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Revenue Reconciliation Directives in the FY2004 Budget Resolution

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Summary

On April 11, 2003, the House and Senate reached agreement on a budget resolution for FY2004 (H.Con.Res. 95) which recommends that revenues be reduced by $1.225 trillion over the 11-year period covering FY2003-2013. In addition, the budget resolution recommends increases in outlays stemming from related tax policy changes (i.e., refundable tax credits). These recommendations in the aggregate roughly parallel those proposed by President George W. Bush in the FY2004 budget he submitted to Congress on February 3.

The FY2004 budget resolution recommends that a large portion of the revenue reductions (and associated outlay increases), pertaining to an economic growth package, be achieved through the budget reconciliation process. The remaining revenue reductions, amounting to about $691 billion (plus associated outlay increases), may be considered under regular legislative procedures.

The reconciliation process, authorized under Section 310 of the 1974 Congressional Budget Act, is an optional procedure that operates as an adjunct to the budget resolution process. The chief purpose of the reconciliation process is to enhance Congress's ability to change current law in order to bring revenue and mandatory spending levels into conformity with the policies of the budget resolution. While a budget resolution may rest on assumptions regarding changes in revenue and mandatory spending levels, reconciliation may make it more likely that such changes will occur by compelling committees to develop the necessary legislation and providing for its expedited consideration.

The reconciliation directives, set forth in Section 201 of the budget resolution, require the House Ways and Means Committee and the Senate Finance Committee to report reconciliation legislation to their respective chambers by May 8, 2003. Although the level of tax policy changes is the same for each committee (not more than $550 billion over the 11-year period covering FY2003-2013), the two committees have a different mix of directives to reduce revenues and increase outlays related to tax policy changes. The Ways and Means Committee is directed to reduce revenues by not more than $535 billion and to increase outlays by not more than $15 billion; the corresponding amounts for the Finance Committee are not more than $522.524 billion in revenue reductions and not more than $27.476 billion in outlay increases.

In an innovative procedure intended in part to avoid conflicts with the Senate's so-called Byrd rule (Section 313 of the 1974 Congressional Budget Act), the budget resolution also contains a point of order, set forth in Section 202, that prohibits the initial consideration in the Senate of reconciliation legislation proposing revenue reductions and associated outlay increases greater than $350 billion. The prohibition does not apply, however, to the consideration in the Senate of the conference report.

This report will be updated as developments warrant.

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This report discusses the proposed levels of revenue reduction in the President's budget and the congressional budget resolution for FY2004, the features of the budget reconciliation process, the inclusion of revenue reconciliation directives in the FY2004 budget resolution, and selected procedural issues pertaining to the consideration of the resultant reconciliation legislation.

Revenue Proposals in the President's Budget and the Congressional Budget Resolution

On February 3, 2003, President George W. Bush submitted his budget for FY2004 to Congress. The President recommended revenue reductions totaling $1.307 trillion over a 10-year period covering FY2004-2013, including an "Economic Growth Package" amounting to $615 billion in revenue reductions over the period.[1] The President's revenue proposals also included revenue reductions of $30 billion for the current fiscal year, FY2003, yielding total revenue reductions of $1.337 trillion over the 11-year period covering FY2003-2013. The Congressional Budget Office and the Joint Committee on Taxation estimated that the President's proposals would reduce revenues by $1.490 trillion over the 11-year period.[2]

Some of the President's tax policy proposals (e.g., refundable tax credits) also would affect outlays. The President's budget indicates, for example, that his proposed changes in the child care tax credit, part of the Economic Growth Package, would increase outlays by $25 billion for FY2004-2013. The outlay effects associated with tax proposals are not reflected in the revenue figures cited previously. The cost of the President's Economic Growth Package including the outlay effects, as reestimated by the Joint Committee on Taxation, is $725.771 billion over the 11-year period.[3]

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[1] Office of Management and Budget. *Budget of the United States Government, Fiscal Year 2004* (Washington: February 2003), Summary Table S-10 on pages 324-327.

[2] Congressional Budget Office. *An Analysis of the President's Budgetary Proposals for Fiscal Year 2004* (Washington: March 2003), Table 8 on page 41. (The $1.490 trillion figure is derived by adding the FY2003 amount of $35 billion to the FY2004-2013 total of $1.455 trillion.)

[3] Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2004 Budget Proposal*, March 4, 2003 (JCX-15-03).

The Congressional Budget Act of 1974 (P.L. 93-344, as amended) requires that the House and Senate adopt a concurrent resolution on the budget each year. The annual budget resolution sets forth an overall statement of budgetary policy for at least five fiscal years, including specified levels of total revenues, the amount by which revenues should be changed, total budget authority, total outlays, and the resulting surplus or deficit, and the level of the public debt for each fiscal year during the period covered by the resolution.

On April 11, 2003, the House and Senate reached agreement on a budget resolution for FY2004 (H.Con.Res. 95).[4] The budget resolution recommends that revenues be reduced by $1.225 trillion over the 11-year period covering FY2003-2013.[5] The level of revenue reduction over 11 years assumed in the conference agreement is much closer to the position initially passed by the House ($1.350 trillion) than the position initially passed by the Senate ($801 billion).[6] As with the President's proposals, the outlay effects of related tax policy proposals in the budget resolution are not reflected in these figures.

Budget Reconciliation Procedures

The *budget reconciliation process*, authorized under Section 310 of the 1974 Congressional Budget Act, is an optional procedure that operates as an adjunct to the budget resolution process. The chief purpose of the reconciliation process is to enhance Congress's ability to change current law in order to bring revenue and mandatory spending levels into conformity with the policies of the budget resolution.[7] While a budget resolution may rest on assumptions regarding changes in revenue and mandatory spending levels, reconciliation may make it more likely that such changes will occur by compelling committees to develop the necessary legislation and providing for its expedited consideration.

Reconciliation is a two-stage process. First, reconciliation directives are included in the budget resolution, instructing the appropriate committees to develop legislation achieving the desired budgetary outcomes. The instructed committees submit their legislative recommendations to their respective Budget Committees by the deadline prescribed in the budget resolution; the Budget Committees incorporate them into an omnibus budget reconciliation bill without making any substantive

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[4] For additional information on House and Senate actions on the budget resolution and reconciliation legislation, see CRS Report RL31754, *Congressional Budget Actions in 2003*, by Bill Heniff Jr.

[5] See H.Rept. 108-71 (April 10, 2003), *Concurrent Resolution on the Budget for Fiscal Year 2004*, conference report to accompany H.Con.Res. 95. The annual amounts of revenue reduction are specified in Section 101(1)(B) of the resolution, on page 3, and the revenue policies of the resolution are discussed in the joint explanatory statement, on pages 69-71.

[6] *Budget Conference for Fiscal Year 2004; Side-by-Side Comparison of House and Senate Resolutions*, April 2, 2003, page 10 (prepared by the majority staffs of the House Budget Committee and the Senate Budget Committee and available online at: [http://www.senate.gov/~budget/republican/analysis/2003/sideBYside.pdf]).

[7] For more detailed information on the reconciliation process, see CRS Report RL30458, *The Budget Reconciliation Process: Timing of Legislative Action*, by Robert Keith.

revisions. In cases where only one committee in a chamber has been instructed, the process allows that committee to report its reconciliation legislation directly to the chamber, thus bypassing the Budget Committee.

The "fungibility rule" (Section 310(c) of the act) allows some flexibility in determining committee compliance when reconciliation directives involving both revenue and spending changes are issued. Within limits, revenue changes may be substituted for spending changes, or vice versa. In sum, the fungibility rule:

- applies to any House or Senate committee that is subject to reconciliation directives in a budget resolution requiring it to recommend reconciliation legislation changing **both** spending and revenues;
- deems any such committee to be in compliance with its reconciliation directives if its recommended legislation does not cause either the spending changes or the revenue changes to exceed or fall below 20% of the sum of the two types of changes, **and** the total amount of changes recommended is not less than the total amount of changes that were directed; and
- authorizes the chairman of the Senate Budget Committee to file appropriate adjustments in the levels in the budget resolution, and committee spending allocations thereunder, upon the exercise of the rule, and requires any committee receiving revised spending allocations to promptly report Section 302(b) suballocations.

Under the fungibility rule, for example, a committee directed through reconciliation to reduce revenues by $75 billion and to increase outlays by $25 billion, for a total of $100 billion in directed changes, could choose instead to reduce revenues by only $55 billion ($75 billion minus $20 billion, or 20% of $100 billion total). The committee would still be considered to be in compliance with its directives as long as it increased the other required change, in this case outlay increases, by the same amount (by $20 billion, to a total of $45 billion) so as to achieve the total amount of savings that were directed ($100 billion).

The second step in the reconciliation process involves consideration of the resultant reconciliation legislation by the House and Senate under expedited procedures. Among other things, debate in the Senate on any reconciliation measure is limited to 20 hours (and 10 hours on a conference report) and amendments must be germane. The 20-hour debate limitation provides a significant advantage to the proponents of the legislation; without this limitation, the measure would be subject to a filibuster, which could require as many as 60 votes to invoke cloture in order to bring consideration of the measure to a close. In the House, the House Rules Committee typically sets limitations on debate and the offering of amendments during consideration of a reconciliation measure.

In the Senate, the so-called Byrd rule (Section 313 of the 1974 act) bars the inclusion of extraneous matter in reconciliation legislation.[8] There are several strict definitions of extraneous matter in the Byrd rule, which generally involve failure to relate to the budgetary purposes of the legislation (e.g., which are non-budgetary in character or have merely incidental budgetary effects). The Byrd rule applies to reconciliation bills and resolutions, amendments and motions thereto, and conference reports thereon. Waivers of the Byrd rule require the affirmative vote of three-fifths of the membership (i.e., 60 Senators, if no seats are vacant).

Once the reconciliation legislation called for in the budget resolution has been approved or vetoed by the President, the process is concluded. If the legislation is vetoed, Congress cannot develop another reconciliation bill without first adopting another budget resolution containing reconciliation instructions.

Revenue Reconciliation Directives in the FY2004 Budget Resolution

The FY2004 budget resolution, H.Con.Res. 95, includes reconciliation directives to the House Ways and Means Committee and the Senate Finance Committee. The directives, set forth in Section 201, require each committee to report reconciliation legislation to its chamber by May 8, 2003. Although the level of tax policy changes is the same for each committee (not more than $550 billion over the 11-year period covering FY2003-2013), the two committees have a different mix of directives to reduce revenues and increase outlays related to tax policy changes, as shown in **Table 1**. (As indicated previously, certain tax policy changes, such as increases in refundable tax credits, may be scored as outlay increases rather than revenue reductions.)

Table 1. Summary of Reconciliation Directives in the FY2004 Budget Resolution

Committee	Reconciliation directives (in $billions)		
	Revenue reductions	Outlay increases	Total changes
Ways & Means	$535.000	$15.000	$550.000
Finance	$522.524	$27.476	$550.000

Section 201 of the budget resolution reads as follows:

> **Sec. 201. Reconciliation for Economic Growth and Tax Simplification and Fairness.**
> (a) In the House.—The House Committee on Ways and Means shall report a reconciliation bill not later than May 8, 2003, that consists of changes in law within its jurisdiction sufficient to reduce revenues by not more than

[8] For more detailed information on this rule, see CRS Report RL30862, *Budget Reconciliation Procedures: The Senate's "Byrd Rule,"* by Robert Keith.

> $535,000,000,000 for the period of fiscal years 2003 through 2013 and increase the total level of outlays by not more than $15,000,000,000 for the period of fiscal years 2003 through 2013.
>
> (b) In the Senate.—The Senate Committee on Finance shall report a reconciliation bill not later than May 8, 2003, that consists of changes in laws within its jurisdiction sufficient to reduce revenues by not more that $522,524,000,000 and increase the total level of outlays by not more than $27,476,000,000 for the period of fiscal years 2003 through 2013.

The conferees indicated that an additional $690.9 billion in "tax relief" could be accommodated under the budget resolution over the 11-year period, but that they chose not to make it subject to reconciliation directives. Consideration in the House and Senate of any legislation providing such additional revenue reduction would occur under regular legislative procedures. The conferees noted:

> The assumed additional tax relief could accommodate the permanent extension of the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [EGTRRA], the tax provisions of energy policy legislation, the revenue impacts of trade legislation, and several miscellaneous tax provisions proposed by the President or Congress.[9]

The Byrd rule influenced the form of the reconciliation directives in the budget resolution. Initially, House and Senate leaders indicated that they would settle on a conference agreement instructing the House Ways and Means Committee to reduce revenues (and increase outlays through related tax policy changes) through reconciliation by $550 billion (or more) for the period covering FY2003-2013 and the Senate Finance Committee to make similar changes of $350 billion for the same period. A majority of Senators had indicated their opposition to revenue reductions (and related outlay changes) greater than $350 billion included in the budget resolution passed by the Senate (S.Con.Res. 23) on March 26, 2003.

Under this approach, the use of dual reconciliation instructions in the budget resolution would enable the Senate leadership to secure passage of the budget resolution while leaving open the possibility that a subsequent conference on the differing versions of the revenue reconciliation measure passed by the two Houses might reach a compromise between these two amounts.

However, it soon became apparent that, if the Senate initially passed a revenue reconciliation measure consistent with the directive in the budget resolution (i.e., reducing revenues and increasing outlays by $350 billion), the later consideration of a conference agreement reflecting a compromise level of revenue reductions (and related outlay increases) greater than $350 billion could violate the Byrd rule. In particular, Section 313(b)(1)(B) defines as extraneous any provision reported by a committee that reduces revenues (or increases outlays) if the net effect of all of the committee's provisions is that it fails to achieve its reconciliation instructions. Proposing revenue reductions greater than the level of reductions set in the reconciliation instructions would be considered a failure to achieve the instructions. Under these circumstances, Senate adoption of a conference report on a

9 See H.Rept. 108-71, op. cit., page 71.

reconciliation measure including more than $350 billion in revenue reductions and related outlay changes would require as many as 60 votes instead of just 51 votes (i.e., the votes of 50 Senators and the Vice President, if breaking a tie).

In order to resolve the problem, the conferees resorted to a novel procedure. While Section 201 of budget resolution instructs both the House Ways and Means Committee and the Senate Finance Committee to reduce revenues (and increase related outlays) by not more than $550 billion over FY2003-2013, Section 202 of the budget resolution sets forth a point of order that bars the initial consideration in the Senate of a reconciliation measure containing revenue reductions (and related outlay increases) in excess of $350 billion for this period. The point of order does not apply, however, to the consideration of a conference report on the reconciliation measure.

Section 202 further provides that the Senate point of order can be waived only by the affirmative vote of three-fifths of the membership (i.e., 60 Senators, if no seats are vacant).

Section 202 of the budget resolution reads as follows:

> **Sec. 202. Limit on Senate Consideration of Reconciliation.**
> (a) Point of Order.—It shall not be in order for the Senate to consider a bill reported pursuant to section 201, or an amendment thereto, which would cause the total revenue reduction to exceed $322,524,000,000 or the total outlay increase to exceed $27,476,000,000 for the period of fiscal years 2003 through 2013, except for the purpose of inserting the text of a Senate-passed measure and requesting a conference with the House of Representatives.
> (b) Waiver.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.
> (c) Appeals.—An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on the point of order raised under this section.

This procedural formulation strengthens the position of those who favor initial Senate passage of a reconciliation measure limited to $350 billion in revenue reductions and related outlay changes, but removes the potential Byrd rule hurdle should a majority of Senators later choose to support a conference agreement providing as much as $550 billion in revenue reductions and related outlay changes.[10]

The unique procedural techniques employed by Sections 201 and 202 of the FY2004 budget resolution sparked some controversy during Senate consideration of the conference report. While some supported these techniques as an integral part of a difficult political compromise on crucial legislation, others derided them as "gimmicks."

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[10] For further discussion of this matter, see: (1) "Concessions to Moderates Imperil Early GOP Tax Cutting Accord," by Andrew Taylor, *CQ Weekly*, April 12, 2003; and (2) "Grassley Promises GOP Moderates Final Tax Cut Will Not Top $350 Billion," by Bud Newman, BNA's *Daily Report for Executives*, Monday, April 14, 2003, page G-7.

Senator Max Baucus, the ranking minority member of the Senate Finance Committee, questioned whether the directive to the committee should be regarded as $350 billion or $550 billion.[11] Further, Senator Charles Grassley, chairman of the Senate Finance Committee, indicated that he had reached agreement with other Senators to adhere to the $350 billion level in the conference on the reconciliation measure, notwithstanding the fact that the limitation in Section 202 of the budget resolution only applies to initial consideration of the measure.[12]

Reconciliation Legislation: Selected Procedural Issues

The House and Senate are moving toward initial consideration of the required reconciliation legislation prior to the Memorial Day recess. On May 6, 2003, the House Ways and Means Committee marked up and ordered reported H.R. 2, the Jobs and Growth Reconciliation Tax Act of 2003. The Senate Finance Committee is scheduled to begin markup of its version of the Jobs and Growth Reconciliation Tax Act of 2003 on May 8.

There are some procedural issues that may have a bearing on the development and consideration in the Senate of reconciliation legislation pursuant to the directives in the FY2004 budget resolution. These issues, which pertain to the operation of the fungibility rule and the application of the Senate's PAYGO rule, are discussed briefly below.

Operation of Fungibility Rule. In the Senate, the existence of both reconciliation directives amounting to $550 billion (in Section 201) and a point of order limitation amounting to $350 billion (in Section 202) raises a question as to the appropriate amount that should be used for making calculations under the fungibility rule. Some have argued that the directives amounting to not more than $550 billion in Section 201 are directives only in a literal or technical sense, and that the $350 billion limitation under the point of order supersedes them and should be regarded as the actual amount of reconciliation directives. At the higher level, the fungibility rule would allow flexibility up to $110 billion, while at the lower level the amount of flexibility would drop to $70 billion.

Preliminary indications suggest that the Senate Parliamentarian would advise the chair that fungibility calculations should be based on the $350 billion level when the reconciliation measure is reported by the Finance Committee, and on the $550 billion level when it is reported by the conference committee. In implementing the rule, however, no substitutions should be made that effectively would reduce a directive below zero.

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[11] See the remarks of Senator Max Baucus in the *Congressional Record* of April 11, 2003, at pages S5296-5298, in which he inserts a letter from Senate Parliamentarian Alan Frumin to Senate Democratic Leader Thomas Daschle regarding the potential application of the Byrd rule to the consideration of reconciliation legislation.

[12] See the remarks of Senator Grassley in the *Congressional Record* of April 11, 2003, at pages S5295-5296.

Application of Senate's PAYGO Rule. For many years, the Senate has supplemented budget enforcement procedures under the Congressional Budget Act of 1974, as amended (and, until recently, the Balanced Budget and Emergency Deficit Control Act of 1985, as amended), with a "pay-as-you-go" (PAYGO) rule.[13] The rule, which was established and has been revised in annual budget resolutions, bars the consideration in the Senate of any revenue or mandatory spending legislation that would increase (or cause) an on-budget deficit in any one of three different intervals covering 10 years (i.e., the first year covered by the budget resolution, the first five fiscal years covered by the budget resolution, and the next five fiscal years thereafter). Any waiver of the rule requires the affirmative vote of three-fifths of the membership.

Although the Senate's PAYGO rule was slated to expire on April 15, 2003, it was extended through September 30, 2008, by Section 505 of the FY2004 budget resolution.[14]

Reconciliation legislation consistent with the directives in the FY2004 budget resolution would cause the on-budget deficits projected over the coming fiscal years to increase significantly. (Including the effects of reconciliation, the FY2004 budget resolution estimates on-budget deficits over 11 years ranging from $302 billion, for FY2013, to $558 billion, for FY2004.[15]) Consequently, without special accommodation, such legislation would be subject to a point of order under the Senate's PAYGO rule.

As included in the FY2004 budget resolution, the Senate's PAYGO rule has been modified in several respects. In particular, Section 505(a)(5)(A) requires that estimates prepared under the rule "use the baseline surplus or deficit used for the most recently adopted concurrent resolution on the budget as adjusted for any changes in revenues or direct spending assumed by such resolution." Inasmuch as reconciliation legislation was assumed in the FY2004 budget resolution, the consideration of any such legislation (that is consistent with the reconciliation directives) would not violate the PAYGO rule. Further, the consideration of legislation providing the remaining $691 billion in "tax relief" assumed in the budget resolution presumably would not be subject to the PAYGO rule either.[16]

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[13] For more information on this topic, see CRS Report RS21316, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.

[14] See H.Rept. 108-71, op. cit., pages 29-30 for the text of the rule and pages 118 and 122-123 for an explanation of its features.

[15] See H.Rept. 108-71, ibid., page 38.

[16] According to the conferees on the budget resolution, a total of $1.691 trillion in revenue reductions and mandatory spending increases over FY2004-2013 may be enacted without violating the Senate's PAYGO rule; see H.Rept. 108-71, ibid., page 123.