

# CRS Report for Congress

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## Estate Tax: Legislative Activity in 2002

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### Summary

The provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16) are scheduled to sunset on December 31, 2010. On April 18, 2002, the House passed legislation, H.R. 586, that would remove the sunset provision and thereby make permanent all other provisions of the tax cut law enacted in June 2001. This includes making permanent the repeal of the estate tax. On June 6, the House passed a free-standing estate tax repeal bill. H.R. 2143 would remove the sunset provision of EGTRRA solely with respect to the estate tax provisions of the 2001 Act. The House defeated a substitute amendment offered by Representative Pomeroy that would have retained the estate tax but increased the estate tax exclusion to \$3 million per decedent effective January 1, 2003. The Senate was unlikely to consider a bill to make the entire tax cut package permanent. Instead, the Senate agreed to take up the estate tax alone through H.R. 8 under a unanimous consent agreement, before June 28, 2002. The Senate began consideration of the estate tax on June 11. In addition to an amendment to permanently repeal the estate tax, amendments to alter but retain the estate tax were expected to be introduced in the Senate. This report will be updated as legislative events warrant.

### Background

The estate tax and generation-skipping transfer (GST) tax are scheduled to be repealed effective January 1, 2010, under Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16). However, under Title IX of the Act, the estate tax repeal, and all other provisions of EGTRRA, are scheduled to sunset as of December 31, 2010. In 2011 tax law would return to the law that was in place prior to the enactment of EGTRRA on June 7, 2001. The exclusion amount under the estate tax would be \$1 million per decedent.

For those concerned with permanently repealing the estate tax, attention is now focused on removing the sunset provision of EGTRRA with respect to the estate tax provisions of the Act. The estate tax would then be eliminated from 2010 onward. Other changes made by Title V of EGTRRA would also continue (such as replacing the step-up in basis with a modified carryover basis for assets transferred at death and retaining the

gift tax even when the estate tax is repealed). Alternative proposals that may be introduced might retain the estate tax, but make some changes, such as making special provisions for qualified family-owned business interests or accelerating an increase in the exemption amount for all estates.

The revenue cost of permanently repealing the estate and generation-skipping transfer tax has been estimated at \$55.8 billion for FY2012. This is in comparison to permitting EGTRRA to sunset and reinstating the law prior to EGTRRA.<sup>1</sup>

## **Actions and Announcements to Date**

On April 18, 2002, the House passed H.R. 586, part of which would make permanent all of the tax provisions of the \$1.35 billion tax cut law enacted in June 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16). H.R. 586 would eliminate Title IX of EGTRRA which sunsets all other parts of the Act as of December 31, 2010.<sup>2</sup> Among its many effects, removing the sunset provision would make permanent the repeal of the estate tax, scheduled under EGTRRA to take effect in 2010.

On April 16, Senate Majority Leader Thomas Daschle indicated that he would not bring up for Senate floor consideration legislation to extend the entire EGTRRA tax cut package. Instead, on April 23, in order to prevent the estate tax issue from delaying the energy policy bill, S. 517, Senator Daschle agreed to schedule Senate consideration of a free-standing estate tax repeal bill. Consideration is to begin sometime before June 28, 2002, under a unanimous-consent time agreement (described below).

In response, on May 14, House Majority Leader Richard Armey announced that the House might consider its own free-standing bill to permanently repeal the estate tax before the Senate considers the estate tax. On June 6, the House passed H.R. 2143, the Permanent Death Tax Repeal Act of 2001. H.R. 2143 would remove the sunset provision with respect to the estate tax provisions of EGTRRA, thereby making repeal of the estate tax permanent. The House defeated a substitute amendment offered by Representative Pomeroy that would have retained the estate tax but increased the estate tax exclusion to \$3 million per decedent effective January 1, 2003.

On June 11, the Senate began its consideration of the estate tax by taking up H.R. 8.

## **H.R. 2143 and Substitute Amendment**

H.R. 2143, the Permanent Death Tax Repeal Act of 2001, was introduced by Representative Dave Weldon on June 12, 2001, soon after the enactment of EGTRRA on June 7, 2001. As introduced, the bill would simply remove the sunset provision with

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<sup>1</sup> U.S. Congress, Joint Committee on Taxation, Estimated Revenue Effects of H.R. 2143, "Permanent Death Tax Repeal Act of 2001," JCX-51-02, 107<sup>th</sup> Cong., 2d Sess., June 4, 2002.

<sup>2</sup> In addition to extending the provisions of EGTRRA, P.L. 107-16, H.R. 586 contains provisions to improve taxpayer protection and Internal Revenue Service accountability. H.R. 586 passed the House on April 18, 2002, by a vote of 229 to 198.

respect to Title V of EGTRRA, which contains the estate, gift, and generation-skipping transfer tax provisions. The House passed H.R. 2143 June 6, 2002 by a vote of 256-171.

Representative Pomeroy offered an amendment in the nature of a substitute to H.R. 2143 for the Democrats. The amendment was defeated by a vote of 197-231. The amendment would retain the estate tax but increase the estate tax exclusion to \$3 million per decedent effective January 1, 2003, to remain at that level.<sup>3</sup> Section 2057, the special provision for qualified family-owned business interests, would be terminated at the end of 2002, one year earlier than under EGTRRA. The maximum estate tax rate would remain at 50% (where it is in 2002 under EGTRRA, compared with 55% under prior law). But the 5% surtax would be reinstated to phase out the advantage of the graduated rates and, in addition, the unified credit, for a range of estate values over \$10 million.

The substitute amendment would repeal the modified carryover basis rules that EGTRRA implements in 2010 and would instead continue the step-up in basis rules under current law. (The step-up in basis rule eliminates capital gains tax liability for heirs on all increase in asset values before the decedent's death. EGTRRA's modified carryover basis limits the permitted step-up in the basis of assets transferred at death to \$1.5 million per decedent, plus \$3 million for assets transferred to a surviving spouse.)

## **The Senate's Unanimous Consent Agreement**

The Senate began consideration of the estate tax issue on June 11. On April 23, 2002, the Senate reached a unanimous consent agreement under which it was to take up H.R. 8 by June 28, 2002.<sup>4</sup> Under the agreement, when the bill reaches the floor, only four amendments to the bill will be in order, all of which must pertain to the estate tax. Senator Daschle or his designee may offer one amendment to the bill (which must be the first amendment offered) and two second-degree amendments to that amendment, after which Senator Gramm may offer one amendment to the bill. For each amendment, there will be a motion (requiring 60 yeas) to waive the Budget Act. If the Budget Act is waived for a particular amendment, it will then be debated for two hours equally divided. If any of the amendments is adopted, the Senate will proceed to vote on final passage of the bill. If none of the amendments receives the 60 yeas needed to waive the Budget Act, the bill will be returned to the calendar and further consideration would occur on H.R. 8 only if it were later again called up for consideration.

## **Estate Tax Amendments Previously Offered in the Senate**

An amendment to remove the sunset on the repeal of the estate tax was proposed by Senator Jeff Sessions for Senator Jon Kyl on February 5, 2002. The amendment was

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<sup>3</sup> Under EGTRRA, the estate tax exclusion is scheduled to rise from \$1 million in 2002 and 2003, to \$1.5 million in 2004 and 2005, \$2 million in 2007 and 2008 and \$3 million in 2009, before the tax is repealed in 2010.

<sup>4</sup> H.R. 8, the Death Tax Elimination Act of 2001, was passed by the House on April 4, 2001. Many of the provisions of H.R. 8 were included in Title V of EGTRRA, P.L. 107-16. H.R. 8 would have repealed the gift tax as well as the estate and generation-skipping transfer taxes. For more information, see CRS Report RL30912, *H.R. 8: The Death Tax Elimination Act of 2001*, by Nonna A. Noto.

considered by the Senate on February 6 but not voted upon. S.Amdt. 2807 was an amendment to S.Amdt. 2721 to H.R. 622, the economic stimulus bill.

On February 13, 2002, the Senate agreed, by a vote of 56 yeas to 42 nays, to an amendment expressing "...the sense of the Senate that the repeal of the estate tax should be made permanent by eliminating the sunset provision's applicability to the estate tax." (Sixty votes would be needed for any amendment to be considered under the unanimous consent agreement in the Senate, described above.) S.Amdt. 2850 was introduced by Senators Jon Kyl and Don Nickles as an amendment to S.Amdt. 2850 to S. 1731, the Senate's farm aid bill.<sup>5</sup>

The specific amendments to be offered to H.R. 8 under the unanimous consent agreement in the Senate have not yet been released. However, the amendments regarding the estate tax that were introduced, but not voted upon, in April 2002 in relation to S. 517, the energy policy bill, may offer an indication of the types of amendments likely to be offered to H.R. 8.<sup>6</sup>

On the Republican side, Senator Phil Gramm introduced an amendment to make the repeal of the estate (death) tax permanent.<sup>7</sup> Senator Gramm's amendment would have removed the sunset provision of EGTRRA with respect to estate, gift, and generation-skipping transfer taxes only.

On the Democratic side, Senator Byron Dorgan introduced a proposal for an "estate tax with full tax deduction for family-owned business interests."<sup>8</sup> Senator Dorgan's proposal would have amended several provisions in Title V of EGTRRA, the title which deals with estate, gift, and generation-skipping transfer taxes. It left the sunset provision of EGTRRA in place for provisions other than Title V.

Notably, effective in 2003, the Dorgan proposal would eliminate the dollar limits on the special deduction for qualified family-owned business interests (Section 2057 of the Internal Revenue Code) and make the deduction permanent. Currently the maximum amount of the deduction for qualified family-owned business interests, in combination with the applicable exclusion amount available to all estates, is \$1.3 million. Under EGTRRA, section 2057 is scheduled to be repealed in 2004 when the applicable exclusion amount for all estates rises to \$1.5 million. Thus, under EGTRRA, there would no longer be preferential estate tax treatment for family-owned businesses compared with

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<sup>5</sup> S. 1731 was the Agriculture, Conservation, and Rural Enhancement Act of 2001. Further action on S. 1731 occurred as H.R. 2646, which became P.L. 107-171. The estate tax reference was not included in the final Act.

<sup>6</sup> S. 517 was a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006. S. 517 was later incorporated in H.R. 4 as an amendment.

<sup>7</sup> S.Amdt. 3144 (Gramm) to S. 517.

<sup>8</sup> Senator Dorgan's proposal was introduced as three separate amendments to S. 517, all with the same language but designed for use in different parliamentary settings: S.Amdt. 3293, S.Amdt. 3303, and S.Amdt. 3304.

other assets after 2003. In direct contrast, the Dorgan proposal would restore preferential treatment for family-owned businesses and make it unlimited.

The Dorgan proposal would retain the estate and generation-skipping transfer taxes after 2009. It would keep the step-up in basis rule for determining the basis for assets transferred at death, and not introduce the modified carryover basis in 2010. It would let the maximum rate of tax fall to 45% as scheduled under EGTRRA, but remain there from 2007 on, with no repeal in 2010. It would eliminate the further reduction of the maximum gift tax rate from 45% to 35% in 2010. It would increase the applicable exclusion amount (the estate tax exemption) scheduled for 2009 from \$3.5 million to \$4 million per decedent, and set it to remain there from 2009 on.<sup>9</sup>

There could also be a Democratic amendment to H.R. 8 to retain the estate tax but accelerate the increase in the exemption amount scheduled under EGTRRA.

### **For Additional Information**

CRS Electronic Briefing Book, *Taxation*, “Federal Estate and Gift Tax,” available at [<http://www.congress.gov/bfbk/html/ebt35.html>].

CRS Report RL31061, *Estate and Gift Tax Law: Changes Under the Economic Growth and Tax Relief Reconciliation Act of 2001*, by Nonna A. Noto.

CRS Report RL30600, *Estate and Gift Taxes: Economic Issues*, by Jane G. Gravelle and Steven Maguire.

CRS Report 95-416, *Federal Estate, Gift, and Generation-Skipping Taxes: A Description of Current Law*, by John R. Luckey, Legislative Attorney.

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<sup>9</sup> The exemption would remain per decedent. Unlike some proposals offered in previous years, the Dorgan amendment did not provide that any of the personal estate tax exemption amount not used by the first spouse to die could later be applied to the estate of the surviving spouse. That alternative would mean the exemption per couple would be \$8 million even without estate tax planning. The current unlimited marital deduction, that is, the ability to transfer assets to a surviving spouse free from estate tax, would remain in effect.