

⁴²(...continued)

resolution for fiscal year 1997 included instructions for a third reconciliation bill that would reduce revenues. During the consideration of that resolution, Leader Daschle and the Presiding Officer interpreted this subparagraph as follows:

Mr. DASCHLE. Mr. President, the Byrd rule forbids legislation that will increase the deficit in years beyond those covered in the budget resolution. If this third reconciliation bill does not find a way to end or offset its tax cuts in the years beyond 2002, would the bill violate the Byrd rule?

The PRESIDING OFFICER. Yes, it would.

Mr. DASCHLE. Is it not true, unless the budget resolution assumes that the tax cuts will sunset in 2002, or be offset by tax increases thereafter, the resolution calls for a reconciliation bill that would violate the Byrd rule?

The PRESIDING OFFICER. The resolution cannot make assumptions beyond the years which are instructed.

Mr. DASCHLE. That is not the question, Mr. President.

What I am asking is that under the Byrd rule there must be a determination that the deficit is not increased by actions taken in the reconciliation instructions in the out-years, in the years beyond the window.

The PRESIDING OFFICER. The Byrd rule does not apply to reconciliation instructions. It applies to a reconciliation bill.

Mr. DASCHLE. That is my point, Mr. President. This resolution assumes that a reconciliation bill will be triggered that will violate the Byrd rule unless it is terminated at the end of 2002 or else subsequently offset.

The assumption of the resolution is that tax cuts will sunset in the year 2002 or be offset by tax increases thereafter in order for it not to be in violation of the Byrd rule, is that not correct?

The PRESIDING OFFICER. The budget resolution makes no assumptions.

Mr. DASCHLE. Mr. President, let me ask you this: Would the reconciliation bill be in order if the budget resolution did not address the issue of deficit reduction beyond that 6-year timeframe?

The PRESIDING OFFICER. I read to you under extraneous provisions [section 313(b)(1)](E):

A provision shall be considered to be extraneous if it increases or would increase net outlays or if it decreases or would decrease revenues during a fiscal year after the fiscal years covered by such a reconciliation bill or reconciliation resolution.

This only applies to reconciliation bills.

Mr. DASCHLE. Let me then phrase my question another way, because I think we can now clarify this.

The reconciliation bill triggered by this resolution would not be in order,
(continued...)

⁴²(...continued)

in other words, if it failed either to offset the tax cuts or to sunset them after fiscal year 2002, is that not correct?

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, let me just note parenthetically, if that is correct, that the majority party is the same party that has criticized the President's budget because the President sunsets his tax cuts. But now the majority comes before us with a reconciliation instruction that requires either that their tax cuts be abruptly sunsetted in the year 2002 or that taxes be increased dramatically after that point to pay for the continuing tax cuts.

142 CONG. REC. S5418 (daily ed. May 21, 1996).

For examples of the application of this subparagraph, see, *e.g.*, 143 CONG. REC. S6307-08 (daily ed. June 25, 1997) (Domenici point of order against Lautenberg for Kennedy amendment reducing fees on student loan programs; Dodd motion to waive rejected 43-57; point of order sustained); 145 Cong. Rec. S9478-84 (daily ed. July 28, 1999) (Lott point of order against section 1502 of the committee-reported bill on general extension of revenue-reduction provisions; Roth motion to waive rejected 51-48; point of order sustained; section stricken); 146 CONG. REC. S6784 (daily ed. July 14, 2000), *id.* at S7043 (daily ed. July 17, 2000) (Roth point of order July 14 under section 313 and apparently subsection (b)(1)(E) against section 4 of the conference committee-reported bill on the earned income tax credit; Roth motion to waive approved by unanimous consent July 17); *id.* at S6804 (daily ed. July 14, 2000), *id.* at S7045 (daily ed. July 17, 2000) (Moynihan point of order against Roth amendment to strike the sunset provision in the committee-reported bill; Roth motion to waive rejected 48-47; point of order sustained); *id.* (Roth point of order implicitly under subsection (b)(1)(E) against Roth amendment to strike the sunset provision in the Democratic substitute; covered by same Roth motion to waive as previous point of order; point of order sustained); 149 CONG. REC. S6431 (daily ed. May 15, 2003) (Baucus point of order implicitly under subsection (b)(1)(E) against Sessions amendment applying sunset provision to revenue increase provisions; Sessions motion to waive rejected 51-49; point of order sustained).

Section 205(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subparagraph (E). Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784-85 (1987). The joint statement of managers in the conference report on that bill stated with regard to subparagraph (E):

6. Extraneous Provisions in Reconciliation Legislation

Current Law

Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), as amended by Section 7006 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), established a temporary rule in the Senate — referred to as the “Byrd Rule” — to exclude extraneous matter from reconciliation legislation. The rule specifies the types of provisions considered to be extraneous, provides for a point of order against the inclusion of extraneous matter in reconciliation measures, and requires a three-fifths vote of the Senate to waive or appeal the point of order. The rule expires on January 2, 1988.

Senate Amendment

The Senate amendment (Section 228) amends the Byrd Rule (which applies only in the Senate) to include in the definition of extraneous matter provisions which increase net outlays or decrease revenues during a fiscal year beyond

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§ 313(b)(1)(F) **(F)⁴³ a provision shall be considered extraneous if it violates section 310(g).**

§ 313(b)(2) **(2) A Senate-originated⁴⁴ provision shall not be considered extraneous under paragraph (1)(A)⁴⁵ if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:**

§ 313(b)(2)(A) **(A) the provision mitigates direct effects clearly attributable to a provision changing outlays⁴⁶ or revenues and both provisions**

⁴²(...continued)

those fiscal years covered by the reconciliation measure and which result in a net increase in the deficit for that fiscal year. The Senate amendment also extends the expiration date of the Byrd Rule to September 30, 1992.

Conference Agreement

The House recedes and concurs in the Senate amendment. This rule applies only in the Senate.

It is the intent of the conferees that expiration after the reconciliation period of a revenue increase or extension provided for in a reconciliation bill would not, of itself, be considered a revenue decrease for purposes of this provision. It could, however, contribute to a finding that a spending increase or a positive revenue decrease in that legislation violated this rule.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 65 (1987), *reprinted in* 1987 U.S.C.C.A.N. 739, 765.

⁴³ Section 13214(a)(6) of the Budget Enforcement Act added subparagraph (F). As a result of this addition, a Senator may raise a point of order under this section that would result in excising only the offending provision, whereas raising the point of order under section 310(g) itself against a provision in the bill would result in killing the entire bill.

The Parliamentarian's office has advised (in August of 2005) that extending the payroll taxes (FICA contributions) that fund Social Security coverage would violate both section 310(g) and this subparagraph of the Byrd rule. Extending the payroll taxes that fund the Hospital Insurance coverage only, and not Social Security, could conceivably be done without violating 310(g) or 313(b)(1)(F).

⁴⁴ Section 13214(a)(7) of the Budget Enforcement Act added the words "Senate-originated." For House-originated provisions, this paragraph did not clearly indicate which chairmen held responsibility. This change makes clear that the exception does not apply for House-originated provisions.

⁴⁵ Paragraph (1)(A) concerns provisions without deficit effect. *See supra* p. 8.

⁴⁶ Section 3(1) defines "outlays."