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Estate Tax Legislation in the 110th Congress

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Summary

Under provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16), the estate tax exclusion is scheduled to continue to rise, from $2 million for decedents dying in 2008, to $3.5 million in 2009. The estate tax is repealed for decedents dying in 2010 only. The gift tax is to remain in place in 2010. In addition, when the estate tax is repealed, there is scheduled to be a significant change in the method used to determine the "basis" of all capital assets transferred at death — from "step-up in basis" to "modified carryover basis." Whatever basis-valuation rule is in effect for the year of death applies to all capital assets transferred after any person's death, whether or not their estate is large enough to be liable for the estate tax.

The estate tax provisions of EGTRRA are scheduled to sunset at the end of 2010. That explains why the repeal of the estate tax is currently scheduled to last for only one year. If Congress does not change the law beforehand, on January 1, 2011, estate and gift tax law will return to what it would have been had EGTRRA never been enacted. The unified estate and gift tax will be reinstated with a combined exclusion of $1 million. The maximum tax rate will revert (from 45% in 2007-2009) to 55%. These large year-to-year differences in the estate tax law mean that wealthy individuals face a wide and erratic variation in their potential estate tax liability over the next four years, 2008-2011, depending upon the year they might happen to die.

Following EGTRRA, the House passed a bill to permanently repeal the estate tax in each of the past three Congresses, but the Senate did not pass any legislation addressing the estate tax. In addition, in the second session of the 109th Congress, the House passed two bills that would have modified and retained the estate tax.

Thus far in the 110th Congress, seven bills to permanently repeal the estate tax have been introduced in the House and four in the Senate. Seven bills to retain but modify the estate tax have been introduced in the House and one in the Senate. The repeal bills differ on whether or not they would preserve the other changes made by EGTRRA to the taxation of gifts and the basis for inherited assets. The modification bills differ on the level of the exclusion, what year it would take effect, whether or not it would be indexed for inflation, and whether any unused exclusion could be carried over to the estate of the surviving spouse. They also differ on the tax rates, whether special relief would be given to family-owned farms or businesses, and whether the gift tax would be defined separately from or unified with the estate tax.

The U.S. Treasury Department's February 2008 estimates show the annual revenue loss from total repeal of the estate tax rising steadily from $58 billion in FY2012, up to $84 billion in FY2018. Even though estate and gift taxes account for less than 2% of federal revenue, permanent repeal of the estate tax accounts for one quarter of the estimated revenue loss of the Bush Administration's FY2009 budget proposal to make permanent the group of tax cuts enacted in 2001 and 2003, measured over the 10-year forecast period, FY2009-FY2018. This report will be updated when new estate tax bills are introduced and when new revenue loss estimates become available.

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Underlying Issues

There are several reasons why Congress might address the estate tax sooner rather than later. The law governing the estate tax over the next four years is highly erratic. The applicable exclusion amount (popularly known as the exemption) under the estate tax is $2 million for people who die in 2008. The exclusion is scheduled to rise to $3.5 million in 2009. The estate tax is repealed for people who die in 2010 only. Then, because the current law governing the estate tax is scheduled to sunset on December 31, 2010, the estate tax is set to be reinstated in 2011, with an exclusion of $1 million per person for 2011 and beyond.

This results in dramatic variations in the potential estate tax liability, depending upon which year a wealthy person might happen to die. As shown in **Table 1**, the approximate estate tax due on a taxable estate of $4 million, for example, would be $900,000 if the owner died in 2008, $225,000 in 2009, $0 in 2010, and $1,495,000 in 2011 and subsequent years. It is difficult for individuals and families to do long-term tax planning for their estates under a law which contains such large year-to-year differences. There is uncertainty about the law that may govern in future years.

Table 1. Estate Tax Exclusion and Approximate Tax on a Taxable Estate of $4 Million, 2008 to 2011 and Beyond

Year of Death	Estate Tax Exclusion	Approximate Tax on a Taxable Estate of $4 Million[a]
2008	$2 million	$900,000
2009	$3.5 million	$225,000
2010	No estate tax	$0
2011 and beyond	$1 million	$1,495,000

Source: Tax liability calculated by CRS. See CRS Report RL33718, *Calculating Estate Tax Liability: 2001 to 2011 and Beyond*, by Nonna A. Noto.

a. The taxable estate is equal to the gross estate (the aggregate value of assets) minus eligible deductions (including administrative expenses of the estate, state death taxes, debts, charitable bequests, and transfers to the surviving spouse). The tax liability is described as approximate because other items could affect the final calculation. For example, not taken into account here are gift taxes that may already have been paid on lifetime taxable gifts and foreign taxes paid on the estate.

Such large differences in anticipated estate tax liability could even influence the timing of deaths, or at least the officially recorded date of death.[1] Indeed, there is evidence that when Australia eliminated its estate tax on July 1, 1979, "Over half of those who would have paid the estate tax in its last week of operation managed to avoid doing so."[2] Taking this evidence into account, Congress may choose to address the estate tax well before the tax is repealed on January 1, 2010, and before the estate tax provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 sunset on January 1, 2011.

Bills addressing the estate tax generally fall into one of two categories: those that permanently repeal the tax; and those that retain the tax, but modify it. Here are some of the hotly debated claims commonly made by opponents and proponents, respectively, of the estate tax.

Supporters of permanently repealing the estate tax maintain that the tax:

- reduces savings and investment, thereby reducing long-term economic growth;
- is a form of double taxation, taxing money that has already been subject to the income tax;
- leads wealthy individuals to undertake economically unproductive efforts and expenses in order to reduce their potential tax liability; and
- unduly burdens family farms and businesses[3] and penalizes successful entrepreneurship.

Supporters of maintaining the estate tax argue that the tax:

- does not significantly discourage saving and investment;
- is an important component of a progressive tax system;
- is needed to break up the concentration and dynastic transmission of wealth;
- is a backup for capital gains taxes not collected on the increase in asset values during a decedent's lifetime;
- encourages charitable bequests;
- generates revenue that helps reduce the federal budget deficit; and

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[1] Wojciech Kopczuk and Joel Slemrod, "Dying to Save Taxes: Evidence from Estate-Tax Returns on the Death Elasticity," *Review of Economics and Statistics*, vol. 85, no. 2 (May 2003), pp. 256-265.

[2] Joshua Gans and Andrew Leigh, "Toying with Death and Taxes: Some Lessons from Down Under," *Economists' Voice*, June 2006, pp. 1-3. Available at [http://www.bepress.com/ev].

[3] Two reports prepared for Congress concluded that very few estates containing farms or small businesses did not have sufficient liquid assets to pay the estate tax that may have been due. U.S. Congressional Budget Office, *Effects of the Federal Estate Tax on Farms and Small Businesses*, July 2005, cites evidence from estate tax returns filed in 1999 and 2000. CRS Report RL33070, *Estate Taxes and Family Businesses: Economic Issues*, by Jane G. Gravelle and Steven Maguire, cites evidence from estate tax returns filed in 2003.

- can help states levy estate or inheritance taxes.[4]

If the choice is to repeal the estate tax, questions still remain as to whether assets transferred at death should have a carryover basis or step-up in basis and whether there should be a gift tax. The definition of basis has important implications for the capital gains tax liability of heirs when they sell an inherited asset. The presence of a gift tax protects the income tax but discourages the transfer of assets during a person's lifetime.

If the choice is to retain the estate tax but modify it, there are numerous design elements to consider. In addition to setting the level of the exclusion, there are the questions of whether the dollar amount should be indexed for inflation and whether any unused exclusion should carry over to the surviving spouse. To date, little attention has been given to the tax rate structure. Is it important to have a schedule of several graduated tax rates instead of just one or two rates at a high level? Should the thresholds between the rate brackets be indexed for inflation? Should the estate tax rate be established on its own, or should it be set in terms of another tax rate, such as the income tax rate on long-term capital gains? Should there be special treatment for family-owned farms and businesses? Should there be a credit or deduction for state death taxes? Should there also be a gift tax and, if so, should it be separate from or unified with the estate tax? It may also be appropriate to design an estate tax that is consistent with income tax policy toward saving and toward income from investments. The underlying economic question is: What is the optimal way to tax assets transferred at death?

Current Law: The Economic Growth and Tax Relief Reconciliation Act of 2001

Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16, enacted June 7, 2001) gradually phased out the estate tax by raising the "applicable exclusion amount" or "exemption" under the estate tax, in large increments. The exclusion increased from $675,000 in 2001 before EGTRRA, to $1 million for decedents who died in 2002 or 2003, $1.5 million for 2004 or 2005, and $2 million for 2006-2008. The exclusion is scheduled to rise one last time, to $3.5 million in 2009. Then the estate tax and generation-skipping transfer (GST) tax are repealed for 2010 only, because the provisions of EGTRRA sunset on December 31, 2010. The gift tax is to remain in place in 2010, with a cumulative lifetime exclusion amount of $1 million and with a maximum marginal tax rate of 35% (this is equal to the highest rate for the individual income tax in 2006 and thereafter under EGTRRA).

In addition, when the estate tax is repealed in 2010, there is scheduled to be a significant change in the method used to determine the "basis" of capital assets transferred at death — from "step-up in basis" to "modified carryover basis." The

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[4] For further discussion of these arguments, see CRS Report RL30600, *Estate and Gift Taxes: Economic Issues*, by Jane G. Gravelle and Steven Maguire.

basis is the "cost" of a capital asset that is subtracted from the sales proceeds in order to calculate the "capital gain" that is subject to income tax after an asset is sold.[5]

Under the law in place through 2009, and scheduled to resume in 2011, a *step-up in basis* rule applies to assets transferred at death.[6] Under this rule, the cost basis of an asset is set at the value of the asset on the decedent's date of death.[7] If the heir sells the asset, his or her capital gain is calculated as the difference between the sales price and the stepped-up basis, not the decedent's original purchase price (which is called the *carryover basis*). The effect of this practice is to permanently forgive the income tax liability on the increase in value of the asset (the capital gain) during the decedent's period of ownership.[8]

The estate tax is sometimes defended as a substitute for the capital gains tax at death.[9] Consistent with this argument, an important tradeoff that EGTRRA made for the repeal of the estate tax in 2010 was the return to a carryover basis for assets transferred at death.[10] However, two important exceptions were made. In what is called a *modified carryover basis*, an aggregate step-up in basis of $1.3 million per decedent[11] is permitted in the original adjusted basis of assets transferred at death ($60,000 for nonresident aliens). An additional step-up of up to $3 million is permitted for assets transferred to a surviving spouse. (These dollar amounts are indexed for inflation.[12]) The executor of the estate is left with the task of allocating the step-up allowance to specific assets.

These basis offsets apply to the *net* increase in value of the assets, not the *gross* value of the assets. Thus, the $1.3 million step-up might cover all the gains in a gross

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[5] For a detailed explanation, written before EGTRRA was enacted, see CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto, April 20, 2001.

[6] IRC Section 1014, relating to the basis of property acquired from a decedent.

[7] Or the value may be determined as of the alternate valuation date, six months after the date of death, if that value is lower.

[8] For an asset that has decreased in value since the decedent purchased it, such as an automobile, or stocks or real estate after a decline in the market, the stepped-up basis can be lower than the original cost. As a consequence of the step-up in basis rule, the loss in value during the decedent's period or ownership cannot be claimed as a capital loss when an inherited asset is sold.

[9] For a discussion of this tradeoff, written prior to the enactment of EGTRRA, see CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto, April 20, 2001.

[10] For property acquired from someone dying after December 31, 2009, the basis for the person acquiring the property is to be the lesser of (1) the adjusted basis of the decedent or (2) the fair market value of the property at the date of the decedent's death. Under both prior law and EGTRRA, property transferred by gift has a carryover basis.

[11] This limit may be increased by the amount of unused built-in losses and loss carryovers that the decedent may have had.

[12] The minimum increments are $100,000 for the $1.3 million amount, $6,000 for the $60,000 amount, and $250,000 for the $3 million amount.

estate valued at $2 million or $3 million or more. The spousal step-up of $3 million alone could cover the gains in an estate with a gross value of $4 million or $5 million or more. The practical effect of these two exceptions to carryover basis is to maintain a step-up in basis for smaller estates.

Note that whatever basis-valuation rule is in effect for the year of death applies to all capital assets transferred after any person's death, whether or not their estate is large enough to be liable for the estate tax.

As mentioned above, the estate tax repeal, and all other provisions of EGTRRA, are scheduled to sunset at the end of 2010.[13] If Congress does not change the law beforehand, on January 1, 2011, estate and gift tax law will return to what it would have been had EGTRRA never been enacted. The unified estate and gift tax will be reinstated with a combined exemption of $1 million.[14] The special deduction for qualified family-owned business interests (QFOBI) will be restored, with a value of $1.3 million in combination with the applicable exclusion amount. The maximum tax rate will revert (from 45% in 2007 through 2009) to 55%, with a 5% surtax on taxable estate values over $10.0 million and up to $17.184 million. Step-up in basis will again be the rule.

Main Differences Among the Bills in the 110th Congress

A variety of bills to either repeal or modify the estate tax have been introduced in the 110th Congress. A brief summary of each bill is presented in a later section of this report. This section discusses the bills grouped according to their major distinguishing characteristics.

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[13] Title IX or Section 901 of EGTRRA states that the provisions of the act do not apply after December 31, 2010. The text of the sunset clause is as follows:

TITLE IX — COMPLIANCE WITH CONGRESSIONAL BUDGET ACT
Sec. 901. Sunset of Provisions of Act.

> (a) IN GENERAL. — All provisions of, and amendments made by, this Act shall not apply —
> (1) to taxable, plan, or limitation years beginning after December 31, 2010, or
> (2) in the case of title V, to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010.
> (b) APPLICATION OF CERTAIN LAWS. — The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.

[14] The Taxpayer Relief Act of 1997 (P.L. 105-34) provided for an "applicable exclusion amount" or exemption of $1 million for 2006 and beyond.

Bills to Permanently Repeal the Estate Tax

The bills to permanently repeal the estate tax differ in four main ways. One is whether or not they would preserve the other changes made by EGTRRA to the taxation of gifts and inherited assets. A second is whether the extension of estate tax repeal is part of a broader effort to extend the income tax cuts enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16) and the Jobs and Growth Tax Relief and Reconciliation Act of 2003 (P.L. 108-27). A third is whether the repeal of the estate tax is part of a fundamental tax reform effort to replace the income tax and possibly the payroll tax with some form of consumption-based tax. A fourth is when permanent repeal would take effect.

Preserving Other Changes Made by EGTRRA: The Taxation of Gifts and the Use of Modified Carryover Basis for Inherited Assets. Some bills to permanently repeal the estate and generation-skipping transfer (GST) taxes take the approach of repealing the sunset provision of EGTRRA with respect to Title V. These bills would thereby also preserve the other changes to the taxation of gifts and bequests made by EGTRRA. Among these changes are the modified gift tax and the modified carryover basis (instead of a step-up in basis) for assets transferred at death. H.R. 411 (Mario Diaz-Balart) and H.R. 2380 (Hulshof) would remove the sunset provision of EGTRRA.

Other bills to permanently repeal the estate and GST taxes take the approach of repealing Subtitle B of the Internal Revenue Code of 1986 (Estate and Gift Taxes). These bills would allow EGTRRA to sunset. This would have the effect of repealing other changes made by EGTRRA to parts of the Internal Revenue Code other than Subtitle B, such as the modified carryover basis treatment of assets transferred at death. Repealing Subtitle B would repeal the gift tax, in addition to repealing the estate tax and the generation-skipping transfer tax. The step-up in basis treatment for assets acquired from a decedent would remain as provided in Subtitle A (Income Taxes) of the Internal Revenue Code. H.R. 25 (Linder), H.R. 1040 (Burgess), H.R. 1586 (Thornberry), H.R. 5105 (Dreier), S. 1025 (Chambliss), S. 1040 (Shelby), S. 1081 (Specter), and S. 2547 (Bond) would all repeal Subtitle B.

Still another approach to permanently repealing the estate tax is to amend the U.S. Constitution. H.J.Res. 23 (Paul) proposes an amendment that would prohibit Congress from levying taxes on personal incomes, estates, and gifts. This would repeal not only the estate and gift taxes, but also the individual income tax.

Modified Gift Tax. Under the provisions of EGTRRA a gift tax is retained even when the estate tax and generation-skipping transfer tax are repealed in 2010. The main reason given for maintaining the gift tax when the estate tax is repealed is to protect income tax revenues. The gift tax is intended to discourage people from giving income-generating or appreciated assets to someone in a lower income tax bracket and/or with offsetting losses. In the case of appreciated property, the donee could sell the assets and pay a lower capital gains tax rate than the donor, and then gift or bequeath the sales proceeds back to the original donor.

If Subtitle B of the Internal Revenue Code (IRC) were repealed, the gift tax would be repealed along with the estate tax and GST tax. H.R. 25 (Linder), H.R.

1040 (Burgess), H.R. 1586 (Thornberry), H.R. 5105 (Dreier), S. 1025 (Chambliss), S. 1040 (Shelby), S. 1081 (Specter), and S. 2547 (Bond) would all repeal Subtitle B. The gift tax would also be repealed under the constitutional amendment proposed in H.J.Res. 23 (Paul).

If, instead, the sunset clause of EGTRRA were repealed, the gift tax — as modified by EGTRRA — would remain in effect after 2010. The cumulative lifetime exclusion amount for any one donor would be $1 million.[15] This amount is not indexed for inflation. Beyond that, gifts up to $500,000 would be subject to the same marginal tax rate schedule that had previously applied to both gifts and bequests, with marginal tax rates from 18% to 34%. Starting in 2010, when the estate tax is repealed, and continuing thereafter, the top gift tax rate would be capped at 35% on cumulative lifetime taxable gifts over $500,000. (This is in contrast to a maximum tax rate of 45% on gifts or bequests in 2007 through 2009.) The 35% rate was equal to the maximum tax rate on individual income scheduled by EGTRRA for tax year 2006 and subsequent years.[16] The modified gift tax would continue after 2010 under H.R. 411 (Mario Diaz-Balart) and H.R. 2380 (Hulshof).

If the provisions of EGTRRA are permitted to sunset and we return to prior law, the unified estate and gift tax exclusion would be $1 million. The maximum estate and gift tax rate would return to 55% for taxable gifts and bequests combined (with a 5% surtax over the $10.0 million to $17.184 million range).

Modified Carryover Basis at Death for Capital Gains Purposes. If the sunset provision were repealed with respect to Title V of EGTRRA, then the modified carryover basis rules introduced by EGTRRA would continue in effect after 2010 when the estate tax is permanently repealed. H.R. 411 (Mario Diaz-Balart) and H.R. 2380 (Hulshof) would remove the sunset provision of EGTRRA.

If EGTRRA is permitted to sunset, then the tax law would revert to the step-up in basis rules found in Subtitle A, section 1012 of the Internal Revenue Code. The return to step-up in basis would also hold if the estate tax were permanently repealed by repealing Subtitle B of the Internal Revenue Code, with no accompanying changes in the basis rules. H.R. 25 (Linder), H.R. 1040 (Burgess), H.R. 1586 (Thornberry), H.R. 5105 (Dreier), S. 1025 (Chambliss), S. 1040 (Shelby), S. 1081 (Specter), and S. 2547 (Bond) would all repeal Subtitle B.

Part of Fundamental Tax Reform. Several of the bills to implement fundamental tax reform would repeal the estate and gift taxes. Proponents generally

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[15] This lifetime exclusion is in addition to the annual exclusion available for gifts of up to $12,000 in 2008 (indexed for inflation) per donor per donee (IRC section 2503(b)). There is also an exclusion from the gift tax for qualified transfers of payments for tuition or medical expenses on behalf of another individual (section 2503(e)) or transfers to political organizations, as defined in section 527(e)(1), for use by those organizations (section 2501(a)(4)).

[16] For a fuller explanation of the gift tax provisions of EGTRRA, see CRS Report RL31061, *Estate and Gift Tax Law: Changes Under the Economic Growth and Tax Relief Reconciliation Act of 2001*, by Nonna A. Noto, January 29, 2002.

indicate that the intent of these proposals is to favor savings and investment relative to consumption.[17] Repealing estate and gift taxes is theoretically consistent with a consumption-based tax system. Under such a system, bequests and gifts would be taxed not when transferred or received, but only when the proceeds are spent by recipients.

Companion bills H.R. 25 (Linder) and S. 1025 (Chambliss) would repeal the estate and gift taxes, along with the income, self-employment, and payroll taxes. These taxes would be replaced with a national sales tax.

Five bills would restructure the income tax, in addition to repealing the estate, gift, and generation-skipping transfer taxes. H.R. 1040 (Burgess) would offer each individual and business taxpayer the opportunity to irrevocably elect to be taxed under a flat-rate income tax, instead of the regular income tax and alternative minimum tax. S. 1040 (Shelby) would repeal the alternative minimum tax and all income tax credits; it would replace the current income taxes with a flat tax on individuals and businesses. S. 1081 (Specter) would replace the current income tax with a flat tax on the taxable earned income of individuals and on business taxable income. Companion bills H.R. 5105 (Dreier)/S. 2547 (Bond) would establish an alternative income tax system, based on "simplified taxable income" taxed at three marginal tax rates; each taxable year a taxpayer could elect to pay according to either this alternative income tax system or the regular income tax.

H.J.Res. 23 (Paul) proposes an amendment to the Constitution that would repeal the sixteenth amendment to the Constitution and thereby deny Congress the power to levy personal income taxes, along with estate and gift taxes.

Extending Other Tax Cuts Made in 2001 and 2003. Permanent repeal of the estate tax could be part of a broader bill to make other tax cuts permanent. The Bush Administration's budget for FY2009 once again proposes to make permanent the tax cuts enacted in 2001 (P.L. 107-16) and 2003 (P.L. 108-27). Repealing the estate tax was just one of those tax cuts.

In addition to permanently repealing the estate tax and generation-skipping transfer tax, H.R. 411 (Mario Diaz-Balart) would make permanent five individual income tax provisions which are currently scheduled to expire.[18] Companion bills H.R. 5105 (Dreier)/S. 2547 (Bond) would make all of the provisions of the 2001 and 2003 tax acts permanent by repealing the sunset provisions of those acts.

When Permanent Repeal Would Take Effect. In the bills that remove the sunset provision with respect to Title V of EGTRRA, the repeal of the estate and generation-skipping transfer taxes would first take effect in 2010, as scheduled by

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[17] For more information on these proposals, see CRS Report RL34343, *Tax Reform: An Overview of Proposals in the 110th Congress*, by James M. Bickley, and CRS Report 98-529, *Flat Tax: An Overview of the Hall-Rabushka Proposal*, by James M. Bickley.

[18] These are the deduction for state and local sales taxes; the modifications to the child credit; marriage penalty relief; the deduction for certain expenses of elementary and secondary school teachers; and the deduction for tuition and related expenses.

EGTRRA. The bills would simply extend the repeal into the years 2011 and beyond. These bills include H.R. 411 (Mario Diaz-Balart) and H.R. 2380 (Hulshof).

The bills to repeal Subtitle B of the Internal Revenue Code (Estate and Gift Taxes) would typically take effect earlier. H.R. 1586 (Thornberry) would take effect upon enactment. H.R. 1040 (Burgess), S. 1040 (Shelby), and S. 1081 (Specter) would take effect in 2008. Companion bills H.R. 25 (Linder)/S. 1025 (Chambliss) and H.R. 5105 (Dreier)/S. 2547 (Bond) would take effect in 2009.

The abolition of personal income, estate, and gift taxes under H.J.Res. 23 (Paul) would not take effect until possibly 2018. The resolution allows seven years for ratification of the proposed constitutional amendment, plus three years for the ensuing changes in tax law to take effect.

Bills to Retain a Modified Version of the Tax

A number of bills would retain the estate tax but would modify the tax in diverse ways. The following discussion highlights the major policy differences among these bills.

Repeal of Elements of EGTRRA. Most of the bills to modify and retain the estate tax would repeal the provisions of EGTRRA that repeal the estate and generation-skipping transfer taxes in 2010 and that replace the step-up in basis with a carryover basis at that time. Several of the bills would reunify the estate and gift taxes, thereby subjecting estates and lifetime gifts to the same unified tax credit (exemption) and the same tax rates; these bills would repeal the separate provisions of EGTRRA regarding the gift tax. But some of the bills would leave in place the separate gift tax created by EGTRRA and prevent the sunset provision from applying.

In addition, under H.R. 3170 (Mitchell), the December 31, 2010, sunset date would continue to apply to the three subtitles of EGTRRA regarding conservation easements, modifications to the generation-skipping transfer tax, and the extension of time for payment of the estate tax. H.R. 3170 also would repeal EGTRRA's deduction for state death taxes.

Exclusion. The bills differ on the level of the applicable exclusion amount per decedent, what year it would take effect, whether or not it would be indexed for inflation, and whether any unused exclusion could be carried over to the estate of the surviving spouse.

H.R. 4235 (Lowey) would raise the estate tax exclusion to $3 million upon enactment. After 2007, the $3 million amount would be indexed for inflation.

H.R. 4042 (McNerney) expects that the estate tax will be repealed in 2010. In the meantime, it would accelerate the phase-out of the estate tax by raising the exclusion to $3.5 million in 2008 instead of 2009 as currently scheduled. The $3.5 million figure would be indexed for inflation in 2009. The repeal of the GST tax would be accelerated to 2008.

H.R. 4242 (Pomeroy) would raise the estate tax exclusion to $3 million for 2007 and 2008, and set it at $3.5 million for 2009 and beyond. The exclusion amount is not indexed for inflation.

H.R. 4172 (Moore) would increase the estate tax exclusion to $3.5 million, effective in 2008, and index it for inflation each year thereafter.

H.R. 3475 (Capuano) would increase the unified estate and gift tax credit to an exclusion-equivalent of $5 million per decedent effective in 2010, and index it for inflation each year thereafter.

H.R. 3170 (Mitchell) would raise the unified estate and gift tax exclusion amount in annual increments of $250,000, over six years. The exclusion would be $3.75 million for people dying in 2010 and would reach $5 million for 2015. The $5 million amount would be indexed for inflation each year after 2015. H.R. 3170 is the only bill to provide that the "deceased spouse unused exclusion amount" could be carried over to the estate of the surviving spouse.

Tax Rates. Under H.R. 3170 (Mitchell) the rate of tax on the first $25 million of taxable estate would be equal to the maximum capital gains tax rate in effect on the decedent's date of death. The amount in excess of $25 million would be taxed at twice that rate. The $25 million figure separating the two tax brackets would be indexed for inflation. Gifts would be subject to the same tax rates.

H.R. 4235 (Lowey) would reduce each of the marginal estate tax rates by 20% (by one-fifth, not 20 percentage points).

H.R. 4242 (Pomeroy) would "freeze" the maximum estate tax rate at its 2005 level of 47% for taxable amounts over $2 million. The bill would restore the 5% surtax on taxable amounts over $10 million, up to the estate value sufficient to phase out the savings from the unified credit (exclusion amount) as well as the graduated tax rates.

H.R. 4042 (McNerney) would establish 45% as the maximum tax rate for 2008 and 2009 and would remove the references to the 49% and 50% marginal rates in the Internal Revenue Code.

H.R. 3475 (Capuano) and H.R. 4172 (Moore) would not adjust the tax rates set by EGTRRA.

Special Treatment for Family-owned Businesses and Farms. Two bills target benefits to family-owned farms and ranches. Both H.R. 1929 (Salazar) and S. 1994 (Salazar) would exclude from the gross estate the adjusted value of qualified farmland that continues in farmland use by a qualified heir, subject to requirements that gross income from farming contributed over half of the decedent's gross income in his last taxable years and/or, in the case of S. 1994, that the qualified farmland accounted for over half the value of the gross estate.

Effective in 2008, H.R. 4042 (McNerney) would reinstate the qualified family-owned business deduction (QFOBI, section 2057) that was eliminated by EGTRRA.

It would increase the amount of the QFOBI deduction from $675,000 to $8 million. The $8 million figure would be indexed for inflation in 2009, before the estate tax is repealed in 2010. H.R. 4042 would introduce a new deduction of up to $2 million from the value of the gross estate for the adjusted value of the decedent's principal residence, under certain restrictions. The $2 million figure would be indexed for inflation in 2009.

H.R. 4242 (Pomeroy) would not permit a minority discount in the valuation of a business entity because the transferee does not have control of the entity if the transferee and members of his or her family have control of the entity.

Treasury Department Estimates of Revenue Loss from Permanent Repeal

Among the revenue proposals in its FY2009 budget, the Bush Administration has once again proposed to make permanent most of the tax relief provisions enacted in 2001 and 2003. This includes making the repeal of the estate tax permanent beyond calendar year 2010. **Table 2** presents the U.S. Treasury Department's February 2008 estimates of changes in federal receipts expected each fiscal year from FY2008 through FY2018 if legislation to repeal the sunset provision of EGTRRA with respect to the estate and gift taxes were enacted in 2008, to take effect in 2010. These estimates do not include the reduction in revenue expected as a result of impending changes made by EGTTRA , namely the increase in the exclusion to $3.5 million for 2009.

According to Treasury Department analysts, the estimated revenue losses for FY2008 through FY2010, which are modest in size, stem primarily from a projected decline in gift tax revenues. They are based on the assumption that taxpayers would immediately begin to reduce taxable gifts during their lifetimes if they knew that the estate tax would be permanently repealed in 2010.

In addition, it is expected that enactment in 2008 of permanent repeal of the estate tax (effective in 2010) would modestly affect revenues from the individual income tax, in two opposing ways, starting right away. First, lifetime charitable donations and accompanying tax deductions would fall, thereby increasing income tax revenue. Second, and larger in effect, capital gains realizations by the elderly would fall as they waited to pass on their assets tax-free after death, thereby decreasing current income tax revenue. For FY2009 and FY2010 Treasury projected that net reductions in income taxes would add to the decrease in revenue from gift taxes. For FY2011 and beyond, the loss in income taxes would add to the decrease in revenue from estate taxes as well as gift taxes. For the fiscal years when the effects of estate tax repeal would be fully reflected,[19] the Treasury Department

[19] The estimators expect that FY2012 would be the first full fiscal year in which revenues are likely to reflect the repeal of the estate tax beginning in calendar 2010. The estate tax return is not due until nine months after the date of death. A filing extension of six months is not uncommon, and longer extensions may be granted for complex returns. The fiscal (continued...)

projected that the annual revenue loss would rise steadily from $58 billion in FY2012 up to $85 billion in FY2018.

Table 2. Treasury Department Estimates of Revenue Losses from Permanent Repeal of the Estate Tax

Fiscal Year	Millions of Dollars
2008	-422
2009	-2,502
2010	-3,453
2011	-26,409
2012	-57,639
2013	-59,670
2014	-64,670
2015	-69,371
2016	-74,379
2017	-79,285
2018	-84,604
2009-2013	-149,673
2014-2018[a]	-372,309
2009-2018	-521,982

Source: U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2009 Revenue Proposals* (referred to as the Bluebook), Washington, February 2008, p. 129.

Notes: These estimates are based on the assumption that Congress acts in 2008 to permanently repeal the estate tax and generation-skipping transfer tax effective in 2010. The estimates include the projected accompanying loss of individual income tax revenue, in addition to estate and gift tax revenue, as explained in the text.

a. The second five-year subtotal for FY2014-FY2018 was added by CRS.

According to the Treasury Department's estimates, repeal of the estate tax accounts for one-quarter of the revenue losses associated with making permanent the group of tax cuts enacted in 2001 and 2003, measured over the 10-year forecast period, FY2009-FY2018 ($522 billion out of $2,185 billion). The projected revenue loss from permanent repeal of the estate tax is just over half the size of the most

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[19] (...continued)
year runs from October 1 of the previous calendar year until September 30 of the same-numbered calendar year.

costly component of the package, extending the reductions in marginal individual income tax rates ($522 billion in comparison to $1,008 billion).[20] The large contribution of estate and gift taxes to the loss of revenues may seem surprising given that estate and gift taxes account for under 2% of federal revenue.

Bills Introduced in the 110th Congress

Following is a list and brief description of the bills introduced thus far in the 110th Congress regarding the estate tax. For each chamber, the bills are divided into two groups: first, the bills that would permanently repeal the estate tax, and second, the bills that would retain but modify the estate tax. To date, the bills introduced in the House are evenly divided between seven that would permanently repeal the estate tax and seven that would retain but modify it. In contrast, four bills introduced in the Senate would permanently repeal the estate tax and one would modify the existing estate tax by adding special provisions for farms and ranches. The appendix contains a summary of legislative activity on the estate tax in prior Congresses, from 2000 through 2006.

House Bills to Repeal the Estate Tax

H.R. 25 (Linder). Fair Tax Act of 2007. Introduced January 4, 2007; referred to the Committee on Ways and Means. Companion to S. 1025 (Chambliss). H.R. 25 would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code. H.R. 25 would also repeal the income, self-employment, and payroll taxes. It would replace these taxes with a national sales tax, with the tax rate set initially at 23% for 2009. These provisions would take effect January 1, 2009.

H.R. 411 (Mario Diaz-Balart). Introduced January 11, 2007; referred to the Committee on Ways and Means. H.R. 411 would make permanent six tax provisions which are scheduled to expire. It would repeal the estate tax by preventing the sunset provision (Section 901) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16) from applying to Title V of the Act, which relates to estate, gift, and generation-skipping transfer taxes. This would permanently repeal the estate and generation-skipping taxes starting in 2010. It would leave in place the modified gift tax and modified carryover basis introduced by EGTRRA. The five other provisions that H.R. 411 would make permanent fall under the individual income tax. They are the deduction for state and local sales taxes; the modifications to the child credit; marriage penalty relief; the deduction for certain expenses of elementary and secondary school teachers; and the deduction for tuition and related expenses. The provisions of H.R. 411 would take effect January 1, 2007.

H.R. 1040 (Burgess). Freedom Flat Tax Act. Introduced February 14, 2007; referred to the Ways and Means Committee and the Rules Committee. H.R. 1040

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[20] U.S. Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2009 Revenue Proposals* (referred to as the Bluebook), Washington, February 2008, p. 129.

would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code, effective January 1, 2008.

In addition, H.R. 1040 would offer individuals and persons engaged in business activities the chance to make an irrevocable election to be subject to a flat tax instead of the regular income tax and alternative minimum tax. The flat tax would be levied at a rate of 19% for the first two years after its election by the taxpayer, and at 17% for subsequent years. The income tax provisions would take effect January 1, 2008.

H.R. 1586 (Thornberry). Death Tax Repeal Act of 2007. Introduced March 20, 2007; referred to the Ways and Means Committee. H.R. 1586 would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code of 1986, effective upon enactment.

H.R. 2380 (Hulshof). Death Tax Repeal Permanency Act of 2007. Introduced May 17, 2007; referred to the Ways and Means Committee. H.R. 2380 would permanently repeal the estate and generation-skipping transfer taxes as of 2010 by removing the sunset provision of EGTRRA with respect to the estate tax provisions. The changes made by EGTRRA to the gift tax and the substitution of a modified carryover basis for the step up in basis for assets transferred at death would remain in place. On October 10, 2007, Representative Hulshof introduced language identical to H.R. 2380 as part of a motion to recommit H.R. 3056, the Tax Collection Responsibility Act of 2007. The House voted 196-212 to defeat the motion. H.R. 3056 was passed by the House later on October 10.

H.R. 5105 (Drier). The Fair and Simple Tax (FAST) Act of 2008. Introduced January 23, 2008; referred to the Committee on Ways and Means. Companion to S. 2547 (Bond). H.R. 5105 would repeal the estate and gift taxes by repealing Subtitle B of the Internal Revenue Code, effective in 2009.

H.R. 5105 would also establish an alternative income tax system, based on "simplified taxable income" taxed at three marginal tax rates of 10%, 15%, and 30%. Each taxable year a taxpayer could elect to pay according to either this alternative income tax system or the regular income tax.

H.R. 5105 would also make changes to the regular income tax system and the alternative minimum tax. Most of the income tax amendments would take effect in 2009. In addition, H.R. 5105 would make all of the provisions of the 2001 tax act (P.L. 107-16) and certain individual income tax provisions of the 2003 tax act (Title I of P.L. 108-27) permanent by repealing the EGTRRA sunset date of December 31, 2010.

H.J.Res. 23 (Paul). Introduced February 7, 2007; referred to the Judiciary Committee. House Joint Resolution 23 proposes an amendment to the Constitution that would repeal the sixteenth amendment (which allows Congress to tax incomes without apportionment). Thereafter, the Congress would no longer tax personal income, estates, or gifts. The amendment would also prohibit the United States Government from engaging in business in competition with its citizens. The resolution allows seven years for ratification of the proposed constitutional amendment, plus three years for the ensuing changes in tax law to take effect.

House Bills to Modify and Retain the Estate Tax

H.R. 1929 (Salazar). Save the Family Farm and Ranch Act of 2007. Introduced April 18, 2007; referred to the Ways and Means Committee. H.R. 1929 would exclude from the gross estate the adjusted value of qualified farmland that continues in farmland use by a qualified heir. The provision would apply only if the decedent's gross income from the trade or business of farming exceeded 50% of the decedent's gross income for three or more of the decedent's last five taxable years. In addition, either the decedent or a member of the decedent's family would have to have owned and materially participated in the operation of the farmland for periods aggregating five or more years during the eight years preceding the decedent's death. A recapture tax would be imposed if the qualified heir disposes of any interest in the qualified farmland (other than to a member of his family) or ceases to use the real property as a farm for farming purposes. These amendments would take effect upon enactment. H.R. 1929 is similar to S. 1994 (Salazar), with the differences noted in the summary of that bill below.

H.R. 3170 (Mitchell). Capital Gains and Estate Tax Relief Act of 2007. Introduced July 24, 2007; referred to the Ways and Means Committee. H.R. 3170 would modify and extend the estate tax after 2009. It would restore the unified credit for estate and gift taxes. It would raise the combined estate and gift exclusion amount to $5 million per decedent, in annual increments of $250,000, over six years. The exclusion would be $3.75 million for people dying in 2010; $4 million in 2011; $4.25 million in 2012; $4.5 million in 2013; $4.75 million in 2014, and $5 million for 2015. The $5 million figure would be indexed for inflation each year after 2015. The inflation-adjusted amount would be rounded to the nearest multiple of $50,000. For married couples, H.R. 3170 would permit the amount of the per-decedent exclusion that is not used by the first spouse to die to carry over to the estate of the surviving spouse.[21] H.R. 3170 would repeal the deduction for state death taxes.

The rate of tax on the first $25 million of taxable estate would be equal to the maximum capital gains tax rate in effect on the decedent's date of death. The amount in excess of $25 million would be taxed at twice that rate. The $25 million figure separating the two tax brackets would be indexed for inflation each year after 2015. The inflation-adjusted amount would be rounded to the nearest multiple of $50,000.

H.R. 3170 would repeal the provision of EGTRRA that establishes a separate schedule of graduated rates for the gift tax, capped at 35% after 2009. It would also repeal the provision that limits the tentative gift tax credit to the exclusion equivalent of $1 million.

The estate tax provisions of H.R. 3170 would take effect in 2010. All of the estate tax provisions of EGTRRA are currently scheduled to sunset on December 31, 2010. Under H.R. 3170, the sunset would continue to apply to the three subtitles of

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[21] This provision was previously introduced in the 109th Congress in H.R. 5638 and again in H.R. 5970. Both bills were introduced by Representative William Thomas, chairman of the Ways and Means Committee at the time, and were approved by the House, but not voted upon in the Senate.

EGTRRA regarding conservation easements, modifications to the generation-skipping transfer tax, and the extension of time for payment of the estate tax. But the sunset would no longer apply to the remaining estate tax provisions of EGTRRA.

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27) reduced the maximum tax rate that applies to long-term capital gains and dividends under the individual income tax (to 0% or 15%, depending on the amount of other income) through December 31, 2008. The Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222) extended the sunset date for two years, until December 31, 2010. H.R. 3170 would permanently extend the lower rates with respect to capital gains, but not extend them for dividend income.

H.R. 3475 (Capuano). Introduced September 5, 2007; referred to the Ways and Means Committee. H.R. 3475 would modify the estate and gift taxes by increasing the unified credit to an exclusion-equivalent of $5 million per decedent, effective in 2010. The $5 million exclusion amount would be indexed for inflation after 2010. The annual inflation-adjustment would be rounded to the nearest $10,000. The bill would repeal the one-year termination of the estate tax that is currently scheduled to take place in 2010 under the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, P.L. 107-16). The sunset with respect to the estate tax provisions of EGTRRA would take effect one year earlier than currently scheduled — on December 31, 2009, instead of 2010. The sunset would not apply to the increases in the estate, gift, and GST exemptions that were in effect from 2002 through 2009. H.R. 3475 would also repeal the modified carryover basis for assets that was scheduled to replace step-up in basis in 2010 when the estate tax was eliminated. H.R. 3475 would repeal three provisions of EGTRRA relating to the gift tax: the scheduled reduction of the maximum gift tax rate to the maximum individual income tax rate in 2010 when the estate tax is repealed; treating transfers in trust as taxable gifts; and limiting the gift tax credit to the equivalent of tax on $1 million.

H.R. 4235 (Lowey). Estate Tax Reduction Act of 2007. Introduced November 15, 2007; referred to the Ways and Means Committee. H.R. 4235 would raise the estate tax exclusion to $3 million upon enactment. After 2007, the $3 million amount would be indexed for inflation. The annual adjustment would be rounded to the nearest $10,000. As in H.R. 4172, H.R. 4235 would repeal the subtitles of EGTRRA that repeal the estate tax and generation-skipping transfer tax in 2010 and that replace the step-up in basis with a carryover basis at death at that time. The other changes that EGTRRA made to the estate and gift taxes would remain in effect. Again like H.R. 4172, H.R. 4235 would remove the sunset provision of EGTRRA from applying to those changes. In addition, H.R. 4235 would reduce each of the marginal estate tax rates by 20% (one-fifth, not 20 percentage points). The bill's provisions would take effect upon enactment.

H.R. 4042 (McNerney). Family Farm, Small Business, and Home Tax Relief Act. Introduced November 1, 2007; referred to the Ways and Means Committee. The provisions of H.R. 4042 would take effect on January 1, 2008, and remain in effect for two years, until the estate tax is repealed on January 1, 2010, as scheduled under EGTRRA.

Under the provisions of EGTRRA, the applicable exclusion amount under the estate tax is scheduled to be $2 million for decedents dying in 2007 or 2008, and rise to $3.5 million in 2009. H.R. 4042 would accelerate the increase to $3.5 million by one year, to take effect in 2008 instead of 2009. The $3.5 million figure would be indexed for inflation in 2009. The inflation-adjusted amount would be rounded to the nearest multiple of $1,000.

EGTRRA gradually reduced the maximum marginal estate tax rate by one percentage point per year, from 50% in 2002 down to 45% in 2007, where it is scheduled to remain for 2008 and 2009. The top two marginal tax brackets of 50% (for taxable amounts over $2.5 million) and 49% (for taxable amounts over $2 million, up to $2.5 million) remain in the Internal Revenue Code as amended by EGTRRA. H.R. 4042 would establish 45% as the maximum tax rate and remove the references to higher rates, effective in 2008. (It would remove from the code the 49% and 50% rate brackets and the subsection that governed the phasedown of the maximum rate from 50% to 45%.)

Effective in 2008, H.R. 4042 would reinstate the qualified family-owned business deduction (section 2057) that was eliminated by EGTRRA and increase the amount of the deduction from $675,000 to $8 million. The $8 million figure would be indexed for inflation in 2009. The inflation-adjusted amount would be rounded to the nearest multiple of $10,000.

Under EGTRRA, the generation-skipping transfer (GST) tax is scheduled to be repealed, together with the estate tax, in 2010. H.R. 4042 would accelerate the repeal of the GST tax to 2008.

H.R. 4042 would introduce a new section into the estate tax law. It would permit a deduction of up to $2 million from the value of the gross estate for the adjusted value of the decedent's principal residence. The residence must be located in the United States and be included in determining the value of the decedent's gross estate. The residence must have been owned by the decedent or a member of the decedent's family and used by the decedent or family member as their principal residence for periods aggregating (at least) five years during the eight years prior to the date of the decedent's death. The $2 million figure would be adjusted for inflation in 2009. The inflation-adjusted amount would be rounded to the nearest multiple of $1,000.

H.R. 4172 (Moore). Introduced November 14, 2007; referred to the Ways and Means Committee. H.R. 4172 would increase the estate tax exclusion to $3.5 million, effective in 2008. After 2008, the exclusion would be indexed for inflation, with the annual adjustment rounded to the nearest $10,000. The bill would repeal the subtitles of EGTRRA that repeal the estate tax and generation-skipping transfer tax in 2010 and that replace the step-up in basis with a carryover basis at death at that time. The other changes that EGTRRA made to the estate and gift taxes would remain in effect. H.R. 4172 would remove the sunset provision of EGTRRA from applying to those changes.

H.R. 4242 (Pomeroy). Certain and Immediate Estate Tax Relief Act of 2007. Introduced November 15, 2007; referred to the Committee on Ways and Means.

H.R. 4242 would raise the estate tax exclusion to $3 million for 2007 and 2008, and set it at $3.5 million for 2009 and beyond. The exclusion amount is not indexed for inflation. Like H.R. 4172 and H.R. 4235, H.R. 4242 would repeal the subtitles of EGTRRA that repeal the estate tax and generation-skipping transfer tax in 2010 and that replace the step-up in basis with a carryover basis at death at that time. The other changes that EGTRRA made to the estate and gift taxes would remain in effect. H.R. 4242 would remove the sunset provision of EGTRRA from applying to those changes.

Under EGTRRA, the maximum estate tax rate was reduced to 45% beginning in 2007. H.R. 4242 would "freeze" the maximum estate tax rate at its 2005 level of 47% for taxable amounts over $2 million. The bill would restore the 5% surtax on taxable amounts over $10 million, up to the level sufficient to phase out the savings from the unified credit (exclusion amount) as well as the graduated tax rates. (This would restore the policy that was in effect from 1988 through 1997, under provisions of the Revenue Act of 1987 (P.L. 100-203).) The aforementioned changes in the estate tax would take effect in 2007.

In addition, H.R. 4242 would change the valuation rules for certain transfers of nonbusiness assets and family-controlled entities. No valuation discount would be allowed for nonbusiness assets and the nonbusiness assets would not be taken into account in determining the value of the business entity. With the exception of working capital, passive assets would generally not be considered as being used in the active conduct of a trade or business and, hence, would be considered nonbusiness assets. No minority discount in the valuation of a business entity would be permitted because the transferee does not have control of the entity if the transferee and members of his or her family have control of the entity. These changes in valuation rules would take effect upon enactment.

Senate Bills to Repeal the Estate Tax

S. 1025 (Chambliss). Fair Tax Act. Introduced March 29, 2007; referred to the Finance Committee. Companion to H.R. 25 (Linder). S. 1025 would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code. It would also repeal the federal personal income, self-employment, corporate income, capital gains, and payroll taxes. It would replace these taxes with a revenue-neutral 23% personal consumption tax on all retail sales of new goods and services. These changes would take effect January 1, 2009.

S. 1040 (Shelby). Tax Simplification Act of 2007. Introduced March 29, 2007; referred to the Finance Committee. S. 1040 would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code, effective January 1, 2008.

The bill also would repeal the alternative minimum tax and all income tax credits. S. 1040 would replace the current income taxes with a flat tax levied at a rate of 19% in 2008 and 2009, and 17% in 2010 and thereafter. There would be new definitions of taxable income for individuals and businesses. The income tax changes would take effect January 1, 2008.

S. 1081 (Specter). Flat Tax Act of 2007. Introduced April 10, 2007; referred to the Finance Committee. S. 1081 would permanently repeal the estate, gift, and generation-skipping transfer taxes by repealing Subtitle B of the Internal Revenue Code, effective January 1, 2008. The bill also would repeal Subtitle H (relating to financing presidential election campaigns) and Subtitle J (relating to coal industry retiree health benefits). S. 1081 would replace the current income taxes with a flat tax of 20% on the taxable earned income of individuals and on business taxable income. The bill specifies the deductions that would be permitted in calculating the taxable base for each of these income taxes.

S. 2547 (Bond). The Fair and Simple Tax (FAST) Act of 2008. Introduced January 23, 2008; referred to the Finance Committee. Companion to H.R. 5105 (Drier). S. 2547 would repeal the estate and gift taxes by repealing Subtitle B of the Internal Revenue Code, effective in 2009.

S. 2547 would also establish an alternative income tax system, based on "simplified taxable income" taxed at three marginal tax rates of 10%, 15%, and 30%. Each taxable year a taxpayer could elect to pay according to either this alternative income tax system or the regular income tax.

S. 2547 would also make changes to the regular income tax system and the alternative minimum tax. Most of the income tax amendments would take effect in 2009. In addition, S. 2547 would make all of the provisions of the 2001 tax act (P.L. 107-16) and certain individual income tax provisions of the 2003 tax act (Title I of P.L. 108-27) permanent by repealing the EGTRRA sunset date of December 31, 2010.

Senate Bills to Modify and Retain the Estate Tax

S. 1994 (Salazar). Introduced August 3, 2007; referred to the Finance Committee. S. 1994 would exclude from the gross estate the adjusted value of qualified farmland that continues in farmland use by a qualified heir, under specified conditions. S. 1994 differs from H.R. 1929 (Salazar) in two ways: it has no short title and has one substantive difference. S. 1994 renumbers condition (2) for an estate to qualify for the provision as (2)(A): the decedent's gross income from the trade or business of farming must have exceeded 50% of the decedent's gross income for three or more of the decedent's last five taxable years. S. 1994 then adds an either/or alternative, (2)(B): 50% or more of the adjusted value of the gross estate at the date of the decedent's death must consist of the qualified farmland. The rest of S. 1994 is identical to H.R. 1929, as summarized above.

Appendix. Legislative Activity in Prior Congresses, from 2000 through 2006

Preceding EGTRRA

Even before the enactment of EGTRRA, there were efforts in Congress to permanently repeal the estate tax. The 106th Congress approved H.R. 8, the Death Tax Elimination Act of 2000, but it was pocket vetoed by President Clinton on August 31, 2000. The House sustained the President's veto.[22] Early in the 107th Congress, the House passed H.R. 8, the Death Tax Elimination Act of 2001. Many provisions of that bill were included in EGTRRA enacted on June 7, 2001 (P.L. 107-16).[23]

Remainder of the 107th Congress

H.R. 2143, the Permanent Death Tax Repeal Act of 2001, was introduced on June 12, 2001, just days after the enactment of EGTRRA. But the estate tax did not receive further congressional attention until the spring of 2002, in the second session of the 107th Congress. On April 18, 2002, the House passed an amended version of H.R. 586, the Tax Relief Guarantee Act of 2002, part of which would have removed the sunset provision of EGTRRA and thereby made permanent the repeal of the estate tax and all other provisions of the 2001 tax cut law. On June 6, 2002, the House passed H.R. 2143 which would have removed the sunset provision solely from the estate tax provisions of EGTRRA (Title V). The House defeated the Pomeroy Democratic substitute amendment which would have retained the estate tax but increased the exclusion to $3 million per decedent in 2003.

On June 12, 2002, the Senate considered three amendments offered to H.R. 8 regarding the estate tax. The Conrad Democratic substitute amendment would have retained the estate tax but increased the applicable exclusion amount to $3 million

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[22] H.R. 8 was introduced in the 106th Congress on February 25, 1999, on a bipartisan basis by Representatives Dunn and Tanner. The version of H.R. 8 approved by the House Ways and Means Committee was an amendment in the nature of a substitute offered in the committee by Chairman Archer. This was the version approved by the House and the Senate. For further description of H.R. 8 in the 106th Congress, and the Democratic substitute amendments offered in its place, see CRS Report (archived) RS20592, *Estate Tax Legislation: A Description of H.R. 8, The Death Tax Elimination Act of 2000*, by Nonna A. Noto, Nov. 27, 2000, available from the author upon request.

[23] H.R. 8 was reintroduced in the 107th Congress on March 14, 2001, on a bipartisan basis by representatives Dunn and Tanner. It was replaced by an amendment in the nature of a substitute by the Ways and Means Committee on March 29 and passed by the House on April 4. For further discussion of H.R. 8 in the 107th Congress, and the Democratic substitute amendments offered in its place, see CRS Report (archived) RL30912, *H.R. 8: The Death Tax Elimination Act of 2001*, by Nonna A. Noto, April 9, 2001, available from the author upon request. For a brief description of H.R. 8 and three other bills introduced in the first session of the 107th Congress to permanently repeal the estate tax, see CRS Report RL30875, *Step-Up vs. Carryover Basis for Capital Gains: Implications for Estate Tax Repeal*, by Nonna A. Noto, April 20, 2001.

in 2003 and $3.5 million in 2009, among other changes. The Dorgan amendment to the Democratic substitute amendment would have provided a full tax deduction for family-owned business interests and raised the applicable exclusion amount to $4 million in 2009 for all estates, among other changes. The Gramm-Kyl (Republican) amendment was identical to H.R. 2143. None of these amendments received the 60 votes needed to waive the budget point of order as established by a unanimous consent agreement. On September 19, 2002, the House approved a resolution, H.Res. 524, which called upon the Senate to approve H.R. 2143 before the 107th Congress adjourned. The Senate did not act on the bill.[24]

The 108th Congress

All together, 26 measures addressing the estate tax were introduced in the 108th Congress: 19 in the House and seven in the Senate. The bills can be grouped into three broad categories. First, eight House bills would have made the repeal of the estate tax permanent after 2010. Two Senate joint resolutions would have expressed the sense of Congress that the number of years during which the estate tax is repealed should be extended, pending permanent repeal of the tax. Second, one House bill and three Senate bills would have accelerated the repeal of the estate tax — to 2003 or 2005. Third, 10 House bills and two Senate bills would have retained but altered the estate tax. Some would have lowered the tax rates. Some would have increased the exclusion amount for all estates. Some would have forgiven the estate tax on family-owned businesses and farms but imposed a carryover basis in calculating the capital gain if the heir later sold the business. Some would have repealed the modified carryover basis instituted by EGTRRA and returned to the step-up in basis rule for assets transferred at death. One would have deposited revenues from the estate tax into the Social Security trust funds.

The House approved H.R. 8, the Death Tax Repeal Permanency Act of 2003 (Dunn) on June 18, 2003, by a vote of 264-163. H.R. 8 would have made the repeal of the estate and generation-skipping transfer taxes permanent from 2010 onward by exempting the estate tax provisions (Title V) from the sunset provisions of EGTRRA. Prior to its vote on H.R. 8, the House debated and defeated the Pomeroy substitute amendment. That amendment would have retained the estate tax but increased the exclusion amount to $3 million per decedent, effective January 1, 2004. It included other changes to the estate tax laws to partially offset the cost of increasing the exclusion amount. The Senate did not take up H.R. 8 or any of its own bills addressing the estate tax.[25]

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[24] For additional information, see CRS Report RS21224, *Estate Tax: Legislative Activity in 2002*, by Nonna A. Noto, February 5, 2003.

[25] For additional information, see CRS Report RL31776, *Estate Tax Legislation in the 108th Congress*, by Nonna A. Noto, May 14, 2004.

The 109th Congress[26]

On April 13, 2005, the House passed H.R. 8, which would have permanently repealed the estate tax starting in 2010. Over a year later, on June 8, 2006, the Senate voted on cloture on a motion to proceed to consider H.R. 8. The vote of 57-41 was three short of the 60 votes needed. On June 16, Senate Majority Leader Bill Frist proposed that the House pass a permanent estate tax reform compromise that could attract 60 votes in the Senate. The Chairman of the Ways and Means Committee, William Thomas, introduced two bills, H.R. 5638 and later H.R. 5970. Each was approved by the House but never taken up by the Senate.

Chairman Thomas introduced H.R. 5638 on June 19, 2006. That bill contained an estate tax reform proposal and a timber capital gains provision. The bill would have restored the unified estate and gift tax exclusion and raised the applicable exclusion amount (from $3.5 million in 2009 under current law) to $5 million per decedent in 2010. On June 21, the House Rules Committee adopted a manager's amendment that would have indexed the $5 million exclusion to inflation after 2010, rounded to the nearest $100,000. The bill would have lowered the tax rate on taxable assets up to $25 million to the tax rate on long-term capital gains (currently 15% but scheduled to revert to 20% in 2011). For taxable assets over $25 million, the tax rate would have been twice the prevailing capital gains rate. Married couples would have been able to carry over to the estate of the surviving spouse any exclusion unused by the first spouse to die. The deduction for state death taxes would have been repealed. The bill also would have repealed the provisions of EGTRRA that introduce a modified carryover basis regime starting in 2010; thus, the step-up in basis rules would have continued to govern assets transferred at death. The estate and gift tax provisions of H.R. 5638 would have taken effect January 1, 2010, and been permanent. In addition, H.R. 5638 would have created a new, temporary 60% income tax deduction for qualified timber capital gains effective from the date of enactment through calendar year 2008.[27] The House passed H.R. 5638 by a vote of 269-165 on June 22, 2006.

The Joint Committee on Taxation (JCT) estimated that the estate tax provisions of H.R. 5638 would have cost $282 billion over the period FY2006-FY2016,[28] or 73% as much as total repeal. (Indexing the exclusion amount added $3.25 billion to

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[26] For additional information, see CRS Report RL32818, *Estate Tax Legislation in the 109th Congress*, by Nonna A. Noto, March 29, 2007.

[27] For further explanation of the bill, see U.S. Congress, Joint Committee on Taxation, *Technical Explanation of H.R. 5638, The "Permanent Estate Tax Relief Act of 2006" as introduced in the House on June 19, 2006*, 109th Cong., 2nd sess., JCX-20-06, June 20, 2006. Available at [http://www.house.gov/jct/].

[28] U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects of H.R. 5638, as Amended, Scheduled for Consideration by the House of Representatives on June 22, 2006*, 109th Cong., 2nd sess., JCX-23-06, June 22, 2006. Available at [http://www.house.gov/jct/].

the original cost estimate.[29]) The timber provisions were estimated to cost an additional $940 million.

Next, Chairman Thomas introduced H.R. 5970 on July 28, 2006. H.R. 5970 was called the "trifecta" bill. In addition to reforming and extending the estate tax, the bill would have extended and expanded a number of popular tax relief provisions that had expired at the end of 2005 (the "tax extenders") and would have increased the minimum wage. The bill also included a title of amendments to the Surface Mining Control and Reclamation Act (SMCRA).

H.R. 5970 would have reunified the estate and gift taxes. The estate tax exclusion would have increased (from $3.5 million in 2009 under current law) to $3.75 million in 2010 and by an additional $250,000 each succeeding year until it reached $5 million in 2015. After 2015, the $5 million exclusion would have been indexed for inflation. Married couples could have transferred any of the exclusion amount unused by the first spouse to die to the estate of the surviving spouse. As in H.R. 5638, the tax rate on taxable assets up to $25 million would have been equal to the tax rate on long-term capital gains (currently 15% but scheduled to revert to 20% in 2011). In contrast to H.R. 5638, the tax rate on taxable estate values over $25 million would have been set in the law: at 40% in 2010, 38% in 2011, 36% in 2012, 34% in 2013, 32% in 2014, and 30% in 2015 and beyond. The $25 million bracket divider would have been indexed for inflation, for the first time in the history of the estate tax. The deduction for state estate taxes would have been repealed. The estate and gift tax provisions of H.R. 5970 would have taken effect January 1, 2010, and been permanent. The House approved H.R. 5970 by a vote of 230-180 on July 29, 2006. The JCT estimated that the estate tax provisions of H.R. 5970 would have cost $268 billion over FY2007-FY2016,[30] or about 69% as much as total repeal.

While Congress did pass substantive tax legislation in the final days of the 109th Congress, the act did not include any estate tax provisions.[31]

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[29] U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects of H.R. 5638, the "Permanent Estate Tax Relief Act of 2006"*, 109th Cong., 2nd sess., JCX-21-06, June 20, 2006. Available at [http://www.house.gov/jct/].

[30] U.S. Congress, Joint Committee on Taxation, *Estimated Budget Effects of H.R. 5970, the "Estate Tax and Extension of Tax Relief Act of 2006 ('ETETRA')," as introduced in the House of Representatives on July 28, 2006*, 109th Cong., 2nd sess., JCX-34-06, July 28, 2006, line I. Available at [http://www.house.gov/jct/].

[31] The Tax Relief and Health Care Act of 2006, P.L. 109-432, enacted on December 20, 2006.