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BUDGET RULE CHANGE WOULD MAKE THE COST OF EXTENDING THE TAX CUTS DISAPPEAR

by Robert Greenstein and Joel Friedman

The President's 2005 budget includes a legislative proposal to change the budget rules so that the cost of extending the 2001 and 2003 tax cuts would be incorporated into the official budget "baseline." Under existing rules, the baseline is required to reflect current law and thus shows the tax cuts expiring. As a result, official estimates by the Congressional Budget Office, the Joint Committee on Taxation, and the Treasury Department all show proposals to extend these tax cuts as having large costs. *If the Administration's proposed change to the baseline rules is implemented, however, the official estimates would show proposals to make the 2001 and 2003 tax cuts permanent as having zero cost.*

Proposed Change Magnifies Earlier Budget Gimmick

The audacity of the Administration's proposed change becomes apparent when the proposal is considered in the context of the budget gimmick used to facilitate passage of the 2001 and 2003 tax cuts. The Administration and the Congressional leadership wrote sunset dates into the 2001 and 2003 tax cuts for the purpose of making the cost of those tax cuts look smaller.[1] This allowed more tax cuts to be packed into the legislation without breaching Congressional budget limitations. This gimmick worked because CBO was required under the rules to assume that the tax cuts would, in fact, expire and would thus have no cost in the years after they to sunset.

The Administration's proposed change to the baseline rules is little more than a second step in this gimmick, as it would require CBO to *reverse* its earlier approach and assume now that there would be no cost associated with extending these tax cuts *beyond* their sunset dates. The first gimmick helped to get the tax cuts into law, while the second gimmick is designed to help ensure they become a permanent fixture of the tax code. Both gimmicks have been designed to make the scoring of Congressional action on these tax cuts understate the actual impact of the tax cuts on the budget.

Do Tax Cuts Receive Unfair Treatment Under the Baseline Rules?

Some argue that the baseline rules treat expiring tax provisions unfairly compared to how expiring entitlement programs are handled in the baseline. They point out that if a new

[1] To comply with Senate rules, the tax cuts would have had to be sunset at the *end* of the ten-year period. Both the 2001 and 2003 tax-cut bills were written, however, so all tax-cut provisions expire *before* the end of the ten-year period.

entitlement program is authorized for a few years and needs to be extended, the cost of continuing it is assumed in the baseline, and legislation to extend the program is considered to have no cost. In its budget documents, the Administration makes this argument, asserting that its proposed change to the baseline rules for the expiring 2001 and 2003 tax cuts would merely conform their treatment under the baseline to the treatment already accorded to entitlement programs.

But this argument is disingenuous. It glosses over a critical fact. If legislation to create an entitlement is written so that the entitlement sunsets after a few years, *CBO still counts the full cost of that entitlement proposal for every year of the next ten years*, as if the sunset would not occur. As a result, Congress *cannot* artificially lower the cost of entitlement legislation through artificial sunset dates.

Stated another way, the gimmick of imposing artificial sunset dates that was used to craft the 2001 and 2003 tax-cut packages would not have worked if the proposals had been entitlement changes rather than tax cuts. CBO scored these tax cuts as having *no cost* after their sunset dates; if the tax cuts had instead been entitlement changes, CBO would have been required under the budget rules to ignore the sunset dates and to score the cost of the changes as if they would be in effect throughout the entire ten-year period.

The Administration's proposed change to the baseline rules seeks to ensure that the cost of instituting the tax cuts in the years after the current sunset dates will *never be counted.* This is the *opposite* of how budget rules treat entitlements; the costs of an entitlement increase are counted in all years. To fail to count the cost of tax cuts in the years after the sunset dates, either when the tax cuts were first enacted *or* when they are extended, would represent one of the largest and most flagrant budget gimmicks in recent memory.

Application of the Rules to the 2001 and 2003 Tax Cuts But *Not* to New Tax Cuts

Further underscoring the gimmickry that marks the Administration's proposal is the fact that the Administration proposes that its new rule — that the baseline assume that expiring tax cuts are extended — *apply only to the 2001 and 2003 tax cuts and not to new tax cuts*. Were this rule to apply to new tax cuts, that would preclude use in the future of the gimmick used to help pass the 2001 and 2003 tax-cut bills; Congress and the White House would not be able to lower the cost of new tax cuts by artificially sunsetting those tax cuts after several years.

This may be why the Administration would *not* apply its proposed change in the baseline rules to new tax cuts; for new tax cuts, the existing rules would continue to apply, which would enable the same gimmicks used to pass the 2001 and 2003 tax cuts to be used again to pass additional tax cuts in the future. The Administration seeks to apply its proposal to require that the baseline ignore the sunset dates and assume that expiring tax cuts are being extended *solely* to the 2001 and 2003 tax cuts, in order to make it easier to make them permanent.