

## ***SENATE RULES & PROCEDURES FOR MARRIAGE PENALTY RELIEF FY2001 RECONCILIATION BILL***

### ***The Budget Resolution's Reconciliation Instructions.***

The budget resolution conference report instructed the Senate Finance Committee to report a reconciliation bill (1) not later than July 14, 2000; and (2) not later than September 13, 2000, that consists of changes in laws within its jurisdiction sufficient to reduce the total levels of revenues by not more than \$11.6 billion for fiscal year 2001 and \$150 billion for the period of fiscal years 2001 through 2005. These are **net** amounts; the bill may include revenue-raisers to offset its cuts.

The Parliamentarian has advised that he interprets these instructions to provide for a **total** of up to \$150 billion in tax cuts over 5 years for both bills, rather than up to \$150 billion in tax cuts over 5 years for each bill.

Section 213 of the budget resolution conference report provides that if the Congressional Budget Office's budget and economic outlook update estimates an on-budget surplus for any of fiscal years 2001 through 2005 that exceeds the on-budget surplus as estimated in its March 2000 budget and economic outlook, the Chairman of the Budget Committee may increase the Finance Committee's tax cut reconciliation instruction by the amount of the increased on-budget surplus reestimate.

### ***Germaneness.***

Sections 310(e) and 305(b)(2) of the Congressional Budget Act prohibit amendments to a reconciliation bill that are not germane. Relevancy is not enough to satisfy the germaneness test. Sixty votes are required to waive the point of order. An amendment is germane *only* if it:

- (1) strikes a provision;
- (2) changes a number or date; or
- (3) does not add any new subject matter or expand the existing subject matter.

Note that in the past, provisions stating purely precatory language (such as findings or a sense of the Senate) could be considered germane; however, section 204(g) of the conference report on this year's budget resolution added a new provision stating that an amendment is not germane if it contains "predominately precatory language." It remains to be seen how this new section will be interpreted.

### ***Byrd Rule.***

The Byrd Rule, section 313 of the Congressional Budget Act, allows matter extraneous to the reconciliation instructions to be stricken from the bill. The point of order can be raised en bloc against several provisions, which may be sustained as to some or all, and the motion to waive is divisible. The point of order can also be raised against amendments and motions to recommit, where it operates somewhat differently: amendments and motions are treated as a whole rather than having portions stricken. Sixty votes are necessary to waive a point of order raised under the Byrd Rule. Provisions are generally considered extraneous if they:

- (1) produce no change in outlays or revenues (e.g. authorizing language, findings, sense of the Senates -- anything that doesn't score);
- (2) produce changes in outlays or revenues that are "merely incidental" to their non-budgetary components;
- (3) produce spending increases or tax cuts and the net effect is that the reporting committee fails to achieve its reconciliation instructions;
- (4) would cause a net spending increase or tax cut in any year beyond the years covered by the reconciliation bill (this year, beyond fiscal year 2005);
- (5) are not within the jurisdiction of the reporting committee; or
- (6) contain recommendations with regard to Social Security.

Since the reconciliation instructions this year are for tax cuts only, spending increases and/or decreases will generally be deemed extraneous. In addition, provisions that would cause a net tax cut beyond fiscal year 2005 will be considered extraneous.

### ***Spending in Excess of Finance's Allocation.***

Section 302(f)(2) of the Budget Act provides that it is not in order in the Senate to consider a bill, joint resolution, amendment, motion, or conference report that would cause a committee to exceed or further exceed its 302(a) allocation. Therefore, spending in the underlying reconciliation bill, amendments or motions to the bill, or conference report that would cause the Finance Committee to exceed its 302(a) allocation for FY2001 or for the total of FY2001-2005 will give rise to a point of order pursuant to section 302(f) of the Budget Act against the entire bill, amendment, motion, or conference report. This point of order can be waived with 60 votes.

### ***Amendments Cutting Taxes Below the Revenue Floor.***

Amendments to increase the amount of the tax cuts so as to decrease total revenues below the revenue floors set forth in the budget resolution for FY2001 or for the total of FY2001-2005 will violate section 311(a)(2)(B) of the Budget Act. (Note that section 212 of the budget resolution conference report allows Chairman Domenici to adjust the revenue floors in the budget resolution by up to \$1 billion for FY 2001 and up to \$25 billion for FY2001-2005, and section 213 of the budget resolution conference report further allows the Chairman to adjust the revenue floors to reflect CBO's on-budget surplus reestimate.) This point of order can be waived with 60 votes.

### ***Social Security.***

Section 310(g) of the Budget Act provides that it shall not be in order the Senate to consider any reconciliation bill or amendment thereto or conference report thereon that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act. This point of order can be waived with 60 votes.

### ***Motions to Recommit.***

There is no limit on the number of motions to recommit that may be offered to reconciliation legislation. They are subject to the same rules that govern amendments (they must be germane, cannot contain extraneous material, etc.). The only exception to this rule is that a motion to recommit that is offered solely to remedy the reporting committee's failure to comply with its instructions does not have to be germane. Motions to recommit, like all debatable motions to reconciliation, receive one hour of debate equally divided. A motion to recommit with instructions is amendable in two degrees. An amendment to a motion to recommit will receive two hours of debate, equally divided. A second-degree amendment to a motion to recommit will receive one hour of debate, equally divided.

### ***Time Constraints.***

Debate on reconciliation legislation is limited to 20 hours. Amendments receive 2 hours of debate equally divided; second-degree amendments receive 1 hour of debate equally divided. Time spent reading and voting on amendments is not counted toward the 20- hour total. After time has run out, Senators can continue to send amendments to the desk for votes, but there will be no debate on them.

Debate on any conference report to reconciliation legislation is limited to 10 hours. No amendments are in order to the conference report; however, provisions of the conference report may be stricken pursuant to the Byrd rule.

*Questions and Answers.*

Q: Will amendments to limit the tax cuts in the bill to certain individuals (e.g. those earning under \$X per year) be in order?

A: Probably yes. In the past, such amendments have been considered germane and not extraneous, since they would score, are within the jurisdiction of the Finance Committee, and “limit” rather than expand existing subject matter. Such an amendment could also be done as a motion to recommit.

Q: Can certain tax cuts be reduced or eliminated, and those proceeds used for other programs (prescription drugs, education, housing, etc.)?

A: No. The tax cuts can be reduced, eliminated, or limited, but spending is extraneous and violates the Byrd Rule since the instructions this year are only for tax cuts. In addition, such spending could trigger a 302(f) point of order for exceeding the Finance Committee’s 302(a) allocation.

July 10, 2000 2:30 pm