RSC Republican Study Committee
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Legislative Bulletin……..…..…May 13, 2004

Contents:

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 0
Year to Date Prior to Today's Bills: 17

Total Cost of Discretionary Authorizations: $0
Year to Date Prior to Today's Bills: At least $205.26 billion[#,] over five years

Total Amount of Revenue Reductions: $25.084 billion over five years
Year to Date Prior to Today's Bills: $47.103 billion over five years

Total Change in Mandatory Spending: -$0.032 billion over five years
Year to Date Prior to Today's Bills: -$3.196 million over five years

Total New State & Local Government Mandates: 3
Year to Date Prior to Today's Bills: 12[#]

Total New Private Sector Mandates: 0
Year to Date Prior to Today's Bills: 11

[#] This figure does not include H.R. 3873, the Child Nutrition Improvement and Integrity Act. A CBO analysis of this bill is not yet completed.

H.R. 4275—To amend the Internal Revenue Code of 1986 to permanently extend the 10-percent individual income tax rate bracket (Sessions)

Order of Business: The bill is scheduled to be considered on Thursday, May 13th, subject to a modified closed rule (H.Res. 637). The rule would make in order one amendment in the nature of a substitute, as summarized below.

Summary: H.R. 4275 would *permanently* extend the existence of the 10% marginal income tax bracket, first created by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), and would provide for more updated inflation adjustments of this bracket. Furthermore, H.R. 4275 would ensure that the 10% bracket would continue to apply to the first (pre-inflation-adjusted) $7,000 of taxable income for single filers and the first (pre-inflation-adjusted) $14,000 of taxable income for joint filers. After inflation adjustments, for calendar year 2004 the 10% bracket applies to the first $7,150 of taxable income for single filers and $14,300 for joint filers.

Without legislative action, the 10% marginal income tax bracket would contract beginning in 2005 to cover only the first $6,000 of income for singles and $12,000 for joint filers (resulting in a substantial tax increase), and the 10% bracket would increase to 15% beginning in 2011(resulting in a massive tax increase).

Additional Background: 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 original Bush tax-cut bill (Public Law 107-16) included a "sunset" provision, under which the law and all the tax-cut provisions in it expire at the end of 2010.

Prior to this first Bush tax cut, the lowest marginal bracket was 15%.

To see the other impending tax increases that will *automatically* occur without legislative action, visit this RSC webpage:
http://johnshadegg.house.gov/rsc/Impending%20Tax%20Increases--Feb%202004.pdf

Amendment Made in Order under the Rule (H.Res. 637):

Rangel: Retains the provisions of the underlying bill and:

- **Increases individual income taxes** by 1.9% of the adjusted gross income that exceeds $1 million for joint filers and $500,000 for single filers (for tax-years 2005-2010);

- Conditions ***all*** **extensions** of tax cuts and other tax provisions in the first Bush tax-cut bill (the Economic Growth and Tax Relief Reconciliation Act of 2001—Public Law 107-16) on the enactment of "comprehensive Federal budget legislation" before September 1, 2010 that would:
  --result in a balanced federal budget by fiscal year 2014 (as certified by the Office of Management and Budget—OMB);

--not factor in the receipts and disbursements of the Social Security and Medicare Trust Funds to achieve budget balance; and
--permit the general fund of the U.S. Treasury to repay amounts previously borrowed from the Social Security and Medicare Trust Funds without requiring large foreign central bank purchases; and

- Provides that taxpayers subject to the Alternative Minimum Tax (AMT) could still take advantage of the 10% bracket.

RSC NOTE: Because most small businesses pay taxes on the individual income tax system, as opposed to the corporate tax system, the Rangel Amendment would increase taxes on small business owners. While exact figures are not available, it is likely that much—if not a majority—of the tax increase contained in the Rangel Amendment would be derived from small businesses. To see a fact sheet from the 2001 debate regarding small businesses and the tax code, visit this webpage: http://johnshadegg.house.gov/rsc/SmBiztp.PDF

Committee Action: On May 5, 2004, the bill was referred to the Ways & Means Committee, but the Committee took no official action on it.

Administration Position: The Administration supports this legislation and included the provisions of H.R. 4275 in its FY2005 budget request.

Savings to Taxpayers: The House Budget Committee reports that for these same provisions in President Bush's FY2005 budget request, the Joint Committee on Taxation (JCT) estimated that they would have no budget effect in fiscal year 2004 and would save taxpayers $21.811 billion over fiscal years 2004-08. For purposes of the enforcement periods in the budget resolution conference report for FY2005, the bill would save taxpayers about $4.262 billion in FY2005 and about $25.04 billion over fiscal years 2005-09.

Ways & Means Committee staff, however, report that the savings to taxpayers are likely to be much greater when JCT releases its updated estimate. The original JCT estimate did not examine the 10% bracket extension in isolation of other tax provisions.

The Budget Committee also reports that H.R. 4275 would not violate the terms of the FY2004 budget resolution and is not expected to violate the terms of the FY2005 budget resolution, once completed. Therefore, the bill is not expected to violate any points of order under the provisions of the Congressional Budget Act.

Does the Bill Create New Federal Programs or Rules?: The bill would make permanent certain provisions in current tax law set to expire after December 31, 2004, and after December 31, 2010.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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,…."

Outside Organizations: All known conservative organizations are supporting this legislation. Americans for Tax Reform has indicated that it may include H.R. 4275 in its annual congressional ratings.

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H.Con.Res. 414—Expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown (*Conyers*)

Order of Business: The resolution is scheduled for consideration on Thursday, May 13th, under a unanimous consent agreement.

Summary: H.Con.Res. 414 resolves that Congress:

(1) recognizes and celebrates the 50th anniversary of the Brown v. Board of Education decision;

(2) encourages all Americans to recognize and celebrate the 50th anniversary of the Brown v. Board of Education decision; and

(3) renews its commitment to continuing and building on the legacy of Brown with a pledge to acknowledge and address the modern day disparities that remain.

Additional Background: On May 17, 1954, the United States Supreme Court announced in Brown v. Board of Education (347 U.S. 483) that, "in the field of education, the doctrine of 'separate but equal' has no place," overturning the precedent set in 1896 in Plessy v. Ferguson (163 U.S. 537), which had declared "separate but equal facilities" constitutional and allowed the continued segregation of public schools in the United States on the basis of race.

Committee Action: On May 12, 2004, the Committee met in open session and ordered favorably reported the resolution H. Con. Res. 414 without amendment by a recorded vote of 23 to 0, a quorum being present. Subsequently, a motion to reconsider that vote was agreed to by voice vote. On reconsideration, on May 12, 2004, the Committee met in open session and ordered favorably reported the resolution H. Con. Res. 414 without amendment by a recorded vote of 27 to 0, a quorum being present.

Cost to Taxpayers: None.

Does the Bill Create New Federal Programs or Rules?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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H.R. 4281—Small Business Health Fairness Act of 2004 (Johnson, Sam)

Order of Business: The bill is scheduled for consideration on Thursday, May 13th, subject to a modified closed rule. The rule allows for one amendment in nature of a substitute, to be offered by Representative Kind or his designee. The amendment is described below.

Summary: H.R. 4281 creates association health plans (AHPs) under the Employee Retirement Income Security Act (ERISA), through which small employers could join together to purchase health insurance.

Requirements for AHPs:

- Must be sponsored by a permanent, bona fide organization established for substantial purposes other than to provide medical care and that does not make decisions with regard to membership, payments, or coverage based on health status.
- Must be certified under a procedure established by the Secretary of Labor. Criteria are established for plans offering a self-insured health benefit, including that sponsors may not restrict membership in the plan to one or more businesses or industries. Fully insured plans would be subject to class certification by the Secretary.
- Plans wishing to be certified would submit an application to the Secretary (along with a $5000 filing fee for administration) with information on the states in which the plan intends to operate and with plan documents, including those describing benefits. Plans must file their certification in each state in which at least 25% of the plan's participants are located. Self-insured plans must have at least 1,000 participants in order to be certified.
- Self-insured AHPs must maintain surplus reserves of at least $500,000 (or a greater amount set by the Secretary, but not more than $2 million) and must obtain stop loss and indemnification insurance.
- Must pay $5000 annually into an "Association Health Plan Fund" through which the Secretary would make payments to insurers to maintain stop loss insurance or indemnification insurance coverage if without such payments coverage under the plan would be terminated.

Requirements for AHP Sponsors:

- Must have been in existence for a continuous period of not less than three years.
- Must be operated under a three-year plan by a board of trustees. The board must consist of owners, officers, directors or employees of the employers who participate in the plan and have full fiscal control and responsibility for the plans operations.

- May voluntarily terminate plan only if the board of trustees provides 60-day advance written notice to participants and provides for timely payment of all benefit obligations.

Participation and Coverage Requirements:

- All employers who are AHP members must be eligible for participation under the terms of the plan.
- Eligible employers must be informed of all benefit options available under the plan.
- Eligible employees may not be excluded from the plan because of health status.
- Employers may not exclude employees from the plan by purchasing an individual health insurance policy for the employee based on his or her health status.

Other Provisions:

- The Secretary may become the trustee of an insolvent AHP if the Secretary determines that the plan will not be able to provide benefits or is otherwise in "financially hazardous condition" (as defined by the Secretary in regulation).
- States may collect a contribution tax from a newly established AHP to the same extent that such a tax is collected from other insurance plans.
- For certified AHPs, state law is preempted to the extent it would prevent the AHP from operating in the state. This includes exempting the AHP from state benefit mandates, except the plan must comply with any state laws requiring coverage of specific diseases.
- Penalties are established for uncertified AHPs and entities misrepresenting themselves as an AHP.

Additional Background: H.R. 4281 is virtually identical to H.R. 660, passed by the House by a vote of 262-162 on June 19, 2003 (http://clerk.house.gov/evs/2003/roll296.xml). The Senate has not acted on the bill.

Amendment in the Nature of a Substitute (Mr. Kind or his designee): Strikes all of the current provisions of H.R. 660 and replaces them with a requirement that the Secretary establish a Small Employer Health Benefits Plan (SEHB).

- Requires the Secretary to widely disseminate information about SEHB through the media, Internet, public service announcements, and other employer and employee directed communications.
- All employers with fewer than 100 employees during the previous calendar year shall be eligible to apply for coverage under SEHB. Employers must offer coverage to all employees who have completed 3 months of service. Employees working fewer than 30 hours a week are eligible for pro rata coverage.
- Requires the Secretary to establish an initial open enrollment period and thereafter an annual enrollment period.
- Requires the Department of Labor to annually contract with state licensed health insurers to offer health insurance coverage in a state. Participating insurers shall remain subject to state laws applicable to the states in which they cover residents.
- Requires all participating insurers to offer benefits equivalent to or greater than the options offered to federal employees.

- Requires employers joining SEHB to contribute at least 50% of premium costs. Employers with fewer than 25 employees shall be eligible for a coverage incentive discount of 5% to employers joining SEHB. Small employers with fewer than 50 employees shall be eligible for a sliding scale premium subsidy for employees earning less than 200% of the poverty level (50% for firms under 10 employees; 35% for firms under 25 employees; and 25% for firms under 50 employees). Employee premiums for employees earning under 200% of the poverty level, adjusted for family size, shall be eligible for 100% subsidies for premium contribution over 5% of salary if not covered by another federal or state health insurance program.
- Authorizes up to $50 billion for the Department to provide small employer health coverage subsidies in fiscal years 2004-2014.

Committee Action: H.R. 4281 was introduced on May 5, 2004, and referred to the Committee on Education and the Workforce. The committee did not act on the bill.

Administration Position: The Administration supports AHPs: http://www.whitehouse.gov/omb/legislative/sap/108-1/hr660sap-h.pdf.

Cost to Taxpayers: While a cost estimate of H.R. 4281 is not available, the Congressional Budget Office (CBO) estimated that H.R. 660 would decrease federal revenues (associated with employers adding new non-taxable health benefits instead of increasing taxable wages and salaries) by $3 million in 2004 and $80 million over the 2004-2008 period. CBO also estimated a net increase of about 600,000 individuals with employer-based health insurance by 2008, creating savings to the Medicaid program of $2 million in 2004 and $32 million over the 2004-2008 period. For administration and regulatory activities at the Department of Labor, CBO estimated increased spending of $3 million in 2004 and $54 million over the 2004-2008 period.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill creates a new section within ERISA to certify and oversee association health plans.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The bill would preempt a number of state laws that regulate health coverage, including the ability of states to tax existing entities that become certified as AHPs. In total, the bill contains three intergovernmental mandates, although none would result in additional costs.

Constitutional Authority: A committee report citing constitutional authority is not available. The committee report for H.R. 660 cited federal court cases upholding ERISA as being within Congress' constitutional authority under Article 1, Section 8, Clause 3 (commerce clause).

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Rolled Vote on Pomeroy Motion to Instruct Conferees on S.Con.Res. 95, the FY 05 Budget Resolution

On Wednesday, May 12th, the House debated the following) motion to instruct conferees, offered by Mr. Pomeroy (D-ND**:** "Mr. Speaker, I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the concurrent resolution S. Con. Res. 95 be instructed to agree to the pay-as-you-go enforcement provisions within the scope of the conference regarding direct spending increases and tax cuts in the House and Senate. In complying with this instruction, such managers shall be instructed to recede to the Senate on the provisions contained in section 408 of the Senate concurrent resolution (relating to the pay-as-you-go point of order regarding all legislation increasing the deficit as a result of direct spending increases and tax cuts)."

A vote will occur on the motion on Thursday, May 13th.

Section 408 of the Senate bill would impose a point of order only waivable by 60 votes for any new mandatory spending or revenue reductions that would increase the deficit, even if such spending or revenue reductions were assumed in the Budget Resolution. The point of order would expire after 5 years.

An identical motion offered by Rep. Moore (D-KS) was defeated last Wednesday by a vote of 208 to 215: http://clerk.house.gov/evs/2004/roll145.xml

Key points Members may wish to consider:

- The Senate provision does not reinstate traditional "paygo". Traditional paygo was a statutory requirement that automatically offset legislation that increased the deficit through automatic spending cuts (sequestration). The Senate provision simply creates another Senate rule that can be waived by 60 votes.
- The House will have an opportunity to establish a workable statutory paygo system when we consider budget enforcement legislation. The House is set to consider such legislation in the near future.
- The Senate provision does not exempt the extension of expiring tax provisions, such as the child tax credit, marriage penalty relief and the 10% bracket. Ironically, existing spending programs that have much higher costs in future years would be exempt from paygo, yet continuing existing tax policies would be subject to paygo because they sunset.
- The Senate paygo provision is much stricter than the proposals introduced in the House, including the paygo provision in the budget reform and enforcement bill introduced by Rep. Kirk.

Below is additional information on this topic from the Heritage Foundation that discusses why reinstating this type of paygo would mean tax increases and high spending:

http://www.heritage.org/Research/Budget/wm447.cfm

In addition, Members may wish to note that some of the staunchest proponents in the Senate of preserving the Senate language voted yesterday to waive the "pay-go" point of order in order to spend an additional $8 billion for unemployment benefits. Senators who voted to waive the point of order who according to media reports are not currently willing to compromise on the Senate Budget Resolution language (the one issue preventing us from completing the Conference Report on the Budget) include: Senators McCain, Snowe, Collins, Chafee and Nelson.

George Miller Motion to Instruct Conferees on H.R. 2660, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2004

NOTE: The FY 04 Labor /HHS / Education Appropriations Bill was incorporated into the enacted FY 04 Omnibus, however, since the bill was not enacted stand-alone and the formal Conference on the bill was never dissolved, the House-passed bill and the Senate Amendment are still technically in Conference. Obviously there is no need or plan for the Conferees to meet. The Miller motion simply takes advantage of the fact that there is still technically a Conference in order to force a vote on the topic of the motion. It should be noted that the motion to instruct is subject to a motion to table.

On Wednesday, May 12th, Mr. George Miller (D-CA) offered the following motion to instruct Conferees: "Mr. Speaker, I move that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the Senate amendment to the bill H.R. 2660 be instructed to insist on reporting an amendment to prohibit the Department of Labor from using funds under the Act to implement any portion of a regulation that would make any employee ineligible for overtime pay who would otherwise qualify for overtime pay under regulations under section 13 of the Fair Labor Standards Act in effect September 3, 2003, except that nothing in the amendment shall affect the increased salary requirements provided in such regulations as specified in section 541 of title 29 of the Code of Federal Regulations, as promulgated on April 23, 2004."

This motion is identical to a motion to instruct also offered by Mr. Miller which was tabled by the House on Wednesday, May 12 by a vote of 222 to 205:
http://clerk.house.gov/evs/2004/roll159.xml

When the Department of Labor released their final rule on April 23, 2004, the following information was circulated by the Administration:

Strengthening Overtime

- The Bush Administration's final rule will guarantee overtime protections to 6.7 million workers earning $23,660 per year or less by nearly tripling the minimum salary level.

- With the enhanced overtime protections in the final rule, 1.3 million salaried "white collar" workers, who were not entitled to overtime pay under the previous regulations, will gain up to $375 million in additional earnings every year.

- Another 5.4 million salaried workers, who under the previous regulations were unsure if they should be paid overtime, get an ironclad guarantee of overtime rights under the final rule — regardless of their job duties.

- The final rule strengthens overtime protections for licensed practical nurses and first responders, such as police officers, fire fighters, paramedics, and emergency medical technicians, by clearly stating for the first time that these workers are entitled to overtime.

- The final rule retains terms used in the previous regulations, but makes them easier to understand and apply to the 21st Century workplace by better reflect existing federal case law. In addition, the overall length of the regulations has been reduced from 31,000 words to just 15,000.

Protecting Overtime Can't Wait on Politics or Costly Litigation

- Under previous law, only workers earning less than $8,060 were guaranteed overtime pay because the minimum salary level had not been updated for nearly 30 years.

- The descriptions of job duties required for the overtime exemption had been frozen in time for nearly 50 years, resulting in confusion and uncertainty for both workers and employers.

- The previous regulations were outdated, confusing and complex, and have led to an explosion of lawsuits. Federal court class actions for FLSA cases have tripled since 1997, and now outnumber discrimination class actions.

- Low-wage and middle-income workers should not have to wait another 50 years for rules that protect their overtime pay, and should not have to spend years in federal court to receive their fair pay. Action is needed now to ensure workers receive their overtime pay in real time.

- The final rule ensures that employees can understand their rights to overtime pay; employers can readily determine their legal obligations and comply with the law; and the Department of Labor can more vigorously enforce the law.

Safeguards for Workers

- The final rule increases the minimum salary level required for exemption to $455 per week ($23,660 annually) – an historic $300 per week increase over the existing regulations.
- New section 541.3(a) provides that "blue collar" workers are entitled to overtime pay.

- New section 541.3(b) provides that police officers, fire fighters, paramedics, emergency medical technicians and similar public safety employees are entitled to overtime pay.
- New section 541.4 states that neither the FLSA nor the final rule relieves employers from their contractual obligations under collective bargaining agreements.
    - The "highly compensated" test in the final rule applies only to employees who earn at least $100,000 per year *and* who "customarily and regularly" perform exempt duties.
    - The final rule deletes the special rules for exemption applicable to "sole charge" executives, strengthening protections for workers under the executive duties test.
    - The final rule adds the requirement that employees who own at least a *bona fide* 20 percent equity interest in a business are exempt *only* if they are "actively engaged in its management."
    - The final rule maintains the previous requirement that exempt administrative employees must exercise discretion and independent judgment.
    - Final section 541.301(e)(2) states that licensed practical nurses and other similar health care employees are entitled to overtime. The final rule retains previous law regarding the overtime rights of registered nurses.
    - The final rule clarifies the Department's intent not to change the educational requirements for the professional exemption, and defines "work requiring advanced knowledge" as "work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment."
- The final rule retains terms used in the previous regulations, but makes them easier to understand and apply to the 21st Century workplace by better reflecting existing federal case law. In addition, the overall length of the regulations has been reduced from 31,000 words to just 15,000.

Minimum Salary Level for Exemption		
Current Regulation	**Proposed Regulation**	**Final Regulation**
$155 per week $8,060 annual	**$425 per week $22,100 annual**	**$455 per week $23,660 annual**

Concerns Raised in Public Comments:	**Change in the Final Regulation:**
1. The $22,100 annual ($425/week) minimum salary level for exemption is too low.	➔ The final rule requires a minimum salary level of $23,660 ($455/week) – a $300/week increase over the current minimum of $8,060 ($155/week).
2. Middle-income workers will be harmed because workers earning more than $65,000 per year might not be entitled to overtime pay.	➔ To be considered exempt from overtime, "highly compensated" employees in the final rule must earn at least $100,000 per year, *and* "customarily and regularly" perform exempt duties.

perform exempt duties.

3. Too many workers would be denied overtime protections.

➔ The new highly compensated test for employees who earn $100,000 per year *and* perform exempt duties *could* affect up to 107,000 higher-income workers. However, 6.7 million workers earning less than $23,660 will have their overtime protections guaranteed. For workers in the middle, the final rule is more protective, or at least as protective, of their overtime rights than the old rule.

4. "Blue collar" workers will lose their right to overtime.

➔ New § 541.3(a) clearly states that "blue collar" workers are entitled to overtime pay.

5. Police, fire fighters, paramedics, emergency medical technicians (EMTs) and other first responders will lose their right to overtime.

➔ New § 541.3(b) states that first responders such as police, fire fighters, paramedics and EMTs are entitled to overtime pay.

6. Nurses will lose their right to overtime.

➔ The final § 541.301(e)(2) states that licensed practical nurses and other similar health care employees do not qualify as exempt professionals. The final rule retains the previous law regarding registered nurses.

7. Veterans will lose their right to overtime.

➔ The reference to "training in the armed forces" has been removed from final § 541.301(d) to clarify that veteran status does not affect overtime pay.

8. Technicians, cooks and other skilled employees who do not have four-year college degrees will lose their right to overtime.

➔ The final rule clarifies that there is no change to the educational requirements for the professional exemption. These workers will keep their existing overtime protections.

9. Every worker who holds a "position of responsibility" or has a "high level of skill or training" will lose their right to overtime.

➔ The "position of responsibility" and "high level of skill or training" proposed language has been removed from the administrative duties test.

10. Low-level employees who do not have discretion in their jobs will qualify for exemption and lose their right to overtime.

➔ The final rule retains the discretion standards from the previous administrative and professional duties test.

Additional information can be found at: **www.dol.gov/fairpay**