RSC
Republican Study Committee

Rep. John Shadegg (R-AZ), Chairman
Neil Bradley, Executive Director
432 Cannon House Office Building
Washington, D.C. 20515

http://www.house.gov/burton/RSC/ (202) 226-9717

Legislative Bulletin……………………………..…….……June 21, 2002

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H.R. 4931—Retirement Savings Security Act (Portman)

<u>Order of Business</u>: The bill is scheduled to be considered on Friday, June 21st, subject to a modified closed rule allowing one Democrat amendment in the nature of a substitute to be offered (see "Democrat Amendment" section below).

<u>Summary</u>: H.R. 4931 would make permanent the pension and individual retirement arrangement provisions contained in last year's tax-cut package that are set to sunset on January 1, 2011. (This bill would not affect provisions set to expire before the January 1, 2011, general sunset date in the tax-cut package.) <u>Current law</u> is as follows:

- Increases the maximum Individual Retirement Account (IRA) contribution limits for traditional and Roth IRAs as follows:

Year	Contribution Limit
2002-2004	$3,000
2005-2007	$4,000
2008	$5,000
2009 and thereafter	Indexed for Inflation

- Increases IRA catch-up contribution limits for those age 50 and over by $500 in 2002 and $1,000 in 2006
- Includes other pension provisions generally included in the Portman-Cardin Retirement Savings Bill (regarding such items as elective deferrals, vesting of employer matching contributions, increasing pension portability, excise taxes on pension plans, employer-provided retirement advice, etc.)

The pensions and individual retirement arrangement provisions are set to expire on January 1, 2011. If H.R. 4931 is not signed into law, the pre-tax-package provisions would return literally overnight on New Year's Eve, 2011. For example, in 2010, a person could contribute $5000 (plus inflation adjustment) annually to his IRA, yet in 2011 without H.R. 4931, a person could only contribute $2000 annually.

Failure to pass H.R. 4931 would result in a **$6.1 billion tax increase** on Americans in just two years (2011 and 2012).

Additional Background: The retirement savings provisions discussed above were implemented as part of the Bush tax-cut package (H.R. 1836; Public Law 107-16) signed into law on June 7, 2001. In order to comply with reconciliation procedures under the Congressional Budget Act of 1974 (i.e. section 313 of the Budget Act, under which a point of order may be lodged in the Senate), the tax-cut bill included a "sunset" provision, under which the law generally expires at the end of 2010.

For more details on what was enacted as part of the Bush tax cut, visit this website: http://www.house.gov/burton/RSC/TaxBillCR1.PDF

Democrat Amendment: The Matsui amendment in the nature of a substitute is the only amendment made in order under the rule. The following is an explanatory summary based on a document provided by the Ways & Means Committee:

Changes to the Pension Provisions of the Bush Tax-Cut Package of 2001

- In addition to making permanent the pension and individual retirement arrangement provisions in the Bush tax-cut package, the Matsui amendment would also make permanent the small-savers tax credit. The small savers credit provides a non-refundable tax credit to low-income individuals who contribute to a pension or IRA. The provision was implemented temporarily (for 5 years) so that Congress could monitor the effectiveness of the credit.

- The Bush tax-cut package increased the amount of compensation that may be taken into account for purposes of determining limits on employer deductions, contributions, benefits, and nondiscrimination rules. The compensation limit was increased from $170,000 to $200,000. The Matsui amendment would reduce the limit to $150,000 if application of the higher limit results in lower benefits for rank-and-file employees.

- Some plans (particularly those of small employers) may primarily benefit "key employees." Employers who maintain these so-called "top-heavy" plans are required to make minimum contributions to the pensions of rank-and-file employees. Before the Bush tax cut was enacted into law, matching contributions could not be counted toward the minimum contribution requirements. Now that matching contributions *can* be counted toward the minimum contribution requirements, the Matsui amendment would repeal this new rule.

Corporate Governance Changes

- Under current law, employers cannot deduct "excess" compensation paid to an employee (i.e. amounts in excess of $1 million). Performance-based compensation does not count against the $1 million limit. The Matsui amendment would prohibit the following from being counted in a company's bottom line when determining whether pension plan performance goals have been met: (1) cost savings resulting from changes to a pension plan, (2) excess assets in a defined benefit plan, and (3) investment earnings above what is actually earned by the plan.

- The Matsui amendment would tighten the current-law rules that determine whether an executive compensation arrangement is "funded" (but only when a company maintains a pension plan in which employer contributions are made in the form of employer stock). If the plan is determined to be funded (as determined under these tighter rules), the executive would be taxed on his deferred compensation as soon as he vests in those benefits.

- Under current law, stock options are taxed when they are exercised. The Matsui amendment would tax stock options held by corporate insiders upon a corporate inversion. [A corporate inversion is when a company seeks relief from double U.S. taxation by transforming a foreign subsidiary into the corporate headquarters and transforming the current U.S. corporate headquarters into a subsidiary of the new offshore headquarters.]

- The Matsui amendment would impose a "golden parachute" excise tax on any severance payments or deferred compensation received by a corporate insider who leaves a company if the company's stock value declines by more than 75% in the preceding year or if the company files for bankruptcy protection within a certain period of time.

Arguments against the Democrat Amendment:

- The bulk of the provisions in the Matsui substitute address executive compensation and corporate governance—*far* beyond the sunset repeal in the underlying text of H.R. 4931.
- The provisions that do address pensions—such as the changes to "top-heavy" plans—could actually serve to *diminish* the incentives for employers to provide matching contributions and for employees to contribute to 401(k) plans.
- The House has already passed corporate governance legislation this session by a wide bi-partisan margin (H.R. 3763, *334-90*, http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=110)

Cost to Taxpayers: According to the Joint Committee on Taxation (in document JCX-70-02), implementation of the base text of H.R. 4931 would save taxpayers **$2.091 billion** in FY2011 and **$4.014 billion** in FY2012. For a line-item breakdown of the savings to taxpayers in 2011 and 2012, visit this website: http://www.house.gov/jct/x-70-02.pdf

Does the Bill Create New Federal Programs or Rules?: The base bill would make permanent certain provisions in current tax law set to expire after December 31, 2010.

Constitutional Authority: Though a committee report citing constitutional authority in unavailable, Article I, Section 8, Clause 1 grants Congress the power to "lay and collect Taxes, Duties, Imposts and Excises…," and the 16th Amendment grants Congress the power to "lay and collect taxes on incomes, from whatever source derived,…."

Staff Contact: Paul Teller, paul.teller@mail.house.gov, (202) 226-9718