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Republican Study Committee

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Legislative Bulletin……………………………………..………March 19, 2009

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--***Two Wrongs Don't Make a Right.*** Most conservatives remain oppose to the massive taxpayer "bailouts" of private organizations. Without the bailouts, the taxpayers would never have been put in the position of their dollars being doled out for executive bonuses. But since the bonuses have been distributed, the solution is not to compound the problem with more inappropriate actions by the federal government.

--***Retroactive.*** The legislation is applied to retroactively to December 31, 2008. Many conservatives have historically opposed tax changes that increase liability for individuals that are applied retroactively. In fact, upon taking over Congress, one of the first things the 1995 Republican majority did was amend House rules to prohibit consideration of retroactive tax increases (Clause 5 of Rule XXI).

--***Bill of Attainder.*** The bill, while not mentioning AIG by name, is clearly meant to punish AIG executives who received large bonuses—a specific group of individuals in response to public outrage over the bonuses. Given this motivation, many conservatives may believe that the legislation is a bill of attainder, and thus prohibited by Article I, Section 9, Clause 3 of the Constitution.

--***Confiscatory Tax Rate.*** The legislation creates a tax rate of 90%. The income tax has not had a top marginal tax rate of that level since the Kennedy Administration. Many conservatives may be concerned that this legislation will set a precedent to apply confiscatory tax rates to other individuals in the future.

For more details on these concerns, see below.

H.R. 1586—Additional tax on bonuses received from certain TARP recipients (*Rangel, D-NY*)

Order of Business: The bill is scheduled to be considered on Thursday, March 19, 2009, under a motion to suspend the rules and pass the measure (subject to passage of a rule allowing suspensions on a Thursday).

Summary: The legislation imposes a **90%** tax for bonuses received by an employee of a company that has received Troubled Assets Relief Program (TARP) funds in excess of $5 billion, as well as employees of Fannie Mae and Freddie Mac. The tax would be *retroactive* to December 31, 2008 and apply to income in excess of $250,000 (or $125,000 in the case of a married individual filing separately).

Additional Background: On October 3, 2008, Congress passed H.R. 1424, the Emergency Economic Stabilization Act of 2008, by a vote of 263 to 171. The President subsequently signed the bill into law. This legislation was intended to provide a total of $700 billion of purchasing authority for the Treasury Secretary to purchase trouble assets from financial institutions.

On February 13, 2009, Congress enacted H.R. 1, the so-called "stimulus" bill, with House Republicans unanimously opposed to the legislation. This legislation included the following provision:

> "The prohibition required under clause (i) shall not be construed to prohibit any bonus payment required to be paid pursuant to a written employment contract executed on or before February 11, 2009, as such valid employment contracts are determined by the Secretary or the designee of the Secretary."

This month AIG announced that it would pay out $165 million in bonuses, and the provision noted above in the "stimulus" exempts theses bonuses from the executive compensation standards for TARP recipients established by the "stimulus" bill. Overall, the company has received $170 billion of taxpayer money.

Possible Conservative Concerns: Some conservatives may be concerned about several elements of this tax increase:

- **Retroactive.** The tax would be applied to bonuses paid after December 31, 2008. Many conservatives have historically opposed tax changes that increase liability for individuals that are applied retroactively. In fact, upon taking over Congress, the 1995 Republican Majority amended House rules to prohibit retroactive tax increases from being considered on the floor.

- **Bill of Attainder.** The bill, while not mentioning AIG by name, is clearly meant to punish AIG executives who received high bonuses--a specific group of individuals in response to public outrage over the bonuses. As Roll Call put it:

  > "House and Senate leaders moved at breakneck speed Wednesday to turn outrage over bonuses at American International Group and other bailed-out companies into ***retribution***, with votes beginning today to impose ***punishing*** new tax provisions on the firms."

  The author of the bill, Representative Rangel (D-NY) explains his motivation for the bill by saying that he "*had an obligation to respond to the fears and anger of the people.*"

Given this motivation, many conservatives may believe that this legislation is a "Bill of Attainder"—a legislative action aimed at punishing individuals, explicitly prohibited by the Constitution in Article I, Section 9, Clause 3.

- **Confiscatory Tax Rate.** The legislation creates a tax rate of 90%. The income tax has not had a tax rate at that level since 1963. Even before the 1981 tax cut under President Reagan, the top tax rate was 70%. Some conservatives may be concerned that this legislation establishes the precedent that the tax code can be used to impose confiscatory tax rates on other individuals.

- **Two Wrongs Don't Make a Right.** Most conservatives remain opposed to the massive taxpayer "bailouts" of private organizations. Without the bailouts, the taxpayers would never have been put in the position of their dollars being doled out for executive bonuses. But since the bonuses have been distributed, the solution is not to compound the problem with more inappropriate actions by the federal government. Two wrongs don't make a right.

Committee Action: H.R. 1586 was introduced on March 18, 2009, and referred to the Ways and Means Committee, which took no formal action.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill retroactively establishes a 90% tax rate for bonuses paid to some individuals.

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

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: A Committee Report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. Since the bill is being considered under suspension of the rules an earmark statement is not technically required.

Constitutional Authority: No committee report citing constitutional authority is available. However, many conservatives may believe that the legislation is a bill of attainder, and thus prohibited by Article I, Section 9, Clause 3 of the Constitution.

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