gift taxes is set to expire on January 1, 2011. If H.R. 2143 is not signed into law, these taxes would return to pre-phase-out levels literally overnight on New Year's Eve, 2011.

Additional Background: The phase-out of the death, gift, and generation-skipping transfer taxes was implemented as part of the Bush tax-cut package (H.R. 1836; Public Law 107-16) signed into law on June 7, 2001. In order to comply with reconciliation procedures under the Congressional Budget Act of 1974 (i.e. section 313 of the Budget Act, under which a point of order may be lodged in the Senate), the tax-cut bill included a "sunset" provision, under which the law expires at the end of 2010.

For talking points on eliminating the death tax, go to this website: http://www.house.gov/burton/RSC/Message6502.PDF

Democrat Amendment: The Pomeroy/Rangel/Thurman amendment in the nature of a substitute is the only amendment made in order under the rule.

The Democrat substitute would immediately and permanently restore the death, gift, and generation-skipping transfer taxes (i.e. eliminate their phase-outs) by treating the such provisions of the Bush tax-cut package (Subtitles A and E of Title V of H.R. 1836) as if they had never been enacted. This treatment would also mean repealing the implementation of the "carryover basis" for calculating the value of inherited assets (and the accompanying capital gains tax on the difference between what the deceased paid for assets and current market value).

The Democrat substitute would raise the death tax exemption to $3 million beginning January 1, 2003, yet permanently freeze existing estate tax rates (topped at 50%). Further, the substitute would eliminate (with a few exceptions) the ability to claim valuation discounts by holding property through partnerships.

Cost to Taxpayers: According to the Joint Committee on Taxation (in document JCX-51-02), implementation of the base text of H.R. 2143 would save taxpayers **$1.2 billion** in FY2003, **$9.2 billion** over the FY2003-07 period, and **$99.4 billion** over the FY2003-12 period.

Does the Bill Create New Federal Programs or Rules?: The bill would make permanent provisions in current tax law set to expire after December 31, 2010.

Constitutional Authority: Though a committee report citing constitutional authority in unavailable, Article I, Section 8, Clause 1 grants Congress the power to "lay and collect Taxes, Duties, Imposts and Excises…," and the 16th Amendment grants Congress the power to "lay and collect taxes on incomes, from whatever source derived,…."

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