

**Legislative Bulletin.....December 3, 2009**

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**Key Conservative Concerns**

*Take-Away Points*

- Reinstates Death Tax in 2010:** Under current law, the death tax is set to be repealed in 2010, and then to be reinstated (along with many other tax provisions from the 2001 and 2003 tax cuts) at 2001 levels (55% rate) in 2011 and thereafter. Most conservatives believe that the inconsistency in current law should be resolved by permanently repealing the death tax. By contrast, the policy of this legislation is to resolve the inconsistency by keeping the death tax at a very high rate (45%). And should death tax repeal occur in 2010, it will be politically harder to reinstate it (particularly at a 55% or 45% rate) in 2011 or thereafter.
- No Indexation for Inflation:** Per the legislation, the \$3.5 million exemption would NOT be indexed for inflation, which means that it will gradually hit more and more families and businesses (similar to the Alternative Minimum Tax in this respect).
- Confiscatory Tax Rate:** Many conservatives who believe that the ultimate goal is to completely eliminate the death tax are willing to accept a compromise in the interim. But such proposals have not involved a tax rate as high as 45%, which substantially exceeds the 15% top capital gains tax rate, as well as the 35% top income tax rate.
- Outside Groups Urging a “No” Vote:** National Taxpayers Union (NTU), Americans for Prosperity (AFP), Citizens Against Government Waste (CAGW), Freedomworks, American Family Business Institute, Family Research Council (FRC), the American Conservative Union (ACU), the National Association of Manufacturers, the 60 Plus Association, Concerned Women for America (CWFA), Club for Growth, plus others in opposition to certain aspects of the bill (Americans for Tax Reform, National Federation of Independent Business, and the Farm Bureau).

*For more details on these concerns, see below.*

## **H.R. 4154 — Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009 (*Pomeroy, D-ND*)**

**Order of Business:** The bill is likely to be considered on Thursday, December 3, 2009 under a rule that is unavailable at press time. It is likely that the rule will be closed and automatically engross statutory “PAYGO” (H.R. 2920) into H.R. 4154.

**Summary:** H.R. 4154 would generally make permanent the death tax at 2009 levels. Specifically, the legislation would:

- Prevent the death tax from being repealed in 2010.
- Instead, keep the death tax at 2009 levels in 2010: a 45% maximum tax rate, with a \$3.5 million exemption.
- Keep the death tax at 2009 levels in each year after 2010—the death tax would have a \$3.5 million exemption and a 45% top marginal tax rate in each succeeding year from 2011 onward.

**Note:** The \$3.5 million death tax exemption would NOT be indexed for inflation, which means that it would gradually hit more and more families and businesses, with an impact similar in this respect to the Alternative Minimum Tax (AMT). Democrat Representatives such as Moore (KS), Capunao (MA), McDermott (WA), and Lowey (NY) have previously introduced bills that, while proposing to keep the death tax, would have indexed the exemption for inflation.

**Additional Information:** Prior to 2001, the top death tax rate was 55%. In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), which gradually reduced the top death tax rate, as well as gradually increased the value of the exemption from the tax. In 2009, the death tax has a top rate of 45% and an exemption of \$3.5 million. In 2010, the death tax is scheduled to be repealed. In 2011 (as with most of the 2001 and 2003 tax cuts), the death tax goes back into effect on the same terms as before the EGTRRA: a top tax rate of 55%, and \$1 million exemption for the death tax and gift tax combined.

According to [CRS](#), revenues resulting from the death tax have made up less than 1.5% of federal receipts in each of the last ten years.

**Conservative Concerns:** Most conservatives believe that the death tax should be repealed. Many conservatives oppose this legislation because it proposes a policy that keeps the death tax in place, and at a very high rate (45%). The following are some of the objections to the death tax itself:

**Fairness.** The death tax is triggered by an individual’s death. Many conservatives would therefore argue that the tax is unfair and immoral.

**Harms Saving and Investment.** A study by former CBO Director Douglas Holtz-Eakin [shows](#) that eliminating the death tax would allow small business investment to rise about 3% annually, adding some *1.5 million* jobs to the economy.

Double Taxation. The death tax is a form of double taxation since it taxes money that has already been subject to, for example, the income tax.

Incentivizes Less Productive Economic Activities. The tax is sometimes avoided by the super-rich via creative tax shelters that involve less economically productive activities.

Confiscatory Rate. Most conservatives would argue that the death tax rate, whether at 55% or 45%, is far too high.

Conservatives who object to the death tax may have the following concerns with this legislation in particular:

Reinstates the Death Tax in 2010. Under current law the death tax is repealed in 2010. If the unpopular death tax is repealed in 2010, it will be politically harder to allow it to go back into effect in 2011 and thereafter (especially at a rate as high as 55% or 45%). The intent of this legislation is therefore to preserve as much as the death tax as is politically feasible given the deep unpopularity of the tax.

45% Tax Rate Is Far Too High. Many conservatives who believe that the ultimate goal is to completely eliminate the death tax are willing to accept a compromise in the interim. But such proposals have not involved a tax rate as high as 45%, which substantially exceeds the 15% top capital gains tax rate, as well as the 35% top income tax rate.

No Indexation for Inflation. Under H.R. 4154, the \$3.5 million exemption would NOT be indexed for inflation, which means that it will gradually hit more and more families and businesses, with an impact similar to the Alternative Minimum Tax (AMT). Democrat Representatives such as Moore (KS), Capuano (MA), McDermott (WA), and Lowey (NY) have previously introduced bills that, while proposing to keep the death tax, would have indexed the exemption to inflation.

Cost to Taxpayers: No CBO score is available. However, reportedly, the bill will lower revenues (compared to the CBO baseline) by \$234 billion over ten years. However, compared to a baseline that assumes extension of all of the 2001 and 2003 tax cuts, the legislation raises taxes by **\$264 billion** over ten years.

## ***Democrat Inconsistency Alert!***

**Statutory PAYGO and the Death Tax:** Republicans have maintained that allowing existing tax cuts to expire is a tax increase. The Democrat majority, on the other hand, has consistently taken the opposite view, arguing that budget projections should assume the expiration of tax cuts (beyond the date scheduled to lapse under current law). This means that they have argued that simply maintaining existing tax cuts should require offsets. By this accounting, the legislation will increase the deficit by \$234 billion over ten years without any offsets.

Democrats will reportedly, per the forthcoming rule, attach statutory “PAYGO” (H.R. 2920) to this legislation. This is the second time in two weeks that House Democrats have attached statutory “PAYGO” to a bill that (again, by their own accounting) increases the deficit by more than \$200 billion.

In two weeks, statutory “PAYGO,” which proponents claim will prevent deficit spending, has been used to increase the deficit by a total of **\$443 billion** over ten years.

**Committee Action:** H.R. 4154 was introduced on November 19, 2009, and referred to the House Ways and Means Committee, which took no public action.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Compared to a baseline that assumes that the death tax will come back to pre-2001 levels in 2011 and thereafter: *no*. Compared to a baseline that assumes that death tax repeal would be extended after 2010: *yes*.

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

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No committee report is available, but the legislation does not appear to contain any earmarks.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable.

**Outside Groups:** The following organizations are urging no votes on the legislation:

National Taxpayers Union (NTU)  
Americans for Prosperity (AFP)  
Citizens Against Government Waste (CAGW)  
Freedomworks  
American Family Business Institute  
Family Research Council (FRC)  
The American Conservative Union (ACU)  
The National Association of Manufacturers  
The 60 Plus Association

Concerned Women for America (CWFA)  
Club for Growth

Plus others in opposition to certain aspects of the bill include: Americans for Tax Reform, National Federation of Independent Business, and the Farm Bureau.

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