

Callahan	Heineman	Payne (VA)
Calvert	Heger	Peterson (FL)
Camp	Hilleary	Petri
Canady	Hobson	Pickett
Cardin	Hoekstra	Pombo
Castle	Hoke	Porter
Chabot	Horn	Portman
Chambliss	Hostettler	Pryce
Chenoweth	Houghton	Quillen
Christensen	Hoyer	Quinn
Chrysler	Hunter	Radanovich
Clinger	Hutchinson	Ramstad
Coble	Hyde	Regula
Coburn	Inglis	Riggs
Collins (GA)	Istook	Roberts
Combest	Johnson (CT)	Roemer
Cooley	Johnson, Sam	Rogers
Cox	Jones	Rohrabacher
Coyne	Kanjorski	Ros-Lehtinen
Crane	Kaptur	Roth
Crapo	Kasich	Roukema
Cremeans	Kelly	Royce
Cubin	Kim	Salmon
Cunningham	King	Sanford
Davis	Kingston	Saxton
Deal	Klecza	Scarborough
DeFazio	Klink	Schaefer
DeLay	Klug	Schiff
Diaz-Balart	Knollenberg	Seastrand
Dickey	Kolbe	Sensenbrenner
Doolley	LaHood	Shadegg
Doolittle	Largent	Shaw
Dorman	Latham	Shays
Dreier	LaTourrette	Shuster
Duncan	Laughlin	Sisisky
Dunn	Lazio	Skaggs
Ehlers	Leach	Skeen
Ehrlich	Lewis (CA)	Smith (MI)
Emerson	Lewis (KY)	Smith (NJ)
English	Lightfoot	Smith (TX)
Ensign	Linder	Smith (WA)
Everett	Lipinski	Solomon
Ewing	Livingston	Souder
Fawell	LoBiondo	Spence
Fields (TX)	Longley	Stark
Flanagan	Lucas	Stearns
Foley	Manzullo	Stenholm
Forbes	Martini	Stockman
Fowler	McCollum	Stump
Fox	McCreery	Talent
Franks (CT)	McDade	Tate
Franks (NJ)	McHugh	Tauzin
Frelinghuysen	McInnis	Taylor (NC)
Frisa	McIntosh	Thomas
Funderburk	McKeon	Thornberry
Galleghy	McNulty	Tiahrt
Gekas	Metcalf	Torkildsen
Geren	Meyers	Upton
Gibbons	Mica	Vucanovich
Gilchrist	Miller (FL)	Waldholtz
Gillmor	Molinari	Walker
Gilman	Mollohan	Walsh
Goodlatte	Montgomery	Wamp
Goodling	Moorhead	Watts (OK)
Goss	Morella	Weldon (FL)
Graham	Murtha	Weldon (PA)
Greenwood	Myers	Weller
Gunderson	Myrick	White
Gutknecht	Nethercutt	Whitfield
Hall (OH)	Neumann	Wicker
Hall (TX)	Ney	Wilson
Hamilton	Norwood	Wolf
Hancock	Nussle	Young (AK)
Hansen	Orton	Young (FL)
Hastert	Oxley	Zeliff
Hastings (WA)	Packard	Zimmer
Hayworth	Parker	
Hefley	Paxon	

NOT VOTING—1

Reynolds

So the motion to recommit with instructions was not agreed to.

§56.15 POINT OF ORDER

Mr. MORAN, having previously cited clause 5(c) of rule XXI in a parliamentary inquiry as being applicable to the bill, made a point of order, and said:

“Mr. Speaker, I made a parliamentary inquiry, but I would state a point of order that any vote on this bill should require a three-fifths vote. If it does not require that, then I would appeal the ruling of the Chair.”

Mr. ARCHER was recognized to speak to the point of order, and said:

“Mr. Speaker, I would be pleased to try to help the Chair to support his ruling.

“First, as a result of the enactment of the 50 percent exclusion applicable generally, taxpayers, other than those described in the following two paragraphs, would have a tax rate lower than 28 percent. Thus, the 28 percent maximum rate of section 1(h) of current law would not cause a reduction in tax liability as compared with that under current law; that is, as relates to current law liability, the provision would be inoperative.

“No. 2, the 50 percent exclusion would not apply to collectibles. Under H.R. 1215, for this group of taxpayers the maximum rate of 28 percent is retained in H.R. 1215.

“No. 3, a question has been raised as to the potential application of the 28 percent maximum rate under current law for taxpayers currently qualifying for the special rules of existing section of the law, 1202. In light of the fact that this provision would be repealed by 1215, the maximum rate of 28 percent would have no further application. Moreover, it should be noted that the special rules in section 1202 are an exclusion provision rather than a rate provision.

“Further, it should be noted that concerns as to whether repeal of current law, section 1202, in conjunction with the repeal of current law, section 1(h), constitutes a rate increase, are focused on the effective rate impact rather than the occurrence of any income tax rate increase.

“The House rule in question is not intended to apply to effective rate changes.”

Mr. MORAN was recognized to speak further to the point of order, and said:

“Mr. Speaker, I would like to underscore the last comment that was made by the distinguished chairman of the Committee on Ways and Means that the House rule in question is not intended to apply to effective tax rate changes. There was never any reference to effective rate changes. In fact, it was any income tax rate increase. I read the debate again that occurred on the first day of this session. We are now making a distinction between effective rate changes apparently and statutory rate changes, although both apply here. I do have a letter from the Treasury Department explaining that this is a tax rate increase.

“How it occurred, Mr. Speaker, is in the 1993 Omnibus Budget Reconciliation Act we did pass a capital gains tax rate reduction. What it said is that when people invest in small capitalized firms for five years, their capital gains tax is reduced by 50 percent. What this bill did was to strike the capital gains rate of 28 percent, raise it to 39.6 percent, and then apply the 50 percent preference for capital gains investment. What that means is that the effective capital gains rate is 19.8 percent

if this bill were to pass, whereas today there are investors getting a 14 percent tax rate on capital gains investments.

“Now, this is not an obscure provision. It is a \$725 million capital gains provision that was passed in the 1993 Budget Reconciliation Act. What we have done is for some investors who have invested hundreds of millions of dollars in small capitalized firms, is increased their tax rate from 14 percent to 19.8 percent. That is an increase in the income tax rate. It is both a statutory increase, in that we remove the 28 percent level and put in 39.6 percent. It is also an effective rate increase because it changes from 14 percent to 19.8 percent. That is what the letter from both the Treasury Department and the Small Business Administration underscores, that in fact investors would be paying a higher capital gains rate.”

Mr. CARDIN was recognized to speak to the point of order, and said:

“Mr. Speaker, I do.

“Mr. Speaker, this is a very important ruling. It is the first one that the Chair has had to make on the new rule XXI that requires an extraordinary vote on a tax rate increase. The language, as I understand it, is when the Federal tax rate increase applies we need a three-fifths vote.

“If I understand the potential ruling of the Chair, if the Chair rules that this bill does not raise a rate and therefore does not need an extraordinary vote, what the Chair is saying is that legislation which subjects a larger percentage of a taxpayer's income to an existing tax rate would not be a tax rate increase under the provisions of rule XXI. That would mean that we could effectively raise tax rates in this country by just subjecting a larger amount of a person's income to the tax rate, thereby accomplishing the effect of a tax rate increase under the potential ruling of the Chair without raising the rate.

“I just really want to point that out to the Chair before he makes his ruling, because effectively if he rules against the gentleman from Virginia [Mr. MORAN] rule XXI is meaningless.”

Mr. SKAGGS was recognized to speak to the point of order, and said:

“Mr. Speaker, one further point I think needs to be made on this.

“During the debate on opening day, it was touted that this rules change was remedial in nature. It was to be viewed expansively as remedying a propensity of the House that needed to be curtailed. A narrow reading such as is advocated by the chairman of the Committee on Ways and Means a few minutes ago flies in the face of all of the advocacy, the legislative history, if you will, of this rules change, which is the only basis that the House has and that the Chair has for informing a ruling.

“To take a provision that was intended to be remedial, and therefore viewed expansively, and interpret it narrowly belies the absurdity of the rules change to begin with.”

Mr. McDERMOTT was recognized to speak to the point of order, and said:

"Yes, Mr. Speaker.

"Mr. Speaker, if I understand the ruling the Chair is about to make, you are saying for those who do not understand arcane tax law, if we raise taxes on people but we do it in a sneaky, kind of back-door way of doing it, that, Mr. Speaker, if we do it in a legislatively, carefully crafted way, we can get away with it. If we do it straight out and say to small business, your taxes go from 14 percent to 19 percent just like that, that would require a 60-percent vote. But if we can find some way parliamentarily to swing around it, whatever the effect on people is does not make any difference.

"Is that what the Chair is saying?"

Mr. LINDER was recognized to speak to the point of order, and said:

"Mr. Speaker, this does not seem all that complicated. It does not change any rates of taxation of capital gains. It excludes 50 percent of the gain. Therefore, you are taxed at the 39.6-percent tax rate. Fifty percent of any gain would be excluded, giving an effective rate of 19.8 percent, a lower effective rate.

"If you happen to be taxed at a 35-percent tax rate, 50 percent of the gain would be excluded, giving you a 17.5-percent tax. It lowers the effective rate in every instance by excluding half of the gain from any taxation at all."

The SPEAKER pro tempore, Mr. DREIER, overruled the point of order, and said:

"The Chair is prepared to rule.

"In deference to the specialized expertise that has been provided, the Chair rules that this bill does not include a Federal income tax rate increase."

Mr. MORAN appealed the ruling of the Chair.

Mr. ARCHER moved to lay the appeal on the table.

The question being put, viva voce,

Will the House lay on the table the appeal of the ruling of the Chair?

The SPEAKER pro tempore, Mr. DREIER, announced that the nays had it.

Mr. MFUME demanded a recorded vote on agreeing to said motion, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative { Yeas 228 Nays 204

¶56.16 [Roll No. 294] AYES—228

- Allard Archer Armye Bachus Baker (CA) Baker (LA) Ballenger Barr Barrett (NE) Bartlett Barton Bass Bateman Bereuter Bilbray Bilirakis Bliley Blute Boehlert Boehner Bonilla Bono Brownback Bryant (TN) Bunn Bunning Burr Burton Buyer Callahan Calvert Camp Canady

- Castle Chabot Chambliss Chenoweth Christensen Chrysler Clinger Coble Coburn Collins (GA) Combust Cooley Cox Crane Crapo Cremeans Cubin Cunningham Davis DeLay Diaz-Balart Dickey Doolittle Dornan Dreier Duncan Dunn Ehlers Ehrlich Emerson English Ensign Everett Ewing Fawell Fields (TX) Flanagan Foley Forbes Fowler Fox Franks (CT) Frelinghuysen Frisa Funderburk Gallegly Ganske Gekas Gilchrist Gillmor Gilman Gingrich Goodlatte Goodling Goss Graham Greenwood Gunderson Gutknecht Hancock Hansen Hastert Hastings (WA) Hayworth Hefley Heineman Herger Hilleary Hobson Hoekstra Hoke Horn Hostettler Houghton Hunter Hutchinson Hyde Inglis Istook Johnson (CT) Johnson, Sam Jones Kasich Kelly Kim King Kingston Klug Knollenberg Kolbe LaHood Largent Latham LaTourette Lazio Leach Lewis (CA) Lewis (KY) Lightfoot Linder Livingston LoBiondo Longley Lucas Manzullo Martini McCollum McCreary McDade McHugh McInnis McIntosh McKeon Metcalf Meyers Mica Miller (FL) Molinari Moorhead Morella Myers Myrick Nethercutt Neumann Ney Norwood Nussle Oxley Packard Paxon

NOES—204

- Abercrombie Ackerman Andrews Baesler Baldacci Barcia Barrett (WI) Becerra Beilenson Bentsen Berman Bevill Bishop Bonior Borski Boucher Brewster Browder Brown (CA) Brown (FL) Brown (OH) Bryant (TX) Cardin Chapman Clay Clayton Clement Clyburn Coleman Collins (IL) Collins (MI) Condit Conyers Costello Coyne Cramer Danner de la Garza Deal DeFazio DeLauro Dellums Deutsch Dicks Dingell Dixon Doggett Dooley Doyle Durbin Edwards Engel Eshoo Evans Farr Fattah Fazio Fields (LA) Filner Flake Foglietta Ford Frank (MA) Frost Furse Gejdenson

- Petri Pombo Porter Portman Pryce Quillen Quinn Radanovich Ramstad Regula Riggs Roberts Rogers Rohrabacher Ros-Lehtinen Roth Roukema Royce Salmon Sanford Saxton Scarborough Schaefer Schiff Seastrand Sensenbrenner Shadegg Shaw Shays Shuster Skeen Smith (MI) Smith (NJ) Smith (TX) Smith (WA) Solomon Spence Stearns Stockman Stump Talant Tate Taylor (NC) Thomas Thornberry Tiahrt Torkildsen Upton Vucanovich Waldholtz Walker Walsh Wamp Watts (OK) Weldon (FL) Weldon (PA) Weller White Whitfield Wicker Wolf Young (AK) Young (FL) Zeliff Zimmer

- Lantos Laughlin Levin Lewis (GA) Lincoln Lipinski Lofgren Lowey Luther Maloney Manton Markey Martinez Mascara Matsui McCarthy McDermott McHale McKinney McNulty Meehan Meek Menendez Mfume Miller (CA) Mineta Minge Mink Moakley Mollohan Montgomery Moran Murtha Nadler Neal Obergstar Obey Olver Ortiz Orton Owens Pallone Parker Pastor Payne (NJ) Payne (VA) Pelosi Peterson (FL) Peterson (MN) Pickett Pomeroy Poshard Rahall Rangel Reed Richardson Rivers Roemer Rose Roybal-Allard Rush Sabo Sanders Sawyer Schroeder Schumer Scott Serrano Sisisky Skaggs Skelton Slaughter Spratt Stark Stenholm Stokes Studds Stupak Tanner Tauzin Taylor (MS) Tejeda Thompson Thornton Thurman Torres Torricelli Towns Traficant Tucker Velazquez Vento Visclosky Volkmer Ward Waters Watt (NC) Waxman Williams Wilson Wise Woolsey Wyden Wynn Yates

NOT VOTING—3

- Franks (NJ) Reynolds Souder

So the motion to lay the appeal on the table was agreed to.

A motion to reconsider the vote whereby said motion was agreed to was, by unanimous consent, laid on the table.

The question being put, viva voce, Will the House pass said bill?

The SPEAKER pro tempore, Mr. DREIER, announced that the yeas had it.

Mr. GIBBONS demanded a recorded vote on passage of said bill, which demand was supported by one-fifth of a quorum, so a recorded vote was ordered.

The vote was taken by electronic device.

It was decided in the affirmative { Yeas 246 Nays 188

¶56.17 [Roll No. 295] AYES—246

- Allard Callahan Dreier Andrews Calvert Duncan Archer Camp Dunn Armye Canady Ehlers Bachus Castle Ehrlich Baker (CA) Chabot Emerson Baker (LA) Chambliss English Ballenger Chenoweth Ensign Barr Christensen Everett Barrett (NE) Chrysler Ewing Bartlett Clement Fawell Barton Clinger Fields (TX) Bass Coble Flanagan Bateman Coburn Foley Bereuter Collins (GA) Forbes Bevill Combust Fowler Bilbray Condit Fox Bilirakis Cooley Franks (CT) Bliley Cox Franks (NJ) Boehlert Cramer Frelinghuysen Boehner Crane Frisa Bonilla Crapo Funderburk Bono Cremeans Gallegly Brewster Cubin Ganske Browder Cunningham Gekas Brownback Danner Geren Bryant (TN) Deal Gilchrist Bunn DeLay Gillmor Bunning Diaz-Balart Gillmor Burr Dickey Gingrich Bartlett Doolittle Goodlatte Barton Buyer Dornan Goodling