

Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, DC 20515-6453

MEMORANDUM

MAR 20 2012

TO:

FROM:

SUBJECT: Revenue Estimate

This memorandum is a revision to our correspondence of March 19, 2012, regarding a revenue estimate of S. 2059, the "Paying a Fair Share Act of 2012."

The "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" extended certain provisions of the "Economic Growth and Tax Relief Reconciliation Act of 2001 ('EGTRRA') and the "Jobs and Growth Tax Relief Reconciliation Act of 2003 ('JGTRRA') through 2012. In 2012, the maximum statutory rate on ordinary income is 35 percent and the maximum rate on capital gains and qualified dividend income is 15 percent. In 2013 and years thereafter, the maximum statutory rates for the regular income tax are 39.6 percent for ordinary income and 20 percent for capital gains under present law. (Dividend income will be treated as ordinary income in 2013 and years thereafter.) Also, beginning in 2013, an additional 3.8-percent tax will be imposed on the net investment income of certain individuals.

Under S. 2059, a new tax would be imposed on certain high-income taxpayers. The amount of the tax would equal the excess (if any) of a taxpayer's tentative fair share tax for the taxable year over the sum of the taxpayer's (a) regular tax liability (less allowable credits except for the foreign tax credit), (b) alternative minimum tax, and (c) payroll tax, where the payroll tax includes the employee's share of the OASDI and HI portions of FICA taxes, the additional 3.8-percent tax on net investment income, and any self-employment taxes less the deduction for self-employment taxes permitted under section 164(f) of the Code.

The taxpayer's tentative fair share tax equals 30 percent of the taxpayer's adjusted gross income ("AGI") less modified charitable contributions, where modified charitable contributions equal the taxpayer's allowable charitable deduction under section 170 of the Code multiplied by the ratio of the taxpayer's total itemized deduction after the overall limitation of itemized deductions under section 68 of the Code to total itemized deduction before the application of section 68.

The new tax would apply to taxpayers with AGI in excess of one million dollars (\$500,000 for married individuals filing a separate return). The tax would be phased in for

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taxpayers with AGI between one million dollars and two million dollars (\$500,000 and one million dollars for married individuals filing a separate return). The AGI thresholds would be indexed for inflation for years after 2013.

We are making a technical revision to our March 19, 2012, estimate. Our standard capital gains methodology incorporates an implied elasticity of approximately -0.7. The elasticity accounts for taxpayers adjusting their capital gains in response to changes in the marginal tax rate. Unfortunately, we did not properly specify the proposal in our modeling. This revision continues to use our standard methodology for estimating the capital gains response, but corrects the specification of the proposal when significant minimum tax interaction is involved.

In particular, this revision takes into account the interaction of the new minimum tax and the mix of different types of income at the taxpayer level. As stated above, we project taxpayers respond to increases in marginal and average tax rates by reducing their realization of capital gains. For taxpayers that we expect would adjust their capital gains such that they would not be subject to the new minimum tax, we did not properly limit that adjustment. The adjustment should be limited such that these taxpayers are not significantly below the threshold for the new minimum tax liability. For example, suppose that a taxpayer had \$5 million in AGI that was comprised of a mix of non-capital gains income and capital gains income. Further, suppose that this taxpayer would be subject to an additional tax liability under S. 2059 of \$10,000. This taxpayer might reduce their capital gain realizations by \$35,000 to fall below the threshold. We have determined that in a number of cases our modeling would have had such a taxpayer reduce their capital gain realizations by a greater amount. This revision corrects our modeling specification to limit the amount of the reduction in realized capital gains to approximately the amount that would keep the taxpayer from being subject to the new minimum tax under S. 2059.

S. 2059 would be effective for taxable years beginning after December 31, 2012. For purposes of estimating the proposal, we have assumed an enactment date of May 1, 2012.

We estimate that the proposal would have the following effect on Federal fiscal year budget receipts:

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Fiscal Years
[Billions of Dollars]

| Item | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2012-17 | 2012-22 |
|--|------|------|------|------|------|------|------|------|------|------|------|---------|---------|
| Impose a minimum 30% tax on AGI less charitable contributions for taxpayers with AGI in excess of \$1 million..... | 1.1 | 5.1 | -6.1 | 4.5 | 4.8 | 5.3 | 5.7 | 6.1 | 6.4 | 6.7 | 7.0 | 14.7 | 46.7 |

NOTE: Details do not add to totals due to rounding.