



Legislative Bulletin.....June 18, 2003

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**H.R. 1528—Taxpayer Protection and IRS Accountability Act of 2003
(Portman)**

Order of Business: The bill is scheduled for consideration on Thursday, June 18th, under a modified closed rule. Under the rule, an amendment in nature of a substitute (including the Thomas amendment below) will be considered adopted. An amendment by Representative Rangel or his designee is also made in order.

Summary: H.R. 1528 makes a variety of changes to the tax code for the purposes of taxpayer protection and tax simplification. The key provisions of the bill are as follows:

Provisions Related to the IRS and Tax Administration:

- Increases the “safe harbor” threshold for failure to pay estimated tax (where no interest is charged for underpayment) from \$1,000 to \$1,600.
- Allows taxpayers to exclude overpayment interest paid to them for overpayments of federal income tax from gross income (does not apply if the Secretary of the Treasury determines that the taxpayer overpaid taxes to take advantage of the exclusion).
- Expands the circumstances under which the Secretary would not collect interest on underpayment of taxes, including in instances where a taxpayer made an underpayment as the result of erroneous advice from the IRS.
- Permits the IRS to waive penalties for first-time unintentional minor errors made by a taxpayer if the penalty is disproportionate to the action and the taxpayer has a history of tax compliance.
- Increases the IRS penalty for filing a frivolous tax return from \$500 to \$5,000 and expands the application of the penalty from only income tax returns to any federal tax return.
- Clarifies that the IRS is allowed to enter into partial payment installment agreements with taxpayers (the IRS did so administratively prior to 1998).
- Extends the time limit for contesting a levy from 9 months to 2 years.
- Adds to the prohibited activities for which the IRS Commissioner may discipline employees (including termination of employment) willful unauthorized inspection of

taxpayer returns and return information. Removes from the list late filing of refund returns and employee versus employee acts.

- Extends the deadline for filing tax returns electronically from April 15 to April 30 (this provision sunsets in five years).
- Allows joint ventures whose only members are a husband and wife filing a joint return to choose not to be treated as a partnership.
- Clarifies that IRS employees are not authorized to examine the tax returns or information of a taxpayer's representative when conducting an examination of the taxpayer.
- Prohibits the disclosure of a taxpayer's address and identification number as part of publicly available summaries of accepted offers in compromise.
- Requires annual on-site reviews of contractors or others receiving federal returns and return information to assess the security of the information to ensure confidentiality.
- Allows the IRS to use any means of mass communication (including the Internet) to notify taxpayers of an undelivered refund.
- Permits the National Taxpayer Advocate to limit the circumstances under which confidential taxpayer communications would have to be reported to the IRS or Department of Justice.
- Clarifies that the IRS can provide educational materials and information to churches without violating church tax inquiry procedures.
- Allows the Financial Management Service (FMS) to be paid the fees for administering the continuous levy program (required to be paid by IRS) by retaining levied taxpayer funds rather than IRS paying FMS from appropriations.
- Extends IRS user fees from September 30, 2003 to September 30, 2013.
- Increases authorized funding for low-income taxpayer clinics from \$6 million to \$9 million in FY04, \$12 million in FY05, and \$15 million in FY06 and subsequent years.

NOTE: These provisions were contained in other pieces of legislation considered by the House during the last Congress, including in H.R. 3991 (which also included changes to Section 527 Organization) which failed under suspension by a vote of 205-219-1 (failing because of the changes to Section 527 organizations): <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=85>

The provisions were also contained in an amendment to the Senate amendment to the bill H.R. 586. This amendment also included a repeal of the sunset provision of the 2001 tax cut. The amendment was adopted by the House by a vote of 229-198: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=103>

Provision Related to Health Insurance Tax Credit under Trade Adjustment Assistance Program:

- Allows state-based coverage to meet the definition of qualified health insurance eligible for the refundable health insurance tax credit if the eligible taxpayer (trade adjustment assistance recipient) chooses to waive the requirements the state-based coverage would otherwise have to meet with respect to guaranteed issue, premiums, preexisting conditions, and similar benefits (this provision sunsets on January 1, 2006).

The Trade Promotion Authority Bill (P.L. 107-210) created a new refundable and advanceable tax credit for 65% of health insurance premiums for eligible TAA recipients, alternative TAA recipients, and PBGC beneficiaries for the purchase of insurance through COBRA continuation coverage, high-risk pools, state employee plans, or through other means. However, the law requires that state-based coverage meet the following criteria:

`(i) GUARANTEED ISSUE- Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

`(ii) NO IMPOSITION OF PREEXISTING CONDITION EXCLUSION- No pre-existing condition limitations are imposed with respect to any qualifying individual.

`(iii) NONDISCRIMINATORY PREMIUM- The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

`(iv) SAME BENEFITS- Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

Other Provisions:

- Suspends the tax-exempt status of any organization under section 501(a) (tax on corporations and certain trusts) during the period the organization is identified by federal authorities as a terrorist organization or supporter of terrorism.

Committee Action: The bill was referred to the Committee on Ways and Means on April 1st. The Committee considered the bill on April 3rd and reported it (amended) by voice vote.

Cost to Taxpayers: The Congressional Budget Office and the Joint Committee on Taxation estimate that H.R. 1528 would increase receipts by \$651 million over the 2003-2008 period and would decrease government receipts by \$308 million over the 2003-2013 period. CBO further estimates the bill would increase direct spending by \$171 million over the 2004-2013 period.

Amendments:

Thomas #2 (considered adopted under the rule):

- Changes the sunset date from 2007 to 2005 for the provision allowing electronic returns to be filed by April 30th.
- Changes the provisions with respect to state-based health coverage being eligible for the TAA refundable health insurance tax credit by only allowing states without approved plans to qualify, allowing only the provisions related to guaranteed issue and preexisting conditions to be waived, and moving the sunset date to December 31, 2004.
- Extends the joint review of strategic plans and budget at the IRS from 2004 to 2009.

Rangel #3: Includes many of the non-controversial taxpayer protection provisions of H.R. 1528, but removes the refundable health insurance tax credit waiver. Adds new language related to corporate tax shelters, including prohibiting corporation expatriation, and adds the Senate-passed language accelerating the refundability in the child tax credit and providing military tax relief.

Does the Bill Create New Federal Programs or Rules?: The bill makes a variety of changes to the tax code, as described above. It does not create any new federal programs.

Constitutional Authority: The Ways and Means Committee, in House Report 108-61, cites Article I, Section 8 (power to lay and collect taxes) and the 16th Amendment (power to tax incomes).

Staff Contact: Lisa Bos, lisa.bos@mail.house.gov, (202) 226-1630

H.R. 8—Death Tax Repeal Permanency Act of 2003 (Dunn)

Order of Business: The bill is scheduled to be considered on Wednesday, June 18th, subject to a modified closed rule (i.e. only one Democrat amendment in the nature of a substitute may be offered).

The House passed substantively identical legislation (H.R. 2143) on June 6, 2002, by a vote of 256-171: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=219>

On September 19, 2002, the House passed a resolution (H.Res. 524) expressing the sense of the House that Congress should complete action on H.R. 2143. The vote on H.Res. 524 was 242-158: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=401>. The Senate never considered H.R. 2143.

Summary: H.R. 8 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 (but fully reinstated in 2011). The bill would also make permanent the other provisions of Title V of the 2001 Bush Tax Cut (Public Law 107-16), including replacing the *state* estate tax credit with a state estate tax deduction and the extension of time for paying the estate tax.

Current law for phasing out and eliminating the estate, gift, and generation-skipping transfer 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
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		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	Estate tax repealed	Top Individual Rate (for gift tax)
2011 and after	Estate and gift taxes fully reinstated to pre-2002 levels	Estate and gift taxes fully reinstated to pre-2002 levels

- 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. 8 is not signed into law, these taxes would return to pre-phase-out levels literally overnight on New Year’s Day, 2011. In other words, if H.R. 8 is not enacted, the bolded box in current law above would be effective. If H.R. 8 is enacted, the bolded box would not be effective, and the provisions for 2010 would remain indefinitely.

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 and all the tax-cut provisions in it expire at the end of 2010.

For talking points on eliminating the death tax, prepared during last year’s consideration of this legislation, go to this weblink: <http://www.house.gov/burton/RSC/Message6502.PDF>

Democrat Amendment Made in Order under the Rule (H.Res. 281): The Pomeroy 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 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, 2004, yet permanently freeze existing estate tax rates (topped at 49%). Further, the substitute would eliminate (with a few exceptions) the ability to claim valuation discounts by holding property through partnerships.

Committee Action: H.R. 8 was referred to the Ways & Means Committee on June 12, 2003, but was not considered by the Committee.

Administration Position: Though no Statement of Administration Policy (SAP) is available for H.R. 8, last year for H.R. 2143 (substantively identical legislation) the Administration submitted a SAP to Congress that began as follows:

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.

To read the complete SAP, visit this website:

<http://www.whitehouse.gov/omb/legislative/sap/107-2/HR2143-h.html>

Cost to Taxpayers: The Joint Committee on Taxation (JCT), in a special estimate conducted for the office of Rep. Jennifer Dunn (the bill sponsor), estimates that H.R. 8 would yield the following **savings** to taxpayers:

- \$0.1 billion in FY2003
- \$3.7 billion over the FY2003-FY2007 period
- \$161.8 billion over the FY2003-FY2013 period

JCT estimates that making the repeal permanent would cause some taxpayers to alter their estate planning and gift giving plans *before* the actual repeal.

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, 2010.

Constitutional Authority: Though a committee report citing constitutional authority is 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,....”

RSC Staff Contact: Paul Teller, paul.teller@mail.house.gov, (202) 226-9718
